Masculinities, sexualities and child sexual abuse

Author:
Cossins, Anne

Publication Date:
1998

DOI:
https://doi.org/10.26190/unswworks/4053

License:
https://creativecommons.org/licenses/by-nc-nd/3.0/au/
Link to license to see what you are allowed to do with this resource.

Downloaded from http://hdl.handle.net/1959.4/54137 in https://unswworks.unsw.edu.au on 2023-09-14
MASCULINITIES, SEXUALITIES AND CHILD SEXUAL ABUSE

BY

ANNE ISABEL COSSINS

A THESIS SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

FACULTY OF LAW
THE UNIVERSITY OF NEW SOUTH WALES
SEPTEMBER 1998
COPYRIGHT STATEMENT

‘I hereby grant the University of New South Wales or its agents the right to archive and to make available my thesis or dissertation in whole or part in the University libraries in all forms of media, now or here after known, subject to the provisions of the Copyright Act 1968. I retain all proprietary rights, such as patent rights. I also retain the right to use in future works (such as articles or books) all or part of this thesis or dissertation.
I also authorise University Microfilms to use the 350 word abstract of my thesis in Dissertation Abstract International (this is applicable to doctoral theses only).
I have either used no substantial portions of copyright material in my thesis or I have obtained permission to use copyright material; where permission has not been granted I have applied/will apply for a partial restriction of the digital copy of my thesis or dissertation.’

Signed …………………………………………….......... .................
Date       ……… ……………………………………….......... .................

AUTHENTICITY STATEMENT

‘I certify that the Library deposit digital copy is a direct equivalent of the final officially approved version of my thesis. No emendation of content has occurred and if there are any minor variations in formatting, they are the result of the conversion to digital format.’

Signed …………………………………………….......... .................
Date       ……… ……………………………………….......... .................
ORIGINALITY STATEMENT

‘I hereby declare that this submission is my own work and to the best of my knowledge it contains no materials previously published or written by another person, or substantial proportions of material which have been accepted for the award of any other degree or diploma at UNSW or any other educational institution, except where due acknowledgement is made in the thesis. Any contribution made to the research by others, with whom I have worked at UNSW or elsewhere, is explicitly acknowledged in the thesis. I also declare that the intellectual content of this thesis is the product of my own work, except to the extent that assistance from others in the project’s design and conception or in style, presentation and linguistic expression is acknowledged.’

Signed  …..........................................................

Date  ….............................................................
Abstract 350 words maximum: (PLEASE TYPE)

In light of evidence that shows that the vast majority of child sex offenders are male, the vast majority of victims of child sexual abuse are female, and the vast majority of abusers of male children are male, the question posed by this thesis is, why is child sexual abuse committed primarily by men and male adolescents, unlike other types of child abuse? This thesis poses the hypothesis that child sex offending, rather than being a deviant masculine sexual practice, is related to normative masculine gender practices, that is, practices structured on dynamic and changing relations of power. Using a practice-based sociological approach, the relationship between masculinities, sexualities and child sexual abuse is analysed and the power/powerlessness theory is developed to explain the predominantly male problem of child sex offending. The theory posits that, because the social construction of masculinities involves the construction of dynamic and changing relations of power between men, men's lives are characterised by a combination of power and powerlessness. It is argued that an offender's experiences of powerlessness as a result of his relationships with other men is the key to understanding child sex offending, since sexuality is a key social practice for differentiation between masculinities, the alleviation of experiences of powerlessness and for establishing relations of power with other men. Such a proposition means that there can be no pre-existing tendency (biological or psychological) to engage in child sexual abuse. In particular, the theory argues that a man's particular attachment to the link between sexuality and experiences of masculinity and power will be a key factor for determining how he does sex and whom he chooses as a sexual partner. For these reasons, child sex offending can be understood as a particular masculine sexual practice that some men engage in to protect the vulnerable self that is created through the effects of the masculine social practices of other men. The theory is capable of explaining the behaviour of all types of offenders because it recognises that child sex offending is likely to represent different issues of power for different men practising different masculinities. The theory is tested through a re-analysis of offender interviews originally conducted by Colton and Vanstone (1996), an analysis of victim report studies conducted in Australia, Britain, New Zealand and the USA and an analysis of psychological studies on the characteristics of child sex offenders.

The second main hypothesis addressed by this thesis is that low conviction rates for child sex offences are related to institutional practices of hegemonic masculinity within the criminal justice system (in particular, the trial and appeal processes), in light of data that shows that conviction rates for child sex offences are significantly lower than conviction rates for most other criminal offences. By examining the concept of the institution, the way that gender is institutionalised, the mechanisms by which a dynamic and changing gender regime operates within the criminal justice system, and the specific rules of evidence that govern the conduct of the child sexual assault trial, this thesis argues that particular segregation rules operate to create a gendered division of rights and restraints within the child sexual assault trial which prevents the vast majority of child sex offences from being prosecuted.
CERTIFICATE OF ORIGINALITY

I hereby declare that this submission is my own work and to the best of my knowledge it contains no materials previously published or written by another person, nor material which to a substantial extent has been accepted for the award of any other degree or diploma at UNSW or any other educational institution, except where due acknowledgement is made in the thesis. Any contribution made to the research by others, with whom I have worked at UNSW or elsewhere, is explicitly acknowledged in the thesis.

I also declare that the intellectual content of this thesis is the product of my own work, except to the extent that assistance from others in the project’s design and conception or in style, presentation and linguistic expression is acknowledged.

(Signed) ....
## CONTENTS

<table>
<thead>
<tr>
<th>Dedication</th>
<th>v</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract</td>
<td>vi</td>
</tr>
<tr>
<td>Acknowledgments</td>
<td>vii</td>
</tr>
<tr>
<td>Abbreviations</td>
<td>viii</td>
</tr>
<tr>
<td>List of Tables</td>
<td>ix</td>
</tr>
</tbody>
</table>

### Chapter One

**Introduction: The Male Problem of Child Sex Offending**

A. The Research Issues
B. Some Caveats
C. An Historical Framework in which to Examine the Motivations of Male Child Sex Offenders
   (i) Incest, Child Prostitution and the Sexual Slave Trade
   (ii) The Social Purity Movement in England and Australia
   (iii) Protecting Men from False Accusations
   (iv) The Criminalisation of Incest in Australia
   (v) The Criminalisation of Incest in England
   (vi) Conclusion
D. The Main Research Issue Re-Visited
E. The Second Main Research Issue of This Thesis
F. The Structure of the Thesis
G. Definitions and Terminology Used in this Thesis

### Chapter Two

**Current Explanations of Child Sexual Abuse**

A. Introduction
B. Child Sex Offending: Violence, Sex, Power, Dysfunctional Families or Just Plain Deviance?
   (i) Introduction
   (ii) An Analysis of Child Sexual Abuse as a Function of Family Pathology
   (iii) Sexually Coercive Behaviour: A Case of Biological Propensity or Culturally Produced Behaviour?
   (iv) The Relationship between Power and Child Sexual Abuse
   (v) Child Sexual Abuse as a Sociological Phenomenon
   (vi) Psychological Theories of Child Sex Offenders and ‘Good’ and ‘Bad’ Masculine Sexuality
   (vii) The Characteristics of Child Sex Offenders
   (viii) The Multi-factorial Analysis of Child Sexual Abuse

...
Chapter Three
Masculinities and Sexualities: A Sociological Theory of Child Sexual Abuse
A. Introduction
B. The Role of Power and Sexuality in the Making (and Unmaking) of Men
   (i) Gender as Social Practice
   (ii) Social Practices of Masculinity and Structures of Power
   (iii) The Centrality of Heterosexism to Masculine Sexual Ideals
   (iv) Masculine Sexual Practices
   (v) 'Pedosexuality' as a Specific Masculine Sexual Practice
   (vi) Blurring the Distinction between Pathology and Normality
C. The Social Construction of Feminine Sexuality: Creating Socially Acceptable Targets of Sexual Abuse
D. Conclusion

Chapter Four
The Masculine Sexual Practices of Child Sex Offenders: Testing the Power/Powerlessness Theory
A. Introduction
B. Victim Report Studies and Child Sex Offender Profiles: A Bad Match?
   (i) Introduction
   (ii) The Studies: What They Say about the Prevalence of Child Sexual Abuse
   (iii) The Studies: What They Say about Offender Types
   (iv) Conclusion: The Validity of the Fixated/Regressed Classification Scheme
C. The Characteristics of Child Sex Offenders: Evidence of Deviance or Experiences of Powerlessness?
   (i) Introduction
   (ii) Discussion
   (iii) Poor Social Skills, Loneliness, Isolation, Passivity, Low Self-Esteem and 'Deviant' Sexual Arousal: Do They Cause Child Sex Offending? Poor Social Skills
       Timidity and Passivity
       Deviant Sexual Arousal
       Lack of Intimacy
   (iv) What is the Role of Alcohol in Child Sex Offending?
   (v) Is an Experience of Child Sexual Abuse Causative in Child Sex Offending or Evidence of the Degree of Powerlessness Experienced by the Offender?
   (vi) Juvenile Onset of Child Sex Offending: A Function of Poor Social Skills or the Development of Masculine Sexual Practices in Adolescence?
   (vii) Establishing Relations of Power: The Selection of Vulnerable
Chapter Five
The Gap between Sexually Abused Children and the Criminal Justice System 299
A. Introduction 299
B. Incidence of Child Sexual Abuse in Australia and NSW 301
C. The Prosecution of Child Sex Offences in NSW 305
   (i) Introduction 302
   (ii) Conviction Rates for Child Sex Offences in NSW for the Period 1992 to 1996 306
   (iii) A Comparison of Conviction Rates for Child Sex Offences and All Other Criminal Offences in NSW 311
   (iv) A Comparison of Charges Laid, Conviction Rates and Substantiated Cases of Child Sexual Abuse 313
   (v) Previous Studies on Conviction Rates for Child Sex Offences 315
D. Conclusion: Is the Adversarial System a Barrier to the Successful Prosecution of Child Sex Offences? 328

Chapter Six
A Gendered Division of Rights and Restraints within the Criminal Justice System 334
A. Introduction 334
B. The Criminal Justice System: An Institutional Site for the Practice of Hegemonic Masculinity? 338
   (i) Sites of Masculine Social Practice 338
   (ii) The Gender Practices of the Criminal Justice System 345
   (iii) The Sexual Assault Trial: The Criminal Justice System’s
Gender Regime in Practice 352

C. The Relationship between Conviction Rates for Child Sex Offences and the Gender Regime of the Criminal Justice System 372
   (i) Introduction 372
   (ii) The Prosecution of Child Sex Offences 376
   (iii) The Operation of a Gender Regime within the Child Sexual Assault Trial 380
       *The Operation of the Corroboration Rule within the Child Sexual Assault Trial* 383
       *The Doctrine of Delay in Complaint* 393
       *The Operation of the Delay in Complaint Doctrine and the Corroboration Rule as Segregation Rules within the Child Sexual Assault Trial* 399
       *Challenging the Rationale behind the Delay in Complaint Doctrine* 408
       *Factors Associated with Delay in Complaint* 415
       *Cross-Examination of the Female Complainant of Child Sexual Assault* 423

Chapter Seven

Conclusion

A. What this Thesis has Achieved 434
B. Where to from Here: Future Work 456

Bibliography 464
List of Cases 488
THIS THESIS IS DEDICATED TO THE MEMORY OF
JUDY BERNICE COSSINS
21 MAY 1963 – 2 SEPTEMBER 1993
ABSTRACT

In light of evidence that shows that the vast majority of child sex offenders are male, the vast majority of victims of child sexual abuse are female, and the vast majority of abusers of male children are male, the question posed by this thesis is, why is child sexual abuse committed primarily by men and male adolescents, unlike other types of child abuse? This thesis poses the hypothesis that child sex offending, rather than being a deviant masculine sexual practice, is related to normative masculine gender practices, that is, practices structured on dynamic and changing relations of power. Using a practice-based sociological approach, the relationship between masculinities, sexualities and child sexual abuse is analysed and the power/powerlessness theory is developed to explain the predominantly male problem of child sex offending. The theory postulates that, because the social construction of masculinities involves the construction of dynamic and changing relations of power between men, men’s lives are characterised by a combination of power and powerlessness. It is argued that an offender’s experiences of powerlessness as a result of his relationships with other men is the key to understanding child sex offending, since sexuality is a key social practice for differentiation between masculinities, the alleviation of experiences of powerlessness and for establishing relations of power with other men. Such a proposition means that there can be no pre-existing tendency (biological or psychological) to engage in child sexual abuse. In particular, the theory argues that a man’s particular attachment to the link between sexuality and experiences of masculinity and power will be a key factor for determining how he does sex and who he chooses as a sexual partner. For these reasons child sex offending can be understood as a particular masculine sexual practice that some men engage in to protect the vulnerable self that is created through the effects of the masculine social practices of other men. The theory is capable of explaining the behaviour of all types of offenders because it recognises that child sex offending is likely to represent different issues of power for different men practising different masculinities. The theory is tested through a re-analysis of offender interviews originally conducted by Colton and Vanstone (1996), an analysis of victim report studies conducted in Australia, Britain, New Zealand and the USA and an analysis of psychological studies on the characteristics of child sex offenders.

The second main hypothesis addressed by this thesis is that low conviction rates for child sex offences are related to institutional practices of hegemonic masculinity within the criminal justice system (in particular, the trial and appeal processes), in light of data that shows that conviction rates for child sex offences are significantly lower than conviction rates for most other criminal offences. By examining the concept of the institution, the way that gender is institutionalised, the mechanisms by which a dynamic and changing gender regime operates within the criminal justice system, and the specific rules of evidence that govern the conduct of the child sexual assault trial, this thesis argues that particular segregation rules operate to create a gendered division of rights and restraints within the child sexual assault trial which prevents the vast majority of child sex offences from being prosecuted.
ACKNOWLEDGMENTS

I've always thought that the acknowledgments page of a Ph.D thesis says a lot about the pain and the pleasure of undertaking a doctorate. This acknowledgments page follows in that tradition.

There are many debts of gratitude owed to many people. The first is to my supervisor, Professor Regina Graycar of the University of Sydney who always seemed to believe in me much more than I did. In addition to bolstering my ego, I thank her for her ongoing encouragement, for pushing me to consider issues I had not thought about and for her feedback on and commitment to my work. The second is to Professor David Brown of the University of New South Wales who took on the unrewarding task of unofficial supervisor towards the end of this thesis. His patient, detailed and insightful feedback was invaluable and is gratefully acknowledged. Thirdly, I must thank Associate Professor Sandra Egger of the University of New South Wales who supervised this thesis in its early stages and for her feedback during that period. Fourthly, I thank Dorne Boniface, Senior Lecturer, University of New South Wales for the time she devoted to reading Chapter One of this thesis, her detailed feedback and for her support during a particularly painful period of the writing process. Fifthly, I thank Associate Professor George Zdenkowski for the time he devoted to reading Chapter Three of this thesis and for his very useful comments. I would also like to thank Ian Cameron, Associate Dean of Postgraduate Studies in the Faculty of Law, University of New South Wales for his support and interest in my work.

I owe a large debt of gratitude to the law librarians at the Law Library, University of New South Wales for their help during the writing of this thesis. In particular, Sue Morris gave me an enormous amount of help and assistance with various research databases and both Sue and Yvonne Wilcox helped me gain access to articles and books from other libraries. I am also indebted to Karen Freeman, Information Officer at the New South Bureau of Crime Statistics and Research for her patient help in supplying and interpreting the data used in Chapter Five. Thanks are also due to Jackie Fitzgerald, Information Officer at the New South Bureau of Crime Statistics and Research for her assistance with obtaining some of the statistical data used in Chapter Five.

I am also indebted to Dr Lisa Maher and Associate Professor David Dixon of the University of New South Wales for their advice during various stages of this thesis and to Dr Caroline Hunt of the School of Psychiatry at the University of New South Wales for her feedback on a part of Chapter Four and her support during the writing of this thesis.

Finally, I would like to thank a number of friends who believed that writing this thesis was important for reasons other than merely gaining a degree: my thanks to Shannon Taylor, Susan Kendall, Karen Smith and Romano Crivici.
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
</tr>
<tr>
<td>AIHW</td>
<td>Australian Institute of Health and Welfare</td>
</tr>
<tr>
<td>ALRC</td>
<td>Australian Law Reform Commission</td>
</tr>
<tr>
<td>DPP</td>
<td>Office of the Director of Public Prosecutions</td>
</tr>
<tr>
<td>HREOC</td>
<td>Human Rights and Equal Opportunity Commission</td>
</tr>
<tr>
<td>JITs</td>
<td>joint investigative teams</td>
</tr>
<tr>
<td>NSWBCSR</td>
<td>New South Wales Bureau of Crime Statistics and Research</td>
</tr>
<tr>
<td>NSWDOCS</td>
<td>New South Wales Department of Community Services</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>Royal Commission</td>
<td>Royal Commission into the New South Wales Police Service (1997)</td>
</tr>
<tr>
<td>SES</td>
<td>socioeconomic status</td>
</tr>
</tbody>
</table>
CHAPTER ONE

INTRODUCTION: THE MALE PROBLEM OF CHILD SEX OFFENDING

Imagine a society afflicted by a scourge which struck down a quarter of its daughters and up to one in eight of its sons. Imagine also that this plague, while not immediately fatal, lurked in the bodies and minds of these young children for decades, making them up to sixteen times more likely to experience its disastrous long-term effects. Finally, imagine the nature of these effects: life-threatening starvation, suicide, persistent nightmares, drug and alcohol abuse and a whole host of intractable psychiatric disorders requiring life-long treatment. What should that society's response be? (Glaser, 1997: 4; emphasis added).

A. THE RESEARCH ISSUES

Arguably, the sexual abuse of children raises a number of important questions for researchers, in that explanations need to be sought as to why:

• there is a vast disparity in the numbers of male and female child sex offenders;
• the vast majority of victims of child sexual abuse are female; and
• even when male children are sexually assaulted, the vast majority of abusers are male.

In examining each of these issues, the central question that has engaged many researchers in the social sciences, both feminist and non-feminist alike, is what motivates men to engage in sexual activities with children, rather than with their adult peers? Implicit in this question is the belief that sex with adult peers is the norm, whereas sex with children is a deviation from that norm. For example, much of the psychological literature on child sex offenders contains studies which emphasise the non-sexual motivations behind child sexual abuse, the abnormality of sexual desire for children and the normality of sex with adult women. Furthermore, Mair (1993: 267) considers that the distinction made in the literature between child sex offenders and rapists is simply based on the age of the victim and is likely to be due to the need to distinguish the child sex offender because of the assumed deviancy of his choice of victim.
However, this thesis considers that because there can be no objective standard of ‘normal’ male sexual behaviour, a distinction needs to be made between what are considered to be socially unacceptable sexual practices and sexual practices that may be relatively common within the general community, given the prevalence of child sexual abuse reported in victim report studies. In other words, this thesis recognises that it is problematic to make the assumption that because child sex offending is socially unacceptable behaviour, it, therefore, occurs infrequently. With this view in mind, it is argued that a different approach, that is, one which eschews a judgement as to what is and is not ‘normal’, is necessary for examining the motivation of male child sex offenders’ behaviour.

The main research issue addressed in this thesis is why child sexual abuse, as a sexual act, is committed primarily by men and male adolescents against both male and female children, unlike other types of child abuse. Although the link between gender, masculinity and child sexual abuse has long been recognised (Herman and Hirschmann, 1977; Rush, 1980; Finkelhor, 1984; Ward, 1985; Russell, 1986) and has spawned a number of theoretical analyses as to why men, rather than women, primarily engage in child sexual abuse, it is necessary to identify why this thesis considers that previous answers to the above question do not provide a complete understanding of child sex offending behaviour on the part of men.

Based on an interdisciplinary analysis of explanations which examine the motivations of male child sex offenders, this thesis argues that researchers in the social sciences (both feminist and non-feminist alike) have not yet developed a complete understanding of why some men and male adolescents choose to engage in sexual behaviour with children. Because existing theories are, arguably, contradictory or unable to explain the behaviour of all types of child sex offenders, the central focus of this thesis is to determine whether an explanation can be constructed that addresses the motivations of

---

1 These studies are discussed in detail in Chapters Two and Four.
2 These studies are discussed in detail in Chapter Four.
homosexual, bisexual, heterosexual, intra-familial and extra-familial offenders from an entirely different perspective: that is, from the perspective of the role that child sex offending plays as a particular gender practice.

In other words, in view of the evidence that shows there is a strong correlation between child sex offending behaviour and maleness on the part of the offender, this thesis examines the motivations of child sex offenders by considering the role that sexual behaviour with children plays in their lives as men. As such, this thesis takes a sociological and gender-based approach to the issue of child sex offending to determine whether the social construction of gender is central to understanding male child sex offenders’ sexual behaviour with children. The arguments presented in this thesis, therefore, constitute a sociological account of child sex offending with the understanding that gender is constructed through active social practices. In taking a sociological and gender-based approach to child sex offending, this thesis aims to challenge the dominant assumption found in the psychological literature that the reasons for child sexual abuse are to be found in the individual biological or psychological natures of offenders. Instead, this thesis analyses the relationship (if any) between child sex offending and the social construction of masculine sexualities.

In making these arguments, this thesis eschews the narrow feminist focus that child sexual abuse is primarily an issue to do with the social control of, and exercise of power over a female child and her sexuality, even though that may be how the child, validly, experiences the abuse. Whilst a number of feminist researchers have theorised men’s sexual abuse of children from the perspective of the relationship with the female child, seeing it as a product of the exercise of patriarchal power, this thesis examines whether it is valid to assume that a child’s experience of powerlessness amounts to the possession of power on the part of the male offender. In doing so, this thesis attempts to understand the meaning that child sex offending has from the perspective of the male offender, irrespective of the sex of the child and the child’s experience, in the

---

3 The victim report studies discussed in Chapter Four show that, although female children are at greater risk of being sexually abused than male children, when male children are victims of child sexual abuse, the vast majority of them are sexually abused by male offenders, not female.

4 These theoretical perspectives are discussed in detail in Chapter Two.
social context of the offender’s relationship with other men. In other words, is there a link between an offender’s sexual behaviour with children, his masculine social practices and the effects of other men’s masculine social practices upon him?

This approach has been taken, since, as Kimmel (1994) recognises:

[a] feminist definition of masculinity as the drive for power is theorised from women’s point of view. It is how women experience masculinity. But it assumes a symmetry between the public and the private that does not conform to men’s experiences. Feminists observe that women, as a group, do not hold power in our society. They also observe that individually, they, as women, do not feel powerful. They feel afraid, vulnerable. Their observation of the social reality and their individual experiences are therefore symmetrical. Feminism also observes that men, as a group, are in power. Thus, with the same symmetry, feminism has tended to assume that individually men must feel powerful (1994: 136; first emphasis in original; second emphasis added).

As such, this thesis argues that it cannot be assumed that an experience of powerlessness on the part of a victim of sexual abuse equates with an experience of power on the part of the offender. As its central research goal, this thesis attempts to understand the sexual abuse of children from the perspective of the male offender, in the context of both the considerable public power of men and the lack of power men experience on an individual level, not as a function of their relationships with women and children, but as a result of their relationships with men.

B. SOME CAVEATS

First, in stating the above research goal, I want to stress that by examining sexual behaviour with children from the perspective of the male child sex offender, I am not seeking to excuse nor justify the sexual abuse of children. My personal view about child sexual abuse reflects the commonly accepted view in Western countries towards the end of this century – that children must be protected from sexual exploitation which, from the accounts of child sexual abuse survivors, we know can cause extensive physical, emotional and psychological harm. The theoretical work in this thesis, then, is not in any way intended to be an apology for child sex offenders, nor a justification for their sexual activities with children. Rather, it is an attempt to understand what motivates them for the purposes of improving preventative strategies in relation to the sexual abuse of children, providing a sound theoretical basis for offender treatment
programmes and improving the present system for the prosecution of child sex offences.

Secondly, in stating the above research goal, it is also necessary to point out that the issue of why women and female adolescents engage in sexual behaviour with children is not a central focus of the theoretical analysis undertaken in this thesis which, as stated above, analyses the link between masculinities, sexualities and child sexual abuse. The reasons for not examining the behaviour of female child sex offenders are threefold:

- since the vast majority of child sexual abuse is committed by men and male adolescents, this thesis takes the view that it is necessary to treat the sexual abuse of children by male offenders as a particular and distinct social problem, separate from the issue of why a relatively small proportion of women engage in sexual behaviour with children;
- because of the large discrepancy in the numbers of female and male child sex offenders, it cannot be assumed that the motivations behind female offenders’ abuse of children are the same as that of male offenders;
- the apparently low incidence of child sex offending by female offenders can be assumed, at least at the outset, to be a different social problem which warrants a separate theoretical analysis. It was not considered within the scope of this thesis to undertake a detailed theoretical analysis of this problem, since it is, arguably, a sufficiently complex issue to warrant a separate Ph.D thesis being written on the topic.

Having made these points, however, an analysis of female child sex offending is undertaken in Chapter Four in order to examine whether the fact of some women’s sexual behaviour with children undermines the theoretical propositions as to why some men engage in sexual behaviour with children. In doing so, Chapter Four analyses whether child sexual abuse committed by women is motivated by entirely different considerations than the same behaviour by men. The discussion in Chapter Four, therefore, amounts to an important initial piece of work on the phenomenon of child sexual abuse committed by female child sex offenders which, it is hoped, will be
followed up in subsequent work by a more specific theoretical analysis, as discussed in Chapter Seven.

C. AN HISTORICAL FRAMEWORK IN WHICH TO EXAMINE THE MOTIVATIONS OF MALE CHILD SEX OFFENDERS

As discussed above, in posing the central research issue of this thesis, it is argued that a distinction needs to be made between socially unacceptable sexual practices which occur with relative frequency and so-called deviant sexual behaviour. Arguably, theories which attempt to explain why men engage in sexual behaviours with children need to take account of the history of men’s sexual behaviour with children and recognise that the social intolerance of the sexual exploitation of children is, historically, quite recent. In other words, whilst today child sexual abuse is recognised as a widespread social problem which causes significant emotional harm, as discussed below, in previous centuries, sexual practices with children were socially and legally tolerated, if not at times openly condoned, indicating that the ‘deviant’ child sex offender of the 1990s was, in the 1890s, a man who was considered to be expressing a ‘natural’ masculine sexual desire. For most of the nineteenth century, child sexual abuse was not specifically criminalised, nor, when eventually criminalised, was it widely prosecuted.

For most of this century, authorities and researchers have generally denied or ignored the prevalence and effects of child sexual abuse (Summit and Kryso, 1978; Herman, 1981), or blamed its occurrence on the victim, starting with Freud’s infamous retraction in 1905 of his observations of sexual abuse in eighteen of his patients who were said to be suffering from hysteria\(^5\), up to Kinsey and his associates and beyond, as the following quotes exemplify:

> The most remarkable feature presented by these children who have experienced sexual relations with adults was that they showed less evidence of fear, anxiety, guilt or psychic trauma than might be expected. ... The probation reports from the court frequently remarked about their brazen poise, which was interpreted as an especially inexcusable and deplorable attitude and one indicating their fundamental incorrigibility (Bender and Blau, 1939; cited in O’Donnell and Craney, 1982: 158).

---

\(^5\) The history of Freud’s documentation of child sexual abuse in his patients in 1896 and his subsequent retraction in 1905 are documented in Herman, 1981; Ward, 1985; Russell, 1986.
It is difficult to understand why a child, except for its cultural conditioning, should be disturbed at having its genitalia touched, or disturbed at seeing the genitalia of other persons, or disturbed at even more specific sexual contacts. When children are constantly warned by parents and teachers against contacts with adults, and when they receive no explanation of the exact nature of the forbidden contacts, they are ready to become hysterical as soon as any older person approaches, or stops and speaks to them in the street, or fondles them, or proposes to do something for them, even though the adult may have had no sexual objective in mind. Some of the more experienced students of juvenile problems have come to believe that the emotional reactions of the parents, police officers, and other adults who discover that the child has had such a contact, may disturb the child more seriously than the sexual contacts themselves (Kinsey, Pomeroy, Martin and Gebhard, 1953: 121).

Can a man be entirely blamed for his relationship with a powdered and painted thirteen-year-old who looked at least eighteen, and haunted low class hotels or picked up drunks and offer[ed] them her favours for a small reward; or the garageman who was visited by a ten-year-old eleven times for sexual purposes before she decided the recompense was inadequate and informed the police; or a man whose girlfriend of fourteen boasted of intercourse with twenty-four men before she met him; ... these can hardly be called examples of seduction of the innocent (McGeorge, 1966: 113; cited in Glaser, 1997: 5).

Various authorities who have examined children who have been seduced have concluded that the emotional as opposed to the physical damage which is done to children is more the result of adult horror than of anything intrinsically dreadful in the sexual contact itself (Storr, 1974: 105).

When we examine a cross-section of the population, as we did in the Kinsey Report, rather than a selection of those in prison for incest or those who seek therapy because they are disturbed by incest, we find many beautiful and mutually satisfying relationships between fathers and daughters. These may be transient or ongoing, but they have no harmful effects (Pomeroy, 1976: 101; cited in Russell, 1984: 246).

Indeed, these five twentieth century views resonate strongly with views about the 'normality' of sexual practices with children that were common last century. The following discussion of the history of the criminalisation of child sexual abuse indicates that sex with female children, particularly, but not solely, working-class girls, was socially tolerated and facilitated by the reluctance of parliamentarians to legislate against it, many of whom considered it to be a normal incident of the male sex drive in response to the provocative nature of the 'female species'. Such evidence challenges the view that sexual behaviour with children is a 'deviant' sexual practice, suggesting that child sexual abuse is not a latter twentieth century phenomenon committed by a group of 'deviant' men. If sexual behaviour with children has a history of being a socially acceptable sexual practice engaged in by some men, this suggests that it needs to be examined in terms of the role that it plays as a gender-based sexual practice.
Incest, Child Prostitution and the Sexual Slave Trade

Rush (1980) gives a detailed account of nineteenth century men’s obsession with girls and documents how child prostitution and a slave trade in children were widespread throughout England, Europe and America during the 1800s. For example, Rush (1980: 62-71) documents that:

- during the first part of the nineteenth century, half of all reported prostitutes in Paris were minors;
- in America, black slave girls were hired out for prostitution by slave owners and West coast traders sold young Chinese girls in America for considerable profit;
- in London, in 1876, there were more than 20,000 children living on the streets and the young age of street walkers was a feature of prostitution in London; one eyewitness account of around 1857 described the so-called ‘red-light’ district of London as being “positively infested with junior offenders whose effrontery is more intolerable and disgusting than that of their elder sisters” (Acton, 1968; cited in Rush, 1980: 62). Another eye-witness account observed that “[t]he second class of prostitutes, who walk the Haymarket ... generally come from the lower orders of society. ... Some of these girls are of a very tender age—from thirteen years and upwards. ... Some of them walk with a timid look, others with effrontery. Some have a look of artless innocence and ingenuousness, others very pert, callous, and artful” (Mayhew, 1851; edited by Quennell, 1987:42);
- English brothels specialised in virgin girls and a white slave trade in young girls was widespread throughout Europe. For example, Mayhew (1851) in his chronicles of London’s ‘underworld’ observed that “[o]ne of the most disgraceful, horrible and revolting practices (not even eclipsed by the slave-trade) carried on by Europeans is the importation of girls into England from foreign countries to swell the ranks of prostitution” (edited by Quennell, 1987: 128). Rush documents how men could buy a healthy working-class girl between the ages of fourteen and eighteen for twenty pounds or a middle-class girl of the same age for one hundred pounds, whilst an upper-class girl under the age of twelve could be purchased for as much as four hundred pounds. Josephine Butler, in an address to Parliament on the issue of child prostitution and the abolition of sexual slavery, stated that “the
very men she was addressing were prepared to pay twenty-five guineas for the pleasure of raping a twelve-year-old virgin” and cried: “‘I will set a flood light on your doings’” (Rush, 1980: 68);

- a social movement of abolitionists addressed public rallies, published articles, books and pamphlets and demonstrated against the sex slave trade in girls; for example, the Committee for the Exposure of and Suppression of Traffic in English Girls for Purposes of Continental Prostitution toured England and the Continent in the early 1880s and, in Paris, found “little girls from five to eleven housed in brothels and ... that when homeless children in public shelters went unclaimed they were ‘apprenticed to brothels’” (Rush, 1980: 71).

In 1835, the London Society for the Protection of Young Females “recorded that in three London hospitals in eight years there were 2700 cases of venereal disease among girls between the ages of eleven and sixteen” (Pearsall, 1969: 290). In addition, “[t]wo House of Lords reports in 1881 and 1882 established that in Britain there was a growing trade in children and that adult prostitutes were being forced to dress up as little girls to compete” (Finch, 1991: 21). In fact, Finch considers that the sexual trade in girls was “fetishistic”; that is, “[m]en were not using children as sexual partners through fear of venereal disease but were actively seeking out very young girls” (Finch, 1991: 21), in a legal climate that made it extremely difficult to prosecute the sexual abuse of women and children and a social climate which tolerated such sexual behaviour, on the grounds that “‘fallen’ females no matter how young were nymphomaniacs, sinners and beyond restoration” (Rush, 1980: 67).

(ii) The Social Purity Movement in England and Australia

In England in 1885, certain provisions of the Criminal Law Amendment Act (ss 2-5) were enacted in response to “a moral panic about the sale of children into prostitution” (Smart, 1989: 51). Concern about the sexual exploitation of children had been the subject of a social purity campaign by prominent abolitionists who were joined by the editor of the Pall Mall Gazette, William T. Stead. In what has been described as “one of the most successful pieces of scandal journalism of the nineteenth century” (Walkowitz, 1982: 545), Stead researched and published articles about the sexual trade
in young girls in London in 1885, including the testimony of officials, police, rescue workers and children and his own story of how he purchased a thirteen-year-old girl, Eliza Armstrong, from her mother to verify the sex trade in girls (Rush, 1980: 72). Stead revealed “the widespread existence of juvenile prostitution in London and the presence of an organized traffic in young English girls that supplied brothels on the continent” (Gorham, 1978: 353), although a Select Committee of the House of Lords and a report by a barrister employed by the Home Office had verified the trade in English girls for prostitution back to 1859 (Gorham, 1978: 359). Finch (1991) observes that Stead’s articles established that:

the trade was not the result of men who had not learnt that non-sexual children were ‘out of bounds’, but was, rather, exactly the opposite. It was the fact that they were out of bounds which made them attractive. [Stead’s] crusade was undertaken against the “depraved aristocracy” in four articles in the *Pall Mall Gazette*, evocatively entitled “Maiden Tribute of Modern Babylon”. The articles told in graphic detail of the organised selling of virginity as a market commodity in the London sex market. Bearing a striking resemblance to a pornographic melodrama, Stead presented case after tragic case of the young “daughters of the people” who were “served up as dainty morsels” to the specialist tastes of London’s wealthy. It told how poor girls of thirteen to fifteen, but sometimes as young as nine and ten, were enticed, ensnared, trapped, tied down and raped, by men for whom “the shriek of torture is the essence of their delight” (Finch, 1991: 21).

Although Stead’s descriptions of child prostitution were melodramatic and sensationalised (describing the “shuddering horror” and the “maelstrom of vice”: Stead, 1885: 3), his documentation of child prostitution is verified by many contemporary reports and accounts, as noted above. As Gorham (1978) observes, “the revelations of Stead, the London Committee [for the Suppression of the Traffic of British Girls for the Purposes of Continental Prostitution], and the Select Committee of Agitation against child prostitution had begun several years before the appearance of Stead’s articles on the grounds of social purity. The social purity movement was “an attempt on the part of a disparate collection of [middle-class] reformers to change social attitudes about sex. For most purity reformers, the achievement of a single standard of sexual morality for men and women was a prime goal” (Gorham, 1978: 357). The London Committee for the Suppression of the Traffic of British Girls for the Purposes of Continental Prostitution was set up by Alfred Dyer in 1879 with Benjamin Scott and was joined by “several prominent members of the campaign against the Contagious Diseases Acts, including Josephine Butler, William Shaen, and Henry Wilson” (Gorham, 1978: 358).

Gorham documents how “legislative and administrative anomalies [within England] allowed this well-organized traffic to exist” (1978: 359).

Indeed, at the time, publications of men’s sexual exploits with children were made, such as that of Walter who published the “sex biography”, *My Secret Life*, in which he described his ‘defloration’ of a fourteen year old virgin and how he “was delighted beyond measure, [since] she
the House of Lords do ... tell an irrefutable story of sexual exploitation” in the late 1800s (1978: 362).

The publication of Stead’s accounts of the trade in girls was the catalyst for a social protest movement and significant legal reform, albeit in a limited and not altogether socially enlightened way. Finch (1991) documents how Stead’s articles “caused a sensation. The paper could not print issues fast enough to supply the large crowds that gathered to buy it ... and within days of its appearance [as a booklet] a quarter of a million people gathered in Hyde Park to protest against this traffic in vice” (1991: 21). At the time, news of Stead’s articles also spread to the colonies in Australia, with the Evening News in New South Wales and The Age in Victoria publishing censored and abridged versions of the articles, respectively, with the result that public protests throughout the east coast of Australia, Queensland and South Australia echoed the protests in London in 1885 (Finch, 1991: 21-22).

Finch argues that Stead’s articles and the subsequent public protests were apparently singularly responsible for increasing the age of consent in both Britain and Australia. For example, although the British Criminal Law Amendment Bill was passed by the House of Lords in 1883 and its passage through the House of Commons was delayed on three consecutive occasions until 1885, it was finally passed five weeks after Stead’s articles appeared, thus raising the age of consent for girls from 13 to 16 years (Finch, 1991: 22). In addition, its provisions clearly reflected the social problem of the time, that is, the trade in women and girls for the purposes of prostitution within Britain, and between Britain and other countries. For example, s 2 of the Act created criminal offences in relation to the procurement of:

bled more than any virgin of her age which I ever yet have had I think” (Walter; cited in Rush, 1980: 61). The book was originally published under anonymous authorship.

As Gorham (1978) observes, had the abolitionists “allowed themselves to see that many young girls engaged in prostitution not as passive, sexually innocent victims but because their choices were so limited, the reformers would have been forced to recognize that the causes of juvenile prostitution were to be found in an exploitative economic structure. A critique that recognized these economic realities would have demanded a much more radical transformation of the structure of society than was implied by the reformers’ program of individual moral uplift and individual rescue work” (1978: 355).
“any girl or woman under twenty-one years of age, not being a common prostitute, or of known immoral character, to have unlawful connexion, either within or without the Queen’s dominions, with any other person or persons”;

“any woman or girl to become, either within or without the Queen’s dominions, a common prostitute”;

“any woman or girl to leave the United Kingdom, with intent that she may become an inmate of a brothel elsewhere; or

“any woman or girl to leave her usual place of abode in the United Kingdom (such place not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of a brothel within or without the Queen’s dominions”.

The Act also criminalised unlawful carnal knowledge with a girl under the age of 13 years (s 4) and raised the age of consent of girls from 13 to 16 years (s 5). Nonetheless, it can be expected that the policing and prosecution of the above crimes was difficult given the requirement that “no person shall be convicted of any offence under this section upon the evidence of one witness, unless such witness be corroborated in some material particular by evidence implicating the accused” (s 2).

Despite the revelations contained in Stead’s articles, there was opposition to raising the age of consent. As Gorham (1978) observes,

[m]ost of the men who wished to keep the age of consent at twelve or thirteen accepted as a matter of course a world view in which young girls from the lower levels of the working class were perceived to be human beings of less value than middle or upper-class men. For purity reformers, prostitution was the most evil manifestation of the double standard of sexual morality; but for many upper-class men, who were not endowed with a puritan conscience, prostitution appeared to be both necessary and inevitable. Men of this type openly and repeatedly stated that their objections to raising the age of consent arose from a fear that either they or their sons would be threatened by such legislation (Gorham, 1978: 365-366).

Furthermore, opponents of age of consent legislation insisted that working-class girls who became prostitutes:

belonged to a social class that could not possibly preserve the moral or the sexual innocence of its members. Therefore, any attempt to protect such girls was seen as futile and as leading to the entrapment of middle and upper-class male youths, who were usually portrayed as more innocent than the girls they seduced or whose services they purchased (Gorham, 1978: 370).
Edwards (1981) observes that “[t]he image of the working-class woman as immoral, promiscuous and precipitating was constantly promoted by the media and popular culture” (1981:55). The working-class woman or girl who worked as a prostitute was seen, not as a product of economic and class conditions, but as suffering from a biological or mental defect which manifested in an “‘innate want of virtue’” (Edwards, 1981: 53; citing Hannah). As Edwards observes, “[t]his particular view was common until the end of the nineteenth century” with some commentators of the time defining prostitution as an absence of the instinct for chastity (Edwards, 1981: 53; references omitted).

In Australia, the age of consent was also raised in the wake of Stead’s articles in South Australia, Victoria, Queensland and Western Australia, since “it was common for the Australian colonies to closely follow British legal precedents” (Sturma, 1985: 76), although similar opposition to protecting working-class girls was expressed.

However, Finch (1991) considers that Stead’s articles were used for different purposes in Australia. Because “no ‘depraved aristocracy’ could be located and condemned” in Australia, such legislation in the colonies “was not in fact about controlling the depraved aristocracy ... [but] was about regulating the sexual behaviour of the working class and, in particular, about defining the boundaries of sexual behaviour within the family” (Finch, 1991: 22). In fact, Finch’s contention that age of consent legislation in Australia was more concerned with regulating the morality of the working classes is supported by examining the legislation in the social context of the time which shows there was considerable concern in a section of middle-class, nineteenth century society about the plight of the urban poor, in particular, the issue of overcrowding and the laxity of morals as a result of such overcrowding. In other words, a number of Australian and British social surveys “focused upon the fact that overcrowding was creating conditions of enforced immorality amongst the poor” and overcrowding was used as “the explanation for working class failure to adhere to middle class sexual

10 Criminal Law Consolidation Amendment Act 1885 (SA), s 4 (from 13 to 16 years); Crimes Act 1891 (Vic), s 5 (from 12 to 16 years); Criminal Law Amendment Act 1891 (Qld), s 6 (from 12 to 14 years); Criminal Law Amendment Act 1892 (WA), s 6 (from 12 to 14 years). Tasmania and
practices, especially concerning the privacy of the conjugal bed” (Finch, 1991: 23; see also Edwards, 1981: 54). Because overcrowding invariably led to working class families sleeping in the one room, which was considered to lead to the “"demoralisation’ of young girls”; it was believed that incest was “a ‘common’ feature of working class sexual practice”, thus drawing attention away from sexual abuse within middle and upper class families (Finch, 1991: 24) and from other forms of child sexual abuse. In other words, because the focus of age of consent legislation was on the morality of working-class girls, it left untouched the sexual abuse of children within the middle and upper classes and the sexual abuse of boys, generally.

Finch’s contention is supported by evidence of the social purity movement’s desire to legislate against immorality after the appearance of Stead’s articles. In New South Wales in 1887, an attempt was made to “enact a Seduction Punishment Bill ... which provided for the imprisonment for two years of men who seduced or tried to seduce, a female of ‘previously chaste character’ between the ages of 14 and 18 years”, indicating that non-chaste girls were not entitled to protection (Rayner, 1991: 37) and that the rationale behind the Bill was ‘social purity’, rather than prevention of the sexual exploitation of children. Whilst the Bill followed in the wake of the 1885 Criminal Law Amendment Act,

there were other local factors which gave the campaign in New South Wales greater immediacy. Probably the most important was the much publicized Mount Rennie case of 1886, in which a young woman was sexually assaulted by a gang of Sydney larrikins .... Following a sensationalized trial, nine young men were convicted of the offence, and four eventually executed. The Sydney Morning Herald referred to the case as a 'humiliating blot on our civilization' ... . This was followed by another alleged gang rape tried early in 1887 .... Such crimes dramatically supported claims that women in New South Wales needed greater protection (Sturma, 1985: 76; references omitted).11

The Social Purity Society and Association for the Promotion of Morality met with the Premier to press for the Seduction Punishment Bill on the grounds of a number of moral concerns, such as “the evils of private bars, dancing saloons, houses of assignation, the display of indecent prints in tobacconists’ windows and even picnics”

New South Wales did not raise the age of consent until much later: Crimes (Girls' Protection) Act 1910 (NSW), s 2; Criminal Code Act 1924 (Tas), s 124.

11 Allen (1990) notes that the Mount Rennie case “was the only gang rape during the period which resulted in full conviction of defendants as charged” (1990: 54)
(Sturma, 1985: 77). Nonetheless, the Bill was not passed, probably, as suggested by Sturma, because of the resistance of the then Premier of New South Wales, Henry Parkes, who "opposed raising the age of consent, stating that one could not 'legislate against the principle of human nature' or 'make a woman like a child'" (Sturma, 1985: 77; citing Parkes). Other "[o]pponents of the bill ... tended to portray women as either mentally or morally suspect, and who would use the legislation to carry out vendettas against unsuspecting males" (Sturma, 1985: 80). For example, the Attorney-General of the time stated that "most charges of sexual assault before the criminal courts 'were the results of either hysteria or deliberate wickedness'" and that the Bill "would enable 'any designing and wicked girl to absolutely blast the life of any man against whom she might have a grudge', and provide an opportunity for blackmail" (Sturma, 1985: 80; quoting Wise).

In addition, Allen (1990) considers that "[t]he context of [earlier, unsuccessful] gang-rape trials, the hanging of the Mount Rennie rapists in 1887, and the general public debate about capital punishment and sexual offences proved hostile to the feminist case" (1990: 62) which sought to "reduce illegitimacy, juvenile girl unemployment, and prostitution" through reforms such as the Seduction Punishment Bill (Allen, 1990: 62). Resistance to the Bill can be further understood by examining social and legal attitudes of the time to complaints of rape by women and girls. Allen (1990) has documented the extent to which men in NSW in the late nineteenth century were able to commit sex offences against women and girls with little fear of being convicted. For example, although "[t]hirteen multiple rapes were tried during the 1880s; most were dismissed or acquitted because either the character of the complainant or the Crown evidence was judged unable to withstand defence cross-examination" (Allen, 1990: 54). The Mount Rennie case stands out as the notable exception, since it "was the only gang rape during the period which resulted in full conviction of defendants as charged" (Allen, 1990: 54).

A common view of the time was that only 'fallen women' could be victims of rape (Allen, 1990: 56), such that it can be said that the law of rape was largely "class biased": the working-class woman or girl who complained of rape was "too immoral to be believed" (Allen, 1990: 57). Furthermore:
The high rate of pre-trial dismissal of cases by magistrates assisted the discrediting of complainants. ... *The Bulletin* used the acquittal rate to argue that "it is well known that nineteen out of twenty charges are imprudent conspiracies, in a land where any woman can conspire against the life of a man". Feminine vindictiveness was asserted as the explanation for complaints of rape. ... After a night out on the town, servants would cry 'rape' to divert the ire of their employers. Another occasion for the false 'rape' charge, it was also alleged, was an attempt to force marriage proposals from seducers, and take revenge when this failed. ... That women would knowingly consign to the gallows men [of] their acquaintance, even men they loved, to save their reputations, to force marriage, to avenge rejection, or to forestall a work reprimand, apparently were plausible propositions (Allen, 1990: 57).

Allen notes that such views were "fully supported by judges routinely advising juries, that they need not, indeed should not, take seriously the uncorroborated testimony of 'the prosecutrix'" (1990: 57). The intense scrutiny to which rape complaints were subject is evidenced by the need for eye-witness evidence, "evidence of genital and general violence" and the extent to which "the woman's character, repute, and her demeanour at the time of and after the assault" influenced the rate of acquittals, in the context of the medical view that rape could not be "'perpetrated on adult women of good health and vigor'", unless they were under the influence of drugs, had fainted from terror or exhaustion, been gang-raped or threatened with murder (Allen, 1990: 57-58; quoting Taylor).

The effect of these beliefs on conviction rates for sex offences against women and girls is borne out by Allen's survey of sexual assault cases involving women and girls between 1880-1899 in NSW (1990: 58-59). During that twenty year period, 128 men were charged with carnal knowledge of a girl under 10 years (64 per cent of whom were committed for trial, 26 per cent tried and 16 per cent convicted), 44 fathers or teachers were charged with carnally knowing a girl under the age of 16 years (73 per cent of whom were committed for trial, 34 per cent tried and 16 per cent convicted), 420 men were charged with rape (63 per cent of whom were committed for trial, 40 per cent tried and 12 per cent convicted), 577 men were charged with attempted rape (56 per cent of whom were committed for trial, 29 per cent tried and 12 per cent convicted) and 936 men were charged with indecent assault (45 per cent of whom were committed for trial, 22 per cent tried and 9 per cent convicted). Allen observes that these conviction rates suggest that "the odds were against male sexual offenders suffering a penalty" for a sex offence, although "[s]ome commentators attributed the
high acquittal rates to the severity of punishment attached to all sexual offences”, in particular the death penalty which was prescribed for rape generally and attempted rape and carnal knowledge of a girl under the age of 10 years (Allen, 1990: 58). Furthermore, certain defences, such as drunkenness, were relatively effective for countering a charge of rape, particularly when “men committed assaults most likely to cause outrage”, such as carnal knowledge of a girl under the age of 10 years (Allen, 1990: 61). In addition, carnal knowledge was sometimes prosecuted in the same way as a charge of rape, in that the element of consent was ‘read into’ the criminal offence of carnal knowledge in order to allow the accused to defeat the charge (Allen, 1990: 63-64; Bavin-Mizzi, 1995: 31). For example, evidence of a girl having been previously sexually assaulted was able to be used to infer her consent. As Allen observes:

[the notion of protection involved in the carnal knowledge provision was not deemed appropriate to all female minors. As the editors of The Bulletin argued: 'Women certainly do require protection at the hands of the community. When they are over-protected, the rights of men are endangered' (1990: 64; footnotes omitted).

These social and legal attitudes towards sexual assault complaints made by women and girls suggest that the protection of men was more important than the protection of girls from sexual exploitation when the Seduction Punishment Bill was being considered by the Government of the day. As Sturma observes, it was these “exaggerated portrayals of women” which influenced public policy at the time, with “the sexuality of women, rather than that of men” being the focus of attention and social prescription (1985: 81-82). These attitudes, coupled with the belief that “the proper guardian of virtue was the family not the state” (Sturma, 1985: 81) saw the defeat of this attempt to legislate on the morals of both men and women in NSW, in the wake of Stead’s articles.

Similar to the situation in England in 1885 and in New South Wales in 1887, it appears that the issue of raising the age of consent in Victoria was not motivated by a desire to protect girls from sexual exploitation, rather a desire to control ‘vice’ and immorality. According to Tyler (1986):

[the issue of the age of consent appeared in the Victorian Parliament largely through the efforts of women’s groups involved in the social purity movement, amongst whom the Woman’s Christian Temperance Union (WCTU) was particularly active. A deputation sponsored by this organization presented the Premier with a petition signed by ‘over three hundred physicians and philanthropic persons’ calling for the age of consent to be raised to sixteen (1986: 52).]
However, many members of the Victorian Parliament disagreed with such a move. As Tyler (1986) observes:

[...]

Such a view was accompanied by so-called medical evidence that, because of climatic
differences in Australia, “'[t]he girls here not only reached puberty early, but they were
more forward and more precocious than the girls in any other part of the world’”
(Tyler, 1986: 54; quoting Dr Beaney). In fact, the bodies of working-class girls were
considered to have “the physical signs of sexual maturity in ways that the bodies of
middle-class girls did not” (Tyler, 1986: 54). Thus, if a working-class girl was
considered to be a woman between the ages of twelve and sixteen, a man’s
engagement in sexual intercourse with her was merely considered to be “an
opportunistic advantage of her propensity to immorality and vice” (Tyler, 1986: 54).
In particular, the bodies of working-class girls were considered to be “a trap for
innocent lads who acted on the reasonable assumption that physical maturity equalled
sexual availability” (Tyler, 1986: 54) and any legislation which penalised the man
would cause him “‘very serious trouble’” which he did not deserve (Tyler, 1986: 54;
citing Staughton). Although the age of consent was eventually raised in Victoria, there
was a common view that the working-class girl between the ages of 12 and 16 had no
right to the law’s protection because she was a “source of moral pollution” (Tyler,
1986: 54). However, raising the age of consent was supported by others on the
grounds that working-class girls needed to be protected from the dangers of their
sexual maturity and to have their sexuality confined within marriage (Tyler, 1986: 55).

The views expressed above echoed the views expressed in England upon the passage
of the Criminal Law Amendment Act of 1885, suggesting that, despite the historical
difficulties associated with prosecuting men for sexual exploitation (either because certain non-consensual sexual behaviours were not criminalised or because common law and legislative provisions protected men from both the false and true claims of women and girls)\(^\text{12}\) and the documented widespread nature of such exploitation, the status quo was sought to be preserved by relying on beliefs about women and girls that contradicted evidence of the sexual abuse of women and girls at the time. Indeed, such views found legislative expression in the requirement for the mandatory corroboration of a child’s evidence, with the typical wording of the late 1800s statutes, stating that an accused could not be convicted on the evidence of one witness “unless such witness be corroborated in some material particular by evidence implicating the accused” (Criminal Law Amendment Act 1885 (UK), ss 2, 3 and 4). In other words, “[w]hen sexual offences against children became the specific concern of the criminal law in the 19th century they were hedged about with express caveats about the unreliability of children’s evidence and the possible malice of female complainants” (Rayner, 1991: 42), in a way that was similar to the treatment of adult women’s complaints of rape. These caveats probably ensured that the sexual exploitation of girls continued largely unabated.

(iii) Protecting Men from False Accusations

A common feature of the legislation that criminalised sexual activities with female children was the inclusion of limitation periods barring prosecution after a certain time limit had expired. For example, such a limitation period accompanied legislation which raised the age of consent in New South Wales from 14 to 16 years for girls in 1910.

Boniface (1994) has analysed how s 2 of the Crimes (Girls’ Protection) Act 1910 (NSW) “provided protections for male offenders” in the form of a six month limitation period against prosecution for certain sexual offences, where the victim was above the age of 14 but below the age of 16 years, and an absolute defence where “it could be

\(^{12}\) Before 1885, it was a criminal offence to “carnally know” or to attempt to carnally know a girl under the age of ten years which was punishable by death (46 Vic. No.17, s 41), and, under s 42, carnal knowledge or attempted carnal knowledge of a girl aged between 10 and 14 years was punishable by a maximum penalty of ten years. From the evidence of the widespread trade in young girls it can be expected that such offences were rarely policed or prosecuted, especially in the case of working-class girls.
shown to the court that the complainant was a prostitute or an associate of prostitutes”, or where the accused reasonably believed that the complainant was over the age of 16 years (Boniface, 1994: 54-55). In a vein that was remarkably similar to the parliamentary debates concerning age of consent legislation in England and Victoria, at the time the Crimes (Girls’ Protection) Bill was debated, parliamentarians were concerned “to protect youths from ‘vicious’ women” and to prevent girls from blackmailing ‘honourable’ men (Boniface, 1994: 56-57). The Bill was obstructed by the Attorney-General of the time (B. R. Wise) who “promoted a version of universalist political liberalism that can only be described as phallocentric, refusing to acknowledge differences that arose from sex as relevant to reform or social justice” (Allen, 1990: 77).

Like the debates in the Victorian Parliament, it was generally accepted during debates on the NSW Bill that there existed a class of “‘unduly matured girls’ who would not hesitate ‘to use their seductive powers upon young men to rob them of their virtue’” (Boniface, 1994: 58; citing Broughton), a belief that was based on the medical view that there were:

types of early-ripe girls which we must regard as a peculiar acquirement of the twentieth century. We distinguish without difficulty the simple, hot-blooded, sensual variety from the thoroughly developed perverse types. They lace very tightly to display their already strongly-developed breasts all the more imposing ... [and] [t]heir abnormal development displays their mental corruption (Bloch, 1910; cited in Boniface, 1994: 58).

The Attorney-General claimed that “[r]ecords of the criminal courts ... showed that defendants in carnal knowledge cases were boys rather than men ... [and] suggested that the more urgent need was a bill to protect young boys from seduction by vicious girls” (Allen, 1990: 78). In the parliamentary debates of 1903 when the Bill was first introduced into the NSW Parliament, the Attorney-General stated:

I do not believe in the existence of any large number of men who go about seducing girls. I think the good sense and natural feeling of honour that there is amongst men not only restraints them as individuals, but the idea is repulsive and has a social stigma attached to it

13 Similar provisions existed in all Australian jurisdictions (Boniface, 1994: 55). In its original form, the Bill (first tabled in the NSW Legislative Council in 1903), “proposed raising the age of consent from fourteen to seventeen, and included stepfathers in the special category of fathers/teachers committing carnal knowledge of daughters/pupils. In addition, it proposed serious penalties for those responsible for having girls and young women aged under eighteen on premises used for prostitution” (Allen, 1990: 77).
which prevents the commission of a crime of that kind. I believe in the majority of women and girls, the instinct of chastity is stronger than any other instinct, and those girls do not need protection; but where there is a lapse from virtue ... it occurs where the girls themselves are vicious (Wise; quoted in Allen, 1990: 78).

In light of these beliefs, the Attorney-General stated he “would only support a future bill if a number of amendments and qualifications were included” (Allen, 1990: 78). These qualifications appeared in a subsequent Bill in the form of a limitation period and certain defences which were directly aimed at preventing “men’s lives [being] placed in jeopardy by the number of false charges made by these little female reprobates” (Boniface, 1994: 59; citing Norton), that is, ‘abnormally developed’ females who tempted men into vice. However, Boniface notes that the protections conferred on men by the Crimes (Girls’ Protection) Act were:

developed in addition to the existing frame-work of protections in the trial process which had already been devised. “Protection” from complaints made by female sexual offence victims already existed, in the form of the “recent complaint” rule, the common law which allowed evidence of the history of the complainant’s prior sexual history to be given in open court and the mandatory requirement for a judge to give a warning to the jury about the dangers of convicting on the uncorroborated evidence of a sexual assault complainant. Such protections were inclusive of, but non-specific to, girls of fourteen to sixteen years of age (1994: 60).

In other words, the extra protections conferred under the Crimes (Girls’ Protection) Act were unnecessary in light of existing protections that, arguably, made it very difficult for a man to be prosecuted successfully for a sexual offence in NSW. As Boniface observes, “[t]he defence and limitation period for prosecutions, created in the 1910 [Act], disclosed the legislature’s desire to create a trade-off for the increase in the age of consent. Identifying the fact that a trade-off was made, however, does not explain the reason why a trade-off was thought necessary. An elaborate framework of protections for defendants charged with sexual offences existed” and no other serious offences at the time had a limitation period barring prosecution (1994: 65).

From a survey of particular views about women and girls from the mid-nineteenth century onwards, Boniface shows that the belief in the phenomenon of false accusations by a class of dangerous, depraved and immoral women and girls was “supported by the disciplines of medicine, psychology and legal jurisprudence”, with the common view being that “the age at which girls reached puberty was widely
accepted as a time at which many females became neurotics” (Boniface, 1994: 68). Women and girls were seen as “a significant threat to men” and medicine was used to confirm “that the female gender was prone to make false accusations of sexual offences” (Boniface, 1994: 70). Boniface considers that the rationale for the trade-off in the Crimes (Girls’ Protection) Act was clearly to “pacify those who accepted the conventional wisdom” about female immorality and dishonesty (1994: 70). Thus, whilst such legislation overtly provided protection for girls from sexual exploitation, this protection was undermined by the protections conferred on defendants, on the grounds that girls “could not be trusted to testify truthfully” (Boniface, 1994: 55). In fact, because a girl’s character “became the point in issue rather than the offence” (Allen, 1990: 79), the NSW Act ensured “that a certain supply of ‘immoral’ young women would be available for identification and sexual use by men” (Allen, 1990: 80).

(iv) The Criminalisation of Incest in Australia

As the above discussion shows, the sexual exploitation of girls was not confined to England and Europe during the 1800s. Finch (1991) reports that in New South Wales, the “1859-60 Select Committee into the Condition of the Working Classes of the Metropolis clearly established that in Sydney there was an increase in prostitution in girls under twelve, and the report detailed specific cases in which girls as young as seven were being prostituted” (Finch, 1991: 21). Furthermore, even after the passage of legislation in New South Wales in 1910 to raise the age of consent from 14 to 1614, the 1915 New South Wales Select Committee on the Prevalence of Venereal Diseases ... [documented] the frequency of incestuous rape of young girls in working class families. Dr Gordon Wolseley Bray, founder of the venereal clinic at the Prince Alfred Hospital, informed the panel of doctors on the committee that the great majority of the women patients were children. “We have a lot of infants under ten years old”, he stated, “we are getting twenty to twenty-five a day”. ... All Bray’s cases came from working class families and the lack of outrage or horror at the presence of this flood of sexually abused little girls illustrates an acceptance that this was what the working class were like (Finch, 1991: 26).15

The social toleration of incest in England and Australia is also exemplified by the history of its criminalisation which was characterised by a specific focus, from feudal

---

14 Crimes (Girls’ Protection) Act 1910 (NSW), s 2. This provision amended ss 64, 69, 70, 71, 72, 77 and 78 of the Crimes Act 1900 (NSW) (Boniface, 1994: 57).
times, on ensuring the reliable passage of property\textsuperscript{16} and, later, as discussed above, by a specific focus on working-class morality and working-class girls. For example, it appears that legislation criminalising incest was first enacted in the British empire in the colony of South Australia in 1876\textsuperscript{17} and then in Victoria in 1891 (Finch, 1991: 19).

The criminalisation of incest in Victoria was, as Finch observes:

\begin{quote}
\begin{quote}
a post-script, an after-thought, to another major piece of legislation. The inclusion of the incest clause in the Victorian Criminal Law Amendment Bill was not due to the kind of determined lobbying which tended to accompany late nineteenth century legislation about sexual practices. The papers showed no heightened awareness of the prevalence of incest, and the parliamentary papers recorded no petitions calling for it. The same cannot be said for the main issue which was addressed by the Criminal Law Amendment Bill. Its major aim was to raise the age of consent from twelve to sixteen. This aspect of the bill was the subject of enormous public interest reflected in the petitions signed by thousands of Victorian citizens, the frequent newspaper correspondence, and the heated debate accompanying its introduction into parliament (1991: 18; emphasis in original).\textsuperscript{18}
\end{quote}
\end{quote}

\textsuperscript{15} This lack of outrage appears to be reflected in policing statistics of the time; for example, Allen (1990) notes that between 1900-1919, the rate of charges for sexual offences against women and girls declined by nearly 40 per cent (1990: 119).

\textsuperscript{16} Prior to the nineteenth century, "\textit{rape} had been a criminal offence from Anglo Saxon times, though not necessarily a felony. ... Once rape became a felony in all circumstances [under the reign of Edward I] it became necessary to legislate to define the offences of abduction and forcible marriage which had, until that time, been incorporated in the concept of rape. The common law had concerned itself primarily with the social consequences of marriage on the inheritance of property. By securing the legitimacy of children, and so the effective management of land and its incidents, and the orderly passing of property in a feudal society, the chain of authority and loyalty to the crown was preserved. In other words the protection of children from sexual activity, which might compromise those certainties, was an economic and social necessity and had little to do with compassion or morality. Common law restrictions on ‘marriageable age’ were intended to protect the devolution of land” (Finch, 1991: 35; footnotes omitted). In addition, Gorham (1978) notes that “[t]he Offences Against the Person Act of 1861 ... contained a number of provisions regarding older girls and young women that were designed to protect the parents’, and especially the father’s right, to control a daughter. If a girl under sixteen entered into a relationship with a man, her parents could charge her ‘abductor’ with depriving them of the services of their daughter. If a young woman had property, her parents or guardian could even prevent her marriage up to the age of twenty-one, if they could prove that the suitor had used ‘false allurements’” (1978: 363-364).

\textsuperscript{17} \textit{Criminal Law Consolidation Act} 1876 (SA), ss 73 and 74.

\textsuperscript{18} Although incest was illegal under Scottish law (Bell, 1993: 127) prior to the Victorian and South Australian legislation, incest was only governed by ecclesiastical law in England and the Australian colonies. It is to be noted that English laws applied in the Australian colonies at the time of settlement, whilst subsequent laws passed in the English Parliament applied if adopted by the colonies own legislatures, or if “there were express words in the English statute making it binding” (Rayner, 1991: 33). Nonetheless, Rayner’s analysis of the applicability of English ecclesiastical law to the Australian colonies raises the question as to whether such law ever applied in Australia (Rayner, 1991: 34), although the point is really academic, since ecclesiastical courts appear to have rarely dealt with cases of father-daughter incest and the concern about incest was to do with preventing marriage between cousins or uncles and nieces (Finch, 1991: 18-19). As Rayner (1991) observes, prior to the Criminal Law Amendment Acts in Britain and the colonies of Australia, whilst “[l]aws about unlawful sexual behaviour were found in a variety of English statutes”, none of them dealt specifically with the sexual abuse of children within families or with child sexual abuse as a common social phenomenon (1991: 33).
The criminalisation of incest in Victoria was accompanied by the view of the parliamentarian, Cuthbert, that "there is a new crime, which formerly was not known in this colony or the adjoining colony of New South Wales, but which, I am sorry to say, is not uncommon now; that is incest" (Finch, 1991: 18; quoting Cuthbert). However, as Bavin (1991) has documented, in Victoria during the period 1880 to 1890, eighteen cases of the rape of girls had been prosecuted (although only seven resulted in convictions for rape or a lesser charge), indicating the Victorian Parliament's ignorance or denial of an existing social problem.

It appears that the motivation for the criminalisation of incest in Victoria had been a case "in which a father and daughter had been imprisoned after being found guilty of the 'destruction of the offspring of their incestuous intercourse' ... [and] Cuthbert was able to convince members that the case was of such hideous proportions that immediate action should be taken" (Finch, 1991: 18). Arguably, however, the protection of daughters from sexual abuse by their fathers was not necessarily the rationale for criminalising incest in Victoria, since the Criminal Law Amendment Act 1891 provided that a girl over the age of 18 years would be liable to imprisonment for five years if she was a consenting party to incestuous intercourse (s 9). Whilst Finch notes that when the Act was passed, the concern was to prevent the act of incestuous intercourse itself, it is likely that the sensational nature of the case which led to the criminalisation of incest in Victoria had little to do with the sexual exploitation of the daughter in the case and more to do with moral objections to the killing of the incestuous offspring. In fact, up to that time, under the Criminal Law and Practice Statute (Vic) 1864, incestuous rape of girls over the age of 12 was prosecuted in the same way as the rape of adult women which required proof of lack of consent on the

Incest, that is, "sexual intercourse between persons within prohibited degrees of relationship had been a felony punishable by death by the civil courts in England during the period of the Commonwealth under Cromwell, but the offence appears to have been little prosecuted and from 1661 was again dealt with by the spiritual court according to ecclesiastical law" (Rayner, 1991: 33). However, such prohibitions on incest were in reality prohibitions on marriage between certain relatives, rather than a prohibition on the sexual exploitation of children (Rayner, 1991: 33-34) and the ecclesiastical courts had the power "to declare a marriage void because the parties had 'married' when they were within the prohibited degrees of consanguinity or affinity" (Rayner, 1991: 34).

24
part of the complainant, suggesting that the law was not overly concerned to prevent acts of incestuous intercourse in circumstances where it was considered that a daughter had consented.

The Victorian Parliament's apparent indifference to the sexually exploitative aspect of child sexual abuse is further evidenced by the fact that the Victorian Act only criminalised carnal knowledge of a woman or girl who was a man's daughter, stepdaughter or "other lineal descendant" (s 8), suggesting that the occurrence of other types of child sexual abuse, as a social problem, was either little understood, denied or ignored. For example, even after the passage of the Victorian Act, child sexual abuse committed by extra-familial offenders would have been extremely difficult to prosecute, since it would have been necessary to prosecute either under the law of rape or, where the child was under the age of 10 years, the statutory law of unlawful carnal knowledge of a girl.\(^\text{19}\) The difficulties associated with prosecuting the rape of a child of any age, or unlawful carnal knowledge of a child under the age of ten years was that both crimes carried the death penalty which was likely to have been a major barrier to successful prosecutions.\(^\text{20}\)

For example, Bavin (1991) has discussed the difficulties associated with the prosecution of incest in Victoria prior to the 1891 Act, by analysing a Victorian case of 1885 (the Palmer case) in which a father was indicted for the rape of his three daughters under the Criminal Law and Practice Statute (Vic) 1864 which did not contain a specific provision criminalising incest. As noted above, the crime of rape carried the death penalty and also the common law defences of consent and lack of resistance. Thomas Palmer was only found guilty in relation to the rape of his eldest daughter, with two other juries acquitting him in relation to charges against his other two daughters, despite similar medical evidence being presented in all three trials and despite one judge's clear support for the case of the Crown (Bavin, 1991: 59-60). As

\(^{19}\) This law was first codified under 18 Eliz., c.7 and subsequently consolidated in the Offences Against the Person Act 1828 (UK) (Rayner, 1991: 36) and codified in Victoria under the Criminal Law and Practice Statute 1864.

\(^{20}\) If the offence of unlawful carnal knowledge was committed against a girl between the age 10 and 12, the offender was guilty of a misdemeanour only and liable to an unspecified term of imprisonment: s 47, Criminal Law and Practice Statute 1864 (27 Vic no.233).
Bavin notes, it appears that these two juries were unwilling to convict Palmer on the basis that he was liable to be sentenced to death if found guilty.

Bavin's analysis illustrates a further barrier to protecting children from sexual exploitation; that is, that the prosecution of incest appears to have been directed at working-class men only, since, in Victoria between 1880 to 1890, "all men indicted on incest charges whose occupation was recorded, were skilled, semi-skilled or unskilled workers" (Bavin, 1991: 69). Even so, only 18 cases of incest were prosecuted in Victoria during that period, and of those, only six resulted in a verdict of guilty, whilst one other case resulted in a verdict of guilty to a lesser charge (Bavin, 1991: 70).

Bavin's analysis of the Palmer case also demonstrates the economic necessity of daughters and mothers tolerating incest, since a successful conviction meant that they were then without the financial support of the father of the household. As Bavin observes, "[b]y raping his daughters Thomas Palmer forced [his wife] to choose between imprisoning her husband and witnessing the continued rape of her daughters. Her instructions to [one daughter] not to cry for fear that Thomas might go to gaol for the rest of his life indicates that she was aware of at least these two options" (1991: 57). In fact:

[Mrs Palmer] would have faced the legal and economic restrictions affecting all working-class women in Victoria in the 1880s. Divorce was too expensive for most working-class couples, costing anywhere between sixty to one hundred pounds. ... Even if women managed to circumvent the unequal custody laws, it would have been difficult for them to support so many children on the wages offered for most areas of women's employment (Bavin, 1991: 74).

(v) The Criminalisation of Incest in England
The criminalisation of incest in Victoria in 1891 "provided the blue-print in England" for the criminalisation of incest under the Punishment of Incest Act 1908 (Finch, 1991: 19), although the legislative passage of the Bill was delayed for twelve years from the date it was first introduced into Parliament in 1896 (Bailey and Blackburn, 1979: 709), as a result of "several unsuccessful attempts to pass the Bill ... (in 1899, 1903 and 1907)" (Bell, 1993: 126). In addition, the Victorian legislation "inspired other

---

21 A history of custody laws in colonial Australia is documented by Radi (1979).
Australian parliaments, the last of these being that of New South Wales which passed a similar bill in 1924” (Finch, 1991: 19).

Although the Victorian Act was the blueprint for other similar legislation, given the number of years that it took for the criminalisation of incest in England and New South Wales, for example, it is unlikely that incest was perceived as a pressing social problem. In fact, during the nineteenth century, “[i]ncest was a taboo subject” and was only referred to euphemistically, such as “‘things done in secret’ which ought never to be publicised”, since, to acknowledge incest publicly, “would have been to tarnish the reputation of the Victorian home and family as a repository of the highest Christian virtues” (Bailey and Blackburn, 1979: 709). In addition, given the expressed reluctance of the state to interfere in family relationships (Allen, 1990), the acknowledgment of father-daughter incest, in particular, would have been a challenge to the power of the father within the patriarchal family.

As Smart (1989) documents, there was “strong resistance [within the English Parliament] to the introduction of criminal legislation specifically to deal with sexual abuse within the family” (1989: 53), on the grounds that incest was a rare occurrence, that “it would put ideas into people’s heads which otherwise they would never have thought of and that it would create new opportunities for blackmailing innocent men” (Smart, 1989: 54). Like the Victorian legislation, the motivation behind the English Bill appears to have had little to do with preventing the sexual exploitation of daughters (although some concern about daughters was expressed in the 1908 debates: Bell, 1993: 136), and more to do with “the issue of kinship which was central to the disgust that was felt about this abuse” (Smart, 1989: 54). This is evidenced by the view expressed at the time the Bill was debated in 1903 that incest was “‘against God’s will’ or [was] a moral offence which transgress[e]d some code of behaviour set down by a higher order, either God or Nature or the more abstract ‘moral society’” (Bell, 1993: 128) and was considered to be “something other than the wrong of rape” (Bell, 1993: 130). Such a view suggests that incest was viewed not as a wrong against the

22 Incest was criminalised in Queensland in 1891 (Criminal Law Amendment Act 1891, s 13); Western Australia in 1892 (Criminal Law Amendment Act 1892, s 17); New South Wales in 1924
child, but against a higher law or authority. In particular, it was considered to be “a primitive behaviour” confined to rural districts or working-class populations in the bigger cities as a result of their overcrowded living conditions in one-room accommodation (Bailey and Blackburn, 1979: 710; Edwards, 1981: 53-55) which could be cured by “civilising influences” (Bell, 1993: 144-145; quoting Rawlinson). As a wrong that was to be prohibited on the grounds of kinship, “incest [was] constituted solely by the act of penetration of the vagina by the penis” (Bell, 1993: 127) and “a version of the Bill which included step-daughters was rejected” (Smart, 1989: 54).23

In England, the social purity movement, characterised by the work of the National Vigilance Association (NVS) and the National Society for the Prevention of Cruelty to Children (NSPCC), both of which were founded in the 1880s after the passage of the Criminal Law Amendment Act of 1885, had campaigned to protect children on the grounds of repressing “vice and public immorality” (Bailey and Blackburn, 1979: 711). It was the NVA and the NSPCC which “contributed ... to a developing awareness of the prevalence of incest” through their work with neglected and ill-treated children, with such evidence being passed on to the Home Office (Bailey and Blackburn, 1979: 711). In addition, both organisations informed the Home Office of the difficulties of prosecuting incest under the existing law, that is, the Criminal Law Amendment Act of 1885, because under this Act it was necessary to prosecute within three months of the commission of the offence and parental consent was required for a medical examination of the child in question (Bailey and Blackburn, 1979: 711). Thus, the documented frequency of incest by the NVA and the NSPCC and the difficulties associated with prosecution, are considered to have laid the foundations for the Punishment of Incest Act 1908 (Bailey and Blackburn, 1979: 712). The twelve year delay between the time when a Bill was originally introduced into Parliament and its subsequent passage was attributed to the opposition of the Lord Chancellor who considered that because incest was a rare occurrence, the legislation was not required

23 The 1908 Act made sexual intercourse between grandparent and grandchild, parent and child, brother and sister and half-brother and half-sister a misdemeanour, punishable with penal
and that to introduce it would "‘do an infinite amount of mischief’" (Bailey and Blackburn, 1979: 714; quoting the Earl of Halsbury).

The final passage of the Bill in 1908 was attributed to the support of the Home Office "who were influenced by evidence of the prevalence of incest, by the inadequacy of existing laws to deal with what they saw as morally outrageous cases, and by the belief that a separate statute would act as a preventive measure" (Bailey and Blackburn, 1979: 717). Bailey and Blackburn consider that the 1908 Act must be seen "as a product of a distinctive social movement which combined preventive work in the cause of child protection with a demand for social purity" (Bailey and Blackburn, 1979: 717). However, because of the recognised public reluctance to report cases of incest, "the instrumental effect of an incest statute was less important [to the NVA and the NSPCC] than its symbolic significance", suggesting that the Act "was less an act of rational social policy than a manifestation of the strength and status of the social purity movement" (Bailey and Blackburn, 1979: 718). As such, it is doubtful that any significant reduction in the incidence of incest occurred as a result of the passage of the Act.

(v) Conclusion

By the late nineteenth century and early twentieth century, legislation had been enacted in both Britain and all Australian jurisdictions which criminalised incest and raised the age of consent to either 14 or 16 years for girls. However, the above discussion suggests that the motivation for such reforming legislation had little to do with a recognition that child sexual abuse was a widespread social problem which caused significant emotional harm to children. In particular, the necessity of women and girls using their virtue as an economic ‘bargaining tool’ placed them in the position of having to prove it; a lack of virtue became the responsibility of the woman or girl in question. For example, Allen (1990) considers that politicians who objected to raising the age of consent for girls in NSW, "coolly saw the stakes as high for women in [marital] negotiations; and considered the loss of ‘honour’, repute and risks of servitude for between three and fourteen years or with imprisonment for up to two years (8 Edw 7, c.45)."
pregnancy and venereal disease to be just part of the normal gamble that fell to the female side of negotiation" (1990: 80). In such a social context, sexual behaviour with female children can be said to have been a socially acceptable masculine sexual practice which, from reports of the time, appears to have been widespread.

However, this discussion is not made in order to suggest that all men at that time were involved in sexual practices with children. Whether all, a majority, or only a minority of men engaged in such sexual practices is not the point. The point is that, for those men who did, there was social, legal and political toleration of their behaviour, such that it appears that sexual behaviour with female children was not considered by many prominent men of the time to be an immoral or exploitative form of behaviour that ought to have been stamped out. Sexual behaviour with children did not attract the labels of 'deviance' or 'abnormality' that it has in the latter part of this century; on the contrary, such labelling was applied to the victims of child sexual assault, with the construction of a class of 'immoral' girls justifying men's sexual exploitation of them. For example, Allen's review of sexual assault cases involving women and girls between 1880-1899 in NSW reveals that "[r]ape and related sexual assaults were among a range of sexual options taken by normal men", such that the acts of defendants were not "represented in psychological terms" (Allen, 1990: 62). In particular, sexual behaviour with children was either explicable because of factors such as drunkenness or 'men's passions', or justifiable on the grounds of the immorality of the girl in question and her explicit or implicit seductive character. The discussion in this chapter indicates that the social opprobrium of the late twentieth century that attaches to men who engage in sexual behaviour with children was not a feature of the debates that accompanied age of consent legislation and the criminalisation of incest.

In terms of understanding the social toleration of child sexual abuse in previous centuries and the early part of the twentieth century, it is important to understand that "[l]ike rape and marriage laws, age of consent legislation ... reflected differences in the way male and female sexuality was perceived", since such legislation only applied to girls and not boys, and constituted an attempt to control a girl's sexuality, rather than to prevent harm to the girl (Gorham, 1978: 363). Although the social purity movement ostensibly wanted the age of consent raised to protect young girls from the
“evil lusts of wicked men” (Butler, 1885: 11; cited in Gorham, 1978: 364), Gorham considers that this probably amounted to mere rhetoric on the part of the social purists who “ignored the issue of individual rights, just as they virtually ignored the economic necessities that often led women to engage in prostitution” (1978: 367). In fact, social reformers of the time believed that “illicit sexual intercourse had a permanently corrupting effect on the character of young girls” (Gorham, 1978: 371), suggesting that morality was the basis for their protection. In other words, the social purity movement did not appear to be explicitly concerned with preventing the sexual exploitation of children, rather it appeared to be more concerned with preventing sex, in whatever form, outside marriage. For example, the reformers, who were almost exclusively middle-class (Gorham, 1978: 378), attempted to place strict controls on the working-class girls they took into their care, apparently objecting to the idea that a working-class girl involved in prostitution was “free to flout the mores of society – to support herself, if she chose, by prostitution, to dress as she pleased, and to live in an illicit relationship with a boy of her own age” (Gorham, 1978: 374).

In fact, Gorham considers that:

Victorian middle-class ideology about the nature of ‘true woman-hood’ contained a fundamental contradiction: the sheltered lives that middle-class girls and women were ideally supposed to lead depended directly on the labor of working-class girls and women, who through their services created the material conditions necessary to maintain the middle-class woman’s style of life (Gorham, 1978: 378).

In ignoring the economic conditions which necessitated widespread prostitution amongst the female working class, “[t]he movement to abolish child prostitution illustrates the attraction that symbolic rather than fundamental social change had for many later-Victorian reformers” (Gorham, 1978: 378). This suggests that despite the passage of legislation to raise the age of consent and prohibit child prostitution in the late 1880s and early 1900s, it can be expected that very little social change occurred as a result of such legislation, since the same economic conditions prevailed. It is likely that the social toleration and exploitation of young girls for prostitution continued well into the twentieth century, until social and economic conditions for the working classes began to improve.
In summary, this discussion has shown that legislative responses to the issue of child sexual abuse in the nineteenth century were piecemeal, were unlikely to have been motivated by the need to protect children, and indirectly facilitated the sexual exploitation of children, particularly those most vulnerable to the social and economic conditions of the time. For example, if “[w]e have inherited a legal structure which criminalized [incest and raised the age of consent] only in a broader attempt to regulate sexual morality amongst the working class” (Finch, 1991: 28), it can be said that such a structure reflected the social toleration of child sexual abuse and its acceptance as a particular masculine sexual practice engaged in by some men.

The widespread existence of female prostitutes under the age of 16 during the late nineteenth century and the immorality attributed to working-class girls generally; the documented resistance to increasing the age of consent for girls; the protections available to men accused of sex offences; the documented difficulties associated with prosecuting rape and carnal knowledge offences, together with evidence that documents the history of the sexual slave trade in working-class, middle- and upper-class girls in England and Europe during the 1800s, all suggest that sexual behaviour with children was not considered to be a ‘deviant’ or ‘abnormal’ sexual practice on the part of those men who engaged in it. Yet most of the contemporary psychological accounts of the behaviour of child sex offenders tell us these offenders are deviant, if not psychopathic individuals.

This transition from an apparently widely practised, socially tolerated form of sexual behaviour in the nineteenth century, to behaviour that is considered to be deviant in the latter part of this century, raises the question as to whether there is a gap in our understanding between behaviour that is socially unacceptable, and behaviour that is frequently engaged in. As stated at the beginning of this chapter, it is problematic to make the assumption that because child sex offending is socially unacceptable behaviour, it, therefore, occurs infrequently and is, therefore, committed by sexually deviant men. In other words, whilst the present-day social policies of Western countries, such as Australia, the USA and Britain, can be said to reflect an understanding that child sexual abuse is exploitative and harmful behaviour, there appears to be little understanding of the frequency with which child sex offending has
occurred over, possibly, hundreds of years, and the social tolerance of child sexual abuse until recent decades and, hence, the 'normality' (in terms of frequency) of child sex offending as a particular masculine sexual practice. Indeed, in the latter part of this century, the reported prevalence of child sexual abuse within the general community (with the most rigorous studies reporting rates of 38 and 45 per cent of girls having experienced contact sexual abuse before the age of 18: Russell, 1983; Wyatt, 1985)\textsuperscript{24} suggests that child sexual abuse is sufficiently widespread in the general community to question the assumption that child sexual abuse is committed by sexually deviant men.

D. THE MAIN RESEARCH ISSUE RE-VISITED

The nineteenth century history of the social toleration of sexual practices with children suggests that the sexual exploitation of children can be understood by examining it in terms of masculine sexualities. In particular, it is arguable that any theoretical explanation of child sex offending should address the relationship between different masculinities (as particular gender practices) and child sex offending, by analysing what it is about gender relations between men that might pre-dispose some men to engage in sexual behaviour with children.

At the same time, unlike some early feminist analyses of child sexual abuse (which are documented in Chapter Two), the theoretical position taken in this thesis does not take the view that masculine social practices, of themselves, pre-dispose some men to sexually abuse children. Rather it is proposed that a thorough engagement with masculine sexual practices, in terms of what those practices mean for an offender's relationship with other men, is necessary for understanding why some men engage in sexual behaviour with children.

E. THE SECOND MAIN RESEARCH ISSUE OF THIS THESIS

The second aspect of this thesis is concerned with whether a gender-based sociological account of individual behaviour could be relevant to an analysis of institutional practices, in particular, those of the criminal justice system (in particular the trial and appeal processes) and the way child sex offences are prosecuted.

\textsuperscript{24} This data is set out in Table 4.2, Chapter Four and discussed in detail in Part B, Chapter Four.
In relation to an analysis of the incidence of child sexual abuse cases reported to government agencies and conviction rates for child sex offences (using the NSW jurisdiction as a case study in Chapter Five), it is argued, first, that there is a considerable gap between the number of offenders who are charged with, and convicted of, child sex offences and the number of cases reported to community services agencies, and, secondly, that conviction rates for child sex offences are considerably lower than conviction rates for most other criminal offences.

It is proposed that an explanation for these discrepancies could be sought by examining the criminal justice system from the perspective of the theoretical propositions used to explain the behaviour of male child sex offenders. In other words, it is hypothesised that the criminal justice system is a site for institutional practices of hegemonic masculinity and, through those practices, creates a gendered division of rights between the (predominantly) male offender and the female or male complainant of child sexual abuse. This hypothesis will be tested by examining to what extent relationships of power within the child sexual assault trial are created through the application of particular rules of evidence and the use of particular gendered constructs.

In summary, this thesis addresses three separate but inter-related questions: first, is child sex offending a specific gender practice? Secondly, is the criminal justice system a site for institutional practices of hegemonic masculinity and, thirdly, do hegemonic masculine practices within the criminal justice system create filtering processes that prevent the successful prosecution of a majority of child sex offences?

F. THE STRUCTURE OF THE THESIS

In Chapter Two, this thesis begins with a review of a number of theories that attempt to explain why men engage in sexual behaviour with children. By identifying the contradictions and limitations in such attempts to understand child sex offending, I identify the questions left unanswered by this theoretical work and begin to develop my own theoretical approach. From my review, I argue that it is necessary to understand the nature and social function of gender, in particular the social construction of masculinities, in order to determine whether child sex offending is a particular
masculine gender practice and the role that such behaviour plays in offenders' lives as men.

Chapter Three examines the hypothesis that child sex offending, rather than being a deviant masculine sexual practice, is a particular gender practice that is related to normative masculine gender practices, that is, practices that involve the establishment of relations of power. In other words, it is hypothesised that child sex offending is specifically a sociological phenomenon that cannot be explained by pointing to innate biological or psychological tendencies of offenders.

The focus of Chapter Three is the development of the power/powerlessness theory to explain child sex offending behaviour on the part of men and male adolescents. The theory's development proceeds by examining the concept of gender, that is, chapter Three argues that gender is acquired, not through biology, but through active social practices. The chapter then discusses the relationship between gender, power, the social construction of different masculinities and sexualities. In particular, it examines the centrality of heterosexism to hegemonic ideals of manhood, and argues that sexual practices are central to the social construction of masculinities. In other words, by arguing that sexuality is a central practice for attaining power, it is hypothesised that child sex offenders make claims to power through sexual practices with less socially powerful objects of desire, when their personal or public power as men is in jeopardy, such as through an experience of lack of sexual potency, or an experience which constitutes a lack of power as a man in other arenas of life. In particular, it is argued that the behaviour of child sex offenders is 'symptomatic' of a broader cultural framework in which exploitative masculine sexual practices are normative and in which the lives of men are characterised by a combination of experiences of power and powerlessness that result from their gender relations with other men. Nonetheless, it is recognised that experiences of powerlessness do not, of themselves, explain why a man engages in sexual behaviour with children, so that a man's particular attachment to the link between sexual prowess and manliness is examined to determine whether that attachment is related to his choice of a child as a sexual 'partner'.
Chapter Four undertakes a number of theoretical enterprises which build on the work of Chapter Three; in particular, it tests the validity of the power/powerlessness theory. Part B of Chapter Four analyses victim report studies conducted in Australia, New Zealand, Britain and the USA and argues that the widely accepted child sex offender typologies in the psychological literature do not explain the vast majority of offenders identified in victim report studies, suggesting that these typologies do not provide a coherent understanding of the motivation behind child sex offending. Part B, thus, highlights the need for such an explanation and sets the scene for the analysis in Part C. From a review of studies that document the characteristics of child sex offenders, Part C argues that it is not possible to conclude that particular individual characteristics are causative in child sex offending, and analyses whether the power/powerlessness theory provides the ‘missing link’ between the possession of a particular psychological characteristic and subsequent child sex offending. Part D of Chapter Four further tests the validity of the power/powerlessness theory through a re-analysis of offender interviews conducted by Colton and Vanstone (1996). In doing so, Part D examines the offenders’ masculine social practices, their relationships with other men, the extent to which experiences of powerlessness are central to their lives as a result of those relationships and the centrality of their sexual practices to their place in masculine hierarchies. As a result of this analysis, Part D argues that the power/powerlessness theory fills the explanatory vacuum in both psychological and sociological understandings of child sex offending.

Finally, in Part E, Chapter Four addresses the argument that, because women also sexually abuse children, child sexual abuse is a human issue, rather than a specifically masculine issue, in order to determine whether the power/powerlessness theory of male child sex offending is thereby invalidated. Part E argues that the casting of child sexual abuse as an issue of gender permits both a recognition of the differences and similarities between male and female child sex offending and concludes that the power/powerlessness theory of why men sexually abuse children is not invalidated by the fact that some women also commit child sexual abuse.

Chapters Five and Six move from a focus on child sex offending as a particular masculine sexual practice to the prosecution of child sex offences, in particular an
examination of the gender dynamics within the child sexual assault trial. First, Chapter Five sets the groundwork for Chapter Six by testing two hypotheses:

(i) that the vast majority of cases of child sexual abuse do not result in charges being laid; and

(ii) that when child sex offence charges are laid, they are less likely to result in a successful prosecution compared with most other criminal offences.

Using the NSW jurisdiction as a case study, the first hypothesis is tested by comparing the incidence of child sexual abuse in the NSW community (for the period, 1991-92 to 1995-96) to the number of child sexual assault cases prosecuted in NSW courts for the five-year period, January 1992 to December 1996. In order to test the second hypothesis, conviction rates for child sex offences for the period, January 1992 to December 1996, are calculated and compared to conviction rates for all criminal offences (excluding child sex offences) for the same period.

In light of the analysis in Chapter Five, Chapter Six examines whether relatively low conviction rates for child sex offences are related to institutional practices of hegemonic masculinity within the legal system. As discussed above, Chapter Six examines the hypothesis that the criminal justice system is a site for the institutional practices of hegemonic masculinity and, through those practices, creates a gendered division of rights between the (predominantly) male offender and the female or male complainant of child sexual abuse. In particular, Chapter Six undertakes a number of theoretical tasks:

(i) an examination of the concept of the institution and institutional gender practices;

(ii) a study of the "institutionalization of gender" (Connell, 1987: 120) within the criminal justice system;

(iii) an analysis of whether and to what extent a gender regime operates within the criminal justice system;

(iv) an analysis of the sexual assault trial as an example of the operation of the gender regime within the criminal justice system;

(v) an analysis of how a gendered division of rights and restraints operates within the child sexual assault trial, in order to determine whether the gender regime
within the criminal justice system creates filtering processes which affect the successful prosecution of the majority of child sex offences.

This particular structural analysis is qualified by the argument made in Chapter Six that it is possible to identify and understand structure without then arguing that all practices will then conform to that structure, if, at the outset, it is accepted that structure is a product of cyclical social practices which are also in constant change and flux.

Finally, Chapter Seven draws a number of conclusions from the research undertaken in this thesis, considers the theoretical and practical implications of this research and identifies future research projects that could be undertaken as a result of this research.

G. DEFINITIONS AND TERMINOLOGY USED IN THIS THESIS
Throughout this thesis various terms are used, as defined below.

Child refers to a person under the age of 16 years unless otherwise specified.\textsuperscript{25} Any definition of 'child' raises the issue of consent, since the criminalisation of sexual behaviour with children is dependent on setting an 'age of consent' below which sexual activity with a child is criminalised, regardless of any willingness on the child's part to engage in the behaviour. Whilst it is certainly arguable that some children under the age of 16 years are capable of giving consent to sexual relations, because of children's economic dependency on parents and caregivers, generally speaking, up until at least the age of 16 years, it is accepted that that age, although to some extent arbitrary, constitutes a reasonable age for defining what constitutes a child and a child sex offence.

\textsuperscript{25} This age accords with the age of consent for girls and heterosexual boys in all Australian jurisdictions. However, the age of consent for male homosexual relationships is 18 years in NSW and the Northern Territory and 21 years in Western Australia (Royal Commission into the New South Wales Police Service, 1997: 1075). The Royal Commission into the New South Police Service (1997) notes that within the criminal law, there is "no consistent definition of 'child' or 'children'" (1997: 575). In some contexts in NSW, a child is considered to be a person under the age of 18 years (for example, s 3, the Children (Parental Responsibility) Act 1994), whereas under legislative provisions directed towards protecting children from sexual abuse, a female child is a person under the age of 16 years whilst a male child is a person under the age of 18 years (ss 78K, 78L, 78N, 78O, 78Q(1) and (2), Crimes Act 1900 (NSW)).
This thesis takes a broad approach to the definition of **child sexual abuse** which refers to both contact and non-contact sexual abuse experienced by a child as defined above, unless otherwise specified.26 Whilst it is recognised that some forms of sexual abuse, such as contact abuse, may be more damaging than others, it is also recognised that it is unwise to conclude that non-contact sexual activities with children are non-harmful, particularly where those activities take place on repeated occasions. This is the reason for including non-contact sexual activities in the definition of child sexual abuse.

**Contact abuse** is generally understood to mean any physical contact with a child’s genitals, or contact which involves the child touching the genitals of the offender which takes place for the purposes of the sexual gratification of the offender, in circumstances where:

(i) the offender is at least five years older than the child; *or*

(ii) the offender is younger, the same age, or from one to four years older than the child and the child believes he or she was coerced, forced or pressured or otherwise unable to give their consent to the sexual activity in question. This definition, therefore, excludes consensual sexual exploration between peers.

**Non-contact abuse** is taken to mean any non-physical sexual activity which takes place in the presence of a child for the purposes of the sexual gratification of the offender (as defined in (i) and (ii) above), such as masturbation in front of a child, exhibitionism, or showing a child pornography. Where other definitions of child sexual abuse are used in the thesis, this is made clear.

26 Because of the inclusion of non-contact sexual abuse, the definition of child sexual abuse used in this thesis will, generally, be broader than the type of sexual behaviour which can result in charges being laid for a child sex offence in NSW (the provisions which criminalise sexual behaviour with children in NSW are set out in Table 6.1, Chapter Six). Nonetheless, some non-sexual behaviours, such as promoting acts of child prostitution (s 91D(1), *Crimes Act 1900* (NSW)) or allowing a child to be used for pornographic purposes (s 91G, *Crimes Act 1900* (NSW)) would not come within my definition of child sexual abuse. The reasons for excluding such behaviours is that they are not necessarily consistent with sexual gratification on the part of the person who allows a child to be sexually abused by others and may be motivated by non-sexual reasons.
Paedophilia is not generally used in this thesis to refer to sexual activities with children, for five reasons. First, as Glaser (1997) observes, the problem with using the term 'paedophilia' is that:

it is associated with crude caricatures which are often fostered by paedophiles themselves. 'I don't pounce on small children in public parks, I don't play around with choir boys and I don't kidnap babies in prams; therefore I can't be a paedophile,' they might say. Their partners and friends, and the general community willingly accept these protestations, without realising that there is no such thing as the typical paedophile and that paedophilic behaviours can occur in virtually any sort of circumstance (1997: 6).

Secondly, because the term 'paedophile' has a psychiatric definition (American Psychiatric Association, 1994), it implies that “paedophiles are psychiatrically abnormal in some way” (Glaser, 1997: 6) and that sexual arousal to children constitutes a ‘deviant’ form of sexual behaviour, compared to an assumed norm of sex with adults. Such views are contrary to the theoretical analysis that is undertaken in this thesis and are not supported by a number of studies which document the characteristics of child sex offenders (as discussed in Chapter Four). Thirdly, the psychiatric definition of paedophilia implies that it is restricted to those people who are only sexually aroused by children, thus ignoring a significant number of male child sex offenders who engage in sexual practices with both children and adults. Fourthly, as Kelly (1996) observes, the psychiatric definition of paedophilia, with its focus on ‘deviant’ sexual arousal, makes it more difficult to argue that men make a choice to engage in sexual activities with children. Lastly, the use of a psychiatric term, with its inevitable focus on the individual in isolation from his social context, is in direct contrast to the sociological focus that is taken in this thesis to explain men's sexual behaviour with children.

For these reasons, instead of paedophile and paedophilia, the terms child sex offender and child sex offending are used. In keeping with the definition of child sexual abuse, discussed above, child sex offender refers to a man or male adolescent who engages in contact or non-contact sexual activities with a child for the purposes of obtaining sexual gratification and who is:

(i) at least five years older than the child; or
(ii) younger, the same age as the child, or between one to four years older than a child in circumstances where the sexual activity was non-consensual.  

Where child sex offenders who are female are referred to, this is made clear.

This thesis also makes a distinction between the concepts of sex and gender and adopts the definitions used by West and Zimmerman (1991), with some modifications. Sex is “a determination made through the application of socially agreed upon biological criteria for classifying persons as females or males. The criteria for classification can be genitalia at birth or chromosomal typing before birth, and they do not necessarily agree with one another” (West and Zimmerman, 1991: 14). When the terms ‘male’ and ‘female’ are used in this thesis, they refer to the sex of a person or persons, not their gender.

Gender is defined as the social practices or activities that a person engages in which conform with “normative conceptions of attitudes and activities appropriate for one’s sex category” (West and Zimmerman, 1991: 14), although at the same time it is recognised that gender practices can also constitute a rejection of those normative conceptions through divergent social practices. The social construction of gender is discussed in detail in Chapter Three.

---

27 The Royal Commission into the New South Police Service (1997) observes that “[t]here is no strict legal definition under [Australian] State or Commonwealth legislation of ‘paedophilia’, ‘paedophile’, or ‘pederast’” (1997: 575). In some contexts, a ‘paedophile’ is defined as a person who has been convicted of a child sex offence (see, for example, the Statutes Amendment (Paedophiles) Act 1995 (SA) which provides for paedophile restraining orders for the protection of children from persons convicted of a child sex offence: Royal Commission into the New South Police Service, 1997: 575). Generally speaking, however, the criminal law defines an offence by reference to the prohibited activity, not by reference to the type of person committing the offence (Royal Commission into the New South Police Service, 1997: 575).
CHAPTER TWO

CURRENT EXPLANATIONS OF CHILD SEXUAL ABUSE

A. INTRODUCTION
This chapter contains an analysis of those theories (derived from three disparate disciplines: biology, psychology and sociology) which attempt to explain why men sexually abuse children. The analysis aims to discover the questions that are left unanswered by each theory and, hence, the extent of their explanatory power for explaining men’s sexual behaviour with children, in order to assess the validity of developing a different theoretical approach to the problem of child sex offending. In other words, the task of this chapter is to identify the contradictions and limitations in each theory, in order to determine how an alternative theoretical model of child sex offending could be developed.

The chapter is organised under the following headings:
(i) Introduction;
(ii) An Analysis of Child Sexual Abuse as a Function of Family Pathology;
(iii) Sexually Coercive Behaviour: A Case of Biological Propensity or Culturally Produced Behaviour?;
(iv) The Relationship between Power and Child Sexual Abuse;
(v) Child Sexual Abuse as a Sociological Phenomenon;
(vi) Psychological Theories of Child Sex Offenders and ‘Good’ and ‘Bad’ Masculine Sexuality;
(vii) The Characteristics of Child Sex Offenders;
(viii) The Multi-factorial Analysis of Child Sexual Abuse;
(ix) Conclusion.
B. CHILD SEX OFFENDING: VIOLENCE, SEX, POWER, DYSFUNCTIONAL FAMILIES OR JUST PLAIN DEVIANCE?

(i) Introduction

Although various explanations have been posited to explain the behaviour of men who are sexually attracted to children, they vary in their construction of the phenomenon of child sexual abuse: is the behaviour about violence, sex, power, dysfunctional families or deviance? Eighteen years ago, the very same uncertainty was identified by Rush who observed that:

[i]ncest and other forms of sexual abuse of children are subjects clouded by myths, contradictions and confusions. There is disagreement ... as to whether ... child molesters are normal, neurotic, psychopathic or psychotic, whether the child victim in some way offers herself for a sexual encounter or whether the molester derives his behavior from a disturbed mother or a fractured family (Rush, 1980: 2).

More recently, Gilmartin observed that many explanations of child sexual abuse:

focus predominantly on one of two issues. Either they offer psychological explanations as to why individual abusers do what they do (i.e., models of individual pathology), or they focus on why sexually abused children and adult survivors react in the ways that they do. Much less attention, though, has been paid to the structural underpinnings of these problems (Gilmartin, 1994: 80-81).

In fact, “there is a web of interweaving knowledge and ways of understanding [child sexual abuse] as a problem” (Bell, 1993: 147). Child sexual abuse has been “‘claimed’ by a number of different disciplines ... [such as] criminology, women’s studies, psychology, public health and sociology”, although “there has not been a great deal of sharing of [information] among these various groups, [so that] divergent perspectives have emerged” (Gilmartin 1994: 51-52). However, understandings of child sexual abuse, arguably, have been hampered by the political context in which the behaviour has occurred, since many Western countries have:

a lengthy history of: (1) ignoring the fact that incest and child sexual abuse exist; (2) minimizing the serious impact and the traumatizing nature of these experiences; (3) buying into the mythology which surrounds this subject; (4) ignoring the structural roots and causes of these forms of sexual victimization; and (5) acknowledging the “less serious” forms of child sexual victimization while denying that organized or cultic forms can be real. Even today there are detractors who would have us believe that: incest and child sexual abuse do not exist, child sexual abuse and incest are rare occurrences, and the impact of the experiences is minimal (Gilmartin, 1994: 78; footnotes and references omitted; emphasis in original).
For example Waldby, Clancy, Emetchi and Summerfield (1989) describe how early psychiatric literature described incest as “an extremely rare phenomenon although allegations of incest may be common”; as an incident “usually at the instigation of the child acting out her desire for her father” and how “[m]other-blame is a consistent feature of all the non-feminist literature on incest” (Waldby et al, 1989: 90). Indeed, up until the 1970s, some psychiatric literature accepted that incest was so rare that it occurred in no more than one in a million families (Herman 1981: 11; citing Henderson, 1975: 1532) and “although an index category for child abuse had been added to Psychological Abstracts by the mid 1970s, of the 86 articles listed under this category as late as 1979, approximately 85% were concerned with physical, rather than sexual abuse” (Okami, 1992:118; emphases in original).

Along with the belief in the rarity of child sexual abuse, non-feminist psychiatric literature on incest, generally, has drawn on and selectively used what is now acknowledged to be the discredited work of Freud “on infantile and childhood sexuality and the Oedipus complex” in order “to focus attention on the ‘seductive child’ and the ‘pathological mother’, or to dismiss reports of incest as infantile fantasy” (Waldby et al, 1989: 88-89). As a result of their Oedipus complex and envy for the penis, daughters were believed to either fantasise incidents of sexual abuse or seduce their fathers, in circumstances where mothers with an unresolved Oedipus complex were believed to “use their daughters as surrogates to act out their own

1 Freud’s work on incest has been discredited due to the circumstances surrounding his initial revelations of incest in patients he was treating and his subsequent repudiation of those claims. As Herman (1981) observes: “[t]he patriarch of modern psychology stumbled across the incest secret in the early and formative years of his career. ... In 1896, with the publication of two works, The Aetiology of Hysteria and Studies on Hysteria, he announced that he had solved the mystery of the female neurosis. At the origin of every case of hysteria, Freud asserted, was a child sexual trauma. But Freud was never comfortable with this discovery, because of what it implied about the behavior of respectable family men. If his patients’ reports were true, incest was not a rare abuse, confined to the poor and the mentally defective, but was endemic to the patriarchal family. Recognizing the implicit challenge to patriarchal values, Freud refused to identify fathers publicly as sexual aggressors. ... Scrupulously honest and courageous in other respects, Freud falsified his incest cases. ... Even though Freud had gone to [great] lengths to avoid publicly inculpating fathers, he remained so distressed by his seduction theory [of daughters by fathers] that within a year he repudiated it entirely. He concluded that his patients’ numerous reports of sexual abuse were untrue”: Herman, 1981: 9-10. Later Freud admitted he falsified his patients’ incest reports and “[h]is correspondence of the period reveals that he was particularly troubled by awareness of his own incestuous wishes toward his daughter, and by suspicions of his father”: Herman, 1981: 10. Freud’s suppression of his theory of hysteria is also documented in Masson (1984).
incestuous wish for their fathers" (Waldby et al, 1989: 90). Waldby et al (1989) argue that the constructs of the "collusive" mother and the "seductive" daughter operate as a mechanism for transferring agency away from the father ... [so that] the father is rendered inculpable by being made into the passive object of his wife’s and daughter’s desires. By ignoring the father’s desire, and more importantly, his social power to act upon it, the psychiatric literature effectively shifts blame from the perpetrators to the survivors (1989: 91).

In contrast to the dominant views in psychiatry on the causes and frequency of child sexual abuse, throughout the late 1970s, 1980s and 1990s, other disciplines have revealed the prevalence of child sexual abuse within English-speaking Western countries², the immediate and long term effects suffered by victims and the characteristics of the men and male adolescents who commit child sexual abuse. It has been acknowledged by several people that it was the so-called ‘grass-roots’ feminist movement (through the documentation of survivors’ accounts) and the child welfare movement that placed the issue of child sexual abuse in the public domain and on the research agenda (Finkelhor, 1984: 3-4; MacLeod and Saraga, 1988: 39; McConaghy, 1993: 240-242; Gilmartin, 1994: 77; Briere, 1995). Nonetheless, the child welfare and the ‘grass-roots’ feminist movements were characterised by distinctly different approaches to understanding the phenomenon of child sexual abuse and, since the 1970s, the most contested aspect of research on the problem of child sexual abuse is how different disciplines explain the motivations of child sex offenders. As Finkelhor (1984) explains, “[t]he child protectors have tended to view sexual abuse in the context of other forms of child abuse and neglect”, particularly by focusing on sexual and physical abuse of children within the family (Finkelhor, 1984: 4). The focus on the family has meant that the child welfare movement has “tend[ed] to concentrate [its] attention on sexual abuse committed by parents and other caretakers” (1984: 4) and, therefore, has attempted to explain child sexual abuse as a function of family pathology, implicating all family members, especially the non-abusive parent (usually the mother) in the family pathology that is considered to give rise to incest.

² The Western countries that are referred to in this thesis are Australia, Britain, New Zealand and the USA. I have confined the thesis to these countries mostly due to the ease of access of data from these English speaking countries.
An Analysis of Child Sexual Abuse as a Function of Family Pathology

The view that family pathology gives rise to child sexual abuse is derived from family systems theory which posits that, in a dysfunctional family system where incest has occurred, the abuse can be attributed to sexual problems between the parents. The theory proposes that the function of incest is to hold the family together, that is, the family is considered to be held together by the daughter of the family taking over the wife's sexual role. As such, "sexual abuse is [seen as] a symptom of what is wrong in the family, or even a 'solution' to the dysfunction" (MacLeod and Saraga, 1988: 33).

The work of Mzarek and Bentovim (1981) is typical of the approach of family systems theorists who, generally, consider that, within the incestuous family, there is likely to be covert acquiescence by the mother in the father-daughter incest so as to direct attention away from the dysfunctional relationship between the mother and father and to preserve the stability of the family unit. They give the example of the B family, in which Mr B, because of "anxiety about his declining potency and his fears that his wife will leave him", makes sexual approaches to his nine year old daughter, and, as a result of his daughter's positive response to his sexual advances, his masculinity is affirmed (Mzarek and Bentovim, 1981: 169). In fact, Mzarek and Bentovim consider that "[t]his father-daughter dyad is mutually dependent and reinforcing [because] [t]he incest helps each of them avoid his/her problems with identity and self-esteem" (1981: 169; emphasis added). Thus, the family "shares a meaning or a myth that sexuality between father and daughter is an acceptable and necessary part of the family's life together" (Mzarek and Bentovim, 1981: 169).

In another example, Mzarek and Bentovim (1981) describe the R family in which the father turns to his adolescent daughter for sexual fulfilment, in circumstances where the daughter is described as initially participating willingly ("because of concern for her father and the excitement of keeping a 'secret' from [her mother]"). When the daughter eventually complains to her mother, Mr R "finally breaks down in tears, asking his wife's forgiveness. He promises to leave [the daughter] alone and to spend more time with his wife. This results in a dramatic withdrawal from Mrs R who cannot tolerate even the potential for closeness in the marriage. In the following days,
she avoids her husband. *The system is left open for further incest*” (Mzarek and Bentovim, 1981: 170; emphasis added).

The above examples demonstrate how family systems theory is permeated by essentialist beliefs about women and men, such as the view that family breakdown is due to the failure of the mother to fulfil her nurturing, protective and sexual roles with her husband (Porter, 1984: 8-9) and the view that the father, whose sexual and emotional needs are not met by his wife, is forced to turn to his daughter as a ‘surrogate’ wife: both the wife and daughter are constructed as sexual beings by reference to the father’s sexual needs. As Cammaert (1988) observes:

> the nonoffending mother is seen as a primary cause and/or facilitator of incest because of four ideas held by many clinicians: (1) she is the cornerstone of a pathological family; (2) she is psychologically disturbed herself; (3) she does not fulfil her roles as a wife and mother because she is a poor sexual partner; she reverses roles with her daughter, and deliberately leaves or escapes home through work; and (4) she is collusive in providing opportunities for the incest to occur, pushing both husband and daughter into it, and turning a blind eye (1988: 311).

In other words, traditional sex roles appear to be implicit in family systems theory from the point of view of determining what constitutes a normal, healthy, “functional” family and when so-called “dysfunction” arises (MacLeod and Saraga, 1988: 33). As MacLeod and Saraga have observed, “[o]nce the family system is analysed in detail to see why it has broken down, then in almost every case it is the mother who is seen as ultimately responsible. There is an unwritten assumption that families are functional when men’s needs are met” (1988: 33). Family systems theory has also been criticised for its implication that mothers and daughters are active participants in creating the conditions in which incest occurs and in its treatment of the male offender as a passive protagonist within the family unit. In their review of the literature on family systems theory, MacLeod and Saraga conclude that “women are described as actively withdrawing, being punitive or depriving men of their conjugal rights, while men are described as if they were children, more frequently passive, aroused by what others do to them, or spontaneously acting and in need of control” (1988: 34).
Arguably, a reliance on specific sex roles\(^3\) in family systems theory allows incest to be thought of not as a problem in itself, but as a problem "in so far as it signifies a 'deeper' underlying pathology" within the family unit (Waldby \textit{et al}, 1989: 93); that is, the "pathology" of women and daughters who do not fulfil the sex roles expected of them. In other words, the family dysfunction literature regards these pathological family relationships (cold distant mother, infantile father, love-starved daughter) as the therapeutic issue, while the actual occurrence of incest is a secondary manifestation, a symptom. Incest is treated in some of this literature as a \textit{functional} system serving to hold together a family whose internal relationships are so abnormal as to be otherwise completely unstable (Waldby \textit{et al}, 1989: 93-94; emphasis added).

In attributing child sexual abuse to the phenomenon of family dysfunction, the family is seen as an entity isolated from its cultural, religious and social context.

Other criticisms of family systems theory have been made by Cammaert (1988) who considers that the literature on the characteristics of incestuous families and their members is based on clinical impressions which have not been substantiated by empirical research. In fact, Cammaert (1988) found that in the few studies that have been made of incestuous families, whilst there was a high degree of family dysfunction (including domestic violence and mental health problems), "the hypothesis that the mothers' failure to be sexually available has driven their husbands to seek sexual gratification from their daughters is definitely not supported" (1988: 314).

In another study, De Jong (1988) examined the mothers of 103 sexually abused children and found that they had "varying responses to the sexual abuse of their children which [did] not appear related to the individual characteristics of the child."

\(^3\) Sex role theory is based on biologically deterministic understandings of men and women, since, as Connell (1995) explains, "[i]n sex role theory, action (the role enactment) is linked to a structure defined by biological difference, the dichotomy of male and female — not to a structure defined by social relations. This leads to categoricalism, the reduction of gender to two homogeneous categories, betrayed by the persistent blurring of sex differences with sex roles. Sex roles are defined as reciprocal; polarization is a necessary part of the concept. This leads to a misperception of social reality, exaggerating differences between men and women, while obscuring the structures of race, class and sexuality" (1995: 26-27).
victim, the perpetrator, or the abuse situation” (1988: 18). Although a range of abuse situations were present in De Jong’s sample (with 15% of perpetrators being fathers, 11% the mother’s male partner, 17% another relative, 36% acquaintances and 24% strangers or unknown), De Jong found no significant differences in a mother’s response to the abuse with respect to the mother’s relationship to the perpetrator. In other words, family systems theory would predict that mothers of incest victims would be unsupportive in relation to the sexual abuse of their child (because of the belief that mothers collude in the abuse), however, De Jong’s results do not support such a prediction. De Jong observed that even though, “[g]reater external pressures might be expected among mothers of incest victims”, that is, pressures which would contribute to a mother’s unsupportive response to her child (such as family and economic pressure to protect the abuser, or lack of support from police or other agencies), “[n]o statistically significant differences could be found among the three maternal response groups and the relationship of the perpetrator to the victim” (1988: 18). In fact, De Jong found that almost equal numbers of mothers of incest and non-incest victims showed an unsupportive response (33 per cent and 30 per cent, respectively), with a majority of mothers of incest victims showing a supportive response to their child (1988: 18). On the basis of these figures, De Jong concluded that whilst “[r]elationship of the perpetrator is likely to affect some of the mothers’ responses to the abuse, ... other factors must play a major role in determining maternal response” (1988: 18).

Similarly, Faller (1990) reports that, out of a study of 65 cases of incest, there was “a fair amount of variability in factors that contribute[d] to sexual abuse by bio-fathers”; in only six cases were there significant sexual difficulties between the offender and his wife, and only three mothers knew about the sexual abuse prior to its report and “did not appear to desire or benefit from it, but felt powerless to stop it” (Faller, 1990: 67). Such findings are supported by a study of mothers of incest victims by Salt, Myer, Coleman and Sauzier (1990) who reported that the responses of mothers to the sexual abuse of their children was highly variable, with the majority of mothers showing a

---

4 The responses of the mothers in De Jong’s study were divided into three categories: (i) unsupportive, (ii) supportive with no emotional symptoms on the part of the mother, and (iii) supportive with emotional symptoms on the part of the mother.
moderate to strong concern for the welfare of their children (90 per cent), not blaming their children (77 per cent) and taking steps to protect the child (80 per cent) (1990: 116). As Salt et al observe, such figures challenge the universality of the collusive mother stereotype which has been perpetuated by family systems theorists (1990: 116).

Herman’s (1981) study of the characteristics of forty incest families also shows that the dysfunction in such families cannot be solely attributed to the sexual unavailability of the wife, since family dysfunction was also found to manifest in the form of habitual violence (present in 50 per cent of families), or alcoholism (present in 37.5 per cent of families) on the part of fathers. Although 55 per cent of the daughters of these families reported that their mothers had “periods of disabling [mental or physical] illness which resulted in frequent hospitalizations or in the mother’s living as an invalid at home” (Herman, 1981: 77), it cannot be assumed that the unavailability of the wife explains the occurrence of incest. Evidence discussed by Herman of the domination, control and violence exhibited by the fathers in these families towards their wives suggests the possibility that the wives of such men sought refuge in physical or mental illness as a response to the abuse they experienced at the hands of their husbands.

In their review of the characteristics of incestuous fathers, Williams and Finkelhor (1990) report that whilst two studies have found that these men did experience significant marital difficulties, a study by Parker and Parker (1986) which “compared incest offenders against other clinical fathers (in this case matched groups of prisoners and outpatients)” found few significant differences in the quality of their marital relationships (Williams and Finkelhor, 1990: 246), suggesting that the marriages of incestuous fathers “are not any worse than one might find among other men experiencing other social and psychological problems” (Williams and Finkelhor, 1990: 246). In fact, as Williams and Finkelhor note, “no study has attempted to estimate marital quality prior to disclosure” of incest, so that it is not known how

---

5 These characteristics were compiled after interviews with forty women who were incest survivors.
much the marital discord measured is a result of the fact of disclosure of the incest, rather than being due to pre-existing factors (1990: 246).

Arguably, the work of family systems theorists has obscured, rather than elucidated the motivations behind child sex offending behaviour on the part of men. In summary, it can be said that the view of incest as a family problem which should be dealt with in a treatment framework serves to maintain the ‘normality’ of a father’s sexual response to the assumed stress within his family (his sexually unavailable wife), obscures the possible power and control issues between husband and wife which might explain a wife’s sexual unavailability, unquestioningly accepts “the father’s right to demand sexual servicing and nurture from females” and obscures the possibility that incest is a function of masculine sexuality (Waldby et al., 1989: 95). In addition, because of their reliance on essentialist beliefs about the behaviour of men and women, explanations which focus on family dysfunction, marital discord, the mental state or the sexual unavailability of a wife as causative factors for explaining why a man commits child sexual abuse miss the possibility that marital problems and family dysfunction are likely to be common experiences suffered by many men, not solely those who commit child sexual abuse. Family systems theory also suffers from the flaw that it takes no account of the fact that the majority of child sexual abuse cases do not involve father-daughter incest (MacLeod and Saraga, 1988: 32) and of recent research that shows “that many incest fathers begin their sexually abusive behavior as adolescents” independently of the family unit (Dadds, Smith and Webber, 1995: 576). Furthermore, little evidence exists to support the notion that “incest families typically are overmeshed, rigid, without clear boundaries within the family, but isolated and withdrawn from normal contacts with the community” (Dadds et al., 1995: 576; references omitted).
(iii) Sexually Coercive Behaviour: A Case of Biological Propensity or Culturally Produced Behaviour?

It is possible to discern an ongoing tension in academic work between feminist explanations\(^6\) and non-feminist psychological and biological theories of men's sexual attraction to children. Indeed, the nature of the particular discipline reporting the research very much influences the perspective that is taken on what motivates child sex offenders. For example, a leading Australian psychiatrist considers that:

The response of [sexually offensive] behaviors to chemicals that reduce testosterone levels indicate that biologically driven sexual urges continue to make some contribution to their motivation. The response of sex offenders ... to behavioral treatment alone suggests that learned factors play a major role in maintaining their deviant behaviors. ... [T]he poorer response of homosexual pedophiles and hebephiles to behavioral treatments suggest that their behaviors are more strongly motivated by biological factors which could be genetically determined and/or caused by exposure to an environmentally determined variation in the sex hormone levels to which they were exposed in utero (McConaghy, 1993: 345-346).

Such a view demonstrates how “most researchers seem to take a rather narrow perspective of ... [sex offending], stressing their own preferred processes (i.e., psychological, biological, sociological) to the virtual exclusion of others” (Marshall and Barbaree, 1990: 257). However, if, as Marshall and Barbaree (1990) propose, an integrated approach should be taken to the causes of child sexual abuse (that is, an approach which integrates psychological, biological and sociological processes), it is necessary to investigate the particular cultural assumptions on which psychological and biological theories of child sexual abuse are based. In other words, since “there is no description without a standpoint” (Connell, 1995: 69), it cannot be assumed that scientific theories constitute value-free explanations of male sexual attraction to children, as some feminist researchers have demonstrated in relation to family systems theory. A biological or psychological theory based on essentialist assumptions about male sexuality will have questionable validity. For example, Marshall and Barbaree (1990), in their work on an integrated theory of sex offending, begin with the premiss that “the task for human males is to acquire inhibitory controls over a biologically endowed propensity for self-interest associated with a tendency to fuse sex and

\(^6\) Because of the broad range of researchers who claim a feminist perspective without placing their work within a particular strand of feminist theory, feminist perspectives in this chapter can be broadly defined as those that consider that the social construction of gender establishes relations of
aggression” (1990: 257). Biologically speaking, however, it makes no sense for women not to have a ‘biologically endowed propensity for self-interest’, since women have the sole biological means to ensure that their genes and those of their male partners are passed onto the next generation through successful pregnancy, birth and several years of nurturing. Indeed, the impulse theory of rape, which is closely allied with the view that the male sex drive is uncontrollable such that men must acquire inhibitory controls over it, reduces all sexual behaviour to biology, yet paradoxically is underpinned by cultural assumptions about male and female behaviour. For example, Scully (1990) in her review of the theory states that:

[n]o one has been able to demonstrate that men who rape are more or less prone to impulsive behavior than other known groups of men. In fact, if anything, research has demonstrated the opposite of impulse theory. For example, Amir (1971) analyzed the police records of 646 rapes and found that 71 percent were premeditated, not sudden, impulsive acts (1990: 37).

However, an emphasis on men’s apparent biological propensity in an attempt to explain coercive male sexual behaviour places the focus on the man as an individual which creates the risk of looking for the “cause of and solution to a complex social problem within the individual”, “to ignore the cultural and structural context in which it occurs” (Scully, 1990: 46) and to excuse rather than find answers to the problem. As Scully observes, “[t]he net effect of individualistic explanations is to create an approach to the problem that never reaches beyond the individual offender” (1990: 46).

By way of contrast to biological interpretations of coercive sexual behaviour, “[f]eminist theory starts with gender. In looking at why children get sexually abused we are not looking at some ‘Neanderthal’ drive, ... but at problematic sexual and adult-child politics” (MacLeod and Saraga, 1988: 39). Feminist understandings of rape can be said to have embraced “culture and social structure as dynamic and contributing factors and [to have taken] an alternative multifaceted view of sexual violence and its origins” (Scully, 1990: 47), in particular by viewing rape and other types of sexual assault as “intrinsic to a system of male supremacy” (Herman, 1990: 177). As Herman (1990) observes:

power which are the source of women’s experiences of oppression by and disempowerment in relation to men.
feminist theorists have called attention to the social legitimacy of many forms of sexual assault and to the glorification of even extreme sexual violence in the dominant culture. If, as many feminists argue, the social definition of sexuality involves the erotization of male dominance and female submission, then the use of coercive means to achieve sexual conquest may represent a crude exaggeration of prevailing norms, but not a departure from them (1990: 177-178; references omitted).

Thus, feminist analyses of rape challenge the view of biology and psychology that rape is biologically driven and proposes that it is socially constructed sexual behaviour. In fact, Scully (1990) observes that “[t]he absence of rape in some societies provides support for the proposition that while human behavior, including sexual behavior, may have biological or physiological components, it is always patterned and expressed in cultural terms” (1990: 47).

For example, in her study of 114 convicted rapists in America, Scully found that rape serves a number of emotional and social functions, none of which can be attributed to the biological urge for sex and that men learn to rape as a result of specific social practices. Scully reports that the men in her study had a strong belief in rape stereotypes (1990: 91) which are a feature of “rape-supportive culture[s]” (1990: 101) and that the reasons why these men raped were easily found in the cultural language that is used to justify rape. Scully found that the men in her study who denied the sex offences for which they had been convicted either:

(i) constructed fantasies about their victims as seductresses;
(ii) claimed that a victim’s refusal really meant yes;
(iii) believed that their victims “relaxed and enjoyed it” (1990: 105);
(iv) asserted that “nice girls don’t get raped” so that “any behavior on the part of the victim that is perceived as violating gender role expectations is perceived as contributing to the commission of the act” (1990: 107);
(v) minimised the wrongdoing or emphasised their “macho man image” and attractiveness to women as evidence that they would not need to rape (1990: 111).

Scully concluded that “[s]ince patriarchal societies produce men whose frame of reference excludes women’s perspectives, men are able to [deny] sexual violence, especially since their culture provides them with such a convenient array of
justifications” (1990: 166). In relation to the men in her study who admitted to the rape for which they had been convicted, Scully reported that these men justified or excused their behaviour because of the influence of drugs and or alcohol, on the grounds that “an emotional problem had been at the root of their rape behavior” or that an upsetting event precipitated the rape. In particular:

admitters’ accounts reveal the social factors that permit sexual violence to be excused. They are men who acknowledge they have raped and also express the belief that rape is morally reprehensible. Excuses were the device that allowed them to explain themselves and their acts in socially acceptable terms by appealing to forces beyond their control, forces that reduced their capacity to act rationally and thus compelled them to rape. These excuses - alcohol and drug use, and emotional problems - allowed them to view their rapes as idiosyncratic rather than typical behavior. Thus, they had made serious mistakes that did not represent their “true” selves. As evidence that they were actually “nice guys”, most of the admitters expressed deep regret for their behavior and the desire to apologize to their victims. These, however, were not their sentiments at the time of the rapes (Scully, 1990: 134).

Scully’s work shows how the men in her study socially constructed the sexual violence they had committed and how, for both admitters and deniers, “culture provides the excuses and justifications that allow men who rape to explain sexual violence in socially acceptable terms” (1990: 135). In particular, Scully found that their excuses were:

butressed by the cultural view of women as sexual objects, dehumanized, and lacking autonomy and dignity - a view that allowed these men to rape without emotion. Through the skilful use of these justifications and excuses, deniers were able to define their behavior as wrong, but not rape, while admitters were able to view their behavior as rape, but not themselves as rapists. In the final analysis, whether or not they regarded their behavior as rape, the overwhelming majority claimed, “I’m not a rapist”. The perspective of these men reduced rape to nothing and no one to a rapist (1990: 135).

Because Scully’s work suggests that rape arises from culturally specific gender practices, it highlights the inability of biological theories to explain why men who rape are “characterized by an intensely rigid double standard of moral and sexual conduct” (Scully, 1990: 165) in relation to their own sexual behaviour and the sexual behaviour of women (surely biology needs no moral standard to justify itself) and why sexually violent men need to “identify with traditional images of masculinity and male gender role privilege” (Scully, 1990: 165).

If the motivations for rape and sexual assault of women is to be found in masculine cultural practices, can it be said that child sexual abuse is a sexual activity that also
arises from culturally specific masculine social practices? In an empirical study of thirteen convicted child sex offenders in Britain, Fuller (1993) analysed their stories using five major themes: (i) sexual ideologies; (ii) perceptions of masculinity; (iii) perceptions of children and childhood; (iv) perceptions of social rules regarding sexual activities, sexual relationships and child sexual abuse and (v) emotions and their management (1993: 55). Fuller used the first two themes “to explore any possible links in ideologies regarding women, men and heterosexual relations”, the third theme to explore social learning theory and cultural scenarios concerning childhood and children, the fourth theme to examine “explanations emanating from cognitive labelling theory ... [and] a scripting approach to such activities” and the fifth theme to explore those theories concerning masculinity and emotion (Fuller, 1993: 55).

Following on from Scully’s (1990) work, Fuller analysed whether “the cultural scenarios of hegemonic masculinity and heterosexuality inform the [child sex] abuser’s vocabularies of motive” (1993: 61). In other words, she asked whether individuals who “cannot draw upon rational vocabularies of motive to account for ... behaviour, ... adopt a ‘maniac’ explanation which rests upon ideas of uncontrollable instincts and drives. That is, ideas that are widespread in popular culture” (Fuller, 1993: 62). Like Scully, Fuller found that the offenders in her study resorted to the following common cultural beliefs to justify and excuse their offences (Fuller, 1993: 68-109):

- the failure of a wife to satisfy an abuser’s sexual and/or emotional needs
- in the absence of a wife fulfilling her role, the daughter must ‘fill in’
- the responsibility of a female girlfriend for arousing an abuser
- sexual rejection by women

---

7 The term ‘vocabularies of motive’ which is attributed to C. Wright Mills (1943) (Matza, 1973: 176) is akin to Matza’s (1973) ‘techniques of neutralization’ which Matza uses to describe how adolescent ‘delinquents’ justify their behaviour; as Matza observes ‘techniques of neutralization’ or ‘vocabularies of motive’ “are phrases or linguistic utterances used by the deviant to justify his action. Their importance lies in the fact that they are not merely ex post facto excuses or rationalizations invented for the authorities’ ears, but rather phrases which actually facilitate or motivate the commission of deviant actions by neutralizing a pre-existing normative constraint” (Matza, 1973: 176). I am grateful to David Brown for referring me to Matza’s work and for pointing out that ‘vocabularies of motive’ are used to justify a wide range of socially unacceptable activities.
• the failure of a daughter to say no to sexual advances
• the escalation of sexual activities as a daughter sexually matures
• the sexual titillation of a daughter being sexually inexperienced
• the belief that women and girls are responsible for looking after men’s emotional and sexual needs
• that the abuser was passive and was ‘led on’ by the victim or actively seduced by the victim(s)
• the denial of any power differential between themselves and their victims
• that sex is about opportunity, ‘getting away with as much as you can’, and manipulating a female into having sex.

Fuller’s study showed that:

many of the excuses and justifications used by the respondents were based on a particularly sexist world view, rooted in a biological approach to gender, where the sexes are mutually exclusive. A number of ‘cultural scenarios’ were identified, including the idea that men need sex for instinctual reasons and had little control over their sexual behaviour as a result. Another scenario was that the love of a good woman will control a man. Both are constitutive of the cultural scenarios for heterosexual relations and it was shown how women’s responsibility for men’s sexual and emotional lives was an inherent assumption within these (1993: 113-114).

For example, Fuller describes how “the cultural scenarios of hegemonic masculinity and heterosexual relations informed the content” of one sex offender’s “vocabularies of motive” who attributed his sex offending to marital problems, his wife’s sexual unavailability and the seductive behaviour of his daughter:

It is particularly noteworthy that Charlie attempts to shift blame on to the women around him. This highlights how the cultural scenarios and interpersonal scripts relating to hegemonic masculinity and heterosexual relations operate within our society. The use of ‘biological’ excuses carries the implication that if a man is not being sexually satisfied, no one can blame him for having a sexual relationship with his daughter, because he is merely acting according to natural instinct. ... Charlie is able to blame ... [his wife and daughter] for within his world view they are indeed responsible and his actions were therefore reasonable. ... Finally Charlie tells us he is taking all the blame, however, this claim must be seen in the light of his earlier tactic of blame shifting. He even uses this tactic in accepting blame, since he ‘should have had the common sense to say no’. This implies that he was faced with something his daughter wanted to do (1993: 69-70).

Another feature of the stories told by the offenders in Fuller’s study is that ‘stress’, in their eyes, played a part in the abuse. Fuller observes that:
when we look at the content of these stress factors they can be seen to have a common factor. They all relate to the ‘functions’ of a man in the cultural scenarios for hegemonic masculinity and heterosexual relations. They are all aspects of what a ‘man’ is expected to do in our patriarchal society. That is, have sex (or not be impotent) and be a ‘breadwinner’ (financially successful). I suggest this is why these particular stresses are significant for these men. ... These particular forms of stress were undermining a sense of ‘manhood’ defined by the cultural scenarios and scripts for hegemonic masculinity (1993: 105; emphasis in original).

Thus, Fuller recognises that excuses which focused on unemployment, financial and sexual problems were:

linked to the centrality of the abilities to have sex and be a breadwinner in the cultural scenarios for hegemonic masculinity. Their importance derived from their status as measures of the respondent’s ‘manhood’. ... Feminist dismissal of these stresses as attempts to absolve the abuser of responsibility are correct, but their importance lies in their link to hegemonic masculinity (1993: 115).

Fuller concludes that her study demonstrates:

the ‘normality’ of these ... [offenders because of] their adherence to the cultural scenarios and scripts for hegemonic masculinity and heterosexual relations. What this implies is that these sexual offenders are acting from within the dominant cultural scenarios regarding masculinity, heterosexual relations and sex. Given the content of these scenarios, it seems that the abuse of power is as closely connected to sexual offending, as it is to ‘normal’ sex. Individual adherence to these cultural scenarios is an enabling condition for sexually abusive behaviour to take place (Fuller, 1993: 155).

However, what Fuller’s analysis lacks is a causative link between the particular stresses identified by the offenders and their sexual behaviour, since it cannot be assumed that only men who experience such stresses sexually abuse children. In other words, if child sex offending is a product of “adherence to the cultural scenarios and scripts for hegemonic masculinity and heterosexual relations” (Fuller, 1993: 69), then why do offenders choose sex with children, as opposed to other types of ‘masculine’ behaviours, in the reproduction of those ‘cultural scenarios’? Since Fuller’s main focus is on the relationship between the offenders and their victims and between the offenders and their heterosexual partners, this means that she fails to place the offenders’ behaviour in a cultural context that produces different masculinities and different sexual elements within different masculinities, thereby failing to examine the relationship between those masculinities and, ultimately, the relationships of power between men. In particular, if the offenders in Fuller’s study are “acting from within the dominant cultural scenarios regarding masculinity, heterosexual relations and
sex”, no clear elucidation of their motivations arises from this recognition, since there is nothing to distinguish the motivations for their sexual behaviour from the masculine sexual practices of men who also act “from within the dominant cultural scenarios regarding masculinity” but engage in sexual behaviours with adults.

(iv) The Relationship between Power and Child Sexual Abuse

If, as Fuller’s and Scully’s work suggests, the motivations for child sexual abuse and rape are related to culturally dominant ‘scripts’ for the reproduction of masculinity or, indeed, masculinities, it is important to understand the cultural purpose or function of such sexual behaviour. Prior to the empirical work of Scully and Fuller, some feminist work characterised child sexual abuse as a function of “patriarchal social structure and male socialisation” (Finkelhor, 1984: 4), resulting in “male domination and the devaluation of women and children” (Gilmartin, 1994: 4). It also emphasised the similarities between child sexual abuse and rape and recognised that the vast majority of abusers were men and the vast majority of victims were female (Brownmiller, 1975; Finkelhor, 1979; Nelson, 1982; Herman and Hirschman, 1977; Rush, 1980; Herman, 1981; Stanko, 1985; Ward, 1985; Russell, 1986; MacLeod and Saraga, 1988; Driver, 1989a). For many feminist theorists, the issue of child sexual abuse is an issue of male power:

child sexual abuse is primarily a disorder of power rather than a sexual aberration; it represents a sexual expression of the gratification of nonsexual needs that is achieved by the offender’s misrepresentation of moral standards and misuse of the power that society legitimately accords to adults over children (Sgroi, 1982: 82).

Similarly, Herman (1981) observed that:

[w]ithout an understanding of male supremacy and female oppression, it is impossible to explain why the vast majority of incest perpetrators ... are male, and why the majority of victims ... are female. Without a feminist analysis, one is at a loss to explain why the reality of incest was for so long suppressed by supposedly responsible professional investigators, why public discussion of the subject awaited the women’s liberation movement, or why the recent apologists for incest have been popular men’s magazines (1981: 3).

Indeed, some early feminist work considered that child sexual abuse was:

largely an expression of male dominance over ... children, ensuring silence and submission by enforcing the institution of heterosexuality on young girls in order to

---

8 For example, Kelly (1988) identified six myths and stereotypes about sexual violence which were common to rape, child sexual abuse and domestic violence (1988: 34-36).
prepare them for a powerless role in the family and society as adults (Driver, 1989a: 1; footnotes omitted).

One common radical feminist view considers that men sexually abuse children because society gives them the power to do so. For example, Ward (1985) considers that “[t]he rape of girl-children by a Father is an integral product of our society, based as it is on male supremacist attitudes and organisation, reinforced by the fundamental social structure of the family” (1985: 77). Indeed, if the family is to be implicated as a causative agent in feminist understandings of child sexual abuse, it is because it is an institution which perpetuates patriarchal social values (Ward, 1985: 193-201; Driver, 1989a: 37-38; O’Donnell and Craney, 1982: 159).

However, the feminist viewpoint represented by Ward’s work is informed by the belief that “most child sexual abuse occurs within the family” (1985: 77), a belief that is not supported by general population studies on the prevalence of child sexual abuse which show that the most common form of child sexual abuse experienced by both male and female children is extra-familial abuse. Ward’s focus on ‘the family’ as being a necessary power base for men who sexually abuse children, her belief that sex offenders are primarily heterosexual in orientation (even if they do victimise male children) and her belief in the causal connection between “the rape ideology of a male supremacist society” (Ward, 1985: 80), the possessory rights of the father and the sexual abuse of daughters, together fail to satisfactorily explain the motivation of the majority of child sex offenders, since, as discussed in Chapter Four, the majority of known victims of child sexual abuse are not abused by their fathers.

Whilst Ward attributes the sexual abuse of a daughter to the possessory rights of the father over his daughter and the man’s power to rule in the home, such an explanation fails to explain sexual abuse by brothers, uncles, grandfathers, friends of the family and strangers (who together, have been shown to constitute a greater proportion of the men who abuse female children than fathers in a number of studies, as discussed in

---

9 These studies are discussed in detail in Chapter Four.

10 Ward’s statement that “statistical information shows that an overwhelmingly heterosexual orientation in men who rape children” (1985: 80) relied on, what was at the time of the publication of her book, one 20 year old study by Gebhard, Gagnon, Pomeroy, and Christenson (1965) whose study on sex offender types relied on studies of incarcerated sex offenders only.
Chapter Four) and the behaviour of men who sexually abuse their own children as well as children unrelated to them. In other words, Ward’s analysis of the dominance of the father in incestuous families (and the concomitant passive role of the mother) is largely irrelevant to an explanation of the phenomenon of extra-familial child sexual abuse, abuse by relatives other than fathers and the sexual abuse of male children. Indeed, why is the family, as a source of power, fundamental to the sexual abuse of female children by fathers but not other men? If the family is the basis for male power over children, why is there not more intra-familial child sexual abuse than extra-familial?

Ward’s analysis of child sexual abuse is further limited because she relies on the stereotypes of aggressive men and passive women and a stereotype of the family unit in which the father’s word is law and the mother and daughter passively serve his sexual and non-sexual needs. She does not allow the possibility of any other family-type or social grouping in which the child sex offender’s power is not “supreme”.

One of the interesting findings from a review of the literature on the characteristics of incestuous fathers is that they have sometimes been found to be passive and dependent, contrary to the frequently used description of them as “dominant and tyrannical” (Williams and Finkelhor, 1990: 241). As Williams and Finkelhor report, some researchers have attempted to:

resolve [this] contradiction by suggesting that the fathers possess both aggressive and passive traits, while others have suggested that there may be two different types of abusers ... [However,] in an observational study of family interaction, Cammaert (1984) found that incestuous fathers were no more dominant than community controls, and Fredrickson (1981) found them to be no more authoritarian than community controls. Thus, based on test measures, incestuous fathers seem to be no more assertive and dominant than others (1990: 241).

Although there is no way of measuring the value judgments that may be present in particular findings that a man is passive and dependent, these findings raise the possibility that Ward’s analysis of the power base of the family as the sole basis for understanding child sex offending behaviour in fathers is incomplete and creates a category of false universalism when describing the incestuous father.
But if child sexual abuse is to be interrogated within its relevant social context, arguably a much broader analysis is required of the cultural significance of child sexual abuse for not only incestuous fathers but also those offenders who have no power base in the form of the family on which to draw. Bell (1993) recognises that incest must “be understood within the context of a society in which men are able to exercise power over women and children in a sexualised way” (1993: 3). She documents how feminist perspectives have sought to understand incest in the context of other forms of sexual violence, so that rape and incest are seen as manifestations of the same power relationships between males and females:

feminist contributions suggest that, ... given the power dynamics of male-dominated society and the understandings of sexuality which we live out, incestuous abuse is in a sense unsurprising. In feminist analysis, incest signals ... an order, the familiar and familial order of patriarchy, in both its strict and its feminist sense. Incest reveals the gendered power dynamics of the society in which we exist. Importantly, feminists argue that incest cannot be regarded as asocial at all, but has to be analysed instead in direct relation to the social structures which are continually produced and reproduced as 'normal'. Turning the earlier sociological discussions on their head, therefore, feminists argue that it is not the incest prohibition but, rather, the actual occurrence of incest which provides a key to a sociological understanding of social structure and culture (Bell, 1993: 3; footnotes omitted; emphasis in original).

Thus, a feminist perspective which is grounded in social theory suggests that incest is a manifestation of a broader social dynamic in which the institution of the family and the behaviour of individuals mirror the cultural and political belief systems of male domination, an analysis that could encompass the abuse of both female and male children. In fact, given the “extensive, well-documented histories of sexism, misogyny and discrimination against women and children” in certain Western countries, feminists have attempted to show that “these histories are linked in very clear ways to the contemporary factors which cause and perpetuate sexual victimization” (Gilmartin, 1994: xiv). However, feminist analyses which focus on the male domination of women and children raise the question, if child sexual abuse is solely and only ever about power, what is it about sexual activity with children that satisfies that ‘lust’ for power? Even if incest is about “wider questions of power and of sexuality in our society”, not the “individual problem of individual men, [or] the result of poor or problematic socialisation” (Bell, 1993: 11), those questions require specific identification. Arguably, it is the questions that are asked that determine the scope of any inquiry into the causes of child sexual abuse.
I argue that early feminist analyses which focus on power and the male domination of women and children are ultimately limited because, even if there was empirical evidence to confirm that the characteristics of the majority of incest families are those reported by feminists from clinical and survivor observations\(^\text{11}\) (that is, the female child is sexually possessed by the father [Ward, 1985: 193] who is dominant and commits “abuses of authority of every conceivable kind” [Herman and Hirschmann, 1977: 41] and, expects to have his will obeyed), what does this tell us about why such fathers use sex to assert their power and authority? If their authority within the family is so complete, why would they need to exert that authority through sex with their daughters? Or are fathers’ motivations for child sexual abuse unlike those of other child sex offenders who also sexually abuse female children or who sexually abuse male children or sons? If there are other ways to exert complete authority, for example, through economic power or emotional or physical violence, why incest? In other words, if incest is about the exertion of control over daughters, it is unlikely to be an inevitable or even necessary mechanism through which domineering fathers need to assert their power within the family. Further, since a number of studies show that incest and other forms of child sexual abuse are typically secretive and hidden activities whether within or outside the family, how does a secretive, hidden activity affirm a father’s need for power within the family, particularly when it is compared to the demonstrable economic power that fathers have traditionally exercised within the family?

The particular feminist analysis of child sexual abuse offered by Ward and others falls into the trap of treating the categories of ‘men’ and ‘women’ as absolutes “in no need of further examination or finer differentiation” and membership of these categories as socially deterministic (Connell, 1987: 56-57). Arguably, this absolutist approach “misses the social arrangements that give a particular kind of masculinity a hegemonic position in sexual politics and that marginalize others”, thus, creating a “false universalism” of who men are (Connell, 1987: 58). Thus, different divisions that

\(^{11}\) In making this observation, I do not mean that survivors’ accounts of their experiences of incest are invalid; rather it cannot be assumed that all incidents of incest are identical to those survivor accounts which have documented the dominance of the father within the incest family.
arise as a function of class and race, for example, cannot be accounted for in a dualism based on the categories of ‘man’/‘woman’. As Connell observes:

[...] the effect is to offer women a metaphysical solidarity (‘all women ...’), an omnipresent enemy (‘all men ...’), and a strong implication that struggle in existing relationships is pointless, since the structure and the categories are universal. ... In the final analysis, categoricalism can recognize power but deletes from its analysis the element of practical politics: choice, doubt, strategy, planning, error and transformation (1987: 61).

Furthermore, in positing a social framework in which to understand child sex offending, some feminist work (Herman and Hirschmann, 1977; O’Donnell and Craney, 1982; Finkelhor, 1984; Ward, 1985) produces a concept of gender that is “not too different from one based on a simple biological dichotomy” (Connell, 1987: 56). In other words, “[c]ategorical thinking about gender is most obvious when the categories can be presumed to be biological and the relationship between them a collective or standardized one” which is exemplified in the feminist slogan ‘dead men don’t rape’, a slogan that implies that all living men do (Connell, 1987: 56).

Contrary to the approach of Ward and others, Kelly (1988a) considered that child sexual abuse could only be understood as a form of male sexual violence and as part of the continuum of male violence against women and children, along with rape, sexual harassment and domestic violence (1988a: 22-23). Indeed, the characterisation of coercive sexual behaviour as violence has had the effect of highlighting victims’ actual experiences and the intrusive and harmful nature of the behaviour. As a victim-centred perspective, this characterisation has the important objective of challenging people to take the behaviour seriously, rather than viewing it as an inevitable incident of heterosexual relationships. As Bell (1993) observes, “the extension of the term violence is made in order to draw attention to the sheer volume of male behaviours that constrain women’s lives, i.e. that are oppressive to women. It is only when these instances are seen in their totality that an overall ‘strategy’ is revealed” (1993: 58). However, the use of the term ‘violence’ places the focus on the effect on the victim, rather than placing the focus on the abuser’s motivation. Because violence can be used as a catch-all description for a number of men’s oppressive behaviours, there is less incentive to understand offenders’ motivations for child sexual abuse, other than as a form of oppression of female children.
On the other hand, some feminist researchers have argued that the “problem of child sexual abuse is, for feminism, the problem of masculine sexuality” (Smart, 1989: 50). For example, Driver (1989a) has rejected the analysis that child sexual abuse is solely an act of aggression or violence and the implication that the abuser is neither seeking sexual gratification nor sexually motivated, on the grounds that the explanation of violence:

allows us to avoid looking at any connections between male aggression and male sexual pleasure, and to avoid the uncomfortable thought that male sexuality in general may be implicated in [the offender’s] acts. Yet it is plain from pornography that for many traditionally ‘normal’ men, sex and violence are inextricably linked (Driver, 1989a: 12-13).

Furthermore, Bell (1993) observes that “[t]he argument that incest is about power not sex was mainly a consequence of taking up the feminist model of rape as the paradigm for the analysis of incest” which had the effect of conceptualising incest as a form of rape and hence as a vehicle for the exercise of power over female children (Bell, 1993: 72). The assertion that child sexual abuse is solely about violence does not account for acts of child sexual abuse which do not involve physical force, but may appear to be the ‘loving’ acts of a man who is actually sexually aroused.12 As such, to use the words of Bell, it is helpful to maintain some conceptual distinction between power, violence and sex, since it allows the following questions to be asked: if powerful groups or individuals do not need to resort to violence in order to maintain power, do they need to resort to sex in order to maintain power and, if so, why? These questions are not generally addressed by feminist analyses of child sexual abuse that focus on power and male domination of female children.

Feminist analyses of the causes of child sexual abuse have been criticised as:

unable to satisfactorily explain the diversity of human sexual desire and the fact that some men are sexually aroused primarily by children or other men; nor does it adequately account for the (comparatively rare) examples of sexual offending by women ... except where women have been coerced into such behaviour by men. Moreover, equating sexual assaults exclusively with male power fails to take account of those instances where females use positions of power to abuse (Colton and Vanstone, 1996: 17).

12 Indeed, women’s accounts of “normal” heterosexuality have made the link between pornography, sexual arousal, coercive sex and male sexuality in consenting, heterosexual relationships (Minneapolis City Council, 1988; Brady, 1993).
Arguably, some feminist analyses of child sexual abuse have seen too great an engagement with the concept of power without recognising the contradictions inherent in the analysis and without a thorough interrogation of the need for that power. Further, Bell (1993) observes that, whilst feminist analyses of incest recognise that incest occurs within the context of normative masculine sexual behaviours, these analyses “do not spell out a theoretical position on the social construction of sexuality” so that feminist arguments “tend to appear as mere assertions or as rather crude adoptions of a neo-Marxist position on ideology which portrays individuals as living out the ideological messages to which they are exposed” (Bell, 1993: 73).

In pointing out these limitations of some feminist analyses of the relationship between power, violence and child sexual abuse, this thesis recognises that feminist theory challenges other contemporary theories of why men sexually abuse children, such as the psychological model of individual pathology, the medical model which ascribes causation to natural hormonal levels (McConaghy: 1993: 345) and the family therapy model of family dysfunction. The challenge comes from the fact that in the process of explaining the occurrence of child sexual abuse, “it has been feminist analyses, in the main, which have taken up the challenge of framing the sociological questions” about child sexual abuse (Bell, 1993: 3; emphasis in original).

(v) Child Sexual Abuse as a Sociological Phenomenon

Some feminist critiques of the causes of child sexual abuse have examined whether gendered cultures create the necessary environment and social conditioning for child sexual abuse to occur. In other words, some feminist researchers have argued that understanding the social construction of masculinity (referring to the singular) is central to understanding men’s sexual behaviour with children. For example, MacLeod and Saraga (1988) have argued that masculinity is associated with sexual dominance, since “[g]enerally boys and men learn to ... focus their sexual feelings on submissive objects, and they learn the assertion of their sexual desires, the expectation of having them serviced” (1988: 41). They also argue that in order to discover why men sexually abuse children, the answers will not be found in “studying their children, their ‘victims’, their mothers, wives or girlfriends” and that attention must be paid to the “‘problem of masculinity’” (1988: 41). Furthermore, Frosh (1987) has argued that
the nature of the dominant form of masculinity (with its focus on independence, alienation from intimate relations and nurture, denial of emotion, the role of sex to “bolster a man’s sense of masculinity rather than to create a bond with another”) is such that there is an obvious link between culturally dominant masculinity and sexual abuse: sexual abuse will be “inherent in a mode of personality organization that rejects intimacy. Sex as defence and triumph slides naturally into sex as rejection and degradation of the other” (Frosh, 1987: 335; emphasis in original; cited in MacLeod and Saraga, 1988: 42). Even though Frosh argues that adherence to this type of masculinity does not make it inevitable that all men will sexually abuse children, nor “that there are no differences between those that do and those that do not”, he argues that, “if there are systematic factors that make men more likely to sexually abuse children, then these factors will be present more or less strongly in all men” (1988: 335).

Further, MacLeod and Saraga (1988) argue that “it is a particular construction of masculinity that enables men to sexually abuse children”, irrespective of the individual difficulties or life experiences a man may have (1988: 43). Indeed, they propose that “[a] feminist analysis places at the centre of an explanation of child sexual abuse the "problem of masculinity"” (1988: 43). Bell (1993) takes the argument one step further by arguing that the form of masculinity that is most valorised (the type that is “depicted as an aggressive force, easily tempted and, once roused, needing to be expressed” through the taking of a woman: Bell, 1993: 74), “entails a gender relation - ‘getting a woman’ - which is ‘deployed’ as part and parcel of the deployment of sexuality” (1993: 76). In other words, Bell considers that:

- representations of masculine heterosexuality are not just about ‘male behaviour’ but are also about the delineation of a relation between men and women. In predatory masculine heterosexuality this relation is at its most crude. ... [W]omen are positioned as the objects of masculine sexuality and are therefore made to take account of it (1993: 76-77).

In a similar vein to MacLeod and Saraga (1988), Frosh (1988) and Bell (1993), Finkelhor (1984) posits four reasons why child sexual abuse, unlike physical abuse, should be recognised as a problem of masculine socialisation on the grounds that the vast majority of offenders are male (1984: 12-13):
"Men grow up seeing heterosexuality success as much more important to their gender identities than women do" so that “[w]hen their egos or their competencies suffer any insult, men are much more likely than women to feel a need for sex as a way of reconfirming their adequacy, even if the only easily available sexual partner is a child”.

"Men are socialized to be able to focus their sexual interest around sexual acts isolated from the context of a relationship” in comparison to women who “are taught to focus on whole romantic contexts and whole relationships”, so that “[m]en ... could experience arousal because the partner, even though a child, had the right kind of genitals or could engage in the desired sex act”.

“Women learn earlier and much more completely to distinguish between sexual and nonsexual forms of affection”.

“Finally, men are socialized to see as their appropriate sexual partners persons who are younger and smaller than themselves, while women are socialized to see as their appropriate sexual partners persons older and larger.”

Although Liddle (1993) considers that Finkelhor’s frankness “about the gendered character of child sexual abuse surely provides a refreshing contrast to the bulk of mainstream work on the topic” (1993: 106), Finkelhor’s categorisation of men’s and women’s differences in relation to sexual interest and emotional needs creates another form of false universalism which, arguably, impedes a thorough engagement with what it is about masculine gender practices that provide the motivation for the sexual abuse of children by male child sex offenders. In particular, the type of gender practices described above by Finkelhor, MacLeod and Saraga, Frosh and Bell leave unanswered the question as to why all or most men do not sexually abuse children. In relation to Finkelhor’s work, Liddle (1993) observes:

[b]esides creating an impression that men and women somehow absorb roles, attitudes, models and beliefs that exist ‘out there’ in the social world, to be donned by pre-existing bodies like so many costumes to be worn, [Finkelhor’s] claims reflect a rather hydraulic model of human agency, in which it appears to be suggested that people act the way that they do simply because they have learned to act that way (or because they have been ‘socialized’ or ‘conditioned’ to act in the way that they do act). In addition, ... [p]erspectives which rest on notions such as ‘social learning’ or ‘socialization’ have been further criticized for lacking any clear reference to the structure of power, and for assuming that such things as gender ‘norms’ somehow arise in a political vacuum, in the absence of real struggle or contest (1993: 107; emphases in original).
Nonetheless, in pointing to gender differences, Finkelhor, MacLeod and Saraga, Frosh and Bell raise the possibility that child sexual abuse could be linked to masculine gender practices, thus taking us beyond the limitations of feminist analyses which attempt to explain incest within the family but which ignore the sexual abuse of boys and offenders who are not fathers. Arguably, a sociological focus on the practice of gender challenges "the general linkage of male sexual behaviour with the social control of women" (Liddle, 1993: 109) and raises the possibility that a unified theory of child sexual abuse might be possible, one that is able to explain the sexual behaviour of all types of child sex offenders, irrespective of their relationship to the child and the sex of the child, without resorting to universalism.

Bell (1993) has investigated how the "work of Foucault can be useful in developing a feminist understanding of social processes", such as incest (1993: 6), and has analysed incest as part of a feminist inquiry into issues of social control, the sociology of deviance and crime and, ultimately, into the "wider sociological questions of power, knowledge and the law" (1993: 11). Bell considers that incest is not "simply about violence: it is also about the operations of power" and that "[i]t is not necessary to distinguish between violent behaviour and oppressive behaviours" (1993:59). In fact, she considers that

whilst we can say that incest is on the continuum of violence, to give the impression that 'violence' is the only relevant conceptual term is misleading and damaging to the feminist case. It is helpful to maintain some conceptual distinction between violence and power. Such a distinction has a long sociological tradition. That tradition has distinguished between violence on the one hand and power on the other in order to illustrate that violence is often unnecessary; powerful groups or individuals do not need to resort to violence. At its most general the distinction is that power is much more subtle and discreet than violence. Foucault continues this perspective when he states 'power's success is proportional to its ability to hide its own mechanisms' (1981: 86). For Foucault power is 'actions upon actions'. That is, the one who is constrained (the abused in the example of incest) is maintained as an acting individual. The operation of power does not stop people acting (chains or locked cells are not always necessary), but acts instead upon their movements (Bell, 1993: 59).

According to Bell, the father in an incest family commands and receives obedience and exercises his power in an analogous way to "the sovereign's exercise of power", thus exercising the juridico-discursive power that Foucault describes (Bell, 1993: 60). To Bell, the "power of the Father is the power of 'seizure', which Foucault identifies with juridico-discursive power" (1993: 61) and the father's exercise of a sovereign-
like mode of power appropriately matches survivors’ accounts of incest (1993: 62). In addition, Bell argues that feminist analyses of incest “illustrate the operations of a ‘disciplinary’ power in the practice of incest” which is akin to Foucault’s concept of disciplinary power and that both disciplinary and juridico-discursive power are in operation when a father commits incest (Bell, 1993: 62).

In her analysis of incest, Bell illustrates how the “three basic instruments of discipline” that are identified by Foucault (hierarchical surveillance, normalising judgement and the examination) accord with feminist analyses of incest. First, Bell argues that the features of ‘hierarchical surveillance’ match the survivor’s experience of incest: “[d]iscipline is a mode of power that works through observation. Those upon whom discipline is applied are rendered visible”, yet they can never know when they are being observed: “[t]he inmate is totally seen without ever seeing, whereas the observer is able to see everything without ever being seen” (Bell 1993: 63-64). This analysis, Bell argues, matches feminist accounts of incestuous abuse in which “surveillance recurs as a theme, or arguably as a mechanism, by which the bodies of the Daughters are caught within a power network” (1993: 64). However, if the experience of incest is that a daughter feels that her privacy is invaded, that she must be constantly alert to the watching father, can it be assumed that a father’s motivation for his voyeurism, for watching his daughter dress or undress, is ultimately a desire for power over his daughter through exercising discipline? This thesis argues that it cannot and that a broader sociological inquiry is required to understand the father’s behaviour.

Secondly, Bell argues that, in some feminist analyses of incest, the concept of “normalising judgement” can be found. In other words, a push towards conformity to some specified norm is considered to be a demonstration of disciplinary power. The act of incest has been characterised as imposing conformity to the norm of subservient femininity, that is, incest is considered to prepare a girl for “conventional femininity, a life of accepting subordination to the males around her” (Bell, 1993: 67; quoting Rush, 1974: 71). Thirdly, Bell examines whether incestuous abuse is a ceremony of power, that is, whether, through the exercise of sovereign power and discipline, the daughter becomes objectified through her subjection to the abuse (1993: 69). In other
words, “the subjectification process involved in incestuous abuse is one by which children are subjected to abuse and treated as objects such that they are subjectified as feminine” (1993: 70). Thus, “the sociological argument that emerges from the feminist analyses is that the Daughter is subjected to and subjectified through the abuse in ways that continually attempt to place her within prevailing familial and gender relations” (Bell, 1993: 71; emphases in original). In fact, Bell contends that “two modes of power – the authority of the Father figure (juridico-discursive power) and the disciplinary tactics – make incestuous abuse possible” and that the operation of this power “build[s] up the state of domination that exists between the groups male/female and adult/child” (1993: 72).

However, the conspiracy theory implicit in Bell’s analysis of incest (that is, the continual attempts through incest to place the daughter “within prevailing familial and gender relations” and to prepare her for conventional heterosexuality) seems too grand a claim to make in relation to individual incestuous fathers. Furthermore, such a claim does nothing to explain the experience of women who have not been victims of incest but who also conform to conventional, subservient feminine practices, suggesting there must be other mechanisms that explain why some female children conform to that norm. Indeed, the mere fact that daughters who are victims of incest have been found to be “well prepared for conventional femininity” (Herman, 1981: 118) cannot mean that incest is the sole ‘causative agent’ in such gender practices, unless other social mechanisms can be eliminated. Even if the act of incest does have the effect of pushing a daughter to conform to the norm of subservient femininity, it cannot be assumed that that effect on the daughter (an experience of powerlessness) correlates with a father’s a need to assert power over his daughter. Indeed, the experience of incest may also have the effect of a daughter rejecting conventional femininity and/or heterosexuality, as Bell also recognises (1993: 69), a response that also does not provide an explanation of the father’s motivation. In other words, whilst the commission of incest can have the effect of disempowering a female child, I contend that the need for power over the child is not the primary motivation for the act of incest. In other words, the victim’s experience of being sexually abused may not match the abuser’s experience of abusing, even if, as feminists have argued, incest is “the experience of powerlessness, of being conquered” (Ward, 1985: 118). Arguably,
the assumption that the child’s experience of being conquered and of powerlessness equates with the abuser’s experience of being the conqueror, of being powerful is made because of the underlying assumption that the female child who is sexually abused is the male abuser’s only point of reference for his social and sexual practices. In other words, in the view of some feminists, the female child represents a challenge to his authority and must be subdued. Nonetheless, whatever the mode of power (be it exercised through humiliation or discipline), this thesis argues that the abuse of children (both male and female) is committed not by reference to the child as a threat to the offender’s authority, but by reference to other men and to the offender’s masculine social practices, so that incest and other forms of child sexual abuse become a manifestation of the most vulnerable (not the most powerful) aspect of a man’s social activities: his masculinity.

(vi) Psychological Theories of Child Sex Offenders and ‘Good’ and ‘Bad’ Masculine Sexuality

What does an analysis of psychological theories of child sex offending reveal about the cultural assumptions that researchers make about male sexuality? The most influential psychological theories of child sex offenders have typically distinguished between two types. First, those whose behaviour is considered to be “a product of a deviant sexual preference for children” (Howells, 1981: 76; cited in Finkelhor, 1984: 49), are known as “sexual preference mediated” offenders (Howells, 1981), “pedophilic” types (Finkelhor, 1984: 49) or “fixated” offenders (Groth and Birnbaum, 1978; Groth, Hobson and Gary, 1982). Secondly, those whose deviant behavior is considered to be “situationally induced” and to occur “in the context of a normal sexual preference structure” (Howells, 1981: 76) are known as “situational” offenders (Howells, 1981) “nonpedophilic” types (Finkelhor, 1984: 49) or “regressed” offenders (Groth and Birnbaum, 1978; Groth et al 1982). The effect of this classification has seen the emergence of a clear distinction between child sex offenders and the rest of the male population, whom, it is assumed, bear no similarity to them in terms of sexual practices.

The most widely accepted terminology is that of Groth and his associates which paints a picture of child sex offenders as having either deviant sexual proclivities or lifestyle
problems: “fixated” offenders are said to exhibit a primary or exclusive sexual attraction to male children (usually from adolescence), while “regressed” offenders exhibit a sexual attraction for both women and children, but do not exhibit a sexual attraction to children until stressful situations arise in adulthood. Essentially, the two types are, with some exceptions, considered to differ markedly: “men who have a history of offending against girl children could all be considered as regressed, and homosexual pedophiles and hebeophiles as fixated” (McConaghy, 1993: 312).

However, it is arguable that the categories of ‘fixated’ and ‘regressed’ offenders neatly reflect basic essentialist assumptions about ‘good’ and ‘bad’ masculine sexuality. For example, the ‘oversexed’, homosexual child sex predator who preys on young boys and in whom the media delights neatly mirrors the ‘fixated’ offender category. This category is considered to consist of men who commonly sexually abuse many hundreds of victims, are generally single, report an exclusive attraction to male children since puberty, abuse children who are usually unrelated and unknown to them, commonly seek out their victims in places where young boys congregate, are typically of average intelligence or above, do not participate in social or sexual relations with adults, are more likely to re-offend and usually their sexual behaviour begins in adolescence (McConaghy, 1993: 309-310). The “regressed” offender category, on the other hand, mirrors essentialist assumptions about alienated husbands who inadvertently turn to their daughters for sexual comfort, since this category is considered to consist of men who report few victims, are usually attracted to adult women and married, rarely show a sexual interest in children during adolescence, “may have been sexually deprived at the time of the offence”, usually abuse female children who are usually either related or well-known to them, are more likely than “fixated” offenders to be heavy drinkers, to be from a lower socio-economic class with little education, to have committed other criminal offences and to have repeated the sexual abuse with the same child on many occasions (McConaghy, 1993: 310). If the offender is the biological father of the victim, he is considered to offend “in a family environment characterized by relatively high levels of personal, social, and economic stress”, is more likely to have social relations with adult peers, whilst the more intelligent so-called regressed offenders with higher moral and ethical standards report that the “initial occurrence [of sexual abuse] was usually impulsive, in response
to an unexpected opportunity” (McConaghy, 1993: 310), thus denying the possibility that such men are sexually attracted to children. Indeed, based on these categories, Abel, Mittelman and Becker (1985) have reported that homosexual child sex offenders are more dangerous than heterosexual child sex offenders, although this does not accord with survivors’ experiences of incest, in which they describe a high degree of premeditation, grooming and surveillance of them by the perpetrator over long periods of time, as well as repeated abuse (Herman, 1981; Russell, 1986).

How valid is the fixated/regressed classification scheme and what are its limitations? First, the scheme relies on studies which are based on a highly unrepresentative population, that is, convicted offenders who are considered to constitute between one to four per cent of men who sexually abuse children13 and who are, therefore, likely to be “the most compulsive, repetitive, blatant, and extreme in their offending” (Finkelhor, 1984: 35), or subject to policing because their offending falls into the least socially tolerated forms of child sexual abuse, such as stranger abuse, homosexual abuse or because they are of a particular social class, race or ethnicity (Russell, 1986: 86). Although Finkelhor (1984) contends that “it seems very probable that undetected offenders are persons with much less conspicuous psychological abnormality” (1984: 35), it is equally probable that undetected offenders do not clearly fall into the categories of offenders that are more likely to be policed. Secondly, a comparison of the characteristics of convicted offenders with the characteristics of (mostly) non-convicted offenders derived from victim report studies on the prevalence of child sexual abuse shows that the fixated/regressed offender profiles are not reflected in

---

13 Finkelhor (1984: 17) estimated that between 1 to 3 per cent only of child sex offenders are convicted for child sexual abuse. In a general population study of the prevalence of child sexual abuse, Russell (1986) reported that only 5 per cent of 648 cases had been reported to police and, of those cases, only 23 per cent were known to result in convictions. This means that there was an overall conviction rate of 1 per cent in the sample of 648 cases studied (Russell, 1986: 85-86). From data reported in a study of child sexual assault cases prosecuted and finalised in the New South Wales Higher District Court during 1995 by Gallagher and Hickey (1997), I calculated that 3.7 per cent of the original 2,143 complaints made to police resulted in a conviction at trial, although a total of 15.2 per cent of offenders either pleaded guilty before or were convicted at trial. Nonetheless, the 2,143 complaints made to police do not represent the total number of child sexual assault cases in New South Wales during 1995, since on a financial yearly basis approximately 3,000 substantiated cases of child sexual abuse have been reported by the Department of Community Services every year for the last five years as set out in Table 5.1. Even this figure is likely to be an underestimation, since there will be a variety of reasons as to why some cases of child sexual abuse are not substantiated. This issue is discussed further in Chapter Five.
these studies. For example, Baker and Duncan (1985) reported that 56% of female respondents in a general population survey had been abused by strangers compared with 43% of male respondents (Baker and Duncan, 1985: 459), although the fixated/regressed classification would predict that boys would be abused by strangers and girls by people known to them, in particular their fathers or stepfathers. In fact, in this study, neither homosexual strangers (so-called fixated offenders) nor fathers (so-called regressed offenders) constituted the majority of offenders. In other words, a significant proportion of child sex offenders, that is, non-household member relatives and offenders known to the victim in this study are not able to be explained by the fixated/regressed classification. As shown in Chapter Four, neither homosexual strangers (so-called fixated offenders) nor fathers (so-called regressed offenders) constitute the majority of offenders that are reported in victim-report studies.

In fact, a classification of child sex offenders based on the relationship to the victim (father, stranger etc.) is misleading in the sense that recent studies in America show that any one particular child sex offender may have multiple victims, their victims may be of either sex and either known or unknown to the offender (Salter, 1995: 533). As La Fontaine (1990) asks, "[h]ow are the men with a variety of victims to be classified: as abusive fathers, stepfathers, grandfathers or neighbours? They may have abused a child in each of these capacities" (La Fontaine, 1990: 115). This suggests that the labels of fixated stranger or regressed father operate as a deflection from the real issue of why men sexually abuse children. The fact of a married man abusing his son or daughter or the same man abusing his children’s friends or his neighbour’s children or a single man abusing children who are unknown to him may have more to do with access and opportunity than with anything inherent in the roles of father, neighbour, stranger or acquaintance. For these reasons, it is argued that no one category of offender can be singled out when predicting the risk that male and female children face from fathers, strangers or other types of offenders and great caution should be used when making assumptions about the so-called danger of stranger abuse of boys, or that girls are more likely to be abused by their fathers. In fact, the category into which an offender is placed may not be all that relevant to the issue of why he sexually abuses children.
Thirdly, Salter (1988) has suggested that:

both ways of categorizing offenders, as intrafamilial versus extrafamilial or as fixated versus regressed, rest entirely on the offender's honesty in reporting his sexual and social interests, most frequently the number, sex, and relationship of victims, and his degree of social and sexual comfort and experience with adults. As such they are subject to considerable distortion (1988: 49).

Salter observes that the denial and dishonesty of sex offenders about their offences is well-established from empirical studies which have measured sexual behaviour after treatment (Salter, 1995: 7), so that, it can be said that sex offenders who do admit to their offences, "characteristically admit to the single offence for which they are caught and deny a history of other ... sexual offences" (Salter, 1995: 6). In fact, because of a reliance on the fixated/regressed classification scheme by researchers, many similarities between the two so-called distinct groups of offenders are easily obscured. For example, Groth and Birnbaum (1978) uncritically report that "fixated" offenders report many hundreds of victims and that "regressed" offenders engage in repeat abuse; in fact, this characteristic highlights the predatory behaviour of child sex offenders, a characteristic that appears to be a common feature of child sex offenders in general (Elliott, Browne and Kilcoyne, 1995; Salter, 1995).

Fourthly, the fixated/regressed categories stress the non-sexual aspects of child sexual abuse by focusing on the psychological abnormality of offenders, leading to the conclusion that their sexual behaviour is deviant and obscuring any analysis of the relationship (if any) between masculine sexual practices and child sex offending, as opposed to what is socially acceptable sexual behaviour. Darke (1990) documents how attempts have been made to understand the behaviour of rapists and child sex offenders in terms of sexual arousal (1990: 56), but because sexual arousal to rape depictions or to children is considered to be deviant sexual behaviour, an understanding of the behaviour is sought in psychological explanations (Williams and Finkelhor, 1990). Thus, it can be argued that researchers have made a moral

---

14 In her analysis of the links between sexual aggression and power, Darke (1990) questions the validity of psychological analyses which emphasise the significance of deviant sexual arousal, since “deviant sexual arousal [to rape depictions] is neither inevitable in, nor limited to, incarcerated rapists” (1990: 56). The fact that studies have shown that non-rape can be aroused by depictions of rape and that some rapists have shown lower arousal to rape than depictions of consenting sex and that non-rape can be equally aroused by rape and consenting sex depictions (Darke, 1990: 56) raises questions about what researchers define as rape and how rape is actually
decision as to what is 'normal' which does not necessarily correlate with the sexual practices of a significant proportion of the male population, if we are to accept prevalence rates for child sexual abuse in the general community (see Table 4.1, Chapter Four). In fact, the fixated and regressed categories have perpetuated the idea that there are 'good' and 'bad' offenders and 'good' and 'bad' men, since the psychological literature uses the language of deviance to define child sex offenders, to determine what types are more dangerous, and to perpetuate the idea that the sexual behaviour of child sex offenders is a deviation from the masculine sexual norm which is assumed to be heterosexual sex with women.\(^\text{15}\) In relation to different offender groups, such as male family members, non-familial men who are known to the family, men who are strangers to the family and men who use child prostitutes, Driver (1989a) has observed:

I would argue that incest offenders and strangers who molest children ... are not distinct groups... . Physiological data show that both offender groups have the same arousal levels to children. Attempts by researchers to categorise the offenders separately manifestly fail when increasing exposure begins to show that many of them are indiscriminate in their preference for family members or strangers, choosing one or the other simply because of considerations of access or avoidance of detection (1989a: 17; footnotes omitted).

In fact, the distinction that is made between child sex offenders and so-called 'normal' men is problematic, unless it is known to what extent the general male population engages in sexual behaviour with children or uses child pornography. Furthermore, Herman (1990) has observed that psychological theories of child sex offending behaviour either do not recognise the sexual aspect of the behaviour or minimise it:

\[\text{depicted and suggests that rape depictions cannot be legitimately categorised as being outside the boundaries of what is considered to constitute normative masculine sexuality. Darke concludes that because "aggressive cues do not always enhance the sexual arousal of rapists ... [and] neither do they always inhibit the sexual arousal of normal males under a variety of conditions ... it is becoming increasingly difficult to identify the factors which readily differentiate men who rape from those who do not" (1990: 56). In fact, Darke considers that the data from various studies on rapists show that "sexual motivation is not primary in sexual aggression" (1990: 57) and proposes, instead, that if "sexuality is viewed as the means through which alternate aims are achieved (e.g., exercising power and control), then the mixed reports from laboratory assessments are understandable" (1990: 57-58).}\]

\[\text{Here I am not prepared, in the absence of empirical data, to assume that heterosexual practices with women are in fact the norm for men and male adolescents, even if such practices are culturally dominant and even if culturally speaking, other sexual practices, such as same sex sexual practices and those with children are not culturally condoned. Certainly, victim report studies discussed in Chapter Four suggest that a significant proportion of men engage in either contact or non-contact sexual practices with children.}\]
Most psychodynamic explanations tend to minimize the sexual component of the offender's behavior and to reinterpret the assault as an ineffectual attempt to meet ordinary human needs. This renders the behavior more comprehensible (and, presumably, more accessible to psychotherapy) and allows the offender to be viewed more sympathetically. The victimizer is seen as a victim, no longer an object of fear but of pity (1990: 182).

Often the sexual aspect of sex offending is written out of the offence and is transformed into an attempt at psychological healing; for example, the child sex offender has been described as:

an immature individual whose pedophilic behavior serves to compensate for his relative helplessness in meeting adult bio-psycho-social life demands ... through sexual involvement with a child, the offender attempts to fulfil his psychological needs for recognition, acceptance, validation, affiliation, mastery, and control (Groth, Hobson and Gary, 1982: 137; cited in Herman, 1990: 183).

As Herman (1990) recognises, "[t]he effect of this euphemistic reformulation of the offender's behavior is to detoxify it, to make it more acceptable" (1990: 183). In fact, the characterisation of the child sex offender in this way obscures any role that masculine gender practices may have in the motivation of the child sex offender. Since the sexual aspect of his behaviour is removed, the offender is decontextualised by being removed from his cultural context.16

Finally, at the time when the fixated and regressed categories were gaining acceptance in the literature, there was the concomitant view "that the behavior of most sex offenders could be explained by the fact that they themselves were victims of sexual abuse as children" (Finkelhor, 1984: 35), but, as a catch-all reason for explaining child sexual abuse, this view did not explain why child sex offenders fell so neatly into the two distinct categories of fixated (homosexual) and regressed (heterosexual) offenders. Indeed, if, as Scully (1990) observes, sexual abuse in childhood is the cause of men's sexually aggressive behaviour in adulthood, "why do men victimize

---

16 One of the ramifications of the decontextualisation of the sex offender in psychological theories is that treatment models which are based on such theories may be flawed. Herman (1990) warns that: "[w]hen a treatment program minimizes the importance of the actual sexual behavior and does not provide any concrete method for monitoring it, failures are likely to go unrecognized, sometimes with disastrous consequences. In one extreme documented case, a young man mandated to psychiatric treatment after committing a rape at age 14 subsequently committed six additional rapes and five rape-murders while in treatment. His psychiatrist was entirely unaware of these crimes and could apparently detect no clues to their occurrence in the material offered by the patient in his treatment sessions" (1990: 184; references omitted; emphasis in original).
primarily girls and women, when, for the most part, their own victimization was inflicted by men? For that matter, why don’t the legions of girls and women who have been molested, raped, and otherwise brutalized by men respond through acts of sexual violence against their tormentors?” (1990: 70). Furthermore, it is “difficult to comprehend why men suffering from stress would seek relief through sexual relations with primarily female children, while the more deeply disturbed fixated offenders would primarily target male children. This contention implies that sexually abusing young girls is less disturbed behavior than sexually abusing young boys” (Russell, 1984: 256). Nonetheless, Herman (1990) contends that because

[h]istories of child abuse do seem to be unusually common in pedophiles who prefer boy victims ... childhood sexual trauma in boys may be a particularly significant risk factor for the development of sexually abusive behavior toward other males. In this area, where feminist theories are relatively weak, the cycle of abuse theory may turn out to be relatively strong. In other words, while traumatic childhood experiences may play an important part in directing male sexual aggression against other males, no such trauma is necessary to direct sexual aggression against females. Normal male socialization is sufficient (1990: 181-182; emphasis in original).

However, Herman’s analysis is unsatisfactory for a number of reasons. First, it ignores warnings made by some researchers, such as Salter (1995), about the unreliability of offender self-reports.17 Salter (1995) has suggested that the fixated and regressed categories should be abandoned altogether because of emerging evidence that shows that offenders do not fall neatly into these categories. For example, Salter (1995) observes that:

the entire category of regressed offender ... must be viewed with some suspicion because it is based on self-report and is difficult to verify independently. Sex offenders sometimes use such categorization to deny responsibility and to claim they are not ‘real pedophiles.’ Indeed, the denial of sex offenders is so well-established and well-entrenched that ... deviant scores typically go up rather than down after treatment (Nichols and Molinder, 1984). Nichols and Molinder believe that this reflects the increased honesty of the offenders after treatment rather than any increased deviancy (1995: 7).

Secondly, Herman’s analysis presupposes that homosexual child sex offenders are uninfluenced and unaffected by the masculine social practices which she considers are sufficient to explain the sexual practices of heterosexual child sex offenders. Thirdly,
Herman ignores the possibility that the proportion of offenders who have been sexually abused as children approximate prevalence rates in the community; for example, rates of child sexual abuse experienced by incestuous fathers is considered to accord with “estimates of the rate of sexual abuse in the community in general and are a far cry from the numbers that one often hears ... suggest[ing] that there is much more to sexual abuse than simply ‘intergenerational transmission’” (Williams and Finkelhor, 1990: 236).

All in all, this discussion suggests that validity of the fixated/regressed classification scheme of child sex offenders is undermined by a number of other studies on child sex offenders, that there are many men with a sexual interest in children who do not fall into these two, dichotomous categories and that the categories may say more about the hidden, cultural assumptions researchers bring to their work, than about the reasons why men engage in sexual behaviour with children. Indeed, a continued reliance by researchers on a classification system which describes good (regressed) and bad (fixated) could mean that:

(i) offenders who are classified as ‘regressed’ may be less likely to be reported, charged, prosecuted or subject to imprisonment;

(ii) the offender who is classified as ‘regressed’ may be able to argue more easily for leniency in relation to sentencing on the grounds of stress, disinhibition by alcohol or family dysfunction;

(iii) there may be more denial surrounding particular types of child sexual abuse (such as intrafamilial abuse) resulting in its continued under-reporting;

(iv) policing of child sex offenders may be more a function of essentialist cultural assumptions about different offender types than what victims of child sexual abuse report about their experiences of being sexually abused;

(v) the belief that the fixated offender is the more ‘dangerous’ type of offender may lead to differential resource allocation in relation to the investigation of intrafamilial and extrafamilial abuse;

(vi) parents may be resistant to the idea that children are at greater risk from men either known or related to them; and

offender reports of having been sexually abused as a child dropped from 65 per cent to 30 per cent when the offenders were subject to lie detector tests.
(vii) "doctors may ignore symptoms which indicate sexual abuse" by a relative (La Fontaine, 1990: 109).

(vii) The Characteristics of Child Sex Offenders
Since the 1970's, numerous studies have attempted to draw a profile of the characteristics of child sex offenders. According to these studies, child sex offenders may exhibit some or all of the following characteristics:

- deviant sexual preferences (Simon and Shouten, 1992; Marshall, Barbaree and Eccles, 1991);
- sexual and physical abuse histories (Benoit and Kennedy, 1992; Ford and Linney, 1995);
- poor childhood attachments leading to deficiencies in the ability to engage in adult intimacy (Seidman, Marshall, Hudson and Robertson, 1994);
- criminal psychopathy coupled with deviant sexual arousal (Serin, Malcolm, Khanna and Barbaree, 1994);
- alcoholism (La Fontaine, 1990: 100-101), hyper-religiosity (Elliott, 1994), stress or family dysfunction (Madonna, Van Scoyk and Jones, 1991; Hanson, Lipovsky, Saunders, 1994);
- cognitive and social deficiencies (Watson and Stermac, 1994), poor self-esteem, fear of criticism and rejection by others (Hayashino, Wurtell and Klebe, 1995);
- impairment of capacity for empathy and bonding with children (Williams and Finkelhor, 1990; Hayashino et al, 1995);
- developmental immaturity making it easier to relate to children rather than adults (Simkins, 1993);
- cognitive distortion; that is, having stereotypical beliefs about victims (Hayashino et al, 1995);
- high degree of sexual anxiety and guilt due to dysfunctional families of origin (Simkins, 1993);
• deficiencies in social skills, fear of intimacy and consequent withdrawal from social contact leading to loneliness, boredom, frustration and anger (Simkins, 1993; McFall, 1990).

Since these studies focus on the individual psychological make-up of child sex offenders, without reference to the ways that social and cultural factors may influence and affect their sexual behaviour, the question arises, how accurate are psychological profiles in providing a causal explanation for why men sexually abuse children and to what extent do they merely reinforce cultural stereotypes? On the one hand, Hayashino et al (1995) observe that “child molesters are believed to hold distorted cognitions that serve to maintain their deviant behavior”, such as believing that children want to have sex with adults, are unharmed by sex with adults and that adult-child sex is socially acceptable (1995: 106). On the other hand, men who exhibit other forms of sexually coercive behaviour or approve of such behaviour have also been shown to have distorted belief systems about both the social acceptance of their behaviour and women and girls in general (Herman, 1990). Indeed, in a study measuring the level of distorted thinking in groups of rapists, child molesters, incarcerated non-sexual offenders and lay persons, Hayashino et al (1995) report that:

[At least a quarter of the laypersons believed that a child who does not resist an adult’s sexual advances really wants to have sex with the adult, that a child’s flirting with an adult means she or he wants to have sex with the adult, and that if an adult has sex with a young child, it prevents the child from having sexual hangups in the future (1995: 114; emphasis added).

These findings raise the question as to whether distorted belief systems are causative in child sexual abuse or whether they are merely used to justify the abuse and deny responsibility for any wrongdoing (Best, Dansky and Kilpatrick, 1992: 175), as suggested by the studies of Scully (1990) and Fuller (1993), discussed above. These findings also raise the possibility that what psychological profiles reveal about child sex offenders can only ever amount to a partial explanation of the motivation of child sex offenders, since in the absence of a cultural analysis of the role of, for example, distorted belief systems and the extent to which such belief systems are held by the male population generally, the attribution of child sex offending to distorted belief systems may be misleading.
In fact, it could be said that the psychological literature on child sex offenders is riddled with similar contradictions, inconsistencies and omissions. For example, despite feminist recognitions of the flaws in family systems theory and of the essentialist assumptions made about the role of the mother and daughter within the family unit, several psychological studies have been carried out to document the characteristics of incestuous fathers in the belief that “incestuous fathers are a distinct group of child molesters” (Williams and Finkelhor, 1990: 231) and, by implication, that incest is a distinctly different type of child sexual abuse compared to extrafamilial abuse. Such studies show an adherence to the idea that the motivations of incestuous fathers are different to the motivations of extra-familial child sex offenders (see, for example, Williams and Finkelhor, 1990: 251), even though there is evidence to show that a significant proportion of incestuous fathers abuse children unrelated to them, that the choice of child may have more to do with opportunity and access rather than anything inherent in the particular relationship the child sex offender has with the child, and that some sex offenders commit a range of sexual offences involving both children and adults (Salter, 1995: 13-17).

Incestuous fathers have been studied as a discrete group of offenders, with their offending behaviour being attributed to factors such as childhood experiences, psychiatric, personality, mood and cognitive disturbances, substance abuse, marital problems, and social skills (Williams and Finkelhor, 1990). In fact, causative links between such psychological characteristics and offending patterns have been made in a way that is reminiscent of an ‘all roads lead to Rome’ type of thinking; that is, an approach based on essentialist definitions of child sex offenders leads to the conclusion that, if a particular characteristic is present for say a third of a particular sample of incestuous fathers (compared to a group of controls), then that must be the reason why that one third commits incest. As to the other two-thirds – simple – they will no doubt exhibit another characteristic which can be used to explain why they commit incest. For example, Williams and Finkelhor (1990) have observed that:

[i]t is practically an article of faith among clinicians that ‘molesters molest because they themselves were molested as children’, yet the connection appears far less universal than this claim would have it. ... [M]ost interestingly, the absolute percentages of incestuous fathers with a history of being victimized is not very high. ... [T]he highest percentage of
these offenders who were sexually abused as children is 35% (Baker, 1985), and the mean is about 20%. These numbers are closer to estimates of the rate of sexual abuse in the community in general and are a far cry from the numbers that one often hears (1990: 236).

Similarly, for incestuous fathers who have been found to exhibit psychopathy, that is, “a willingness ... to exploit others and to violate social norms” (compared to normal controls), such a characteristic is considered to be causative in the commission of child sexual abuse (Williams and Finkelhor, 1990: 241), as are characteristics such as passivity and dependence, personality disorder, immaturity, social inadequacy, low self-esteem, anxiety and depression (Williams and Finkelhor, 1990: 241). But since personality characteristics are measured after disclosure of the incest, are they a function of the fact of disclosure, as Williams and Finkelhor suggest, or a true assessment of the characteristics of incestuous fathers? Furthermore, since 100% of incestuous fathers have not been found to exhibit the above characteristics and since women are also as likely to exhibit such characteristics, what explains why more women do not sexually abuse children and what explains the sexually abusive behaviour of those men who do not exhibit these characteristics?

If, as Williams and Finkelhor posit, because incestuous fathers have been found to be “illogical and simplistic in their thinking”, they have “an impaired ability to get their needs met and are unable to think of ways to deal with problems” which “may lead them to turn to incest” (1990: 243), the obvious question is, why incest? Why not gambling or drinking or physical violence or stealing? Basically, it seems, anything in terms of a child sex offender’s background or personality can be held to be a cause or pre-condition for his sexual behaviour, although the psychological literature demonstrates very little analysis of why the possession of a particular characteristic, such as low-intelligence or social inadequacy, is instrumental in the sexual behaviour of a child sex offender.

Indeed, Williams and Finkelhor consider that the evidence does not support “a simple single-factor hypothesis” since “[t]here is no characteristic that appears universal or near universal” and there are many offenders who do not display the characteristics that have been considered to typify the incestuous father (1990: 249). Instead, Williams and Finkelhor consider that:
the lack of universality suggests multiple causes and multiple pathways. Different men probably come to incestuous acts as a result of different needs, motives, and impairments. And very likely this behavior, even within one individual, is multicausal, requiring a combination of ingredients before a predisposition becomes a real act (1990: 249).

Nonetheless, Williams and Finkelhor offer a word of caution in relation to the studies that have documented the characteristics of incestuous fathers in that the conclusions made about these fathers might be much weaker if the studies had included that vast body of undetected abusers. Thus, all that can be said about the studies that have involved incarcerated child sex offenders and/or child sex offenders involved in treatment programs (on either a mandatory or voluntary basis) is that “their conclusions apply to reported offenders only” (Williams and Finkelhor, 1990: 251). If child sexual abuse is multicausal, then, arguably, all the characteristics that have been used to explain the behaviour of child sex offenders need to be analysed as a function of the fact that it is almost exclusively men who display these characteristics and commit child sexual abuse, even though it is true, as Williams and Finkelhor observe, that “men are not a homogeneous group” (1990: 251). The one distinctive feature about child sexual abuse is that it is a sexual act (as opposed to other forms of child abuse) committed primarily by men or male adolescents. If anything, this feature would seem to be the most compelling aspect of child sexual abuse, in particular, its relationship to other forms of masculine sexual expression.

(viii) The Multi-factorial Analysis of Child Sexual Abuse
Because of the perceived limitations associated with the explanatory power of a number of theories which attempt to explain child sexual abuse, some researchers have attempted to integrate the different theories into one cohesive explanation. For example, some theories have developed in relation to highly specific types of offending (such as, father-daughter incest or multiple abuse by homosexual, extra-familial offenders) with very little recognition of the similarities between different types of offenders and of the possibility that child sex offenders may have similar

---
18 Chapter Five discuss the discrepancies between the prevalence of child sexual abuse reported in victim-report studies, the number of cases of child sexual abuse reported to the police and community services agencies, the number of offenders charged and the number of offenders found guilty.
motivations which are independent of the relationship of the offender to the child. In addition, studies on child sex offenders make little reference to victim report studies and the data revealed by those studies about types of offenders and offences, in particular the fact that such studies show that a significant proportion of child sex offenders are neither homosexual offenders nor incestuous fathers.

The first multi-factorial analysis of child sex offending was developed by Finkelhor (1984) who incorporated both psychological and sociological theories of child sexual abuse into a model designed to explain how men, in the face of the social proscription against sex with children, overcome their inhibitions to sexually abuse a child. Indeed, Finkelhor's approach, along with that of Marshall and Barbaree (1990), is considered to "have been particularly influential and directly underpin most of the work that is carried out with sex offenders in Britain", since both "analyses suggest that a range of psychological and socio-cultural factors contribute to child sexual abuse" (Colton and Vanstone, 1996: 19). Because of the influence of the work of Finkelhor (1984) and Marshall and Barbaree (1990), their work is discussed in detail below.

Finkelhor's model is designed to address the limitations of psychological theories of child sex offending, in particular the fact that such theories have developed in isolation from a sociological understanding of masculine sexual behaviour. The model is called the "four-preconditions model of sexual abuse" because it delineates a four-stage process in which offenders are considered to engage when they sexually abuse a child; that is:

1. having the motivation to sexually abuse a child;
2. overcoming internal inhibitions against acting on the motivation;
3. overcoming external impediments to committing sexual abuse;
4. overcoming a child's resistance to sexual abuse.19

19 This model has been constructed to explain the behaviour of male child sex offenders only (Finkelhor, 1984: 37). The third and fourth factors of Finkelhor's model relate to an offender's access and opportunity for abuse and the planning and "grooming" processes that are considered to be characteristic of child sex offenders. For example, a man may become a so-called intra-familial offender because he has access to his own or other related children. Alternatively, a childless man may actively pursue employment or social activities that involve children, thus being defined as an extra-familial offender. Overcoming a child's resistance to sexual abuse involves
In relation to the first factor, having the motivation to abuse a child, Finkelhor proposed that it was comprised of four elements:

- "emotional congruence": that is, "relating sexually to a child [must be] emotionally gratifying and congruent";
- "sexual arousal": that is, a man is "capable of being sexually aroused by a child";
- "blockage": that is, a man is "blocked in efforts to obtain sexual and emotional gratification from more normatively approved sources";
- "disinhibition": a man is not "deterred by conventional social inhibitions from sexual relationships with a child" (1984: 37).

Finkelhor considers that the model "is useful for giving some order to the variety of theories ...[by] show[ing] the commonalities amongst the various ideas that have been proposed and ... reduc[ing] the complexity of the theories to four basic factors" (Finkelhor, 1984: 46). As Finkelhor recognises, the model is essentially a classification scheme (although Finkelhor has used it to generate new theories for explaining child sexual abuse) and, with some exceptions, it does not constitute a critique of existing theories but is merely constructed around them. Colton and Vanstone (1996) consider that the strengths of Finkelhor's model are based on the fact that the model is "sufficiently general ... to integrate all forms of intra- and extra-familial sexual abuse"; it "suggests that abuse both by fathers and by paedophiles requires an explanation of how the sexual interest in the child arose, why there were no effective inhibitors, and why a child's resistance was either absent or insufficient"; it "applies both to offenders whose deviant behaviour results from a deviant sexual preference for children (fixated offenders) and to those whose behaviour is situationally induced and occurs in the context of a normal sexual preference structure (regressed offenders)"; it places "responsibility for abuse in perspective and, unlike some explanations, does not remove responsibility from the offender and displace it on to victims, third parties or society as a whole"; and, finally, the model allows methods such as threats, bribery, coercion or the more common subtle method of "grooming" which child sex offenders use to gain the trust and friendship of a child: Salter, 1995: 69-80. The grooming process is described in more detail in Chapters Four and Six.

However, Finkelhor’s model is premised on the assumption that sexual behaviour with children constitutes an abnormal or deviant form of masculine sexual expression compared with normative sex, that is, sex with adult women. The model is also premised on the belief that there is a social inhibition against sex with children (evident in the form of criminal sanctions), but no recognition that there are contradictory social messages which can be said to condone sex with children in the form of child pornography, sexual images of children in advertising and the portrayal of sexual relationships between children and adults in literature and film, Vladimir Nabokov’s *Lolita* being a typical example (Stermac, Segal and Gillis, 1990: 145). Further, some feminists have argued that the ‘infantilisation’ of women and their representation as children and children’s representation as women constitutes another form of social acceptance of sex with children: “the child is made to look or act like a woman, and the woman made to look or act like a child” (Driver, 1989a: 23). As Driver observes, the cross-over between child and woman is common and is “such an everyday part of our lives that we hardly notice it – in a Shirley Temple or Marilyn Monroe film, or an adult woman’s baby doll nightgown, for example, or the absurd coyness of those bikinis designed for toddlers” (1989a: 23).²⁰ Nor does Finkelhor’s model recognise that the present criminal and social prohibitions against sex with children (particularly girls) have a relatively short history in some Western countries, as discussed in Chapter One.

Thus, whilst Finkelhor believes that child sexual abuse needs to be understood within a social and cultural framework, he has, at the outset, accepted the dichotomy between so-called normal and deviant masculine sexual behaviour, an approach which is evident in other theoretical approaches to the motivations of child sex offenders, as discussed above. Because of this assumption, it is arguable that it is not possible to understand child sex offending from a sociological perspective and as a function of

²⁰ One recent example of the sexualisation of female children was portrayed in the documentary, *Painted Babies*, ABC Television, 22 July 1997 which documented the beauty competitions conducted in America for girls under the age of five years.
masculine social practices, if at the outset, a framework is established which incorporates within it an unstated moral decision to define child sexual abuse as sexual behaviour that is deviant to an assumed norm, since the relationship (if any) between normative masculine social practices and sexual behaviour with children will remain obscured. For example, a feminist theory of child sex offending based on the social construction of gender would predict that the sexual abuse of children was congruent with masculine social practices and would argue that a search for independent explanations centred on the psychological make-up of the offender was merely an example of an essentialist approach to understanding human behaviour. Thus, it is arguable that Finkelhor's assumptions about normative and deviant masculine sexual practices constitute a major flaw in his explanatory model, because he fails to analyse the extent to which child sex offending could be a function of normative masculine social practices.

For this reason and the reasons discussed below, I consider that Finkelhor's model is limited in its ability to explain male child sex offending behaviour. Looking more closely at the model, Finkelhor considers that the element of emotional congruence, as a factor related to motivation, attempts to explain "the nonsexual motivations surrounding pedophilic sexual behavior" (1984: 38) on the grounds that "child molesters have arrested psychological development ..., experience themselves as children, ... have childish emotional needs, and thus wish to relate to other children" (1984: 38; references omitted). These characteristics are considered to be necessary pre-conditions to committing sexual abuse, a view that implies that child sex offenders are psychologically different from men who do not sexually abuse children. The flaw in this analysis is that no investigation is made of the extent to which such 'arrested' psychological development might be a function of gendered relations of power in societies structured on gender lines. For example, if emotional congruence is affected by the "masculine requirement to be dominant and powerful in sexual relationships" (Finkelhor, 1984: 64), why is it that only child sex offenders suffer from such impaired psychological development? In fact, Finkelhor considers that:

[identifiable characteristics of our society tend to motivate adult men to interact sexually with children. These include the erotic premium that males place on youth, smallness, and submissiveness in sexual partners and the tendency of males to eroticize all their affectionate relationships. Such social factors make sexual relations
with children more emotionally congruent for potential offenders (Finkelhor, 1984: 64).

This comment highlights a basic contradiction in Finkelhor’s analysis: on the one hand, child sex offenders are ‘abnormal’ in terms of their psychological development, but on the other, they are ‘normal’ in their choice of sexual partner. Further, because “[s]everal studies have demonstrated the sense of inadequacy and immaturity experienced by child molesters”, Finkelhor considers that “[r]elating to a child is congruent because it gives them the feeling of power, omnipotence and control ... [since] what is most salient for child molesters when they describe victims is the child’s ‘lack of dominance’” (Finkelhor, 1984: 38). Nonetheless, it is possible that a study of a group of non-offenders would also find a proportion of men who have a similar “sense of inadequacy and immaturity” for which it could also be argued they compensate by relating to women or other men who demonstrate a “lack of dominance”.

In constructing his model, Finkelhor has relied on studies of incarcerated offenders who are characterised as a distinctive group because they exhibit low self-esteem, immaturity and inadequacy in social relationships, without considering the extent to which those characteristics are exhibited by men in the general population. Because of the extent to which women experience sexually coercive behaviour in Western societies and the widespread dissemination of pornography, it would be inappropriate to conclude that only child sex offenders experience low self-esteem, immaturity and inadequacy in social relationships and hence have a need to relate, sexually, to those who demonstrate a lack of dominance. Using Finkelhor’s arguments, it is possible that “emotional congruence” is a salient feature of other forms of masculine sexual behaviour where a man experiences a sense of inadequacy and immaturity and needs to relate to those who demonstrate a lack of dominance. Still the question remains unanswered, why is it that only some men sexually abuse children whereas others do not?

Another variation on the theme of arrested psychological development is that “the child-molesting fantasy comes to serve as a ‘scene of symbolic mastery over
childhood-induced psychological trauma’ ... [whereby] a molester needs the relationship to children to overcome a sense of shame, humiliation, or powerlessness that he had experienced as a small child at the hands of an adult” (Finkelhor, 1984: 38). Arguably, this theory is also inadequate for understanding the phenomenon of male child sex offending, since it fails to account for the behaviour of those who have suffered psychological trauma as a child (such as female victims of child sexual abuse) who do not become child sex offenders in adulthood.

In explaining the motivation to sexually abuse children based on sexual arousal to children, Finkelhor observes that “[t]here are good experimental data ... that child molesters, including incest offenders, do show unusual levels of sexual arousal to children” (Finkelhor, 1984: 39; references omitted). Finkelhor observes that there are many people who have emotional needs to relate to children but do not find children sexually arousing so that the “fact of finding children sexually stimulating would seem to be a component that needs to be explained independent of, or in addition to, having a strong emotional need that can be met only by children” (1984: 40). Whilst this approach opens the way for exploring a connection between child sexual abuse and masculine sexuality, Finkelhor considers, however, that “[w]hat needs to be explained is why ... arousal [to children] is stronger in some adults than in others, or why it occurs for them in a wider variety of circumstances with a wider variety of children” (Finkelhor, 1984: 40). He suggests that the sexual arousal of child sex offenders to children may be due to:

- “early sexual experiences which cause them, through conditioning or imprinting, to find children arousing later when they become adults” (1984: 40-41; references omitted). Nonetheless, Finkelhor notes that more than “half of all children have childhood sexual experiences with other children ... and since not all these people become sex abusers, it would suggest that there are some special circumstances under which such experiences condition a later sexual interest in children” (1984: 41; references omitted);
- a “critical experience ... [where] some special kind of fulfilment or frustration is involved” (1984: 41);
• a critical experience associated with traumatic childhood victimisation, such as child sexual abuse "which facilitates an imprinting or conditioning process" (1984: 41; references omitted);
• a process of "attributional error" which Howells (1981) considers will cause some men to mistakenly trigger their "adult sexual response cycle", since that cycle is indistinct physiologically from patterns of arousal produced by parental, protective or affectionate emotions which are the normal emotional reactions to a child. Finkelhor explains that "perhaps certain socialization experiences or subjectively felt sexual deprivation may prompt individuals to label any emotional arousal as a sexual response ... [which may be] reinf[or]ced ... through repetition and fantasy ... [resulting in] a much more general sexual arousal to a child ... or children in general" (1984: 42);
• "biological factors, such as hormone levels or chromosomal make-up", although in 1984 these theories had not yet "developed enough to specify how biological factors affect the choice of a child as an object of sexual arousal" (1984: 42).

But it is necessary to consider why sexual arousal to a pre-pubescent child is considered to be different from sexual arousal to a fifteen year old girl who looks sixteen\(^{21}\) and different from sexual arousal to an adult woman who has the characteristics of childlike femininity. Is it the fact that the fifteen year old has a greater resemblance to an adult woman and hence to what is assumed to be a ‘normal’ sexually stimulating image? The theories which attempt to explain why some men are aroused by children focus on a presumed difference between men sexually aroused by children and ‘normal’ male sexuality, an approach which Finkelhor has adopted, although such a presumption raises the question as to whether it is issues of morality that underpin the belief that male sexual attraction to children is distinctively different from male sexual attraction to adults or adolescent females close to the age of consent. Such an approach may say more about the moral values that researchers bring to their research rather than the apparent distinctiveness of child sex offenders, since the sexual objectification of women as children, and of children as women (as discussed

\(^{21}\) Under s 77 of the Crimes Act 1900 (NSW), for example, a defence is available to a man accused of certain specified sex offences against female children if the child is between the ages of 14 and
above), suggests that sexual attraction to children is consonant with normative masculine sexual practices. Whilst I do not condone the sexual abuse of children, I believe a theoretical approach based on taking such a moral position does little to aid our understanding of why child sex offending is predominantly a male problem and what motivates male child sex offenders.

The third factor involved in the motivation of child sex offenders in Finkelhor's model, that is, blockage, focuses on why some men “are blocked in their ability to get their sexual and emotional needs met in adult relationships” (Finkelhor, 1984: 43). Various theories have been developed to account for this ‘blockage’, such as those which rely on “Oedipal dynamics” in which child sex offenders are seen “as having intense conflicts about their mothers or ‘castration anxiety’ that makes it difficult or impossible to relate to adult women” (Finkelhor, 1984: 43; references omitted). The idea of blockage, however, incorporates two assumptions: first, that sex with adult women is the norm for male adults and, secondly, that if a man sexually abuses a child he cannot simultaneously be sexually involved with adults. In addition, the concept of ‘castration anxiety’ is based on the prevalent cultural belief that masculinity is defined by strength and power and that dominant mothers and wives threaten a man’s development of ‘normal’ male sexuality, thus giving rise to the link that is made between male power, male genitalia, female power and ‘castration anxiety’. Arguably, this can be said to be another example of the influence of the unstated cultural beliefs that researchers bring to their work.

Other theories which Finkelhor uses to explain the concept of blockage focus on ideas that if a man is impotent in his first sexual attempts or abandoned by his first lover, he will eschew adult relationships because they are associated with trauma, or because he is incapable of attracting adult women and will “choose children as a substitute gratification” (Finkelhor, 1984: 43; references omitted). In addition, “the family dynamics model of incest” uses the blockage model to explain that, in the face of marital breakdown, “the father is too inhibited or moralistic to find sexual satisfaction outside the family. Thus blocked in other avenues of sexual or emotional gratification” (Finkelhor, 1984: 43; references omitted).
gratification, he turns to his daughter as a substitute” (Finkelhor, 1984: 43; references omitted). Again, Finkelhor demonstrates how he is constrained by the essentialist approach that psychology takes to understanding the motivations of child sex offenders, since an analysis of the marital status of child sex offenders from a number of studies does not confirm that the majority of offenders are unable to form sexual relations with women (Salter, 1995). Furthermore, the blockage factor presumes that there is a biological component to child sex offending, in that it is premised on the belief that the male sex drive is uncontrollable and if blocked from expression in normative ways will be expressed in other, less socially acceptable ways. For example, as discussed in Part (ii), the family systems theory of incest implies that male sexuality requires an outlet and that the abuse of a daughter is only chosen if the ‘normal’ outlet within the marital relationship is blocked. Even the acceptance of the view of “children as substitute gratification” implies that children are considered to be an ‘understandable’ form of sexual gratification, thus, making the child sex offender’s behaviour explicable in terms of his biological sex drive. Such an analysis serves to prevent any interrogation of the underlying cultural beliefs that men need sex and that women and girls are responsible for meeting the sexual needs of men, and leaves unanswered the question as to whether there is any relationship between masculine social practices and child sex offending.

Furthermore, the blockage theory does not explain why children, as opposed to sex workers or pornography, are the sexual choice for child sex offenders who claim they were sexually blocked. Indeed, as Fuller’s (1993) study has shown, sexual blockage is easily used as a justification by child sex offenders keen to deflect responsibility for their behaviour. Because information about blockage is derived from self-report studies of offenders and because of the known unreliability of offender self-reporting (Salter, 1988; 1995), it is doubtful whether the concept of blockage provides an adequate explanation of what motivates child sex offending behaviour.

Finally, the fourth factor in Finkelhor’s analysis of the motivation of child sex offenders, disinhibition, poses the question as to why “conventional inhibitions against having sex with children are overcome or are not present” (Finkelhor, 1984: 44). Several factors have been offered to account for the lowering or disappearance of
inhibitions against attraction to children, such as poor impulse control, alcoholism, psychosis, personality and stressful situations (Finkelhor, 1984: 44-45; references omitted). At a cultural level, Finkelhor considers that disinhibition will be affected by "social toleration of sexual interest in children, weak criminal sanctions against offenders, ideology of patriarchal prerogatives for fathers, social toleration for deviance committed while intoxicated, child pornography [and] male inability to identify with needs of children" (Finkelhor, 1984: 56-57). Finkelhor considers that these factors may work in tandem with individual personality or behavioural characteristics exhibited by offenders, although Finkelhor does not analyse whether such personality or behavioural characteristics are merely used by child sex offenders to excuse their behaviour and taken by researchers at face value.

Finkelhor also incorporates feminist theories at this stage of his model, since he considers them to be "essentially disinhibition arguments" which highlight the "social and cultural elements which encourage or condone sexual behavior directed toward children and thus weaken inhibitions" (Finkelhor, 1984: 45; references omitted). For example, Finkelhor quotes Nelson's (1982) observation that:

[w]hen residual, patriarchal beliefs about rights of fathers provide further excuses for initiating sexually gratifying relationships within the family, it is not hard to see how many "Mr Averages" can manage to overcome all the social and emotional barriers to committing incest with their daughters (Nelson, 1982: 69-70; cited in Finkelhor, 1984: 46).

Whilst Finkelhor's model does identify some of the flaws in psychological theories which explain child sex offending (for example, that such theories fail to provide a causative link between an offender having a certain characteristic and the sexual abuse of a child), the model does not question the premises upon which such theories are based. In some respects, these premises are, arguably, incompatible with feminist theories which attempt to explain some men's sexual behaviour with children. For example, Finkelhor contends that “[a] full explanation has to show why [an] adult was capable of being aroused, why he directed his impulse toward a child, and why no inhibitions halted the enacting of the impulse” (Finkelhor, 1984: 46). In other words, the underlying premise of the theories classified by Finkelhor is that child sexual abuse is an abnormal response to psychological or situational problems, a proposition which does not accord with feminist theories of child sexual abuse. Indeed, his
integration of both feminist and non-feminist theories of child sexual abuse implies that the theories are consonant with one another, even though, arguably, feminist analyses would question the validity of most psychological theories because of the unstated cultural assumptions upon which they are based.

The problems associated with Finkelhor's merger of these incompatible theories is evident in Finkelhor's application of his four preconditions model to the family-systems model of father-daughter incest (Finkelhor, 1984: 62). Finkelhor considers that the factor of blockage arises because the relationship between the father and his wife has deteriorated, emotional congruence is satisfied because the daughter gives the father "uncritical admiration" and can be easily manipulated to fulfil his emotional and sexual needs, and sexual arousal is satisfied, either because the father himself has been sexually abused or because he has fantasised about his daughter and/or masturbated to these fantasies. Nonetheless, because the father is not only sexually aroused but also sexually blocked, Finkelhor reasons that the father must have an outlet: the father's internal inhibitions are overcome either by alcohol or stress and "[h]e rationalizes to himself that he really loves his daughter, or that no great harm will be caused, or that committing incest is preferable to having an affair" (Finkelhor, 1984: 63). Further, the father's external inhibitions are low because the "mother is not readily protective of daughter," and the "[d]aughter's resistance to [her] father's advances is undermined because she trusts him, because she enjoys the attention, affection and favoured status" (Finkelhor, 1984: 63).

In this way, Finkelhor has merely adapted his model to accommodate the family systems theory of father-daughter incest, but provides no analysis of the assumptions about masculine sexuality on which the theory is based; the issue of the relationship (if any) between masculine social practices and child sex offending remains obscured because Finkelhor's analysis assumes that the father would not otherwise abuse his daughter but for the dynamics within his family and the consequent stress suffered by him. Whilst Finkelhor contends that his model puts the issue of a mother's responsibility into perspective by acknowledging that a mother's role is "not germane to the situation until after the potential offender has taken some giant strides on the road toward committing the offence" (1984: 64), Finkelhor's model still fails to
critique the underlying assumption of family systems theory that the sexual abuse of a daughter is explicable on the grounds of a man’s sex drive and the failure of his wife to meet his sexual needs. The model also fails to explain the behaviour of those offenders who engage in sexual activities with both their wives and children, as documented in a number of studies (Salter, 1995: 14-19).

Another problem with Finkelhor’s model is his acceptance of the need to distinguish between different types of child sex offenders on the basis of distinctive psychological characteristics which serves to reinforce the belief that child sex offending is abnormal sexual behaviour and to obscure the relationship, if any, between child sex offending and masculine social practices. For example, Finkelhor adopts Howells’ (1981) theory that distinctions can and should be made between men who prefer boys, those who prefer girls, aggressive and non-aggressive abusers, and those who have an exclusive preference for children and those who do not. In light of the justifications for such distinctions, Finkelhor uses his model to describe why a girl or boy preference would develop on the basis of emotional congruence, sexual arousal, blockage and disinhibition. According to Finkelhor, emotional congruence for a boy may be based on narcissistic identification, in which case a man will be attracted to children of his own sex, or, if developmental experiences create a need for power and omnipotence, a man may be more likely to choose a girl because girls are “less imposing or threatening than a boy” or a girl may be chosen because of the effects of male sexual socialisation on the offender. Once the emotional congruence stage has been passed, Finkelhor considers that, at the sexual arousal stage, a girl or boy preference may be based on early conditioning processes so that “any early pleasurable experience with a girl may lead to sexual preference with girls,” and likewise for boys.

Next, at the blockage stage, Finkelhor considers that developmental or situational blockage may lead to different choices: an Oedipal conflict with mother means a preference for boys is more likely; a blockage because of an unavailable wife or partner means that a girl is more likely to be chosen because she is the same sex as the man’s partner. Finally, at the disinhibition stage, Finkelhor considers that the final choice for a girl or boy will be based on how strong a man’s inhibitions are against
sex with boys or girls. Thus, despite a prediction from the first three stages that a man has a strong preference for boys, it appears that because of a strong inhibition against sex with boys the model could still be used to explain his preference for a girl. Likewise the model could predict that a man has a strong preference for sex with girls but at the inhibition stage he chooses sex with boys because “some offenders may prefer to have sex with boys because they presume boys can ‘take care of themselves better’, and they are disturbed and inhibited by the rape and seduction taboos that surround the idea of sex with ‘helpless girls’” (Finkelhor, 1984: 48-49). Such unsupported supposition leaves the model looking like an artificial device that could be moulded to explain any type of sexual behaviour without adding anything to an understanding of why child sex offending is predominantly a male phenomenon.

Whilst acknowledging the male-dominated social context in which child sexual abuse occurs and which “we might imagine ... promote[s] sexual abuse” (Finkelhor, 1984: 5), Finkelhor’s analysis demonstrates a lack of detailed engagement with the social and historical processes involved in the construction of gender in relation to his speculation as to why child sexual abuse has occurred in the past, whether it is declining or on the increase in recent times, whether child sexual abuse has increased because “today children are exposed to more stepfathers, mothers’ lovers and boyfriends as a result of an increasing number of divorces and recoupings”, whether the accessibility of divorce has rescued children from “what might have once been chronic and inescapable torment and abuse”, or whether the sexual revolution” has aggravated the problem of child sexual abuse because it has resulted in people being “confused about the state of sexual norms” (Finkelhor, 1984: 6-7) and what is permissible and what is taboo:

[0]ne group for whom this state of confusion is particularly serious are those whose sexual behavior in the past was regulated primarily by strong external controls. [From] [t]he loss of these controls ... [t]his group might conclude, logically, that there are no longer rules. If, for example, prohibitions no longer govern premarital sex or extramarital sex, are the prohibitions against sex with children still in force? (Finkelhor, 1984: 8).

Further, as another result of the “sexual revolution”, Finkelhor speculates that men’s expectations of increased sexual opportunities have left them “feeling a sense of sexual deprivation in the face of these expectations, but locked in situations where
they felt few other options were available, [so that they] might turn to children for the sexual gratification promised by the sexual revolution” (1984: 9). He also speculates as to whether women’s new found assertiveness in their sexual roles “may threaten ... men who have been raised to prefer passivity and uncritical compliance from sexual partners” so that they turn to children as an “attractive sexual alternative” (Finkelhor, 1984: 9). Because Finkelhor’s speculations focus on social taboos, he gives the impression that the more sexually permissive a society is, the greater the prevalence of child sexual abuse within that society. Apart from his failure to place his discussion within an historical context in order to test such an assertion, his ideas suggest that child sexual abuse is primarily driven by biological urges as a result of sexual deprivation in other areas of an offender’s life. In other words, it can be argued that Finkelhor’s attempts at constructing a sociological account of child sex offending and integrating such a theory with psychological theories of child sex offending merely boil down to a conglomeration of suppositions based on unsubstantiated beliefs about the male, biological sex drive.

Another attempt at integrating the theories which attempt to explain male child sex offending has been undertaken by Marshall and Barbaree (1990) who consider that biological explanations are the starting point for understanding sex offending, whilst cultural factors and family background mediate and affect biology. In other words, Marshall and Barbaree consider that “[e]volutionary history has provided human males with various behavioral possibilities which may be employed as ways of obtaining sexual goals” (1990: 258). Whilst it is true that “hardly anyone is likely to oppose the view that human males are capable of using aggression, threats, or coercion in a sexual context” (Marshall and Barbaree, 1990: 258), the question is whether such behaviour can be attributed to evolution (and biology) rather than social practices of gender, since, as Marshall and Barbaree observe, not all men use aggression, threats or coercion to obtain sex. Marshall and Barbaree consider that:

biological endowment ... simply set[s] the stage for learning, providing limits and possibilities rather than determining outcomes. Indeed, in the case of sexual offending we believe that the contribution of biological factors is minimal once learning has established patterns of behavior. The impact of innate propensities is most strong in initially establishing the learning task and possibly also at pubescence, when hormonal changes are dramatic (1990: 258-259).
On the other hand, because the urges for sex and aggression are both considered to be stimulated by sex steroids:

biological factors present the growing male with the task of learning to appropriately separate sex and aggression and to inhibit aggression in a sexual context. Human males must learn not to use force or threats in the pursuit of their sexual interests; they must learn not to engage in sexual behaviors which are frightening or humiliating to their partner; and they must learn to constantly change the age of their preferred sexual partner as they grow older. Our biological heritage makes these tasks difficult, and fluctuating or abnormally high levels of sex steroids may increase the difficulty. However, developmental and other environmental factors appear to play the most important role in shaping the expression of sexual needs and in bringing aggression under control (Marshall and Barbaree, 1990: 260).

Thus, Marshall and Barbaree propose that there is a clear conflict for the male human who needs to learn how to contain and control the biological/hormonal impulse for aggression and, hence coercive sex, since the triggers for sex and aggression are considered to be neurologically linked and activated by the same sex steroids. In their view, environment and socio-cultural factors can be important for teaching a man how to control his biological impulses or in fact reinforce them.

Marshall and Barbaree discuss studies on the family background of rapists and child sex offenders which show that their families are characterised by poor parenting and physical and sexual abuse, such that they are unable to acquire restraints against sexual aggression and “learn to use aggression as a way to solve their problems and to secure what they want” (1990: 261). Marshall and Barbaree consider that:

the period surrounding pubescence and early adolescence is almost certainly a critical period for the development of sexuality, and it is also an important time for acquiring social competence. If the young boy has been prepared by a loving family environment for the hormonal changes of puberty, and if he is given continued and consistent encouragement for prosocial behavior, then he should be able to make the transition to adult functioning with both the social constraints against aggression in place and the skills necessary to develop effective relationships with appropriate peer-aged partners. However, if the child comes from the kind of disruptive background described above, then the pubertal release of hormones will serve to fuse sex and aggression, enhance his already acquired aggressive proclivities, and lead to a failure to develop sufficiently strong constraints on the expression of sex and aggression (1990: 261-262).

Thus, because “self-esteem appears to be largely determined in males, and particularly in young males, by their sense of sexual ability ... the young boy who cannot develop a relationship with a female may turn to aggressive sex or sex with children as a way of proving to himself that he is masculine” (1990: 262).
In discussing the importance of the effect of socio-cultural factors upon male sexual behaviour, Marshall’s and Barbaree’s analysis proceeds from the view that aggressive sex (rape and child sexual abuse) is a normal biological response but an abnormal social response. Such a view is to be compared to psychological theories which consider that both rape and child sexual abuse stem from abnormal psychological characteristics and to feminist theories which propose that rape and child sexual abuse are sexual responses that are consonant with culturally normative masculine sexuality.

However, the biologically and socially deterministic analysis of Marshall and Barbaree does not accord with widely prevalent representations of masculine sexuality in some Western countries which portray coercive sex as the norm, nor does it account for the social acceptance of high levels of violence and sexual aggression against women and children which is evident in the media, film, literature, pornography and social attitudes about the acceptability of date rape and forced sex (Herman, 1990; Darke, 1990). Nor does the view of Marshall and Barbaree accord with victim report studies which have documented the prevalence of rape and child sexual abuse and which show that sexual abuse by strangers is the least common form of child sexual abuse, that men rarely rape women unknown to them and that most victims of rape knew or were in relationships with their abusers (Standing Committee on Social Issues, 1993: 8; see also the studies discussed in Chapter Four). In other words, such studies show that men who are quite capable of forming so-called normal consensual, heterosexual relationships with women commit the vast majority of rapes. Marshall and Barbaree’s analysis is also problematic, since it relies on data drawn from studies of incarcerated rapists who only represent a small minority of sex offenders, since the vast majority of sexual assaults committed against both women and children are not reported. Since some of these studies show that incarcerated rapists are characterised by the inability to form heterosexual relationships, an incapacity for intimacy and empathy, social inadequacy, a lack of confidence, and self-centredness, and since victim report studies show that the majority of women are abused by their

---

22 The underreporting of sexual assault and rape is a feature of both American and Australian societies: see, for example, Standing Committee on Social Issues, 1993: 9; New South Wales Sexual Assault Committee, 1993: 35; Finkelhor, 1984; Russell, 1986; Salter, 1988.
partners or men known to them, it is clear that incarcerated rapists are not representative of the majority of men who commit sexual offences. Indeed, there is also likely to be variability between different incarcerated offender groups, since Scully’s (1990) study of incarcerated rapists found that 89 per cent were in a consensual sexual relationship at the time of their offences.

Clearly, a biological approach to sex offending misses the cultural significance of the sexually coercive behaviour of men. Whilst Marshall and Barbaree consider that coercive sex plays a role in constructing masculinity (referring to the singular), and whilst they accept the influence of sociocultural factors on sex offending behaviour, they fail to understand the sociological significance of such behaviour because they consider that the need to participate in masculine sexual practices is biologically driven. For example, they conclude that “[b]iological inheritance confers upon males a ready capacity to sexually aggress which must be overcome by appropriate training to instil social inhibitions toward such behavior” (Marshall and Barbaree, 1990: 270-271) and, at most, “sociocultural attitudes may negatively interact with poor parenting to enhance the likelihood of sexual offending, if these cultural beliefs express traditional patriarchal views” (Marshall and Barbaree, 1990: 271). Thus, the poorly socialised, biologically driven young male “may readily accept these views to bolster his sense of masculinity” (Marshall and Barbaree, 1990: 271). Indeed, “[i]f such a male gets intoxicated or angry or feels stressed, and he finds himself in circumstances where he is not known or thinks he can get away with offending, then such a male is likely to sexually offend depending upon whether he is aroused at the time or not” (Marshall and Barbaree, 1990: 271), the implication being that he is a prisoner of his biology. However, this analysis is incapable of explaining the rape and child sexual abuse committed by those men who are not socially isolated and are capable of forming consensual sexual relationships and is not able to explain the behaviour of the poorly socialised male who does not engage in coercive sexual behaviour. For example, Darke (1990) has observed that “lack of access to a consenting sexual partner [does not] appear to be a relevant factor in sexual aggression, as the majority of convicted offenders are involved in consenting sexual relationships at the time of their assaults” (1990: 57; references omitted).
In summary, the attempts by Finkelhor (1984) and Marshall and Barbaree (1990) at integrating biological and sociological theories on child sex offending suffer from the belief that, at the heart of all social behaviour, is an underlying biological drive that determines the social and that, consequently, there is little possibility of escape from such biological destiny. By way of contrast, this thesis considers that in order to understand why child sex offending is predominantly a male social behaviour, "nothing like one-way determination of the social by the biological can be sustained; the situation is far more complex" (Connell, 1995: 47). This complexity, it is argued in Chapter Three, can only be understood if child sex offending is specifically analysed as a sociological phenomenon.

(ix) Conclusion

Arguably, the child sex offending theories discussed in this chapter leave unanswered a number of questions, such as:

(i) why do men and male adolescents make up the vast majority of child sex offenders?

(ii) if the need for power and control is the motivation for father-daughter incest, why does a father choose incest, instead of exerting economic, emotional or physical power over his daughter? In other words, if child sexual abuse is solely and only ever about power, what is it about sexual activities with children that satisfies that 'lust' for power?

(iii) why is the family, as a source of power, fundamental to the sexual abuse of female children by fathers, but not the sexually abusive behaviour of extrafamilial child sex offenders and fathers who abuse their sons?

(iv) if sexual abuse in childhood is the cause of men's sexually aggressive behaviour in adulthood, "why do men victimize primarily girls and women, when, for the most part, their own victimization was inflicted by men? For that matter, why don't the legions of girls and women who have been molested, raped, and otherwise brutalized by men respond through acts of sexual violence against their tormentors?" (Scully, 1990: 70);

(v) why do child sex offenders choose sexual behaviour with children, as opposed to a range of other sexual and non-sexual behaviours to alleviate the myriad of psychological problems they are considered to possess?
since victim report studies show that the majority of child sex offenders are neither fixated homosexual offenders, nor regressed fathers, what explains the motivations of this majority?

what explains the sexually abusive behaviour of those men who do not exhibit the documented psychological profiles of child sex offenders?

Arguably, because of the failure of other analyses to provide answers to these questions, I have established that there is a basis for proposing that a new theoretical approach to understanding male child sex offending is needed. In particular, the "sex and gender specificity" (Edwards, 1996: 178) of child sex offending raises the question as to whether it can be said that child sexual abuse is a sexual activity that is consonant with culturally specific masculine social practices. In light of the inability of the above analyses to explain this sex and gender specificity, this thesis proposes that child sex offending must be understood within a framework which analyses gender relations and the social construction of masculinities. In other words, I argue that it is necessary to understand the nature and social function of gender, in order to determine whether child sex offending is a particular masculine gender practice and the role that such behaviour plays in offenders’ lives as men. This is the task that is undertaken in the next chapter.
CHAPTER THREE

MASculinities and Sexualities: A Sociological Theory of Child Sexual Abuse

Men are not born, growing from infants through boyhood to manhood, to follow a pre-determined biological imperative, encoded in their physical organisation. To be a man is to participate in social life as a man, as a gendered being. Men are not born; they are made. And men make themselves, actively constructing their masculinities within a social and historical context (Kimmel and Messner, 1995a: xxi).

A. INTRODUCTION

As discussed in Chapter Two, because of the failure of other analyses to develop a comprehensive understanding of the reasons why men sexually abuse children, this chapter argues that, irrespective of whether a child sex offender identifies as homosexual or heterosexual, or whether he sexually abuses children whilst also having sexual relations with adults, men’s sexual behaviour with children needs to be understood by, in turn, understanding the social significance of masculine social practices. In other words, it is hypothesised that child sex offending, rather than being a deviant type of sexual behaviour, is related to normative masculine gendered practices, that is, practices that are structured on relations of power, as suggested by one male counsellor of incest offenders:

I considered myself a ‘nice guy’ who ‘could never do such a thing’. I wanted these men to be monsters. I wanted them to be different from me, as different as possible. Yet as I heard them talking about childhood and their early teens, I was less and less able to deny how much we had in common. We grew up learning the same things about how to be men ... We were taught that privilege is our birthright and aggression is our nature, so we learned to take but not to give. We learned to get affection ... mainly through sex. We expected to marry a woman who would provide for us like a mother, but obey us like a daughter. And we learned that women and children belong to men, that there is nothing to keep us from using their labour for our benefit and their bodies for our pleasure and anger (Snowdon, 1980; quoted in Driver, 1989a: 15).

Similarly, McIvor (1994) has described how the American military men stationed in Taiwan who regularly used child ‘prostitutes’ appeared to be ‘normal’, married men who “all considered themselves solid Americans and good family men” and did not

---

1 This is a page number in Roman numerals.
feel they were doing anything against the law, their religious faith, or their marriage (1994: 28). The ‘normality’ of one man’s expression of his sexual behaviour is exemplified by the following comments:

‘Now look at little Tammie (six-years old) here. She wants to be here too. Don’t you, Tammie (Girl nods yes.) ... I pay her $5.00 a night, or $150.00 a month, which is more than an adult can make in three months working full-time. I treat her well. She gets all the Coke she wants to drink. I don’t beat her or anything. I tell her she doesn’t have to do anything sexually that she doesn’t want to do, and besides I’m teaching her all about sex, but in a very gentle way’ (quoted in Mclvor, 1994: 28-29; emphasis in original).²

In examining the relationship between child sex offending and masculine social practices, it is argued that different masculinities contain normative sexual elements that are reproduced and affirmed by child sex offenders in a cultural environment where the objects of culturally normative masculine sexual desire are constructed by reference to characteristics such as passivity and receptivity. In particular, because “masculinity is historically and culturally variable” (Liddle, 1996: 365)³ and because of the historical and cultural variability of men’s sexual practices (such as, heterosexuality, homosexuality, bisexuality and transvestism), this chapter argues that sexual practices with children are related to that variability and, are, therefore, a particular sexual choice for some men, even though such an argument may appear to ‘legitimise’ sexual behaviour with children, as many child sex offender groups have attempted to do.⁴

In fact, this argument raises the uncomfortable possibility that sexual practices with children could be a sexual choice that child sex offenders make, in much the same way as other men make choices about engaging in sexual practices with adults. To avoid any misunderstandings, my earlier caveat from Chapter One that my work is not intended to condone, excuse or justify sexual practices with children is reiterated here.

---
² Mclvor states that the child sex offenders he interviewed “experienced no guilt, lied by omission, and effortlessly used compartmentalization and rationalization [to explain their behaviour]” (1994: 28). Interestingly, Mclvor found that the married men who used adult prostitutes, “separated themselves from the other married men who used child prostitutes. They looked down on those who used child prostitutes calling them ‘sex offenders’ and ‘baby rapers’” (1994: 28).
³ The use of the plural term, ‘masculinities’ denotes this historical and cultural variability (Liddle, 1996: 365).
⁴ For example, the Royal Commission into the New South Wales Police Service’s inquiry into paedophilia documented some of the paedophile groups that promote sexual behaviour with children as a loving and harmless practice (1997: 642-643).
In fact, I adopt the observations made by Featherstone and Lancaster (1997) in relation to questions they pose for child sex offender treatment programs:

[t]rying to explore and understand [the] differences [between child sex offenders] does not mean that we excuse or condone abusive behaviour. Indeed, it is a sad reflection of our divided and hostile times that exploring and understanding are increasingly seen as redundant and useless, if not positively dangerous, activities (1997: 68; emphasis added).

This analysis, therefore, is made as an attempt to explore and understand, not to condone, excuse nor justify, nor to imply that child sex offending is an activity that any man could, potentially, engage in. To take the sting out my argument even more, if I made a similar argument that homosexual adult sexual practices are a particular sexual choice made by some men, this argument would not, I imagine, be taken to infer that I mean that homosexual practices are what any man could, potentially, engage in. I hope that the same disjuncture can be applied to the arguments that I make in this chapter about child sex offending as a particular sexual practice chosen by some men.

As discussed in Chapters Two and Four, psychological analyses of child sex offenders consider child sex offending to be a deviant form of sexual behaviour, that is a deviation from some undefined standard of ‘normal’ masculine sexual behaviour with adult women. In other words, what is intrinsic to psychological analyses of child sex offenders is the view that offenders do not conform to socially acceptable masculine sexual behaviour which is premised on an assumed and unchanging biological imperative to engage in adult heterosexual relations. A departure from this normative standard in the form of sex with children is defined as pathological or deviant, even though ‘pedosexuality’ may be more common than what the normative standard of masculine sexual behaviour would predict, particularly since, as discussed in Chapter One, sex with girls under the age of sixteen was socially and legally tolerated in England and Australia and possibly in Europe and America until the early twentieth

---

5 What is ‘normal’ is usually that which is normative, in other words, that which is socially prescribed (Kimmel and Messner, 1995b: 2). However, ‘normal’ male sexuality can be said to be inherently undefinable, although it might be considered to be any heterosexual behaviour which is consensual or non-violent. But wherever a consenting partner perceives that she or he has, for whatever reason, no choice in the issue of consent or violence, it can be seen that ‘normal’ male sexual practices can encompass a wide variety of sexual behaviours. Therefore, ‘normal’ male sexuality can be taken to be any sexual practice which involves the absence of an official
century (which suggests that normative masculine sexual practices during the 1800s included sexual practices with children) and since the most methodologically thorough victim report studies show that some form of child sexual abuse may be experienced by between one half to nearly two-thirds of girls under the age of eighteen (Russell, 1983; Wyatt, 1985; see Table 4.1).

Indeed, what is normative is not "a definition of normality but ... a definition of what the holders of social power wish to have accepted", which raises the issue of "whose interests are embodied in the 'norms'" (Connell, 1987: 52). In fact, Connell considers that:

[...] the dominance of the normative standard case in sex-role literature, plus the concept of deviance, have a distinct effect. They create the impression that the conventional sex role is the majority case, and that departures from it are socially marginal and likely to be the result of some personal eccentricity, produced by imperfect or inappropriate socialization. Lesbianism, men's homosexuality, chastity, prostitution, marital violence and transvestism are all liable to this treatment (1987: 52).

Indeed, the same can be said of child sex offending, since there is a value judgement inherent in equating this socially unacceptable behaviour with abnormal sexual behaviour. Such an equation is likely to have the effect of underestimating the extent and impact of child sexual abuse and of the variety of men involved in it, and of legitimising, through non-recognition, the sexual practices of many child sex offenders.

Because psychological studies on the behaviour of child sex offenders begin with the value judgement that sexual behaviour with children is abnormal, they have failed to test whether child sex offending is, in fact, abnormal, thus failing to distinguish between what is abnormal and what is socially unacceptable. Psychological theories then attempt to prove the abnormality of child sex offenders' behaviour through a deterministic analysis whereby particular psychological characteristics are held to be responsible for child sex offending. As Liddle (1993) recognises, "even a brief perusal of the [psychological] literature suggests that 'masculine sexuality' is not

complaint on the part of the man's partner, indicating that 'normal' masculine sexual practices can include non-consenting and violent sexual behaviour.
widely regarded as having causal centrality in the genesis of child sexual abuse” (1993: 105).

Since scientific inquiry has a tradition of analysing child sex offenders as if the fact of them being men is irrelevant to their sexual behaviour and focuses, instead, on the individual pathology of the offender, child sex offenders are classified according to particular psychological categories, such as:

- those attracted to boys, those attracted to girls;
- those who molest aggressively, those who molest non-aggressively;
- those with relatively exclusive sexual interest in children, those with sexual interest in other types of partners;
- those who molest their own children, those who molest other people’s children (Finkelhor, 1984: 52).

Arguably, when psychological analyses concentrate on the differences between apparently diverse types of offenders and promote the view that child sexual abuse is committed by men who exhibit identifiable characteristics or suffer from a particular affliction, this obscures the fact that child sex offenders are acting in a social context that is constituted by both dynamic and cyclical patterns of masculine social practices. In other words, if cultural practices are reduced to “universal psychological or biological truths”, the social conditions that produce them will be ignored (Coltrane, 1994: 45). But if the focus is switched from the choice of sexual ‘partner’ (that is, child or adult) and the exclusivity of that choice to the characteristics of the sexual behaviour, it is argued that child sex offending is as much a gender practice as socially acceptable forms of masculine sexual behaviour. Indeed, Liddle (1993) considers that:

an adequate explanation of the disparity [between the numbers of men and women who sexually abuse children] will need to be both sociological and gender-based, given that adult-child sexual interactions take place on a wide scale (this fact renders implausible those explanations that focus strictly on psychopathology or individual circumstances), and given also that males greatly outnumber females as the initiators of these interactions (1993: 104).

In fact, if, like criminal activities in general (Messerschmidt, 1993: 1), gender is the strongest predictor of who will engage in sexual behaviour with children, then the ability to explain the gendered nature of child sex offending is an important challenge to the discipline of criminology. As Messerschmidt (1993) observes:

[to structure a comprehensive feminist theory of gendered crime, we must bring men into the framework ... by articulating the gendered content of men’s behavior and of crime.
This approach requires a different theoretical lens—one that focuses on a sociology of masculinity—to comprehend why men are involved disproportionately in crime (1993: 62).

For this reason, it appears necessary to ask the question, is child sex offending specifically a sociological phenomenon which cannot be explained by pointing to innate biological or psychological tendencies? In answering this question, I argue that it is necessary to determine whether the social construction of gender is central to the sexual behaviour of child sex offenders and to determine whether child sex offending (as an example of one type of masculine sexual behaviour) plays a part in child sex offenders' social and psychological development as men.

As such, the starting point of this analysis is to understand the concept of gender and the gendering process, with the recognition that (i) "patterns of gender" are specifically a social phenomenon (Connell, 1987: 16); (ii) gender is socially constructed; (iii) the reproduction of gender is the source of men's privilege (Connell, 1987: 44); (iv) these patterns of gender, if sufficiently cyclical, will coalesce to produce particular social structures at particular times and places; and that (v) at the same time, cyclical social practices are in constant change and flux, so that structure is as much subject to change as the social practices that constitute it. As a truly sociological analysis (which eschews biological determinism and essentialism as explanatory models for explaining child sex offending), this argument proceeds by examining the complexities of changing and dynamic practices and structures of gender and power and eschews the narrow feminist focus that child sexual abuse is primarily an issue to do with the social control of, and exercise of power over women and children and their sexuality (although child sexual abuse is likely to be experienced that way). As such, the arguments presented in this chapter constitute a practice-based sociological account of child sex offending in recognition of the acceptance amongst sociologists that gender is constructed through social practice. As Liddle (1993) recognises, such an account:

---

6 As discussed in Chapter Two, some feminists have argued that men sexually abuse female children in order to exercise power over them, a view which clearly reflects the experiences of those who have been abused, since many survivors have spoken out about their experiences of violation and powerlessness as a result of being sexually abused as children and it is clear that child sexual abuse damages and constrains a child's psychological, social and sexual development which can have profound effects extending into adulthood (Salter, 1995: 159-247).
can describe the genesis of gendered propensities or inclinations to engage in particular forms of sexual behaviour, without losing sight of the terrain of individual choice, and without losing sight of the structure of power which arguably presents the patterns of prohibition and incitement within individual life histories in the first place (1993: 121).

The theory presented below is largely drawn from recent accounts of the sociology of masculinity and masculinities (Connell, 1987; 1995; Segal, 1990; Messerschmidt, 1993; Kimmel, 1994; Kaufman, 1994), for the reason that such accounts have interrogated the dynamics of gender, in particular, the social practices of masculinity, more comprehensively than other theoretical accounts have to date, although many early radical feminist accounts of the sexual abuse of women and children will be found to have some resonances with this body of work. It is argued that sociological accounts of masculinities hold the key to understanding child sex offenders’ motivations for sexual behaviour with children and it is contended here that a comprehensive understanding of child sex offending is possible through an analysis of this work, which serves to explain my reliance on it. In particular, the work of Connell (1987; 1995), which is influenced by, and builds on the work of radical and socialist feminism, is consonant with the models of power developed by feminist theorists to explain the sexual abuse of women and children, but takes the understanding of power one step further by developing an analysis of men’s power through a focus on their relationships with each other, rather than their relationships with women. At the same time, however, it is recognised that radical feminism first identified sexuality as a social construct and made the link between domination, subordination and eroticism. In other words, the “distinctive contribution of [radical] feminism is its understanding of gender as power rather than simply as sex role

7 Jefferson (1996) notes that “[t]he first theoretical attempt to take the ‘maleness’ of certain crimes seriously ... can be found in the writings of American radical feminists on rape in the 1970s. Though rape is by definition a crime committed by men, it was the pathbreaking work of Susan Griffin (1971) and Susan Brownmiller (1976) that first made visible the ‘maleness’ of rape. This work ... situated the crime of rape within broader, namely patriarchal, social relations ... [Further] it implicated ‘masculinity’, most famously in Brownmiller’s contention that ‘rape’ is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear’ (p. 15)” (1996: 338; emphases in original). Radical feminism is represented by the work of Firestone, 1971; Brownmiller, 1975; Dworkin, 1981, 1987; MacKinnon, 1982; 1983; Stanko, 1985. This thesis acknowledges the importance of radical feminist theories which have contributed to progressive conceptions of gender but it is not within the scope of this thesis to review these theories; see Jefferson (1996) and Daly (1997) for a review of some of this work.
differentiation” (Brod, 1995: 394; emphasis added). In fact, Messerschmidt (1993) considers that “[r]adical and socialist feminism provide the overall ambience and intellectual context for the contemporary study of men and masculinity. Indeed, the current interest by men in masculinity is indebted to many of the insights emanating from these two feminist perspectives” (1993: 31; footnotes omitted). Although it can be said that my work builds on this feminist tradition to some extent, my work does not embody the radical feminist premise that “patriarchy is primary, [and that] all other social relations (such as class and race) derive from relations between men and women” (Messerschmidt, 1993: 32). This particular ideological position is, arguably, unsustainable, since, as Jefferson (1996) observes, “patriarchy and masculinity were reductively conceptualised” by the work of radical feminists (1996: 339), in that:

the notion of masculinity deployed was implicitly deterministic: whether the ultimate root of male dominance was seen as biology or culture, there seemed little possibility of escape from either, anatomical destiny or the ‘iron cage’ of masculine sex-role socialization. For a political project desperate to get men to ‘act responsibly’ and to change, casting them theoretically as victims of biology or cultural ‘dupes’ was both ironic and contradictory (Jefferson, 1996: 339).

Messerschmidt (1993) is even more critical of the essentialism of radical feminist theories about men and masculinity: although Messerschmidt considers that “radical feminist research has spotlighted the nature and pervasiveness of violence against women and has successfully challenged ‘malestream’ social thought ..., a number of serious theoretical errors have accompanied the successes of radical feminism” (1993: 44-45). In particular, Messerschmidt considers that radical feminism fails to recognise “how social differences between men create, for example, varying forms of masculinity and, for example, different types and degrees of violence against women” (1993: 45). In other words:

---

8 The recognition of gender as a social structure of power is to be contrasted with sex role theory which has been recognised as “a form of social determinism” (Connell, 1987: 50) and is based on the “biological category of sex”. As Connell remarks, “[w]ith ‘sex roles’, the underlying biological dichotomy seems to have persuaded many theorists that there is no power relationship here at all. The ‘female role’ and the ‘male role’ are tacitly treated as equal. ... Anne Edwards has observed how drastically sex role theory simplifies the complexities of gender: reducing all masculinities and femininities to one dualism; sweeping all women into one feminine role, which in turn is equated to being a housewife and located in the family. Most sex role theory is not constructed around problems raised by field observation, but as analysis of a normative standard case” (1987: 50-51). Messerschmidt (1993) notes that the problems with sex role theory have been critiqued by a wide range of theorists (1993: 25).

9 For a review of the “specific theoretical positions of radical and socialist feminism on men, masculine dominance, and crime” see Messerschmidt (1993: 31-44).
[t]he radical and cultural feminist focus on alleged differences between men and women acted to obscure differences among men. ... Moreover, radical and cultural feminism obscure the fact that men exercise unequal amounts of control over their lives as well as over the lives of women. ... By concentrating on alleged differences between men and women, then, radical and cultural feminists fail to consider the variations among men in terms of race, class, age, and sexual preference, focusing instead on an alleged ‘typical male’, as if he represents all men. ... Such an analysis regards ‘masculinity as more or less unrelieved villainy and all men as agents of the patriarchy in more or less the same degree’ (1993: 45; quoting Carrigan, Connell and Lee, 1987: 140; other references omitted).

For these reasons and because a theory based on essentialism is likely to prove “itself inadequate to explaining crime committed by men” (Messerschmidt, 1993: 61), this thesis proposes that a non-essentialist and non-conspiratorial relationship between sexuality and power is called for in order to understand why some men engage in sexual behaviour with children.

This chapter is organised under the following headings:

B. The Role of Power and Sexuality in the Making (and Unmaking) of Men
   (i) Gender as Social Practice
   (ii) Social Practices of Masculinity and the Structures of Power
   (iii) The Centrality of Heterosexism to Masculine Sexual Ideals
   (iv) Masculine Sexual Practices
   (v) ‘Pedosexuality’ as a Specific Masculine Sexual Practice
   (vi) Blurring the Distinction between Pathology and Normality


In Part B, part (i) examines the concept of gender and shows that gender is acquired, not through biology, but through active dynamic and changing social practices which, in turn, create dynamic and changing social relations of power. Part (ii) then discusses the centrality of structures of power to the social construction of different masculinities whilst Part (iii) discusses the centrality of heterosexism to hegemonic ideals of manhood, suggesting that sexual practices (including child sex offending) are central to the social construction of masculinities. Part (iv) discusses how sexual practices can be used to alleviate men’s experiences of powerlessness and how relations of power between men can be established through sexual practices with less
socially powerful objects of desire. Part (v) then examines the role that child sex offending plays as a specific masculine social practice, whilst Part (vi) discusses the extent to which child sex offender profiles are merely social constructs which bear little relationship to the reality of the lives of men who sexually abuse children, thus serving to hide the real extent of the social problem of child sexual abuse.

Finally, Part C examines the extent to which particular masculine social practices construct children as socially acceptable targets of masculine desire.

B. THE ROLE OF POWER AND SEXUALITY IN THE MAKING (AND UNMAKING) OF MEN

(i) Gender as Social Practice
This analysis begins with challenging the beliefs that men are born, not made and that biology determines how masculine or feminine a person will be. In proposing the alternative viewpoint, that gender arises out of dynamic and changing social practices and that masculinity is, therefore, historically and culturally variable, it is necessary to point out that gendered concepts are evident in many discourses which may, at first glance, appear to be unrelated to gender but are, arguably, not explicable in terms of biology. Consider the following examples which can be said to show how gender constitutes a variety of social, as opposed to biological, practices. Kimmel and Messner (1995a) describe:

composer Charles Ives, debunking “sissy” types of music; he said he used traditional tough guy themes and concerns in his drive to build new sounds and structures out of the popular musical idiom .... Or architect Louis Sullivan, describing his ambition to create “masculine forms”: strong, solid, commanding respect. Or novelist Ernest Hemingway, retaliating against literary enemies by portraying them as impotent or homosexual (1995a: xiii; references omitted).

Similarly, Segal (1990) describes the gendered nature of Hemingway’s writing:

[h]is work - the action-packed, concrete, laconic prose - and his life - the boxing, big-game hunting, shooting, fishing, drinking, swearing, whoring champion of any and every manly pursuit - were both crafted to teach the world the meaning of manhood: tough, patriotic, North American masculinity (1990: 111).

The social practices of sport can also be shown to reproduce gender, since:
Sports as a mediated spectacle provides an important context in which traditional conceptions of masculine superiority—conceptions recently contested by women—are shored up. As a 32-year-old White professional-class man said of one of the most feared professional footballers today: A woman can do the same job as I can do—maybe even be my boss. But I’ll be damned if she can go out on the football field and take a hit from Ronnie Lott (Messner, 1991: 67; emphasis in original).

Thus, sport is considered to construct and normalise the differences between men and women: “the ‘tough guys’ of the culture industry—the Rambos, the Ronnie Lotts who are fearsome ‘hitters’...are the heroes who ‘prove’ that ‘we men’ are superior to women”, even though the maker of the above statement “was quite aware that he (and perhaps 99 percent of the rest of the U.S. male population) was probably as incapable as most women of taking a ‘hit’ from someone like Lott and living to tell of it” (Messner, 1991: 67).

In fact, for some men, engagement in, and identification with sport is considered to link those men in the common comparison with, and domination of women, at the same time as “construct[ing] and clarif[y][ing] differences among various masculinities” (Messner, 1991: 67). In other words, sport could be said to serve several functions: it is an “organizing institution for the embodiment of masculinity”, being the cultural site where “images of ideal masculinity are constructed and promoted most systematically” (Connell, 1987: 84-85), although “it appears that the meaning that most men give to their athletic strivings has more to do with competing for status among men than with proving superiority over women” (Messner, 1991: 72-73; emphasis added). For example, “journalists constantly celebrate the ‘legitimate violence’ of male athletes by depicting them as heroic ‘warriors’, ‘gladiators’, ‘field generals’, ‘hit men’, ‘top guns’ or ‘combatants’, who are engaged in a ‘blitzkrieg’, ‘battle’, or ‘shootout’, with bodies that are portrayed as machines or weapons” (McKay, 1996: 16).

Nonetheless, the construction of the ‘mighty’ sportsman in a battle for superiority over other men obfuscates the other social functions of sport, that is, how sport “breeds blind obedience to figures of authority, overrides personal autonomy and creates ‘overconformity’ to subcultural norms both on and off the field” (McKay, 1996: 17). Thus, sport could be said to be an important social site for constructing masculinities.
and reproducing hegemonic forms of masculinity. For example, descriptions of men’s participation in sport use gendered speech and terms to convey and reinforce the precepts of ideal forms of masculinity and exemplify how, amongst men, “gender remains one of the organising principles of social life. [Men] come to know [themselves] and [their] world through the prism of gender” (Kimmel and Messner, 1995a: xiv).

This analysis of the social function of sport is made to demonstrate that gender describes “social relations of power” (Kaufman, 1994: 144), not only those between women and men, but also those between men, so that, whilst the gender description, ‘man’, implies a social position of power that is different from that implied by the gender description, ‘woman’, men, as a group, are characterised by different and dynamic types of masculinity, all of which represent different social positions of power.10 In fact, an analysis of social practices, such as sport, shows that “gender is not fixed in advance of social interaction, but is constructed in interaction” (Connell, 1995: 35; emphasis added). This means that the behaviour of men who, through their social practices reproduce social relations of power, “cannot be understood as externalized manifestations of some natural inner biological or psychological drives existing prior to the social-order, but must be seen as emerging in and from the relations of power which constitute social structures” (Brod, 1995: 394). Indeed, whilst the social practices that give rise to gender are said to be constantly referable to the body, they are not determined by the body:

[g]ender is a social practice that constantly refers to bodies and what bodies do, [but] it is not social practice reduced to the body. ... Gender exists precisely to the extent that biology does not determine the social. It marks one of those points of transition where historical process supersedes biological evolution as the form of change (Connell, 1995: 71-72; emphasis in original).11

10 Power could be said to be the “ability to impose a definition of the situation, to set the terms in which events are understood and issues discussed, to formulate ideals and define morality, in short to assert hegemony” so that the relations of power can be said to function as a social structure (Connell, 1987: 107).

11 The social practices of gender “sustain the social definition of gender” (Connell, 1987: 81) and hence the structures of power between men and women in ways that biology could never do, given the wide variety in male and female height, weight, strength and intelligence. In other words, not all women are short and frail and not all men are tall and muscular. Whilst Connell (1995) considers that we cannot ignore the “bodily presence” and that “the physical sense of maleness and femaleness is central to the cultural interpretation of gender” (1995: 52), what he means by this is that the body is “inescapable in the construction of masculinity; but what is inescapable is not fixed” (1995: 56). For example, “the pressure of high-level competitive sport obliges professional
In other words, because gender is considered to be something distinctively sociological, it must be a "recurring accomplishment" (West and Zimmerman, 1991: 13), so that males and females are considered to acquire gender through "doing" it and, whilst "it is individuals who ‘do’ gender", the existence of gender is dependent on interaction (West and Zimmerman, 1991: 14), and is, therefore, subject to constant change and flux. Gender is:

a situated doing, carried out in the virtual or real presence of others who are presumed to be oriented to its production. Rather than as a property of individuals, we conceive of gender as an emergent feature of social situations: as both an outcome of and a rationale for various social arrangements and as a means of legitimating one of the most fundamental divisions of society (West and Zimmerman, 1991: 14).

Thus, gender is considered to be neither merely a role that is assumed (it involves active everyday practice), nor is it used merely for the purposes of display (it is central to individual interactions) (West and Zimmerman, 1991: 14). In fact, West and Zimmerman question, "can we ever not do gender?" and conclude that because "society is partitioned by ‘essential’ differences between women and men and placement in a sex category is both relevant and enforced, doing gender is unavoidable" (1991: 23-24; emphasis in original). West and Zimmerman suggest that the consequence of this unavoidability is that "in doing gender, men are also doing dominance and women are doing deference ... [and] the resultant social order, which supposedly reflects ‘natural differences,’ is a powerful reinforcer and legitimator of hierarchical arrangements" (West and Zimmerman, 1991: 32), although this should be

players to treat their bodies as instruments, even as weapons. ... Bodies cannot be understood as a neutral medium of social practice. Their materiality matters. They will do certain things and not others. Bodies are substantively in play in social practices such as sport, labour and sex" (Connell, 1995: 58; emphasis in original). In other words, the body acquires a particular symbolism for social practice, with this symbolic representation of the body being used to justify the resultant social practices of gender. However, the body does not determine social practices. Connell considers that "[w]ith bodies both objects and agents of practice, and the practice itself forming the structures within which bodies are appropriated and defined, we face a pattern beyond the formulae of current social theory. This pattern might be termed body-reflexive practice" (1995: 61). In other words, "[b]ody-reflexive practices ... are not internal to the individual. They involve social relations and symbolism; they may well involve large-scale social institutions. Particular versions of masculinity are constituted in their circuits as meaningful bodies and embodied meanings. Through body-reflexive practices, more than individual lives are formed: a social world is formed" (Connell, 1995: 64).

As Messerschmidt (1993) has noted, "[i]n a series of articles, West, Zimmerman and Fenstermaker ... distinguish 'sex' (one's birth classification), 'sex category' (the social identification as a woman or man), and 'gender' (social action validating that identification)" (1993; 79; references omitted).
qualified by the observation that this is only one of the possible consequences of doing gender and that there is no inevitable path from masculine gender practices and feminine gender practices to dominance and deference. Furthermore, if 'doing gender' is characterised as being unavoidable, then perhaps this is better understood as 'doing gender' in a social context where structures of power limit and constrain any one person's particular social practices, such that an active decision is made to conform rather than challenge, a decision which, in some circumstances, will be based on the material resources available to that person for challenging social limits and constraints. As Messerschmidt (1993) observes:

[m]asculinities are constructed through practices that maintain certain types of relationships between men and women and among men ... . Specific forms of masculinity are constructed in specific situations, and practices within social settings produce, reproduce, and alter types of masculinity. Thus, we "do gender" ... in response to the socially structured circumstances in which we live and within different social milieux diverse forms of masculinity arise, depending upon prevalent structural potentials and constraints. ... In other words, men do masculinity according to the social situation in which they find themselves (1993: 83-84; references omitted).

On the one hand, it can be argued that the dynamic social practices that constitute gender (that is, actions that are constructed "in relation to how they might be interpreted by others in the particular social context in which they occur": Messerschmidt, 1993: 79), such as dress and mannerisms, are symbolic of the power differential between different genders, "often vastly exaggerating or distorting them" (Connell, 1987: 80). For instance, some women's clothing can result in an actual loss of physical power, preventing women from undertaking basic human activities, such as breathing (corsets), running (high-heel shoes) or climbing (short, tight mini-skirts), although there is nothing inherent in femaleness that requires the use of corsets, high-heel shoes or short, tight mini-skirts. Instead, such clothing, arguably, symbolises the particular social positions of power of the women who wear them, although this symbolism can take many forms and generate more than one meaning. Nonetheless, "the division of the social world into women and men is so deeply ingrained that from the moment of birth, when the sex assignment of a newborn is made, parents, doctors, midwives, and all those around the infant, 'do gender' – starting with a name" (Lorber and Farrell, 1991: 8), suggesting that the social practices that constitute this division of the social world are sufficiently cyclical to produce specific social phenomena
(such as boys’ names and girls’ names), although they may be historically and culturally variable.

This analysis constitutes a social constructionist approach to understanding the dynamics of gender and, since it assumes that individuals are active and willing participants in the process of ‘doing’ gender, as Connell (1987) recognises, individuals may engage in active resistance to specific gendering processes. Indeed, gender can be understood as constituting cyclical patterns which are both subject to change and reinforced through social practice. In other words, to claim that a person’s gender is constructed is not to claim that he or she lacks agency or active involvement in that process; rather individuals must actively participate in the social practices of gender to acquire it. Thus, gender is not biologically or socially imposed through socialisation13, but actively constructed by the individual in question.

---

13 Connell (1987) criticises socialisation theory which proposes that “society provides a string of prescriptions, templates, or models of behaviour appropriate to the one sex or the other. Certain agencies of socialisation - notably the family, the media, the peer group and the school - make these expectations and models concrete and provide the settings in which they are appropriated by the child. ... Various mechanisms of learning come into play: conditioning, instruction, modelling, identification, rule learning ... [so that] the social models or prescriptions are internalized to a greater or lesser degree. The result is a gender identity that in the usual case corresponds to the social expectations for that sex”. Nonetheless, the theory considers that some people will deviate because of what is considered to be inappropriate socialisation: those “whose gender identity fails to correspond in the usual way to their sex” (Connell, 1987: 191-192). The problems with the theory of socialisation are identified by Connell: (i) socialisation is closely linked to sex role theory which is internally incoherent and relies on biological differences as the basis for the different sex roles; (ii) the idea of socialisation by a social agency such as the family “implies a definite script, a charter under which the agency acts on behalf of the society, and a degree of consensus about what it is to do and how to do it” which does not accord with historical evidence which shows “schools and families often in conflict with each other and with larger social structures. ... Nor are these institutions internally homogeneous, consensual, or even roughly consistent in their dealings with the people being ‘socialized’” (1987: 192-193); (iii) the notion of modelling “becomes untenable as a general conception of gender formation once we recognize the fact of contradiction within the process” (1987: 193) and the production of behaviour within the person which is entirely different to the expectations of the socialising model: “[a] homogeneous or consensual model of gender identity loses the ability to account for creativity and resistance. It recognizes the production of different gender practices only as deviance resulting from inadequate or aberrant socialization” (1987: 194). In fact, socialisation theory cannot be the “smooth and successful” operation it is supposed to be given the degree of coercion and violence exacted on children to conform (Connell, 1987: 195). Instead, Connell considers that psychoanalysis can best explain the creation of the gender order (1987: 196), for example, Freud’s view of “the importance of power relations in social structure” led him to “develop a ‘psychology of power’, a psychoanalytic account of responses to powerlessness in childhood and social insecurity in adulthood” (Connell, 1987: 199). Further, Kaufman contends that the “basis for the individual’s acquisition of gender is that the prolonged period of human childhood results in powerful
This means that the very practices of gender are, therefore, the practices of creating, in specific individual interactions, a dynamic of equal, less or more power (depending on the specific gender practices involved), indicating that gender can only be accomplished in the real or imagined presence of other people. If sufficiently cyclical, over time, individual men and women internalise “these relations of power”, so that gender becomes “the central organizing category of our psyches ... [and] is the axis about which we organize our personalities, in which a distinct ego develops” (Kaufman, 1994: 144), although these relations of power may also be actively resisted. As well, gender becomes a measure of a person’s changing and dynamic social power in changing and dynamic social interactions.

In recognising gender as dynamic social patterns, Connell considers that gender is both “a product of history, and also ... a producer of history” (1995: 81; emphasis in original), so that different masculinities and different femininities, as historical products of social practice, “are formed and transformed over time” (Connell, 1995: 81-82), with the conceptions of ‘man’ and ‘woman’ being different at different periods of history. Whilst gender may evidently be something that defines an individual (through, for example, their sexual behaviour, the clothes they wear, the job they do), Connell argues that gender is not just the property of individuals and writes

\[14\]

14 At this point it could be said that Jefferson’s (1996) “third stage in thinking about masculinities and crime” (1996: 341) is applicable. In other words, Jefferson considers that it is necessary to incorporate a theory of subjectivity into theories of masculinity in order to understand why certain masculine practices are practised by some men and not others, such as violent acts of rape which are said to represent the accomplishment of masculinity for some men who experience specific class and race disadvantages (Messerschmidt, 1993). Jefferson considers that psychoanalytic theory provides “the fundamental idea of a dynamic unconscious ... [which] renders the subject complexly split: between an unconscious ‘self’ which harbours a whole host of socially unacceptable, hence repressed, desires, and a conscious ‘reasoning’ self” (1996: 341). Further, Jefferson considers that it is the conflicts and contradictions between the unconscious and conscious, “that must be taken into account in theorizing practice or identity” (1996: 341). However, it was considered beyond the scope of this thesis to enter into this theoretical terrain, except to recognise that “gender difference does not have the same meaning for all children. It will depend on the state of integration of their identity, in particular on their dependence on the mechanisms of splitting as a defense against anxiety precipitated by the threats to their developing (gender) identities” (Hollway and Jefferson, 1996: 383).

\[15\]

15 Segal (1990), for example, traces the historical construction of masculinity and its changing nature as a result of various historical imperatives (1990: 104-123). For instance, “[t]he rigid athleticism dominant in late nineteenth-century ideals of manliness in Britain and America has been explained by most historians ... in terms of public concern about men’s physical weakness at a time of...
of gender as being "collective": gender is "also a property of collectivities, institutions and historical processes" (Connell, 1987: 139). Thus, gender at this level becomes a process: "[i]t has its own weight and solidity, on a quite different basis from that of biological process, and it is that weight and solidity that sociology attempts to capture in the concept of 'institution'" (Connell, 1987: 140).

As a sociological process, gender is institutionalised by what Connell calls cyclical practices; that is, those practices that are not divergent from, but which reinforce gender patterns: the "process of 'institutionalization' ... is the creation of conditions that make cyclical practice probable" (1987: 141). Gender is then "stabilized to the extent that the groups constituted in the network have interests in the conditions for cyclical rather than divergent practice" (Connell, 1987: 141). But Connell warns:

[r]ather than attempting to define masculinity as an object (a natural character type, a behavioural average, a norm), we need to focus on the processes and relationships through which men and women conduct gendered lives. 'Masculinity', to the extent the term can be briefly defined at all, is simultaneously a place in gender relations, the practices through which men and women engage that place in gender, and the effects of these practices in bodily experience, personality and culture (1995: 71).

More particularly, gender relations, as dynamic social structures, can be understood as existing in various cultural sites and institutions as a result of particular types of social practice: "[s]tructure is always emergent from practice and is constituted by it. Neither is conceivable without the other" (Connell, 1987: 94) and each varies as a function of time (history) and place. Further, "[t]he concept of social structure expresses the constraints that lie in a given form of social organization" (1987: 92; emphasis in original), so that "[p]ractice never occurs in a vacuum. It always responds to a situation, and situations are structured in ways that admit certain possibilities and not others. Practice does not proceed into a vacuum either. Practice makes a world" (Connell, 1995: 65). In other words:

[s]ocial structures originate, are reproduced, and change through social practice. In short, we can only speak of structured action: social structures can be understood only as constituting practice; social structures, in turn, permit and preclude social action. ... Thus,
as we engage in social action, we simultaneously help create the social structures that facilitate/limit social practice (Messerschmidt, 1993: 62; emphasis in original).

As activities that are engaged in (rather than roles that are assumed), different genders always have the capacity for change. Thus, the structure of gender relations is not fixed and immutable, a point that Connell emphasises when he observes that, whilst social practice cannot “escape structure, cannot float free from its circumstances”, “structure can be deliberately the object of practice” (1987: 95).  

Because gender is a symbol of social power and represents the way that “social practice is ordered” (Connell, 1995: 71) and because “gender is not a static thing” (Kaufman, 1994: 147), a man’s experience of power is unlikely to be static. If gender is constructed from active social practices, then in order to experience power, a man will need to engage constantly in social practices of gender and will also be subject to the social practices of other men. Indeed, Kimmel considers that:

[m]asculinity must be proved, and no sooner is it proved than it is again questioned and must be proved again – constant, relentless, unachievable, and ultimately the quest for proof becomes so meaningless than [sic] it takes on the characteristics ... of a sport. (1994: 122).

In summary, therefore, gender is produced in individual interactions through active social practices (people ‘do’ gender) and symbolises social relations of power, being one of the key organisational principles of social life. When individuals practise gender, they are engaging with social structures of power, although their gender practices may be constrained and limited by those structures. But because gender is produced by a variety of social practices, it is subject to change, although specific gender patterns are more likely to be reproduced in societies that institutionalise the practices of gender; that is, are structured in a way that differentiate between the sexes on the basis of power. Thus, it is argued that ‘doing’ gender produces relations of

17 Towards the end of the twentieth century, it could be argued, for example, that the practices of femininity in Western society are still constrained by historical feminine practices in previous centuries with their emphasis on female chastity and obedience. Yet, at the same time, modern practices of femininity make historical structures of femininity an object of practice, through the adoption of different social practices in relation to women’s sexuality. As well, “the structure of gender relations may be internally contradictory” (Connell, 1987: 96), as it is when, in the late 1990s of Australian society, de-facto relationships are widespread and, yet, after having had such a relationship, some women still choose to marry, dressed in white with a veil, the signifiers of virginity and a particular type of feminine sexuality.
power which, if sufficiently cyclical, produce social structures of power that, whilst
dynamic and changing, impose particular social constraints on particular individuals
who may either conform to, or actively resist specific gender practices that serve to
derive them of social power.

But is it possible to say that masculinities will be produced through specific sexual
practices, if a power differential is intrinsic to those practices? As Liddle (1993)
recognises, the focus on gender as a product of social practices is particularly relevant
to explaining the fact that the majority of child sex offenders are male, since social
practice “rescues such things as personality and sexual desire from the realm of
inevitability (in whatever terms the latter is thought to be grounded), and places them
squarely in the stream of human history – it construes gender as being something that
people do” (1993: 113; emphasis in original). But Liddle warns that:

1. It is not enough to claim simply that the gendering of bodies leaves men more prone than
women to abuse children sexually, where this proneness is described solely in terms of a
differential incorporation or cultivation of sexual desire. After all, nothing whatever
allows from the mere presence of a specific set of desires in an individual, and the
majority of men obviously do not participate in adult-child sex, whether they have the
equisite desire to or not (1993: 115; emphases in original).

Therefore, it is important to analyse, in relation to practices of masculinity, whether
the emergence of structures of power are central to those practices, the relationship of
sexuality to those structures of power and the role of child sex offending as a specific
gender practice.

(ii) Social Practices of Masculinity and Structures of Power

In terms of theorising masculinity, Connell (1987) considers that power and sexuality
are two major structures of gender relations which require interrogation if it is to be
accepted that they, along with the division of labour, are the main structural models
that underpin any gender order (Connell, 1987: 99) or set of gender relations. In
addition, Messerschmidt (1993) argues that these social structures “are not separate in
the sense implied by the capitalism plus patriarchy framework. Through social action,
these structures are constantly constructed together. For example, the gender division
of labor is simultaneously sexualized and maintains gendered power relations” (1993:
77) Arguably, therefore, the characteristics of, and the interaction between, social
strictures of power and sexuality need to be examined, as well as the ‘products’ of enacting in the practices of power or sexuality or both (that is the social advantages that accrue to an individual from such practices) in order to understand child sex offending as a specific gender practice.

Kaufman (1994) considers that acts of masculinity are considered to be “a bond, a glue, to the patriarchal world” (1994: 148) and, hence, to the structures of power, although, as discussed above, men exercise gender, and hence, power according to the social and economic possibilities open to them:

“For example, part of the ideal of working-class manhood among white North American men stresses physical skill and the ability to physically manipulate one’s environment, while part of the ideal of their upper-middle class counterparts stresses verbal skills and the ability to manipulate one’s environment through economic, social, and political means. Each dominant image bears a relationship to the real-life possibilities of these men and the tools at their disposal for the exercise of some form of power (Kaufman, 1994: 145).

Whatever the means for exercising power, arguably, the power that is central to social practices of masculinity is that which “hinge[s] on control and domination” (Kaufman, 1994: 146). As Kaufman explains:

“[The equation of power with domination and control is a definition that has emerged over time in societies in which various divisions are central to the way we have organized our lives: One class has control over economic resources and politics, adults have control over children, humans try to control nature, men dominate women, and, in many countries, one ethnic, racial, or religious group, or group based on sexual orientation, has control over others. There is, though, a common factor to all these societies: All are societies of male domination (1994: 146).

Indeed, “[t]he main axis of power in the contemporary European/American gender order is the overall subordination of women and dominance of men” (Connell, 1995: 74) and, although there is nothing inevitable about gender practices that lead to that social structure of domination and subordination, this particular axis of power indicates that some types of masculinity are defined by reference to power over others: “[n]en come to know what it means to be a man ... by setting [their] definitions in opposition to a set of ‘others’ – racial minorities, sexual minorities, and, above all, women” (Kimmel, 1994: 120).
But Hearn (1987) considers that men’s lives are characterised by a combination of power and alienation. In other words, men’s lives can be seen as a combination of experiences of powerlessness countered by experiences of power. Because different forms of masculinity exist in conjunction with different classes, races, ages, sexualities, ethnicities and religions, creating a hierarchy of hegemonic, subordinated and marginalised forms of masculinity (Connell, 1987), men can have “contradictory experiences of power” (Kaufman, 1994: 144), indicating that men’s experiences of power are not static and unchanging. For example, although “[w]hite men’s masculinities ... are constructed not only in relation to white women but also in relation to black men” (Connell, 1995: 75), white men’s experiences of power and domination will not be universal because of the hierarchical relationships between different groups of white men, as a result of class, ethnicity, religion or sexual preference.

‘Doing gender’ means that any one individual man not only engages with dynamic social structures of power but is also subject to the dynamic social

---

18 As Messerschmidt (1993) observes, “[s]everal pro-feminist men have begun to employ Antonio Gramsci’s notion of ‘hegemony’ to distinguish between ‘hegemonic masculinity’ and ‘subordinated masculinities’ ... . Gramsci (1978) used the term hegemony to refer to the ascendency—obtained primarily by manufactured consent rather than by force—of one class over other classes” (1993: 81; other references omitted). Connell (1987) defines “hegemony” to mean “a social ascendancy achieved in a play of social forces that extends beyond contests of brute power into the organization of private life and cultural processes. Ascendancy of one group of men over another achieved at the point of a gun, or by the threat of unemployment, is not hegemony. Ascendancy which is embedded in religious doctrine and practice, mass media content, wage structures, the design of housing, welfare/taxation policies and so forth, is” (1987: 184). In other words, hegemony “refers to the cultural dynamic by which a group claims and sustains a leading position in social life. At any given time, one form of masculinity rather than others is culturally exalted. Hegemonic masculinity can be defined as the configuration of gender practice which embodies the currently accepted answer to the problem of legitimacy of patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women” (Connell, 1995: 77). In addition, “‘hegemony’ does not mean total cultural dominance, the obliteration of alternatives. It means ascendancy achieved within a balance of forces, that is, a state of play. Other patterns and groups are subordinated rather than eliminated” giving rise to the possibility of conflict, contestation and “historical changes in definitions of gender patterns on the grand scale” (Connell, 1987: 184).

19 Criticisms of Connell’s work have been made by Featherstone and Lancaster (1997) who consider that Connell does not explain how masculinities are constructed in relation to each other, particularly given the social divisions of class, ethnicity and so on. They also ask “whether there is a point when marginalized men no longer share in what Connell (1995) calls the patriarchal dividend, the material advantages accruing to men over women” (1997: 64-65). This discussion, therefore, is important for the purposes of elaborating on the complex ways in which class, race, ethnicity and sexuality create conditions of both power and powerlessness in men’s lives, as well as the ramifications of those contradictory experiences of power and powerlessness. Because these divisions of power give rise to varying degrees of experiences of power and powerlessness on the part of men, then it is possible that there will be a point at which marginalized men do not share in the so-called patriarchal dividend, although that does not necessarily mean that such men
power of other men – different men will experience their own social power (or lack of it) in complex ways.

In recognising multiple masculinities, therefore, it can be seen that there is no one black masculinity, one white masculinity or one working-class masculinity (Connell, 1995: 76). Because different masculinities are ordered in a hierarchy, different white, black or working-class men will experience power differently and will have different access, socially and economically, to ways of accruing power and to the institutions of power:

[The social power of a poor white man is different from a rich one, a working-class black man from a working-class white man, a gay man from a bisexual man from a straight man, a Jewish man in Ethiopia from a Jewish man in Israel, a teenage boy from an adult. ... Furthermore, because masculinities denote relations of power among men, and not just men against women, a man who has little social power in the dominant society, whose masculinity is not of a hegemonic variety, who is the victim of tremendous social oppression, might also wield tremendous power in his own milieu and neighborhood vis-à-vis women of his own class or social grouping or other males, as in the case of a schoolyard bully or a member of an urban gang who certainly does not have structural power in the society as a whole (Kaufman, 1994: 152; emphasis added).

Thus, men whose masculinity is subordinated or marginalised can exhibit hegemonic behaviours, that is, engage in social practices that serve to place them in a position of power over women and men of their own socioeconomic background. Men’s acts of power keep experiences of powerlessness at bay through control and domination of an identified less powerful individual or group which becomes the motivation “at the individual level ... to recreate and celebrate the forms and structures through which men exercise power” (Kaufman, 1994: 151). In this way, power is not only practised by men whose masculinity is hegemonic: power can have many sites of cultural practice, although hegemonic practices require “some correspondence between cultural ideal and institutional power, collective if not individual” and a “successful claim to authority” to be maintained (Connell, 1995: 77). Indeed, what is accepted amongst sociologists who theorise masculinities is that:

[O]ne definition of manhood continues to remain the standard against which other forms of manhood are measured and evaluated. Within the dominant culture, the masculinity that defines white, middle class, early middle-aged, heterosexual men is the masculinity will not be able to assert power over other marginalized men and women of their own socioeconomic and racial background.
hat sets the standards for other men, against which other men are measured and, more often than not, found wanting (Kimmel, 1994: 124-125).

Further, Connell (1987) considers that “[t]o sustain patriarchal power on the large scale requires the construction of a hypermasculine ideal of toughness and dominance ... although] the physical image of masculinity this produces is grotesquely unlike the actual physique of most men” (Connell, 1987: 80). In other words, the social practices of hegemonic masculinity involves the creation of and adherence to dominant ideals of manhood: “[t]he production of exemplary masculinities is thus integral to the politics of hegemonic masculinity” (Connell, 1995: 214; see also Segal, 1990: 111-115). But Segal (1990) recognises that, in the production of power by exemplary masculinity, “masculinity is structured through contradiction: the more it asserts itself, the more it calls itself into question” (1990: 123).

The recognition of a masculinity which is culturally ascendant (hegemonic masculinity) means that there are “relations between the different kinds of masculinity: relations of alliance, dominance and subordination. These relationships are constructed through practices that exclude and include, that intimidate, exploit” (Connell, 1995: 37). One of the most telling examples in contemporary Western society of gender relations of dominance and subordination between men is “the dominance of heterosexual men and the subordination of homosexual men” (Connell, 1995: 78) which arguably can be said to parallel the historical dominance of many heterosexual men and subordination of many women, since, historically, both women and homosexual men have been subject to violence and suffered political and material excision as a result of the power of heterosexual men.20

Conversely, an example of the construction and reproduction of the dominant ideals of hegemonic masculinity is reported by Wills (1997): “[i]n 1993, pollsters asked a representative sample of more than 1,000 Americans, ‘Who is your favourite star?’ John Wayne came in second, though he had been dead for 14 years. He was second

---

20 In fact, whilst men who exhibit heterosexual masculinity benefit from their dominant position gaining authorisation for their behaviour from “an ideology of supremacy” (Connell, 1995: 83)), the subordination experienced by women and homosexual men is complex and layered given the different social, economic, physical and psychological disadvantages associated with rape, street violence, domestic violence, sexual harassment, or lack of access to employment and education.
again in 1994. Then, in 1995, he was number one” (1997: 14). In addition, although Wayne did not serve in the military, “the Veterans of Foreign Wars gave him their gold medal, and the Marines gave him their ‘Iron Mike’ award” (Wills, 1997: 14). However, Wayne was, in fact, a grand invention of ideal masculinity: he developed a particular way of walking, standing and talking which emphasised control, sense of purpose, manliness, self-reliant authority and hence power (Wills, 1997: 16), although paradoxically, he “hated horses, was more accustomed to suits and ties than to jeans when he went into the movies, and had to remind himself to say ‘ain’t’. Wayne was no-born Wayne. He had to be invented” (Wills, 1997: 14).

Another aspect of the construction of the Masculine Ideal involves identification with a particular male body type. The physique of the “‘muscle man’-type body characterized by well-developed chest and arm muscles and wide shoulders tapering down to a narrow waist” has been shown to be “intimately tied to cultural views of masculinity and the male sex role, which prescribes that men be powerful, strong, efficacious – even domineering and destructive” (Mishkind, Rodin, Silberstein and Striegel-Moore, 1987: 41). Indeed, “[a] muscular physique may serve as a symbolic embodiment of these personal characteristics”, since “people rate mesomorphically proportioned bodies as the most masculine” and it may be that, for some men, “[o]ne of the only remaining ways men can express and preserve traditional male characteristics may be by literally embodying them” (Mishkind et al, 1987: 47), through an attempt at acquiring the right body-type.

However, the image of the Masculine Ideal is, as Connell (1987) recognises, not intended to fit most men: “[t]he celluloid heroism of a John Wayne or Sylvester Stallone is heroic only by contrast with the mass of men who are not” (1987: 110). But “the winning of hegemony often involves the creation of models of masculinity which are quite specifically fantasy figures .... Or real models may be publicized who are so remote from everyday achievement that they have the effect of an unattainable ideal” (Connell, 1987: 184-185). Whilst these ideals may represent the public face of hegemonic masculinity, Connell warns that that public face is “not necessarily what powerful men are, but what sustains their power and what large numbers of men are motivated to support. The notion of ‘hegemony’ generally implies a large measure of
consent. Few men are Bogarts or Stallones, [but] many collaborate in sustaining those images” (Connell, 1987: 185).

The above discussion shows that to practise masculinity is also to be subject to the masculine practices of other men and because “hegemonic masculinity is something that one never incorporate enough to satisfy the omnipresent standards ..., there is a sort of compulsiveness about maintaining one’s masculine credentials” (Liddle, 1993: 116). However, men who, through their social practices, are unable to attain the standard of masculinity represented by Masculine Ideal are likely to experience as many instances of powerlessness as of power so that, paradoxically,

[m]en’s feelings are not the feelings of the powerful, but of those who see themselves as powerless. These are the feelings that come inevitably from the discontinuity between the social and the psychological, between the aggregate analysis that reveals how men are in power as a group and the psychological fact that they do not feel powerful as individuals. They are the feelings of men who were raised to believe themselves entitled to feel that power, but do not feel it (Kimmel, 1994: 136).

Arguably, the lack of power that men experience arises as a result of their relationships with other men and whilst “men’s experience of powerlessness is real – the men actually feel and certainly act on it – ... it is not true, that is, it does not accurately describe their condition” (Kimmel, 1994: 137; emphases in original), since, in contrast with women’s lives, men have access to the “power of men as a group” (Kimmel, 1994: 137) even if, on an individual level, their access to power, relatively speaking, is constrained by hegemonic structures of power. Whilst there can be individual experiences of powerlessness, men can resort to experiences of empowerment through identification and engagement with other men as a group and clearly “within the current structure of gender relations ... [there is] a structure of power which affords greater freedom to men than women in the satisfaction of their desires” (Liddle, 1993: 117).

The contradictory experiences of social and individual power are described by Arendt (1970) as follows:

\[
\text{[p]ower corresponds to the human ability not just to act but to act in concert. Power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together. When we say of somebody that he is “in power” we actually refer to his being empowered by a certain number of people to act in their name. The moment the group, from which the power originated to begin with ... disappears, “his}
\]
power" also vanishes (Arendt, 1970: 44; emphasis in original; quoted in Kimmel, 1994: 136-137).21

At the same time, it is important to make a distinction between "personal and institutional male power" (Brod, 1995: 399), in order to identify the link between an experience of powerlessness and acts which compensate for it. As Archer (1994) explains, structural power ("that which resides in the state and organizations") is distinguishable from interpersonal power which concerns "relationships between individuals in circumstances where the influence of structural power is minimal" (1994: 311). In fact, Jefferson (1994) considers that "[i]t is [the] hierarchical ordering [amongst men] ... that largely accounts for the pressure exerted by the [hegemonic] 'ideal'" (1994: 12) and consequent experiences of lack of power. In fact, it could be said that male groups which are based on hierarchical relationships and interactions are "shame cultures ... because the male bond is a group identity that subordinates the individual to the rules [of the dominant culture], and because social control is imposed through collective judgments about self-control", so that the "male bond is formal (rule governed), rather than personal (based upon intimacy and commitment)" (Lyman, 1987: 161). This then could be said to be the mechanism by which experiences of power and powerlessness are set up between men and "once the 'pressure' [to live up to the masculine ideal] has become internalised, a part of one's sense of self, then failure to live up to [it] can have painful, even catastrophic, consequences" (Jefferson, 1994: 12). On the other hand, an experience of failure to live up to the ideal "can lead to an active rejection of the ideal on offer and a positive identification with an alternative, albeit subordinate, masculinity" (Jefferson, 1994: 13).

This argument suggests that a man's motivation for engaging in hegemonic masculine practices will be life experiences that generate experiences of powerlessness, vulnerability and anxiety: "if there is weakness ... there will be anxiety which

---

21 Connell considers that "[t]he number of men rigorously practising the hegemonic pattern in its entirety may be quite small. Yet the majority of men gain from its hegemony, since they benefit from the patriarchal dividend, the advantage men in general gain from the overall subordination of women. ... Masculinities constructed in ways that realize the patriarchal dividend, without the tensions or risks of being the frontline troops of patriarchy, are complicit in this sense" (Connell, 1995: 79).
m活性炭es an exaggerated emphasis on the masculine side of things. This 'masculine pretest', in Adler’s famous phrase ... means over-compensation in the direction of aggression and restless striving for triumphs” (Connell, 1995: 16). In particular, when, as a result of his relationship with other men, a man’s experience of power is in jeopardy, he may engage in particular masculine social practices to overcome that experience of powerlessness, if to lose power is akin to losing ‘manhood’. For example, one man describes his masculine social practice as follows:

I learnt that there was a particular style of masculinity that must be cultivated if I wished to be taken seriously by other men. It was a style that spoke of inner strength, of self-containment and control. ... I learnt to keep my feelings to myself. I learnt to express myself in an impressively masculine, no-nonsense sort of way. I became skilled in the masculine art of self-containment, savouring the maleness of it and defending it against the women in my life who challenged it (McMillan, 1992: 2).

Indeed, Weeks (1985) considers that “masculinity or the male identity is achieved by the constant process of warding off threats to it” (1985: 190).

In summary, therefore, it has been argued that the social construction of masculinities involves dynamic and changing practices of power which are sufficiently cyclical to create hierarchies of power between men. Because of these hierarchies of power, it has also been argued that men’s lives are characterised by a combination of experiences of powerlessness and power. Indeed, it could be said that experiences of powerlessness are as central to experiences of masculinity as are experiences of power, because masculine cultures are typified by shame and subordination of their own members. Further, it has been argued that hegemonic masculine practices are typified by the construction of a Masculine Ideal which bears little relationship to the reality of who men are but which sustains relations of power between men. For some men, the antidote to experiences of powerlessness will be to engage in social practices in relation to other men or women to re-establish their power within masculine hierarchies.

In relation to the question of whether child sex offending is a particular masculine gender practice for creating relations of power between child sex offenders and other men or as a response to experiences of powerlessness, it is necessary to determine whether sexuality is an important practice for the accomplishment of gender, the
reproduction of masculinities and experiences of power. In other words, since a man must ‘do’ gender in order to derive power, that is, actively engage in masculine social practices, is sexuality central (a “defining element” (Gutterman, 1994: 232)) to the accomplishment of masculinities? If so, it is hypothesised that child sex offenders are ‘doing’ masculinity through their particular sexual practices, contrary to psychological analyses which define child sex offenders’ behaviour as a ‘deviation’ from the social practices of normative masculine sexuality. The question arises, therefore, is child sex offending a particular masculine social practice by which a man can accomplish gender? The following two sections analyse this question.

(iii) The Centrality of Heterosexism to Masculine Sexual Ideals

As discussed above, much of the work on the social practices of masculinity has been keen to point out the differences between men and to recognise the existence of different masculinities (Kimmel and Messner, 1995a; Kaufman, 1994; Messerschmidt, 1993; Connell, 1987; 1995), in that any one individual man practices masculinity according to the cultural and material resources available to him. But as much as there is great diversity between men, it is hypothesised that there is also great similarity, if it can be argued that sexuality is central to the social construction of all masculinities, central in the sense that certain sexual behaviours create and maintain power relations between men, and between women and men. In other words, whilst race, class, age, sexual preference, religion, ethnicity and physical abilities confer different experiences of power on men, there are similarities between different masculinities if there are normative elements which are reproduced and affirmed in the reproduction of different masculinities. Thus, like sport, it is hypothesised that certain sexual behaviours differentiate men from women whilst creating bonds between men and provide the “promise of male privilege” (Coltrane, 1994: 55).

This hypothesis means that, contrary to the approach that other theorists take, my analysis focuses, not so much on dominant versus marginalised forms of masculinity, but on those elements of masculine sexuality that are common to all forms of masculinity (whether hegemonic, subordinated or marginalised) which could be called
hegemonic sexual practice but which I choose to call exploitative masculine sexuality.\footnote{The term “exploitative” is used to denote the type of sexuality that characterises the masculine sexual ideal in a variety of Western cultures, that is, one based on dominance and aggression and is to be compared with the Feminine Ideal which is characterised by passivity and compliance. The term “exploitative masculine sexuality” is meant to convey the idea that through certain individual sexual practices, a masculine ideal is affirmed thus reinforcing the “gender order” (Connell, 1987: 119). Arguably, to use the term “hegemonic masculinity” when discussing masculine sexual practices obscures the specific role that sexual practices may play in creating relations of power, irrespective of a man’s place in masculine hierarchies, since the term is equated with a hierarchically dominant form of masculinity. The term also implies that men practising sexuality have more power at their disposal than may be real, although they are likely to have more public power at their disposal than women and children of their own racial/class/ethnic groups.}

Although there is no one universal form of masculinity in that different masculinities are not “fixed categories” (Connell, 1995: 38) and deterministic models of masculinity must be avoided (Connell, 1995: 39), it is possible to analyse different masculinities from the point of view of their similarities, on the grounds that the masculine “gender order is characterized by men’s individual and collective oppression of women” (Hondagneu-Sotelo and Messner, 1994: 203; Connell, 1987). In other words:

[whilst] we cannot speak of “masculinity” as a singular term, but must examine masculinities..., the oppression of women is a chief mechanism that links the various masculinities, and ... the marginalisation of certain masculinities is an important component of the reproduction of male power over women (Kimmel and Messner, 1995a: xx\footnote{This is a page number in Roman numerals.}; emphasis in original).

More particularly, “[a]lthough personal conceptions of masculine identity ... vary according to race, class, age, and other social variables ..., there remains a stable common core ... called ‘heterosexual masculinity’” (Herek, 1987: 72; emphasis added), so that it can be argued that heterosexism is central to the social construction of all forms of masculinity. Indeed, even subordinated masculinities, such as homosexuality, employ a gender differentiation between themselves and women, and between so-called ‘straight’, gay men and effeminate ‘queers’ (Connell, 1995), given that “[e]ffeminacy ... is highly stigmatized in the homosexual subculture” (Lehne, 1995: 326). The dominant forms of both homosexual and heterosexual masculinities are heterosexist in the sense that both seek to define themselves as everything that femininity is not. In particular:

[b]oys may learn to be men primarily through learning not to be women .... The negative definition of heterosexual masculinity is at least as important as its positive definition.
Homophobia is thus an integral component of heterosexual masculinity, to the extent that it serves the psychological function of expressing who one is not (i.e., homosexual) and hereby affirming who one is (heterosexual) (Herek, 1987: 76).

The centrality of heterosexism to dominant forms of masculinity is evidenced by the cultural labels used to describe women and gay men, such, as ‘faggot’, ‘poofter’, ‘wloore’ or ‘slut’ which, from a heterosexist perspective, are labels of “ultimate contempt” (Kimmel, 1994: 131) for those who are considered to lack manliness: “[patriarchal culture has a simple interpretation of gay men [and women]: they lack masculinity” (Connell, 1995: 143), even though some gay men practise ‘hypermasculine’ forms of masculinity. The centrality of homophobia to heterosexual masculinity means that men must compete and prove they are ‘real’ men, not ‘sissies’, ‘faggots’ or ‘girls’, since “[t]he stakes of perceived sissydom are enormous – sometimes matters of life and death” (Kimmel, 1994: 133) and are considered to embody the ultimate fear:

Homophobia, therefore, appears to be a social practice which creates gender distinctions between men. In other words, homophobia (and hence heterosexism) can be said to be, not merely a value system or attitude, but a particular social practice for differentiating power between groups of men and can manifest “at both individual and societal levels” (Herek, 1987: 69): homophobia “is a socially constructed phobia that is essential for the imposition and maintenance of masculinity” (Kaufman, 1995: 20), since “‘heterosexuals’ and ‘homosexuals’ do not exist in nature; they are constructs, ways of giving meaning to particular patterns of sexual behavior and interpersonal relationships” (Herek, 1987: 75).

24 Whilst the derogatory terms used to describe women and homosexual men may vary from culture to culture, from a heterosexist perspective these terms connote a derogatory meaning, although because such meanings are dependent on the cultural context in which they are used, they are not fixed or immutable. Within gay culture, for example, these terms may be reconfigured as labels of resistance and the celebration of difference. I am grateful to David Brown for this observation.
Connell (1995) considers that homophobia "define[s] 'real' masculinity by its distance from the rejected" (1995: 40) through the extent to which homophobia (in the form of various discriminatory behaviours) is directed towards the production of heterosexuality. For example, Messerschmidt (1993) considers that:

\[\text{gay bashing serves as a resource for constructing masculinity in a specific way: physical violence against gay men in front of other young, white, working-class men reaffirms one's commitment to what is for them natural and masculine sex—heterosexuality.} \]

Accordingly, gender is accomplished and normative heterosexuality is reproduced (1993: 100; footnotes omitted).

Further, homophobia provides a reference point for the accrual of power, not only for privileged or dominant masculinities, but also non-privileged masculinities that are heterosexist in nature; for example, "one's status as a man can be improved in social situations merely by the act of labeling someone else as gay" (Lehne, 1995: 332), since across different masculinities:

\[\text{men devalue homosexuality, then use this norm of homophobia to control other men in their male roles. Since any male could potentially (latently) be a homosexual, and since there are certain social sanctions that can be directed against homosexuals, the fear of being labeled a homosexual can be used to ensure that males maintain appropriate male behavior. Homophobia is only incidentally directed against actual homosexuals — its more common use is against the heterosexual male.} \]

... Homophobia is a threat used by societies and individuals to enforce social conformity in the male role, and maintain social control. The taunt "What are you, a fag?" is used in many ways to encourage certain types of male behavior and to define the limits of "acceptable" masculinity (Lehne, 1995: 332; emphasis in original).

Further, Epstein (1996) has documented how some gay men seek to avoid harassment and "defend their own masculinity" by their own harassment of other men and of women (1996: 211-213), thus boosting their social power. Such behaviour shows how misogyny and homophobia appear to be characteristic of different types of masculinities and that the social practices of harassment are "strongly implicated in the production of heterosexual gendered identities" (Epstein, 1996: 217). Through

\[\text{For example, "men involved in gay-bashing often see themselves as avengers on behalf of society, punishing the betrayers of manhood" (Connell, 1995: 213).}\]

\[\text{In fact, homophobia, at the political level, has been used as a form of cultural "cleansing" or social conformity by authoritarian governments (Lehne, 1995: 332). As Mason (1997a) recognises, "[t]he historically-specific construction of sexual identities such as lesbian and homosexual ... has had dramatic consequences for women (and men) who experience same-sex sexual desire. It has 'rendered' in the main — whole groups of people devalued, dishonourable, or dangerous and [has] frequently justified monstrous human atrocities and the denial of human rights'" (1997a: 57; references omitted). Epstein (1996) reports from interviews of gay men and lesbians that some}\]
honophobia and sexism, both heterosexual and homosexual men can prove or exaggerate their masculinity by demonising and sexualising women and gay men, or displaying other ways of showing contempt for them. It is argued here that such social practices have the effect of constructing women and gay men, not only as everything unmanly, but as legitimate targets for measuring masculinity, in order for a man to sustain a position of dominance within masculine hierarchies. It can be predicted that the more a man subscribes to heterosexist ideals of manhood (whether he identifies as gay or straight), the more homophobic he will be (Lehne, 1995: 331).

To varying degrees, those men who engage in social practices of masculinity learn that “sexuality becomes a vehicle for expressing the needs of social roles” (Fracher and Kimmel, 1995: 367; emphasis added). In other words, some men are considered to “confirm the successful construction of [their] gender identity [through sexuality]. Gender informs sexuality; sexuality confirms gender” (Fracher and Kimmel, 1995: 367; emphasis added). Because of this, sexuality can be a particular cultural site for studying the similarities between different masculinities and, in particular, in exploring “how sexualities express issues of masculinity” (Kimmel and Messner, 1995c: 363). In particular, some masculine sexual practices can be said to reinforce and maintain relations of power, not only between women and men, but also between men, since certain sexual practices and the social construction of desire are ways of attaining status among men.

In summary, therefore, it is argued that heterosexism and homophobia are key social practices for establishing relations of power between men and for the reproduction of masculinities in which heterosexuality and homophobia are normative, and that sexuality is a key social practice for differentiation between masculinities, and between masculinities and femininities.

In particular, if sexually exploitative behaviour is one of the sexual practices that constructs different masculinities and constitutes an expression of (normative) masculine sexuality, it can be argued that child sex offending is a particular practice

undertook avoidance behaviours, such as “a heightening of their own homophobic behaviours and even heterosexual activities” (1996: 210) because of a fear of homophobic harassment.
which allows some men to express a type of sexuality characterised by dominance and control. An examination of child sex offending in terms of what it tells us about masculine social practices might inform us about those elements within different masculinities that need to be reproduced for the successful accomplishment of gender. In other words, it is argued that different masculinities contain normative sexual elements that can be reproduced and affirmed through child sex offending in a cultural environment where the characteristics of less powerful objects of desire is that they are willing, compliant, petite, submissive, in short, childlike.

(iv) Masculine Sexual Practices

Within the cult of exemplary masculinities is the heterosexual ideal or hero, the 'playboy' or 'stud' whose endless conquests are reified and idolised. Cult hero movies, magazines like *Playboy* and *Penthouse*, men's clubs, strip-joints, the commercialisation of prostitution and the multi-billion dollar pornographic industry can be said to create a ‘collectivization’ of masculine sexuality and represent social practices centred on the masculine sexual ideal. These dynamic, yet cyclical social practices suggest that sexuality is a major cultural site for the reproduction of masculinities, the maintenance of dominant forms of masculinity and the perpetuation of hierarchies between men and between women and men, in that “[h]eterosexual men of all classes are in a position to command sexual services from women, through purchase, custom, force or pressure” (Connell, 1995: 226). In particular, dynamic and changing social practices of sexuality (as opposed to the ability to be sexual), indicate that sexuality “is socially constructed”, since it does not “exist before, or outside, the social practices in which relationships between people are formed and carried on” (Connell, 1987: 111). However, Connell (1987) considers that the expression of masculine sexuality is “not intelligible without structure” (1987: 107), that is, structures of power, even though he also recognises that those structures are not static and unchanging. For example, rape is “routinely presented in the media as individual deviance, [but] is a form of person-to-person violence deeply embedded in power inequalities and ideologies of male supremacy. Far from being a deviation from the social order, it is in a significant sense an *enforcement* of it” (Connell, 1987: 107;
For instance, Messerschmidt (1993) observes in relation to a middle-class, business man who frequently raped his wife that:

Ross believed his wife not only controlled the sexuality in their lives, but that she had ‘completely and totally emasculated’ him … . The rape was both a way to overcome that loss of power in his life and a means to construct a specific type of patriarchal masculinity centering on heterosexual performance and the domination and control of women’s sexuality (1993: 151).

In examining how relations of power are established through social practices of sexuality, a number of researchers have argued that sexual performance and virility are central to the construction of the masculine sexual ideal. For example, the capacity for erections is an obvious symbol of a man’s potency (and masculinity):

men discuss their sexual experiences – both their “successes” and their “failures” – in terms of gender, not pleasure. A man experiencing, for instance, premature ejaculation would be more likely to complain that he wasn’t “enough of a man” than that he was unable to feel enough pleasure (Fracher and Kimmel, 1995: 363).

Tiefer (1987) considers that the persistent use of the stigmatising “label of impotence reflects a significant moment in the social construction of male sexuality” (1987: 166), since “the first definition dictionaries give for impotence never mentions sex but refers to a general loss of vigor, strength, or power” (Tiefer, 1987: 165):

[t]he word *impotent* is defined in Stedman’s Medical Dictionary as 1. Weakness, lack of power, 2. Specifically lack of power in the male to copulate. In the American Heritage Dictionary, *impotent* is defined as lacking physical strength or vigor, weak, powerless, ineffectual, as well as incapable of intercourse. The word *impotent* is used to describe the man who does not get an erection, not just his penis. If a man is told by his doctor that he is impotent … [he] is saying a lot more than the penis cannot become erect (Kelley, 1981: 126; emphases in original).

In order to see how practices of sexuality are related to the structures of power, consider the ways in which sexuality is organised. First, there are clear demarcations between men’s social practices of sexuality and women’s (represented by the traditional double standards that operate in relation to men’s ‘sowing of wild oats’ and women’s ‘promiscuity’). Therefore, the social practices of men’s sexuality can be said to be constituted around permissive access to women’s bodies, creating different social experiences of power on the part of men and women. Secondly, women’s sexuality has historically been controlled by the state (for example, police regulation of prostitution but not the men who use sex workers); thirdly, women’s sexuality has historically been exploited for profit making by men (prostitution; pornography); fourthly, women have traditionally been assigned the responsibility for controlling men’s sexuality (for example, women have often been held responsible for unwanted sexual attention because of the way they dress, so that if a woman wears ‘seductive’ clothing she is ‘asking for it’, whereas a man’s body has generally been a neutral site for the playing out of women’s sexuality); fifthly, some men engage in both social and sexual practices which have the effect of maintaining the power differential between women and men (gang rape; the traditional non-policing of rape).
Poency manifests in other ways too: demonstrations of masculinity and potency are evident in sexual jokes, gestures and stories (Tiefer, 1987: 166-167), such as masturbatory gestures or gestures symbolising intercourse, whistles and "cat-calls" at women, all of which can be said to be gender practices which construct relations of power not only between women and men but also between men. For example, working-class men are considered to use ritualized sexual exchange in the form of jokes and sexual gestures to validate their "bond[s] of masculinity in a [work] situation that otherwise emasculates them" (Tiefer, 1987: 167). McKay (1996) also describes how ritual sexualised practices are a central feature of the construction of the masculinity of middle-class, male athletes and gives the example of fifteen white, middle-class, high-school athletes from California who called themselves the "Spur Posse" and who "bragged about how gang members earned 'spurs' or 'points' for raping young girls as young as 10" (1996: 17-18). Such examples suggest that men challenge each other and/or masculine structures of authority through particular sexual practices and that practices of sexuality have social implications that are much more complex than mere reproduction and competition for sexual partners. Indeed, in relation to sexual practices, it can be argued that if "different masculinities emerge from practices that utilize different resources, and class and race relations structure the resources available to construct specific masculinities" (Messerschmidt, 1993: 153), then different men will create situationally accomplished, unique masculine sexualities by drawing on sexual practices that define their distinct positions within the structural divisions of power, labour and sexuality.

This is likely to mean that normative masculine sexuality, that is, living up to the masculine sexual ideal, has the potential to be a source of problems for those men who use it to reinforce the difference between themselves and women and, ultimately, to compete for status amongst themselves. Some researchers suggest that adherence to the masculine sexual ideal ultimately engenders an experience of low self-esteem and social inadequacy in men who attempt to aspire to it, because failure to achieve the attributes of the ideal are inevitable given the idealised nature of it. Indeed, Kaufman (1995) considers that masculinity is:

terrifyingly fragile because it does not really exist in the sense we are led to think it exists; that is, as a biological reality – something real that we have inside ourselves. It exists as
ideology; it exists as scripted behavior; it exists within 'gendered' relationships. But in the end it is just a social institution with a tenuous relationship to that with which it is supposed to be synonymous: our maleness, our biological sex (1995: 16).

Indeed, this fragility, as well as the inability of maleness to equate with masculinity (which Kaufman contends is a figment of men’s imaginations: 1995: 16) and the requirement that a whole range of human needs and emotions be suppressed in order to achieve idealised forms of masculinity (Kaufman, 1995: 16) suggests that behaviour such as exploitative sexual conduct is “an expression of the fragility of masculinity” (Kaufman, 1995: 17) and perpetuates the illusion of masculinity and hence power.28 Kaufman further argues that:

masculinity needs constant nurturing and affirmation. This affirmation takes many forms .. [and] in those who harbor great personal doubts or strongly negative self-images, or who cannot cope with a daily feeling of powerlessness, violence against women can become a means of trying to affirm their personal power in the language of our sex-gender system (1995: 18).

Conversely, as can be expected from the variable and dynamic characteristics of gender, Fracher and Kimmel (1995) explain how practices of normative masculine sexuality can lead to sexual dysfunction, since what is at stake for some men when they are sexual involves far more than the biological imperative to reproduce:

it is not so much sexual problems that are of interest, but the problematization of “normal” sexuality, understanding perhaps the pathological elements within normal sexual functioning. ... Because masculinity ... requires adherence to certain rules that may retard or constrain emotional expression, we might fruitfully explore how even “normal” male sexuality evidences specific pathological symptoms (1995: 368).

For some men, the stakes are extremely high, in terms of what is sought to be achieved through sexual behaviour: some men learn that their sexual performance goes to the core of their worth as a man and their social power, since the ideal of masculine sexuality prescribes that a man should “be in a constant state of potential sexual arousal, to achieve and maintain perfectly potent erections on command, and to delay ejaculation for a long time” which, for the less than ‘ideal’ man, can create intense performance anxiety and lead to various forms of sexual dysfunction (Fracher

---

28 Kaufman (1995) contends that “[r]ape is a good example of the acting out of these relations of power and of the outcome of fragile masculinity in a surplus-repressive society” and that “[i]t is the crime against women par excellence because, through it, the full weight of a sexually based differentiation among humans is played out” (1995: 17).
and Kimmel, 1995: 371), conditions which could be said to be more 'normal' than dysfunctional, given the ideal nature of the standard.

The key characteristics of the masculine sexual ideal are described by Haddon (1988) as: "potent, penetrating, outward thrusting, initiating, forging ahead into virgin territory, opening the way, swordlike, able to cut through, able to clear or differentiate, god-oriented, to the point, focused, directive, effective, aimed, hitting the mark, strong, erect" (Haddon, 1988: 10; quoted in Flannigan-Saint-Aubin, 1994: 241), characteristics which could be described as a "fantasised collective male experience" (Flannigan-Saint-Aubin, 1994: 240), as McMillan (1992) has observed:

[The letters to Penthouse, relating the supposed exploits of the writers' 'massive love missiles', 'ten-inch jism pumpers', and 'fully loaded love bazookas' read much more like masturbatory fantasies than accounts of actual sexual encounters. The writers dwell at length on sensations of hardness and muscularity in their penises, a sensation I associate with auto-eroticism, but which is not so apparent in real sex with women. The Penthouse letters section reads like a forum of men with their hands on their dicks (1992: 30).]

In light of the contradictions that appear to characterise descriptions of masculine sexual performance, how does sexual behaviour relieve the 'performance anxiety' associated with living up to the 'Masculine Ideal', as well as serving as an affirmation of a man's masculinity? Consider pornographic depictions of women, for example, which not only convey information to men about their rights of access to women and about the receptivity of women to masculine sexuality, but which also represent a powerful mechanism for maintaining the masculine sexual 'fantasy' of virility, potency and aggression. In other words, pornography can be said to be both a site for the social construction of normative feminine sexuality (the Feminine Ideal is compliant, willing, able, eager and perpetually available for the taking: Brod, 1995: 395), and a site for the social construction of normative masculine sexuality (the Masculine Ideal is big, bold, hard, the consummate performance machine). McMillan (1992) considers that pornography offers:

-easy sex, both in the way that I use it and in what it depicts. The sexual stimulus is provided for me: it is right there, the moment I turn the page; the main act, penetration, gratification and orgasm without any of the anxiety-provoking preliminaries... I am able to ignore my uncertainties about my own sexuality, because I am stimulated by watching, without having to participate other than in my fantasies. The woman in the photograph smiles. She smiles at me, every time I open the magazine. She lies on her back. A man stands at her head, another kneels between her legs. All I see of the men is their pelvises and their erect penises, the woman's body being what fills the frame. The men have just
ejaculated on her. Her torso is wet with their sperm. She smiles happily out of the picture at me, her smile saying, ‘Now your turn’. The woman is Asian. She is small and frail with a delicate kind of beauty. She is not big or strong, she does not threaten my size or strength. With her I could be powerful. She is also foreign. She is different from the real women in my life, she does not have the complications of their needs and wants and emotions and judgements. She is a woman who exists only for my gratification, an inhabitant of a fantasy world of Asian bars and sex clubs. She is totally compliant. While she is small and frail and unchallenging, she is also knowing and permissive and sexual... She has devoted herself with geisha-like dedication to the ancient and secret oriental arts of satisfying my desires. She is mystical, exotic and distant, but my money, my power, can make her accessible and I can fuck her with impunity (McMillan, 1992: 26-27; emphases added).

In fact, McMillan reveals that:

\[\text{[t]}o\text{say that pornography lies about women is not really the point. I don’t look at pornography to find the truth about women’s sexuality. Nor is the sex depicted in pornography a full and accurate depiction of men’s sexuality – not mine, anyway. Yet pornography has a profound relevance for me. In pornographic images, Man’s sexuality is archetypal: simple, pure, male and strong (1992: 32-33).}\\

In particular, in terms of the relationship between social practices of masculinity, adherence to the Masculine Ideal, sexual potency and the expression of power, it could be said that, for some men, “a man’s sexuality exists exclusively in his penis” (McMillan, 1992: 28). Such a relationship is exemplified by pornographic depictions of heterosexual sex: “[t]he woman is at the centre of every frame, and in every image she is penetrated by a penis, or two or three, in her mouth, in her vagina, in her anus” (McMillan, 1992: 28). This positioning of a woman and the penis demonstrates that relations of power are central to pornographic depictions, as if the penis has subdued the woman who lies compliant before it, although relations of power between men can also be experienced through the use of pornography:

the excitement [is] more intense, when the woman I imagine myself fucking is fucked by another man at the same time. I show myself, my sexuality, my power and strength, my pride and joy, and not only does the woman embrace and accept my manhood, it is witnessed and acknowledged by another man and therefore by the world (McMillan, 1992: 29; emphasis added).

In fact, the woman over whom power is exerted appears to be incidental to this display of masculine potency:

[t]he woman’s role in this image is as a medium for our display of potency. It must be a heterosexual act for this to happen; without a woman, neither man would have a totally compliant recipient of his power, and there would be a conflict. With a woman shared between us, we can be intimate with each other, because we witness and approve each other’s manhood (McMillan, 1992: 29; emphases added).
The converse of the above sexual experiences is described by Fracher and Kimmel (1995) who report the view of a man who was:

terrified that failure to please a woman sexually may result in criticism that will challenge his masculinity; [that] he will not be a “real man”. Anticipating this criticism from his wife ... [he has] a total lack of sexual interest in his wife, but a high degree of sexual interest involving sexual fantasies, pornography, and masturbation (1995: 365-366).

Arguably, this man eschews those sexual experiences which threaten to undermine his perception of what amounts to adequate manliness and which threaten to render him powerless, engaging only in those activities that serve to confirm his experience of sufficient masculinity, notably anonymous sexual experiences: “he felt sexually potent with women he devalues, such as prostitutes” (Fracher and Kimmel, 1995: 366). In other words, it appears that a successful sexual experience for this man was dependent on establishing a power differential between himself and the object of his sexual desire, in a way that is similar to the sexual potency described by McMillan above. Fracher and Kimmel (1995) describe another man who, because he experienced erectile dysfunction, believed he had lost his masculinity, since it “was almost entirely predicated upon erectile functioning. ... Everything was suddenly on the line – his self-worth, his marriage, and his career – if he proved unable to correct his problem”, which, in his eyes, made him “less of a ‘real man’” (Fracher and Kimmel, 1995: 366).

Such examples suggest that, for some men, sexual activities such as the use of pornography and prostitution allow them to accomplish gender and experience power in a way that ‘normal’ adult sex may not, so that:

[p]sychologically, then, male sexual performances may have as much or more to do with male gender role confirmation and homosocial status as with pleasure, intimacy, or tension release. This may explain why men express so many rules concerning proper sexual performance: Their agenda relates not merely to personal or couple satisfaction but to acting ‘like a man’ in intercourse in order to qualify for the title elsewhere (Tiefer, 1987: 167).

The above discussion suggests that, for some men, the penis is a symbol of power and that an experience of power is confirmed if a sexual interaction occurs with a person
(or image) who is perceived to have less social power.\textsuperscript{29} Thus, "[i]t is no surprise ... that any difficulty in getting the penis to do what it 'ought' can become a source of profound humiliation and despair, both in terms of immediate self-esteem and the destruction of one's masculine reputation, which, it is assumed, will follow" (Tiefer, 1977: 168). In fact, Segal (1990) observes that, "the most common sexual complaints of men seeking therapy are erectile dysfunction, inhibited sexual desire and premature ejaculation – the exact inversions of the fictions of pornography" (1990: 218; emphasis in original). She proposes that "[t]hese anxieties are fed by pornography ... [since] men can passively consume them, hallucinating their own active engagement" (Segal, 1990: 218-219), something that Fracher and Kimmel show may not be possible with wives or lovers. Consider the experiences of Joe who had a low sex drive with his wife, due to performance anxiety, but masturbated frequently. Fracher and Kimmel report that:

> when his self-esteem was low, as when he lost his job ... his sexual fantasies increased markedly. [His] fantasies of prowess with devalued women restored, he felt, his worth as a man. Interest in pornography included a script in which women were passive and men in control, very unlike the situation he perceives with his wife. ... He felt he needed the mastery of a masculine challenge to confirm his sense of self as a man, which would then find further confirmation in the sexual arena (1995: 372).

Thus, the need to prove sexual prowess and confirm his masculinity appears to have been the motivation behind Joe's fantasies with sex workers (women he devalued). Fracher and Kimmel argue that Joe believed in the "'madonna/whore' ideology" in

\textsuperscript{29} This analysis is not incompatible with the discussion by Segal (1990) that men seek out sexual experiences which centre on passivity rather than power. For example, Segal discusses a survey of men's sexual fantasies which showed that "[b]y a ratio of four to one, men's fantasies were masochistic" (1990: 213) and concludes that these "findings accord with the evidence we have from sex workers, who reveal that more of their clients pay to play the victim than the aggressor in sexual encounters. Men are almost as likely as women to select a masochistic role in fantasy, seeing pain as the symbolic price for pleasure", seeking sexual passivity (Segal, 1990: 213). However, Segal has not analysed these sexual practices in terms of a power dynamic in a context where sex workers are culturally inferior to men, nor has she analysed these findings in relation to the fact that men's experiences of masculinity are a combination of experiences of power and powerlessness; it must be questioned, therefore, whether a man who pays for sex in a context where sex workers are culturally inferior is actually experiencing powerlessness or power. Indeed, access to sex workers can be said to be an exercise of men's public power even if on an individual level a man seeks experiences of powerlessness through his sexual practices. Even so, a recognition that masculine practices involve the creation of dynamic and changing hierarchies of power, means that there will be some masculine practices (such as sexual masochism) which are just as characteristic of masculinities (and relations of power) as sexually aggressive behaviours, since it cannot be assumed that there is one monolithic type of masculine sexual practice. In other words, practices of sexuality by some men will not necessarily amount to the sexual domination of their partner, although their sexual practices may still be about (converse) relations of power.
which the madonna (wife or mother) “was perceived as both asexual and as sexually rejecting of him, since his failures rendered him less of a man” (Fracher and Kimmel, 1995: 372). The ‘whore’, on the other hand, as a result of her social devaluation, was perceived to be less socially powerful and a woman with whom sexual arousal was possible because she represented no threat to Joe’s worth as a man and affirmed his superior masculine status. Such sexual experiences suggest that in order to understand the relationship between potency and experiences of sufficient masculinity, it is necessary to understand the role that sexuality plays in creating experiences of power and in constructing different masculinities.

(v) ‘Pedosexuality’ as a Specific Masculine Sexual Practice

The above discussion raises the following question: can the same analysis be made of child sex offending, in that it can be said, for some men, the struggle for experiences of power and sufficient manhood is just as likely to take place through sexual behaviour with children? Do child sex offenders “make a claim to power” (Connell, 1995: 111) through sex with a child, a less powerful sexual ‘partner’?

Essentially, my argument is that they do for the following reasons. The above discussion has shown, first, that sexuality (as opposed to the ability to be sexual) is socially constructed and, secondly, that sexuality is an important site for accomplishing masculinity, that is, for establishing relations of power between men and between women and men, although it has been argued that the assertion of power over a woman can act as a medium for establishing a relationship of power with other men. In other words, it has been argued that gender practices such as practices of sexuality occur in a relational context and are not independent of that context, so that different men will create different masculine sexualities as a function of their distinct and dynamic positions within the structural divisions of power, labour and sexuality.

This means that sexuality can be as much a site for experiences of powerlessness as of experiences of power, as discussed above in an examination of the centrality of potency to conceptions of different masculinities that are constructed by reference to the Masculine Ideal and the impact of lack of potency (that is, a failure to live up to the masculine sexual ideal) on a man’s self-esteem. For some men, it is arguable that
sexual practices with sex workers, pornography or children can ensure a correspondence with the masculine sexual ideal; that is, the accomplishment of masculinity and experiences of potency are more likely to occur with those who are perceived to have less social power than the individual man in question. Therefore, I think it is important to ask, why should child sex offending be treated as deviant from these normative sexual practices that are considered to conform to the masculine sexual ideal, given the fact that the relationship of adult/child is a relationship of differential power par excellence? Whilst such a question may be, in some people’s minds, unpalatable, the question appears to be particularly salient, given the prevalence of child sexual abuse in some Western countries, as discussed in Chapter Four.

If it is accepted, as argued above, that sexuality is socially constructed, there can be no pre-existing ‘tendency’ (biological or psychological) to engage in child sexual abuse. Because sexuality arises out of social practices, child sex offending can be said to function to establish relations of power between an offender and a child (whether the child is male or female), if it is accepted that the adult/child relationship is inherently a relationship of differential power, since it is by definition a non-consensual relationship because of the inability of children to give informed consent to sexual relations. It can be argued, therefore, that child sex offending is an expression of the fragility of an offender’s experiences of power as a man. Indeed, Fracher and Kimmel (1995) have shown that there is a link between low self-esteem, sexual expression and choice of sexual partner, so that the choice of a passive, non-threatening, inferior sexual partner (or image) means that a man may more easily confirm experiences of

30 I recognise that this argument could be interpreted as essentialist but short of saying that every child has agency and the choice to say yes or no to sex, there is no other way, in my view, of characterising the adult/child relationship. Whilst children can and do engage in sexual practices and exploration with peers, it is arguable that children are significantly more restrained in their abilities to make decisions regarding sexual relations because of the lack of emotional and intellectual development that characterises childhood compared to adulthood and because of children’s emotional dependence on adults for survival.

31 Whether or not this holds true for children close to the age of consent (in NSW 16 for girls and 18 for boys) is difficult to say, particularly where the adult in question is in a relationship of authority with the child, such as father, grandfather, priest, school teacher. I would not make this same argument in relation to man/woman sexual relations because there is nothing inherent in that relationship that means that there will necessarily be a power differential, although it is obvious that some social practices of masculine sexuality can and do create such relations of power. In
manhood and accomplish masculinity. In other words, I am suggesting that a man’s decision to engage in sexual behaviour with a child can be equated with a man’s confirmation of his manhood through the reproduction of normative masculine sexual practices, such as those that involve pornography or sex workers.

Arguably, like a sex worker, a child has an inferior social status and represents no threat to an offender’s sexual performance, since children may allow an offender to ignore any inadequacies he may have about his sexuality. Children are ‘small and frail’ and ‘do not threaten a man’s size or strength’, they are commonly constructed in Western cultures as being sexually available, they are different to adult partners in that they will not have adult sexual needs and are taught to be compliant and obedient in the face of adult authority. Thus, child sex offending, rather than being a biological or psychological given, can be said to be consonant with normative masculine sexual practices in a cultural framework in which children’s bodies are inscribed with cultural meanings of desire and in which men’s lives are characterised by a combination of experiences of powerlessness and power as a result of their complex relationships with other men. In this way, it can be said that child sex offending allows a man to accomplish masculinity and overcome experiences of powerlessness when his power is in jeopardy as a result of his relationship with other men, and may

---

32 In fact, “advertisements, the media, and pornography encourage acceptance of the sexual use of children. By blurring the distinction between woman and girl-child, these omnipresent images sometimes leave the message that children, as well as women, can – and should be – sexually consumed. Women are photographed in seductive poses dressed in ankle socks, holding lollipops and teddy bears. Adolescent and preadolescent girls are photographed soft-focus in and out of lacy, ribboned lingerie” (Bass, 1995: 117).

33 In a literature search conducted by Cameron (1985) it was found that the ratio of victimised female children to male children was approximately 2:1, which is substantially different from the estimated ratio of men who prefer female adults to male adults which is 20:1 (Freund, Watson and Rienzo, 1989), suggesting that the sexually immature bodies of male and female children are perceived as being similar by child sex offenders.

34 This is not to excuse the behaviour of child sex offenders, since, although the masculine hierarchies impact unfairly and differentially on particular men, not all men sexually abuse children and child sexual abuse is not confined to those groups of men who might be considered to be the most socially disenfranchised.

35 Using Arendt’s (1970) work, Mason (1997b) has argued in relation to physical attacks against gay men and lesbians that violence is not just a form of power but is used when power is in jeopardy, that is, some men resort to violence when they experience an absence of power. In this way, violence becomes an instrument of power for those who experience themselves as powerless (Mason, 1997b) and, as a response to perceived powerlessness, violence is a method of aggregating power to the individual. A similar argument can be made in relation to coercive...
be related to his distinct position of power/powerlessness within the "socially structured circumstances" in which he lives (Messerschmidt, 1993: 83).

In other words, the power that men derive through interpersonal interactions with other men is "inherently unstable", dynamic and changing, since it is based on the ability to keep it through repeated acts of power (Archer, 1994: 320), unless, of course, that interpersonal power is supported by structural power, such as legal sanction (which is discussed in more detail in Chapter Six). For example, "male power over women is much more stable and is deeply intrenched [sic] in historically ancient forms of legitimization. Since it is a form of power which is in the individual interest of all men, it does not suffer from the instability shown by inter-male competitive power" (Archer, 1994: 321). The same can be argued of the power derived through sexual practices, such as child sex offending, since historically it has been either socially or legally sanctioned, so that child sex offending can be seen, both as an expression of a man's socially sanctioned power over a child and an expression of his lack of power as a result of his relationships with other men.³⁶

For some men, therefore, sexual practices such as sexual behaviour with a child may be a key experience through which power is derived and masculinity is accomplished. In fact, a child sex offender's chronic experiences of powerlessness may then explain chronic instances of sex offending against children. Despite any structural power that

³⁶ This recognition of contradictory experiences of power and powerlessness answers the radical feminist argument that sexually coercive behaviour by men is only ever about power over women and children. In other words, the power that some men experience in a context of dynamic and changing hierarchies of masculine power may be power that is illusory or temporary, even though women and children who are victims of men's sexual behaviours will usually experience a lack of power and perceive their abuser to have power over them. But as Kimmel (1994) recognises, "[the] feminist definition of masculinity as the drive for power is theorized from women's point of view. It is how women experience masculinity. But it assumes a symmetry between the public and the private that does not conform to men's experiences. Feminists observe that women, as a group, do not hold power in our society. They also observe that individually, they, as women, do not feel powerful. They feel afraid, vulnerable. Their observation of the social reality and their individual experiences are therefore symmetrical. Feminism also observes that men, as a group, are in power. Thus, with the same symmetry, feminism has tended to assume that individually men must feel powerful" (1994: 136; first emphasis in original; second emphasis added). Messerschmidt (1993) also observes that although "radical feminists correctly claim the effect of violence against women as social control, it is nevertheless invalid to assume that all men behave violently for the purpose of controlling women" and considers that "this instrumentalism confuses the effects of violence and the motivations of individual perpetrators" (1993: 45; emphasis added).
a man may be able to draw on, because of the dynamic and changing characteristics of gender practices and, hence, structures of power, arguably, most men will experience a combination of experiences of power and powerlessness. Thus, it is proposed that offenders sexually abuse children in circumstances where there are real or perceived challenges to their masculine power, such as a direct experience of lack of sexual potency or an experience which constitutes a lack of power as a man in other arenas of life; that is, in circumstances where they have limited material and social resources for competing for status with either men who are socially dominant, or men of their own socioeconomic and cultural backgrounds. Further, the choice of a child as a sexual 'partner' may also be a function of a lack of congruence with, or inability to conform to some aspects of the masculine sexual ideal, so that engagement in 'pedosexuality' by some men may be akin to engagement in “counter-masculinities”, in order “to overcome stigmatization and regain self-worth” (Nonn, 1995: 225), an example of which could be the operation of paedophile groups.

The above analysis accords with Brod’s (1995) recognition that men’s use of pornography is:

both an expression of men’s public power and an expression of their lack of personal power. ... With this understanding, one can reconcile the two dominant but otherwise irreconcilable images of the straight male consumer of pornography: on the one hand the powerful rapist, using pornography to consummate his sexual violence, and on the other hand the shy recluse, using it to consummate his masturbatory fantasies (1995: 399).

Similarly, child sexual abuse can also be said to be an expression of men’s public power (in the sense of a man being able to gain access to a child, being able to manipulate a child sexually, silencing the child or colluding with other men in covering up the abuse) and an expression of men’s lack of personal power. This hypothesis explains the range of different men who engage in child sexual abuse, from the socially empowered, white, middle-class father to the comparatively less socially powerful homosexual offender, black offender or working-class offender; that is, from those with considerable public power to those with little public power, since both may experience instances of lack of personal power which, on an experiential level, will not necessarily equate with a man’s access to public power. For example, Liddle (1993) describes how:
prevailing forms of ‘male sexuality’ can perhaps be better described as being fundamentally alienated than as reflecting an uncompromised power or thirst for domination ... . These features have led some writers recently to describe both male sexuality and the psyches of men in terms of powerlessness within power, where the idea is that men’s personal inadequacies and self-brutalization are the flip side to their mastery of the public sphere in capitalist patriarchy (1993: 116; first emphasis in original; second emphasis added).

Does this analysis make it possible to predict when a man will choose sexual practices with children as a way of experiencing a sense of power? In a word, no. Even though there are “different forms of structural power and powerlessness among men” (Kaufman, 1994: 153), as a result of different social and individual variables (such as race, class, sexual preference, religion), and although it can be expected that most men, in cultures which are structured on relations of power, will experience a combination of power and powerlessness to varying degrees, not all men sexually abuse children. Is child sex offending, therefore, an indication of the degree of powerlessness experienced by child sex offenders? If men engage in repeated acts of sexual behaviour with children, can it be assumed their lives are in an almost permanent state of powerlessness, as suggested by Messerschmidt (1993) in relation to his analysis of the Central Park rape case which involved the brutal rape of a white woman by four Afro-American male adolescents? Messerschmidt considers that “crime by men is a form of social practice invoked as a resource, when other resources are unavailable, for accomplishing masculinity” (1993: 85). Is child sex offending, therefore, a particular gender practice or resource “for accomplishing masculinity in a context of class and race disadvantage” (Jefferson, 1996: 340)?

Such a proposition would predict that the least socially powerful men use exploitative sexual practices to experience power (even if that power is illusory) because other material resources for accomplishing masculinity are closed to them and, in particular, that men from lower socio-economic groups would commit more rape and child sexual abuse than men from higher socio-economic groups. However, as discussed in Chapter Four, victim report studies show that child sexual abuse is not confined to particular classes, races or ethnicities, that is, those groups of men whose masculinities are marginalised because of their race, class or ethnicity. In other words, child sexual abuse does not appear to have socioeconomic, cultural or racial
boundaries, such that it can be argued, in relation to child sex offending, that "power relations among men determine the different types of crimes men may commit" (Messerschmidt, 1993: 84). In fact, Messerschmidt argues that:

[f]or many men, crime may serve as a suitable resource for 'doing gender'—for separating them from all that is feminine. Because types of criminality are possible only when particular social conditions present themselves, when other masculine resources are unavailable, particular types of crime can provide an alternative resource for accomplishing gender and, therefore, affirming a particular type of masculinity (1993: 84; emphasis in original).

But the fact that child sex offending is not confined to particular classes, races or ethnicities suggests that if child sex offending is to be thought of as a particular gender accomplishment for men, it is important to analyse it in terms of the complex relations of power and powerlessness that characterise men's lives and to recognise that child sex offending, as a gender practice, is likely to represent different issues of power for different men practising different masculinities. For example, sexually exploitative behaviour on the part of men who belong to a privileged group of men could be a particular gender enactment which serves to maintain their experience of being 'on top' by reference to their experiences of power and powerlessness with men of their own privileged backgrounds, whereas men who are less privileged and oppressed by virtue of their relationship with more privileged groups of men, may "symbolically displace their class antagonism onto the arena of gender relations" (Hondagneu-Sotelo and Messner, 1994: 208). Whilst a man 'on top' might not need to display exaggerated forms of masculine enactments as those displayed by more disempowered men, some level of masculine control will be required because of the constantly competitive masculine environment in which his position at the top has been attained and because of the dynamic and changing characteristics of gender practices. Thus, women, other men and children may become the victims of some men's need to stay on top, or some less privileged men's resistance to the oppression they face "within hierarchies of intermale dominance" (Hondagneu-Sotelo and Messner, 1994: 208).

37 It is at this point that my work on masculinity can be said to differ in some respects from the work of Messerschmidt (1993) in that because of the lack of racial, ethnic and class boundaries for child sexual abuse, I am forced to consider in more depth the complex array of relationships of power between men and the centrality of experiences of powerlessness for men who practise both hegemonic and subordinated forms of masculinity. In other words, I am forced to consider the centrality of experiences of powerlessness to masculine accomplishment and the doing of gender by all types of men, not just those who are socially and materially disenfranchised.
The inability to make neat, concrete conclusions, such as only poor, socially disenfranchised men will sexually abuse children, can be best understood from Kaufman's (1994) warning that:

[t]he tendency, unfortunately, is often to add up categories of oppression as if they were separate units. Sometimes, such tallies are even used to decide who, supposedly, is the most oppressed. The problem can become absurd for two simple reasons: One is the impossibility of quantifying experiences of oppression; the other is that the sources of oppression do not come in discrete units. ... Our whole language of oppression is in need of overhaul for it is based on simplistic binary oppositions ... . What is important for us here is not to deny that men, as a group, have social power or even that men, within their subgroups, tend to have considerable power, but rather that there are different forms of structural power and powerlessness among men. Similarly, it is important not to deny the structural and individual oppression of women as a social group. Rather it is to recognize ... that there is not a linear relationship between a structured system of power inequalities, the real and supposed benefits of power, and one's own experience of these relations of power (Kaufman, 1994: 152-153; emphasis added).

It is hypothesised, therefore, that a man's particular attachment to the link between sexual prowess and manliness will be the key factor that determines how he does sex and who he chooses as a sexual partner. Paradoxically (because it is considered to constitute pathological behaviour), sex with children affirms all the elements of normative masculine sexuality, since it enables a man to be in charge sexually, to be dominant, to be successful sexually, to minimise any sense of sexual inadequacy, to be totally detached and self-focused, and reinforces the predatory, conquest-like, phallocentric, secretive, immoral, detached but pleasurable aspects of sex that constitute the elements of the Masculine Ideal. In light of this analysis, sexual behaviour with children can be understood as a “gender identity issue” (Fracher and Kimmel, 1995: 370) for men whom it can be expected have a need for proof of masculinity through practices of sexuality. Nonetheless, a man may choose a sexual partner other than a child to derive similar sexual experiences, so that factors such as access, opportunity, fear of being caught or morality may all contribute to why those men who seek an experience of power through sexual activities may or may not engage in sexual behaviour with children.

At this point I want to challenge the idea that because sexual behaviour with children is criminalised and therefore the subject of social and moral sanction, then that, of itself, is the reason why many men do not sexually abuse children; that is, because
they think it is wrong. In particular, “the dominance of a moral response [should not] inhibit ... our ability to develop” (Featherstone and Lancaster, 1997: 61) a thorough understanding of the motivations for sexual behaviour with children. For example, as the arguments in Chapter One showed, conceptions of what is ‘right’ and ‘wrong’ and what is ‘moral’ and ‘immoral’ in relation to the sexual abuse of children have been historically and culturally malleable. In other words, I am not prepared to assume that because I think that sexual behaviour with children is morally wrong, then men who abuse children also think it is morally wrong, even if they are aware that it is illegal behaviour. The historical reluctance to criminalise sexual behaviour with children, combined with under-reporting, the low priority that such criminal behaviour has been given by police and prosecuting authorities (Royal Commission into the New South Wales Police Service, 1997) and the difficulties in obtaining convictions (as discussed in Chapter Six) suggests that, historically, child sex offending has been either directly or indirectly socially condoned. In other words, the criminalisation of sexual behaviour with children has, historically, not accorded with those policing, legal and social practices which have ignored or denied its existence. As Smart (1989) observes, whilst child sexual abuse is “publicly deplored ... the criminal law seems designed to make it almost impossible to prosecute” (1989: 51) and, as Chapter Four shows, the views of men who sexually abuse children reflect the social and legal ‘permission’ that has, traditionally, been given to sexual behaviour with children.

Because it is argued that the derivation of power through sexual practices is central to understanding child sex offending, this particular analysis has applicability for both heterosexual and homosexual child sex offenders, because of the centrality of heterosexism, sexuality and power to the reproduction of homosexual and heterosexual masculinities. Thus, the behaviour of both homosexual and heterosexual child sex offenders can be seen to be consonant with normative masculine gendered practices, since the choice of a child as a sexual ‘partner’ is, within the framework of my argument, a paradigmatic expression of the masculine sexual ideal. In other words, children are “emotionally congruent objects for sexual interest” (Finkelhor, 1984: 39) for those men whose heterosexual or homosexual masculine practices are used to reproduce relations of power.
(vi) Blurring the Distinction between Pathology and Normality

The above analysis suggests that there is a blurred distinction between so-called pathological sexual behaviour and what is considered to be normative sexual practices, although it is recognised that asserting a normative element to what is culturally defined as pathological is contentious. But equally contentious is the view that:

[i]f we labelled all punishable sexual behavior as a sex offense, we would find ourselves in the ridiculous situation of having all of our male histories consist almost wholly of sex offenders. ... The man who kisses a girl in defiance of her expressed wishes is committing a forced sexual relationship and is liable to an assault charge, but to solemnly label him a sex offender would be to reduce our study to a ludicrous level (Gebhard et al, 1965: 6).

Such a view is an example of a specific cultural line in the sand being drawn between ‘normal’ masculine sexuality (that which is socially acceptable) and abnormal masculine sexuality which appears to arise when the boundaries of socially acceptable sexual behaviour are breached. However, this analysis suggests that there is no inherent or necessary distinction between abnormal and normal sexual practices and that any distinction that is made is based on political and/or moral grounds which are culturally and historically specific.

This historical and cultural discourse of ‘normal’ and ‘abnormal’ masculine sexuality is analogous to the existence of a cultural discourse, identified by Collier (1993; 1995), which differentiates “‘safe’ paternal masculinity from other ‘dangerous’ extra-familial masculinities” (1993: 2). In other words, the “image of the irresponsible and sexually ‘licentious’ male” (Collier, 1993: 2) is not associated with the family; men who are sexual predators are often portrayed as ‘dangerous’, non-family men, whereas the “concept of the ‘family man’ ... functions ... as repository of all that is good and desirable about paternal masculinity” (Collier, 1993: 6). In fact, “this construct of masculinity mirrors the interests of a particular grouping of men ... [whose] characteristics are closely related to the world view of the socially powerful” (Collier, 1993: 7; citing Naffine, 1989: 100), in particular, that group of men who are culturally ascendant: white, middle-class men. In other words, Collier observes that:

[d]omesticating masculinity, moving from the dangerous masculinities of dangerous classes (immoral, promiscuous, drunk, violent and so forth) involved also ridding masculinity of that which was the perceived essence of maleness at the time – the ‘natural’ force of male sexuality and its potentially destructive expression. It is no
wonder, therefore, that this process involved a de-sexualising of the father as he is transformed into the sex-less, safe and recognisable 'dad' of today (1993: 8).

The construct of the respectable, 'sex-less' ‘family man’ is premised on a masculine authority that is consonant with hegemonic masculinity (Connell, 1987: 109): the “class-based construct of masculinity ... has been central to the discursive power of appeals to the ‘family man’, that is, the otherwise respectable ‘family man’ who is to be reunited with his family notwithstanding evidence of child abuse” (Collier, 1993: 10). Along with this conception of masculinity is the assumption that ‘family men’ could not sexually abuse their children, so that ‘paedophiles’ (generally considered to be non-family men) represent all that is expelled from ‘wholesome and sex-less family man-type’ masculinity (Collier, 1995: 242). The social construct of the ‘paedophile’ is assigned all those qualities that are eschewed in fatherly masculinity; the ‘paedophile’ is the over-sexed, dangerous, predatory stranger who is likely to strike at any moment, even though victim report studies show that child sexual abuse by strangers is the least common form of child sexual abuse.38 This suggests that ‘pedosexuality’, as a stigmatised and deviant form of masculinity, is as much a social construct as ‘family man'-type masculinity.

The discourse of ‘respectable’ versus ‘dangerous’ masculinities clearly permits an obfuscation of the extent to which child sexual abuse is committed by ‘family men’ which may have consequences for the policing, prosecution and sentencing of fathers and other men who sexually abuse children related to them.39 As Collier (1995) observes, “[t]he ‘external’ threat (the paedophile, the pervert) is depicted as a powerful but dangerous sexuality; but this male sexuality is banished to the extra-familial” (1995: 243) so that the threat of sexual abuse within the family can be evaded (Collier, 1995: 242). Thus, the construction of the father as ‘safe’ “has functioned to separate out a ‘respectable’ paternal masculinity ... from those masculinities which embody attributes incompatible with the familial ideal” (Collier, 1993: 13). As Collier observes in relation to family disputes, “[t]he cost of this bifurcation of masculinity ... has been to divert attention from the problematic nature

---

38 This is discussed further in Chapter Four.
39 This is discussed further in Chapter Five.
of masculinity per se and, in particular, from the socially destructive nature of masculinities *inside* the family*"* (1993: 13; emphasis in original).

This analysis takes us back to the fixated (homosexual stranger)/regressed (heterosexual father) categories of child sex offenders (discussed in Chapter Two) that have found greatest acceptance in the clinical literature: the fixated offender is predatory whilst the regressed offender engages in inadvertent sexual behaviour as a result of stress, yet both can be seen to be cultural constructs that have little to do with the reality of the prevalence of child sexual abuse and who offenders are (as shown in Chapter Four). As Kelly (1996) observes:

> the separation of ‘paedophiles’ in much of the clinical literature on sex offenders from all men, but also other men who sexually abuse, has involved the presumption of difference. Similarities – in the forms of abuse, in the strategies abusers use to entrap, control and silence children – are ignored. In this way fathers, grandfathers, uncles, brothers who abuse are hardly ever suspected of being interested in the consumption, or production, of child pornography, nor are they thought to be involved in child prostitution. ... This contrasts with what we know from adult survivors who tell of relatives showing them pornography, expecting them to imitate it and being required to pose for it. Some also tell of being prostituted by relatives (1996: 45).

The fixated/regressed offender profiles give rise to the belief that sexual abuse by fathers (that is, non-paedophiles) is not as frequent, serious or predatory as that committed by ‘true’ paedophiles. In particular, “calling a section of abusers ‘paedophiles’ is accompanied by an emphasis on boys as victims” (Kelly, 1996: 45) which further obfuscates the extent of child sexual abuse within the home and of girls. But the perception that homosexual child sexual abuse is the most common form of abuse confirms the abnormality of the behaviour: “the word ‘paedophile’ disguises rather than names the issue and focuses our attention on a kind of person rather than kinds of behaviour” (Kelly, 1996: 45). Indeed, insistence on the belief that child sex offending constitutes ‘deviant’ sexual arousal is more likely to result in the behaviour being understood as a function of biology or psychology and the obfuscation of a man’s *choice* to act or not act (Kelly, 1996: 46).

But could it be that the label of ‘deviant’ has more to say about the power relations between child sex offenders and the people who label them as deviant? Like homophobia, is ‘paedophobia’ a social practice which constructs relations of power
between child sex offenders and other men, thus obscuring the possibility that child sex offending is related to normative masculine practices, that is, practices that are structured on relations of power?

As discussed above, this chapter has argued that child sex offenders are actively involved in a “masculinising practice” (Connell, 1983: 58) in that, because of the centrality of sexuality for establishing relations of power between men, child sex offending is a specific sexual practice for the accomplishment of masculinity by some men in a cultural environment where men’s lives are characterised by a combination of power and powerlessness. In other words, it has been argued that sexual behaviour with children, because of the characteristics of the adult/child relationship, allows child sex offenders to reproduce those elements of masculine sexuality which accord with the Masculine Ideal and which are a feature of masculine cultural environments that are structured on relations of power. Such a view conflicts with the emergence of a discourse of deviance in attempts to understand child sex offending, although such a view is consonant with historical evidence that shows that sexual practices with children were socially and legally tolerated and, even when criminalised, difficult to prosecute.

For this reason it was argued that the child sex offender profiles that find the greatest acceptance within the psychological literature are social constructs which bear little relationship to the reality of the men who sexually abuse children and deny the possibility of understanding the extent to which child sex offending is related to normative masculine sexual practices and the relationships of power and powerlessness that characterise men’s lives. The distinction between the ‘dangerous’ paedophile and the non-dangerous family man is consonant with homophobic practices of dominant types of masculinity, since ‘paedophilia’ is characteristically equated with homosexual child sex offending, and, homophobia, as discussed above, is central to the reproduction of heterosexual masculinities. In a way that is similar to the construction of the ‘deviant’ homosexual, the construction of the ‘deviant’ child sex offender, therefore, appears to have more to do with relations of power among men than with accurately describing the reality of men who sexually abuse children.
In summary, then, this analysis is made, not to excuse nor justify child sex offending but to highlight the fact that many child sex offenders may remain undetected or not prosecuted by the criminal justice system because they do not conform to the construct of the 'dangerous paedophile'. In fact, the proclamation of difference between 'paedophiles' and other offenders may serve to hide the real extent of the problem of child sexual abuse and to 'protect' the vast majority of offenders, as discussed in Chapters Five and Six.

C. THE SOCIAL CONSTRUCTION OF FEMININE SEXUALITIES: CREATING SOCIALLY ACCEPTABLE OBJECTS OF MASCUINE DESIRE

Since victim report studies show that the vast majority of victims of child sexual abuse are female children, can it be said that normative constructions of feminine sexuality make female children socially acceptable objects for masculine desire? Consider the view that:

the accepted cultural perspective on gender views women and men as naturally and unequivocally defined categories of being ... with distinctive psychological and behavioral propensities that can be predicted from their reproductive functions (West and Zimmerman, 1991: 15).

Indeed, this belief is so fundamental that it leads to “an often elaborate differentiation of feminine and masculine attitudes and behaviors that are prominent features of social organization” (West and Zimmerman, 1991: 15). Part C argues that the social organisation of heterosexual relations is a case in point.

The Western model for erotic love is represented by the heterosexual paradigm which consists of a “strong, possessive male, mainly of a laudatory kind” and a capitulating woman (Naffine, 1994: 10) who is sexually possessed by a man. Within this paradigm, woman is constructed as a Feminine Ideal for male receptivity: historically male philosophers, poets and scientists (such as, Nietzsche, Kant, Rousseau, Balzac, Byron, Tennyson and Freud) have pronounced the view that “[w]oman wants to be taken and accepted as a possession, wants to be absorbed into the concept of

---

40 Part of this analysis has been published in Cossins (1995).
The concept of the passive Feminine Ideal has been reinforced by the Freudian view of female sexuality that the transformation from girlhood to womanhood necessitated the "transformation of ... [a girl's childhood] sexual 'activity' into its opposite: 'passivity'... [and] the desire to be possessed" (Irigaray, 1985: 36). As Irigaray (1985) explains, "[Freud] stresses ... that femininity is characterised, and must be characterised, by an earlier and more inflexible repression of the sexual drives and a stronger tendency towards passivity" (1985: 36-37; emphasis in original) which was considered to correspond with a shift from attachment to the mother to the father and a shift "in experiences of genital excitement from the 'masculine' [or active] clitoris to the feminine [or passive] vagina" (McConaghy, 1993: 82).

The essentialism of such a construct means that a woman is destined to passivity and receptivity by virtue of her anatomy: her receptive vagina. In fact, MacKinnon (1989) considers that "the typical model of sexuality remains deeply Freudian and essentialist: sexuality is an innate sui generis primary natural ... unconditioned drive divided along the biological gender line" (1989: 132; footnotes omitted). In other words, culturally dominant constructs of femininity and masculinity assume "that there is just one set of traits that characterizes men in general and thus defines masculinity. Likewise there is one set of traits of women, which defines femininity" (Connell, 1987: 167).

Furthermore, Liddle (1993) considers that the social practice of "hegemonic masculinity is linked to ... a genitally-focused sexual desire [which] is strongly bound up with themes of performance, superiority and achievement" over women (1993: 111-112). The following description of one man’s use of pornography describes how the passive and receptive Feminine Ideal is constructed for the satisfaction of a
particular form of masculine sexual desire which accords with the Masculine Ideal and hence the reproduction of hegemonic masculinity:

[t]he woman’s sexual appetite is enormous. She will take everything I can give her and more, she just can’t get enough of me. She is doubly penetrated, doubly accepting of men, of me, and in wearing on her body the intermingled sperm of two men, she bathes and revels in the very essence of masculinity (McMillan, 1992: 29; emphases added to highlight the passive essence of the Feminine Ideal).

The clear message of such pornographic depictions of heterosexual sex is that of submission and domination:

[t]he air-brushed images of Penthouse magazine, in which women lie with their legs open, posed so that my attention is invited to their genitalia, while they close their eyes and open their mouths in apparent pleasure, say to me the same thing that the hard-core images state openly: ‘I want you. Fuck me’ (McMillan, 1992: 29).

In fact, Segal (1990) considers that:

[t]he ubiquity of the discourses and imagery of ‘conquest/submission’, ‘activity/passivity’, ‘masculinity/femininity/ constructing heterosexual intercourse as the spectacular moment of male domination and female submission, is inescapable: ‘The man “mounts” and penetrates; the woman spreads her legs and “submits”; and these postures seem to ratify, again and again, the ancient authority of men over women’ (1990: 209; quoting Ehrenreich et al, 1986: 203; emphasis in original).

As constructs that constitute the most ubiquitous images of masculine and feminine sexuality in cultures dominated by hegemonic masculine practices, it is important to interrogate their cultural effects. The lie that is implicit in the masculine and feminine constructs of the heterosexual paradigm, that it is “nature which determine[s] that a woman’s desires should correspond so well with [a man’s]: that she should desire only to be possessed as he desire[s] to possess” (Naffine, 1994: 15; emphasis added) is revolutionary, since it transforms the relatively commonplace control of some women by some men through sexually exploitative behaviour (such as sexual harassment, sexual assault and rape) into women’s agreement to be possessed. 41 Indeed, resort to her dress, her looks, or her behaviour as justification for possession, reinforces the idea of a woman’s choice to be possessed and can be used to mask the exploitative nature of sexual behaviour which is experienced by women as sexual harassment, sexual assault and rape. In this way, the ‘naturalness’ of women’s submissiveness to men can be used to transform the social control of some women.
through some forms of sexual behaviour into nature and, hence, consent. This transformation conceals sexuality as a site for the reproduction of masculinities and, hence, a site for the construction of social relations of power between women and men.

Although, “the erotic reciprocity in hegemonic heterosexuality is based on unequal exchange” (Connell, 1987: 113), the inequality that characterises the sexual exploitation experienced by some women is transformed into a natural state of freedom, equality and choice; the essence of the masculine and feminine sexual ideals is such that each, the man, the possessor, and the woman, the possessed, choose their respective roles because it is in their nature to do so. In this state of “natural freedom and equality” (Pateman, 1988: 39), there is then “only one justification for [women’s] subordination” (Pateman, 1988: 39) which is that she agrees (consents) to be possessed and will not refuse, indeed, cannot be understood to refuse, because she wants nothing more than to be completely devoted to a man: “[f]or a woman, ‘love’ is a faith; woman has no other faith” (Naffine, 1994: 12; footnotes omitted). In other words, in the reproduction of the ideals, men and women learn that the type of femininity embodied in the Feminine Ideal is to be “performed especially to men”, with there being “a great deal of folklore about how to sustain the performance” (Connell, 1987: 188; emphasis added). The passive and receptive essence of the Feminine Ideal means that the Masculine Ideal is taken to be the universal paradigm for the sexual pleasure of both men and women:

The language which describes the institution our society places at the center of acceptable human sexuality, heterosexual intercourse, which focuses exclusively on the experience of the man. As Janice Moulton has put it, “sexual intercourse is an activity in which male arousal is a necessary condition, and male satisfaction, if not also a necessary condition, is the primary aim ... [whereas] female arousal and satisfaction ... are not even constituents of sexual intercourse.” ... [I]ntercourse formally begins when the male’s primary focus for sexual stimulation is inserted in the vagina and ends with male orgasm (Hartsock, 1984: 27).

Indeed, this conception of heterosexual intercourse is really a description of power: in the reproduction of the Masculine and Feminine Ideals through a variety of heterosexist social practices, a focus of sexual intercourse on His pleasure and

---

satisfaction is in fact a focus on His experience of power and Her experience of powerlessness. Thus, if “[i]t was not very long ago that the notion of being sexual and being female was outrageous” (Hartsock, 1984: 27; emphasis in original), then, arguably, it is the notion of being powerful and being female that becomes outrageous.

The characteristics of the Feminine Ideal of hegemonic discourse are those very characteristics which enhance Her compliance to male possession and devotion to a man and affirm the social power embodied in the Masculine Ideal, however, it is obvious that there is a disjuncture between the construction of particular gender ideals and the lived experiences of men and women. Even so, the influence of the Feminine Ideal is evident in the work of feminists such as MacKinnon (1989) who, as discussed below, appears to equate the Feminine Ideal with the actual experiences of all women. Nonetheless, MacKinnon’s observations about the Feminine Ideal are useful for illustrating the nature of the Ideal and the importance of its construction to the reproduction of hegemonic masculinity in various cultural sites, such as the pornography industry. For example, MacKinnon has described the Feminine Ideal as “docile, soft, passive, nurturant, vulnerable, weak, narcissistic, childlike, incompetent, masochistic, and domestic, made for child care, home care and husband care” (MacKinnon, 1989: 109). Further, she considers that:

each element of the female gender stereotype is ... , in fact, sexual. Vulnerability means the appearance/reality of easy sexual access; passivity means receptivity and disabled resistance, enforced by trained physical weakness; softness means pregnability by something hard. Incompetence seeks help as vulnerability seeks shelter (MacKinnon, 1989: 110).

The Feminine Ideal is, in essence, childlike and lacks the characteristics that would make Her an adult, indicating that the boundaries between a woman, constructed as sexual object, and a female child, constructed as sexual object are blurred. The falsity of the construct can be seen, however, in its inherent contradictions: the Feminine Ideal needs looking after as a child does, although ostensibly Her role is to look after; She is “made for child care, home care, husband care” but because She is also passive and ruled by Her emotions, She lacks the very qualities that are required to care for the needs and dependencies of child and husband. The girl-child, on the other hand, is
constructed as sexually available long before she is physically, emotionally or psychologically ready for adult sexual experiences.

Thus, it can be said that the Feminine Ideal of hegemonic discourse is infantilised not only, as MacKinnon observes, evoking 'paedophilia' (1989: 110), but suggesting that child sexual abuse is related to such a construction, since, ‘paedophilic’ images of women, in many cultural sites, have become a normative standard of femininity, thereby obscuring the distinction between child and woman. Since the construction of the Feminine Ideal as childlike emphasises Her powerlessness and hence sexual availability, it is possible to fantasise Her “as a thing rather than a human being, treating a body part as a substitute for the person, or even dispensing with the human being altogether” (Hartsock, 1984: 33). In fact, the ‘thingness’ of the female body (woman or child) can be:

created through her reduction to an image. The mildest of heterosexual male pornography is represented by a massive industry producing photographs of nude women which reduce the real woman to an image on the page, 'imprison' her on paper, and therefore render her powerless to threaten the viewer (Hartsock 1984: 33).

In a deconstruction of the characteristics of the Feminine Ideal, MacKinnon considers that:

[s]ocially, femaleness means femininity, which means attractiveness to men, which means sexual attractiveness, which means sexual availability on male terms. ... Gender socialisation is the process through which women come to identify themselves as such sexual beings, as beings that exist ... specifically for male use (1989: 109; emphasis added).

However, the limitations of MacKinnon’s analysis are recognised (Cornell, 1991: 128-141; 150-151; Naffine, 1994: 25), so that a universal feminine reality is not being advocated in this discussion. In other words, Cornell (1991) considers that “MacKinnon’s central error is to reduce feminine ‘reality’ to the sexualized object [women] are for [men] by identifying the feminine totally with ‘the real world’ as it is seen and constructed through the male gaze” (Cornell, 1991: 130; emphasis in original). The essence of MacKinnon’s analysis is that “women come to identify themselves as sexual beings, as beings that exist for men, specifically for male sexual use” through the process of gender socialisation; in effect they become to themselves
objects of the male gaze and adopt the “male image of their sexuality as their identity as women” (MacKinnon, 1989: 110-111). MacKinnon considers that:

[w]hat is termed women’s sexuality is the capacity to arouse desire in that someone [who is socially male]. If what is sexual about a woman is what the male point of view requires for excitement, for arousal and satisfaction, have male requirements so usurped its terms as to have become them? Considering women’s sexuality in this way forces confrontation with whether there is, in the possessive sense of ‘women’s’, any such thing. Is women’s sexuality, its absence? (MacKinnon, 1989: 118).

In saying this and adopting the belief that the construct of women’s sexuality is inescapable, MacKinnon can see no female identity beyond that projection. Because the requirements of the Feminine Ideal construct a woman in such a way as to make her body sexually available, does this then mean a woman possessed becomes that construct? According to MacKinnon:

[i]f women are socially defined such that female sexuality cannot be lived or spoken or felt or even somatically sensed apart from its enforced definition, so that it is its own lack, then there is no such thing as a woman as such; there are only walking embodiments of men’s projected needs. Under male supremacy, asking whether there is, socially, a female sexuality is the same as asking whether women exist (MacKinnon, 1989: 119).

Further, MacKinnon states that the reality of women’s personal lives is governed by the substantive principle of “pervasive powerlessness to men, expressed and reconstituted daily as sexuality” (MacKinnon, 1989: 120), so that the construct of the Feminine Ideal becomes inescapable:

[n]o matter how [women] think about it, try to think it out of existence or into a different shape, [the male world] remains independently real, keeps forcing them into certain moulds. No matter what they think or do, they cannot get out of it. It has all the indeterminacy of a bridge abutment hit at sixty miles per hour (MacKinnon, 1989: 123).

Thus, MacKinnon equates women’s experience of sexual inequality with a transformation into and internalisation of the very qualities that justify objectification of them. If this is the case, the spectre of a woman’s responsibility is raised: if women become the sexual ideal, does that not then justify and make explicable men’s sexual violation of them? There is a difference, therefore, between recognising the existence of a cultural ideal or construct, recognising the extent to which it is a dominant belief system, recognising the effects of it as a dominant belief system in a given society (such as the prevalence of rape and child sexual abuse) and recognising that the sexual abuse of women may be more the result of men’s projection of the characteristics of the Feminine Ideal upon them than a function of who women and children really are.
In addition, but recognising it as a separate issue, it may be that some women, to a
greater or lesser extent, actively practise a type of femininity that corresponds with the
characteristics of the Feminine Ideal.

What is being advanced in this discussion is that, historically, a Feminine Ideal has
been constructed in a variety of cultural sites to (falsely) attempt to define the
sexuality of women and to construct relations of power between some men and some
women. But although the Feminine Ideal has been traditionally the most common
"socially recognised and validated representation of women’s sexuality" (Grosz, 1994:
202), women as a group express their sexuality in a myriad of ways. As Naffine
(1994) observes, women as individuals are far more complex and varied than is
prescribed by the Feminine Ideal in the heterosexual paradigm:

the vastly more complex and diverse reality of being female keeps on happening
despite the efforts to make the archetype convincing ... [so that] the uncaptured truths
of ‘woman’ keep peering through (1994: 12; footnotes omitted.)

Whilst the cultural constructions of the Feminine and Masculine Ideals are widespread
in film, advertising, television soap operas, women’s magazines, pornography and the
fashion industry42, it is clear “they are not the whole story” (Connell, 1987: 182),
since other types of femininity “are defined centrally by strategies of resistance or
forms of non-compliance. Others again are defined by complex strategic
combinations of compliance, resistance and co-operation” (Connell, 1987: 183),
although “[t]he dominance structure which the construction of femininity cannot
avoid is the global dominance of heterosexual men” (Connell, 1987: 187). This
means that there is no corollary for femininity: there is no hegemonic form of
femininity which is constructed around the subordination of men to women, or even
of women to women (Connell, 1987: 187).

42 The extent to which it can be said that the passive Feminine Ideal is reproduced in Western
cultures is uncontroversial: as Naffine observes, evidence of the ideal may be found in the romance
section of any bookstore, pornographic magazines, women’s magazines, advertisements, television
soap operas, films and the like (Naffine, 1994: 21; 25). Of course, not all women conform to, nor
identify with this ideal and “we must be cautious in assuming an equation between such sado-
masochistic discourse and people’s lived experience of sexuality. Internal and external meaning
are not always identical. Our experiences do not simply mirror social meanings; though they are
inevitably filtered through them” (Segal, 1990: 209).
Thus, there is a difference between recognising “gender as a division of power [which] is discoverable and verifiable through women’s intimate experience of sexual objectification” and then concluding that gender, as a division of power, “is definitive of and synonymous with women’s lives as gender female” (MacKinnon, 1989: 120), so that women become “walking embodiments of men’s projected needs” (MacKinnon, 1989: 119). In other words, MacKinnon’s analysis produces “a one-sided view of woman-as-victim/man-as-oppressor” (Hollway and Jefferson, 1996: 377) which she considers underlies all heterosexual interactions.

This means that it is important to “acknowledge the reality of power [and gender relations] without presenting woman as eternal victim” and to insist “on the agency of the oppressed without denying the reality of oppression” (Connell, 1987: 14). At the same time, it seems important to recognise that if the Masculine Ideal is representative of dominant masculine practices that establish relations of power between men and women, women’s behaviour and sexual availability can be judged according to the content of the Feminine Ideal (even if a woman herself does not identify with the Ideal) in particular social sites where men have access to the power of men as a group and find public legitimation for their behaviour, such as through the refusal of the police to investigate a complaint of rape or child sexual abuse or the rules that govern the conduct of a sexual assault trial.43

This analysis shows, therefore, that sexuality is not “an essence or set of properties defining an individual, or ... a set of drives and needs (especially genital) of an individual” (Hartsock, 1984: 20-21). Whilst the Feminine Ideal is referable to the female body, the Ideal is clearly constructed through social practices:

[s]exuality must rather be understood as a series of cultural and social practices, meanings, and institutions which both structure and are in turn structured by social relations more generally. Thus, ‘sex is relational, is shaped in social interaction, and can only be understood in its historical context ...’ (Hartsock, 1984: 21; citing Weeks, 1981: 12).

In summary, Part C has argued that the heterosexual paradigm of man, the possessor, and woman, the possessed, assists in understanding the relationship between child
sexual abuse and masculine sexual practices, since female children can have projected onto them a sexuality that does not accord with who they are but which makes them sexually available, through the reproduction of the Masculine Ideal by some men. Through that projection, they become socially acceptable objects of masculine desire, despite the emotional, psychological and physical developmental limits of a female child being able to accommodate that sexuality. The characteristics of the Feminine Ideal of hegemonic discourse means that it is possible to see how sexual behaviour with female children is consonant with practices of normative masculine sexuality, and the reproduction of the Masculine Ideal. Arguably, for those men who, through sexual practices with children, strive to reproduce the Masculine Ideal, a projection of the Feminine Ideal (which embodies sexual passivity and receptivity) is a means by which female children can be constructed as sexually available, as consenting to heterosexual sex, as seductive or needing to know how to be sexual, with such descriptions asserting the normative nature of their constructed sexuality. If we go back to the quote at the beginning of this chapter, it is in this way that a child such as six year old Tammie is taken to ‘consent’ (‘she wants to be here too’; ‘she doesn’t have to do anything sexually that she doesn’t want to do’) and is deemed to need to be taught how to be sexual, thus turning the sexual exploitation of her into her ‘agreement’ and wish to be sexual.

D. CONCLUSION

The hypothesis that was posed at the beginning of this chapter was that child sex offending, rather than being a deviant sexual practice, is related to normative masculine practices, that is, practices that are structured on relations of power. In other words, it was hypothesised that child sex offending is specifically a sociological phenomenon which cannot be explained by pointing to innate biological or psychological tendencies of offenders.

In order to test the validity of this hypothesis, it was necessary to determine whether the social construction of gender was central to the sexual behaviour of child sex offenders and to determine whether child sex offending (as an example of one type of

43 This point is discussed in more detail in Chapter Six in relation to how the legal system operates as an institutional site for the practices of hegemonic masculinity.
masculine sexual behaviour) played a part in child sex offenders’ social development as men.

Part (i) of this chapter argued that gender is produced in individual interactions through active social practices (people ‘do’ gender) and symbolises social relations of power, being one of the key organisational principles of social life. In other words, it was argued that gender can be understood as constituting cyclical patterns which are both subject to change and reinforced through social practices. Further, Part (i) argued that when individuals practise gender, they are engaging with social structures of power, although their gender practices may be constrained and limited by those structures. In fact, it was argued that specific gender patterns are more likely to be reproduced in societies that institutionalise the practices of gender; that is, are structured in a way that differentiate between the sexes on the basis of power. Thus, it was argued that ‘doing’ gender produces relations of power which, if sufficiently cyclical, produce social structures of power that, whilst dynamic and changing, impose particular social constraints on particular individuals who may either conform to, or actively resist specific gender practices that serve to deprive them of social power.

As a result of this analysis, it was then necessary to examine how the emergence of structures of power were central to the accomplishment of different masculinities and to determine the relationship of sexuality to those structures of power for the purposes of determining whether there was a relationship between gender, power, sexuality and child sex offending.

Part (ii) of this chapter argued that the social construction of masculinities involves dynamic and changing practices of power which are, at the same time, sufficiently cyclical to create hierarchies of power between men. Because of these hierarchies of power (through the creation of hegemonic, marginalised and subordinated masculinities), it was argued that men’s lives are characterised by a combination of experiences of powerlessness and power, such that it could be said that experiences of powerlessness are as central to experiences of masculinity as are experiences of power. Further, it was argued that hegemonic masculine practices are typified by the
subordination of non-hegemonic masculinities through the construction of a Masculine Ideal which bears little relationship to the reality of who men are but sustains relations of power between men. It was then argued that, for some men, the antidote to experiences of powerlessness will be to engage in social practices in relation to other men or women to establish a measure of power relative to the perceived power and masculinity of other men.

In relation to the question of whether child sex offending is a particular masculine gender practice, it was necessary to determine whether sexuality was an important practice for the accomplishment of masculinities and experiences of power. In other words, since a man must ‘do’ gender in order to derive power, that is, actively engage in masculine social practices, it was necessary to determine whether sexuality was central to the accomplishment of masculinities. If so, it was then hypothesised that child sex offenders are ‘doing’ masculinity through their particular sexual practices, contrary to psychological analyses which define child sex offenders’ behaviour as a ‘deviation’ from the social practices of normative masculine sexuality, which would mean that emotional attachment to sexual objects is gendered in nature, whether we are talking about homosexual or heterosexual desire, or, indeed, desire for an adult or child.

In addressing these propositions, Part (iii) argued that heterosexism and homophobia are key social practices for establishing relations of power between men and for the reproduction of masculinities in which sexuality is central, and that sexuality is a key social practice for differentiation between masculinities, and between masculinities and femininities. Further, it was argued that men can alleviate experiences of powerlessness and establish relations of power with other men (real or imagined) through sexual practices with less socially powerful objects of desire. Therefore, it was argued that a man’s particular attachment to the link between sexual prowess and experiences of masculinity and power will be the key factor that determines how he does sex and who he chooses as a sexual partner.

Thus, Parts (iii), (iv) and (v) argued that in order to understand child sex offending as a gender practice, it is necessary to understand that the primary source of men’s
experiences of powerlessness is a result of their relations with other men in cultural contexts where, first, “the most virulent repudiators of femininity” (Kimmel, 1994: 138) will experience ‘true manhood’ and secondly, where, the dominance of hegemonic masculinity is sustained through the construction of a Masculine Ideal and the differentiation of subordinated and marginalised masculinities. In such contexts, experiences of powerlessness and power do not mean “power for its own sake, but power in relation to another to protect the vulnerable self” (Hollway and Jefferson, 1996: 384); that is, the self that is created through the effects of the masculine social practices of other men.

Furthermore, it was argued that different men will create situationally accomplished, unique masculine sexualities as a result of their distinct positions within the structural divisions of power, labour and sexuality. Because of the dynamic characteristics of different masculinities (whether hegemonic, subordinated or marginalised), different men will create different masculine sexualities as a result of their relationships with both socially dominant men and men of their own social backgrounds which means that sexuality can be a site for the reproduction of power for both socially enfranchised and disenfranchised men.

The arguments made in Parts (iii), (iv) and (v) have been based on, not only a recognition that hierarchical relationships between men are not fixed and that masculinities are reproduced by structured yet dynamic and changing relations of power, but also a recognition that there are similarities between different masculinities, if it is accepted that normative sexual elements are affirmed in the reproduction of different masculinities through exploitative sexual behaviour which constructs a power differential between a man and the object of his desire, and produces an internal experience of power relative to the other men. Thus, child sex offending can be understood as being consonant with normative masculine sexual practices which are structured by reference to the Masculine Ideal, since it allows some men to express a type of sexuality that is characterised by dominance and control. In other words, this chapter has argued that the behaviour of child sex offenders is symptomatic of a broader cultural framework in which exploitative masculinity is normative (that is, culturally prescribed) and in which the lives of men
are characterised by a combination of experiences of power and powerlessness, even though not all men will choose to express their sexuality through such behaviour. Arguably, however, child sex offending allows a man to accomplish masculinity and overcome experiences of powerlessness when his power is in jeopardy as a result of his relationships with other men, and is likely to be related to his distinct position of power/powerlessness within the “socially structured circumstances” in which he lives (Messerschmidt, 1993: 83).

Finally, because child sexual abuse is not confined to particular races, classes or ethnicities, it was argued that the analysis of child sex offending in this chapter can explain the sexual behaviour of different types of offenders, from the socially empowered, white, middle-class father to the comparatively less socially powerful homosexual offender, black offender or working-class offender; that is, from those with considerable public power to those with little public power, since both may experience instances of lack of personal power which, on an experiential level, will not necessarily equate with a man’s access to public power. In particular, this analysis has recognised that child sex offending, as a gender practice, is likely to represent different issues of power for different men practising different masculinities, and experiencing different degrees of power and powerlessness in their lives. For these reasons, this analysis constitutes a significant departure from other analyses of the relationship between gender and crime, since, contrary to predictions by criminologists, such as Messerschmidt (1993), it cannot be argued that men who experience significant structural and social disadvantage are more likely to engage in sexual behaviour with children. In other words, it has been necessary to analyse the complex array of relationships of power between men and the centrality of experiences of powerlessness for men who practise both hegemonic and subordinated forms of masculinity, since child sexual abuse has no class, racial, age or ethnic boundaries, as discussed in Chapter Four.

Part (vi) showed that the child sex offender profiles that find the greatest acceptance within the psychological literature are social constructs that bear little relationship to the reality of the men who sexually abuse children and that the distinction between the ‘dangerous’ paedophile and the non-dangerous family man is consonant with the
homophobic practice of hegemonic masculinity. In other words, 'paedophilia' is characteristically equated with homosexual child sex offending, and homophobia, as discussed previously, is central to the reproduction of hegemonic masculinity. In a way that is similar to the construction of the 'deviant' homosexual, the construction of the 'deviant' paedophile was shown to have more to do with relations of power among men than with accurately describing the reality of men who sexually abuse children.

The overall purpose of the analysis in Part (vi) was to highlight the possibility that many child sex offenders are likely to remain undetected or not prosecuted by the criminal justice system because of a lack of conformity with the 'dangerous' paedophile construct, and the possibility that the proclamation of difference between paedophiles and other offenders may serve to hide the real extent of the problem of child sexual abuse and to 'protect' the vast majority of offenders. Using the New South Wales jurisdiction as a case study, Chapter Five builds on this analysis by examining the relationship between the annual number of substantiated cases reported by community service agencies, the annual number of charges that are laid for child sex offences and the number that result in convictions, in particular, those that result in a guilty verdict at trial. Chapter Six then examines whether child sex offences are processed differently by the criminal justice system, compared to other criminal offences.

Part C of this chapter built on the analysis in Part B by arguing that through an understanding of the social construction of feminine sexualities, it is possible to understand how female children (who constitute the vast majority of victims of child sexual abuse) become socially acceptable objects for masculine desire and the exercise of power. In other words, female children can have projected onto them a sexuality that does not accord with who they are but which makes them sexually available, through the reproduction of the Masculine Ideal by some men. The characteristics of the Feminine Ideal of hegemonic discourse means that it is possible to see how sexual practices with children, rather than being deviant expressions of masculine sexuality, can be understood as being consonant with normative masculine sexual practices and the reproduction of the Masculine Ideal.
In conclusion, child sexual abuse has not been commonly understood as being related to masculine sexual practices and to the contradictory experiences of power and powerlessness that characterise men's lives. Instead, child sex offending has been variously viewed as an issue of deviance and pathology within the province of psychiatry and psychology, an issue of fantasy within psychoanalysis, an issue of biology within the field of sociobiology, an issue of morality within religion and an issue of the family versus the state within the politics of patriarchy. By way of contrast, this chapter has argued that different masculinities contain normative sexual elements that some men reproduce and affirm through child sex offending in cultural environments where the lives of men are characterised by varying degrees of power and powerlessness, as a result of the masculine social practices of other men. The theory that has been developed in this chapter to explain the sexual behaviour of child sex offenders is called the power/powerlessness theory, in order to emphasise this reality of men's lives.

The analysis in this chapter, therefore, constitutes an original contribution to sociological understandings of crime committed by men, since rather than analysing the crime of child sexual assault from the perspective of social and structural disadvantage, this analysis has engaged with gender in a uniquely different way by constructing a theory (the power/powerlessness theory) which explains the structural constraints that affect the lives of both socially enfranchised and disenfranchised men, in order to address the fact that, unlike many other crimes committed by men, child sexual abuse is not confined to particular classes, races, ethnicities or ages.

Arguably, this analysis also addresses the problems associated with the essentialism and universality of many structural analyses, in that the analysis is dependent on a recognition of the dynamic and changing nature of gender practices, in order to be able to explain the complex array of relationships of power between men and the centrality of experiences of powerlessness for men who practise both hegemonic and subordinated forms of masculinity. In other words, rather than predicting that sexual behaviour with children is a product of rigid structures of power on the part of certain men, this analysis envisages structure as a fluid metaphor, which can be considered, at one and the same time, to be sufficiently cyclical to produce particular phenomena at
particular historical times and places, whilst also being constituted by social practices that are in constant change and flux.

The next chapter, Chapter Four, tests the power/powerlessness theory that has been developed in this chapter through, first, an analysis of the characteristics of child sex offenders derived from empirical studies and, secondly, an analysis of the experiences of power and powerlessness of a sample of incarcerated child sex offenders.
CHAPTER FOUR

THE MASCULINE SEXUAL PRACTICES OF CHILD SEX OFFENDERS: TESTING THE POWER/POWERLESSNESS THEORY

A. INTRODUCTION

This chapter tests the validity of the power/powerlessness theory developed in Chapter Three. The chapter is divided into four main parts: Parts B, C, D and E.

Part B provides the empirical context in which the material in Parts C and D need to be read, since Part B examines whether child sex offending is confined to specific and identifiable groups of men or whether it is a cross-racial and cross-cultural phenomenon. Specifically, Part B analyses victim report studies conducted in Australia, New Zealand, Britain and the USA in order to determine whether the widely accepted fixated/regressed child sex offender typologies (described in Chapter Two) are representative of the majority of child sex offenders.

In fact, Part B shows that the vast majority of child sex offenders cannot be explained by these typologies and that victims of child sexual abuse and offenders are not confined to particular classes, races or ethnic groupings. As such, this chapter argues that because of the widespread nature of child sexual abuse there is a need for an explanation that is able to explain the wide variety of men who engage in sexual behaviour with children.

Part C then reviews how the psychological literature attempts to explain men’s sexual behaviour with children. Specifically, Part C analyses the characteristics of child sex offenders that are documented in the psychological literature in order to determine the validity of their explanatory power for understanding why men sexually abuse children. Since the discussion in Part C analyses the psychological characteristics of child sex offenders within a sociological context, it shows how explanations that focus on individual characteristics do not provide an adequate causal explanation of child
sex offending as a widespread social phenomenon. Part C then considers whether the power/powerlessness theory provides the ‘missing link’ between the possession of a particular psychological characteristic and subsequent child sex offending.

In light of the analysis in Part C, which shows that there is an explanatory vacuum in the psychological literature as to why some men sexually abuse children, Part D considers whether the power/powerlessness theory is capable of filling the vacuum. Specifically, Part D tests the validity of the power/powerlessness theory by re-analysing child sex offender interviews conducted by Colton and Vanstone (1996) in order to determine the extent to which experiences of powerlessness are central to the offenders’ lives as a result of their relationships with other men, and the centrality of their sexual practices to their place in masculine hierarchies.

Finally, Part E addresses the argument that feminist analyses for explaining the preponderance of male child sex offenders are flawed because they fail to take account of the fact that women also sexually abuse children.

B. VICTIM REPORT STUDIES AND CHILD SEX OFFENDER PROFILES: A BAD MATCH?

(i) Introduction

This section analyses studies on the prevalence of child sexual abuse in order to determine what those studies say about the validity of the fixated/regressed classification scheme, since these studies reveal, not only the prevalence of child sexual abuse in the general population\(^1\), but also the prevalence of the types of offenders in the general population.

By way of summarising what was said in Chapter Two about the fixated/regressed offender profiles, research on incarcerated child sex offenders proposed that they could be classified into two distinct offender groups: fixated offenders (homosexual, 

---

1 Prevalence studies estimate the proportion of a population that has experienced sexual abuse during childhood, usually defined as that period of time under 18 or 16 years. Such studies are to be compared to incidence studies which estimate the number of new cases of child sexual abuse “occurring in a given time period, usually a year” (Wyatt and Peters, 1986a: 231) and usually measured as children per 100,000.
extrafamilial offenders who have an exclusive sexual attraction to children) and regressed offenders (heterosexual, intramural offenders who have a primary sexual attraction to women and only sexually abuse (mainly female) children as a result of stress, alcohol abuse and/or family dysfunction). Such research proposes that child sexual abuse is a function of individual offender pathologies, such as arrested sociosexual maturation, emotional immaturity, low self-esteem, and narcissistic identification with male children (in the case of the fixated offender) or situational factors such as stress, alcohol, family breakdown, blocked sexual outlet with spouse, or seductive daughters (in the case of the regressed offender). Other 'causes' which have emerged in the literature include prior physical or sexual abuse histories. According to the fixated/regressed offender typologies, the child sex offender is a sexual deviant and psychiatric/psychological research is directed towards diagnosis, prediction of recidivism and treatment of the offender so as to make him more like 'normal' men, whom, it is assumed, only engage in sex with women.

Table 4.1 lists those studies conducted in Australia, Britain, New Zealand and the USA which estimate prevalence rates of child sexual abuse. Because such studies involve random population samples (as opposed to clinical, college or incarcerated samples), they allow predictions to be made about the general population as a whole. Using these studies, this analysis tests the hypothesis that the fixated/regressed categories of offenders are not representative of the vast majority of those offenders who abuse both girls and boys.

Finkelhor (1994) has carried out a comparative study of surveys conducted in 21 countries on the prevalence of child sexual abuse. He found that all studies "found rates in line with comparable North American research, ranging from 7% to 36% for women and 3% to 29% for men. Most studies found females to be abused at 1 1/2 to 3 times the rate for males" (1994: 409). Of the studies conducted outside North America, only four "were reported in easily accessible English-language journals or books" (Finkelhor, 1994: 410) and because "[t]he studies are extremely variable in their scope and quality ... it is not possible or appropriate to make direct comparisons among the rates from different countries" (1994: 410-411). However, Finkelhor notes that studies conducted outside North America which used similar survey methodology
# TABLE 4.1

## PREVALENCE OF CHILD SEXUAL ABUSE FROM GENERAL POPULATION STUDIES IN AUSTRALIA, NZ, UK AND USA

<table>
<thead>
<tr>
<th>STUDY</th>
<th>SAMPLE SIZE</th>
<th>SAMPLE STUDIED</th>
<th>PREVALENCE Females</th>
<th>PREVALENCE Males</th>
</tr>
</thead>
<tbody>
<tr>
<td>Russell (1983); Russell (1986) (a)</td>
<td>930</td>
<td>Probability sample of adult women in San Francisco</td>
<td>38% experienced contact abuse &lt;18; 28% experienced contact abuse &lt;14; 54% experienced non-contact or contact abuse &lt;18; 48% experienced non-contact or contact abuse &lt;14;</td>
<td>N/A</td>
</tr>
<tr>
<td>Finkelhor (1984) (b)</td>
<td>521</td>
<td>Probability sample of parents in Boston, MA</td>
<td>15% experienced contact or non-contact abuse &lt;16</td>
<td>6% experienced contact or non-contact abuse &lt;16</td>
</tr>
<tr>
<td>Baker and Duncan (1985) (a)</td>
<td>2019</td>
<td>Probability sample of men and women in Britain aged &gt;15</td>
<td>12% contact and non-contact abuse &lt;16</td>
<td>8% contact and non-contact abuse &lt;16</td>
</tr>
<tr>
<td>Wyatt (1985) (a)</td>
<td>248</td>
<td>Probability sample of Afro-American and white women in Los Angeles County, aged 18-36 yrs</td>
<td>45% contact abuse &lt;18; 62% contact or non-contact abuse &lt;18</td>
<td>N/A</td>
</tr>
<tr>
<td>Siegel, Sorenson, Golding, Burnam and Stein (1987) (a)</td>
<td>3132</td>
<td>Probability sample in Los Angeles</td>
<td>6.8% contact abuse with pressure or force &lt;16</td>
<td>3.8% contact abuse with pressure or force &lt;16</td>
</tr>
<tr>
<td>Mullen, Romans-Clarkson, Walton and Herbison (1988) (a)</td>
<td>2000</td>
<td>Random community sample of New Zealand women</td>
<td>10% some form of contact abuse &lt;13</td>
<td>N/A</td>
</tr>
<tr>
<td>Study</td>
<td>Sample Size</td>
<td>Sample Description</td>
<td>Prevalence of Abuse</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-------------</td>
<td>--------------------</td>
<td>---------------------</td>
<td></td>
</tr>
<tr>
<td>Finkelhor, Hotaling, Lewis and Smith (1990) (c)</td>
<td>2,626 (1,145 m; 1,481 w)</td>
<td>Random sample of American men and women &gt; 18</td>
<td>27% at least one experience of contact or non-contact abuse &lt; 18</td>
<td></td>
</tr>
<tr>
<td>Anderson, Martin, Mullen, Romans and Herbison (1993) (d)</td>
<td>3000 (1,660 responses)</td>
<td>Random community sample of New Zealand women &lt; 65</td>
<td>32% non-contact abuse and contact abuse &lt; 16; 25% contact abuse &lt; 16</td>
<td></td>
</tr>
<tr>
<td>Fleming (1997) (e)</td>
<td>710</td>
<td>Random community sample of Australian women</td>
<td>33% non-contact and contact abuse &lt; 16; 20% contact abuse &lt; 16</td>
<td></td>
</tr>
</tbody>
</table>

Notes:
A probability sample is considered to be representative of "the population from which it is selected, if all members of the population have an equal chance of being selected in the sample" (Wyatt and Peters, 1986a: 234). Random sampling involves ...

Interviewing Method:
(a) Face-to-face interviews.
(b) Completion of self-administered questionnaires.
(c) Telephone interview.
(d) Postal questionnaire then face-to-face interviews.
(e) Postal questionnaire
and definitions of child sexual abuse to that used in North American studies produced similar rates to those North American studies (1994: 411). Finkelhor’s findings mean that the studies listed in Table 4.1 can be said to be a representative sample of studies conducted in Western countries on the prevalence of child sexual abuse. Whilst there are difficulties associated with making comparisons between the studies, these difficulties are discussed in detail and comparisons between the studies are limited to what they say about offender types.

Before analysing these studies for the information they contain about child sex offender types, it is necessary to document how and to what extent the studies compare with each other on the issue of the prevalence of child sexual abuse.

(ii) The Studies: What They Say about the Prevalence of Child Sexual Abuse

Retrospective community studies of the prevalence of child sexual abuse in Australia, New Zealand, the USA and Britain show a marked variation in the prevalence of women and men who have been abused before the age of 18, with rates of sexual abuse ranging from 7 to 62 per cent of the general adult female population and from 4 to 16 per cent of the general adult male population, as shown in Table 4.1. These variations are due to:

(i) the particular definition of child sexual abuse used by a study; that is, whether the definition includes both contact and non-contact abuse (such as, exhibitionism, showing a child pornography, sex acts in the presence of a child) or whether a study adopts a narrow definition in relation to the nature and content of the acts (for example, abuse associated with pressure or force);

(ii) whether a study specifies unwanted sexual experiences;

(iii) differences in the upper age limit used to define a child, that is, 14, 16 or 18;

---

2 All studies listed in Table 4.1 are retrospective, since as Anderson, Martin, Mullen, Romans and Herbison (1993) observe, “[a]lthough retrospective studies of CSA are open to distortion of memory, they remain the only method open to most researchers for obtaining the necessary information, given the overwhelming ethical and legal restraints on conducting cross-sectional or prospective studies on children. Obtaining parental consent for such research would by itself introduce serious bias among those children being abused within their own families” (1993: 911).

3 Gibbons (1996) observes that “[d]efinitions which specify unwanted sexual behaviour will not include the fairly common instances where the child is taught to believe they asked for the sexual contact” (1996: 1755).
(iv) differences in how a perpetrator is defined; for example, whether a study uses a definition requiring the offender to be at least 5 years older than the victim or whether a study includes non-consensual sexual abuse committed by age peers;

(v) differences in methodology, such as type of interviewing method; number of questions used to elicit information; the clarity of the questions used to explain what constitutes sexual abuse; broadness or narrowness of the questions; the sex, ethnicity and skill of the interviewer; length of interview (Wyatt and Peters, 1986b);

(vi) true differences in prevalence rates from one sample to another as a result of regional variations (Wyatt and Peters, 1986a: 245) or as a result of cultural differences between countries;

(vii) how the study is described to the sample population, since Wyatt and Peters (1986b) have found that response and prevalence rates appear to depend on how broadly the study is described;

(viii) differences in the age range of the subjects studied (Wyatt and Peters, 1986a: 247); and

(ix) the ethnic composition of the samples studied (Wyatt and Peters, 1986a: 247).

As Wyatt and Peters (1986b) observe, these reasons “are not mutually exclusive and each may play some part in accounting for the widely discrepant findings” reported in different prevalence studies (1986b: 242).

---

4 The inclusion of abuse by age peers is considered important, given that “studies of rape victims indicate that adolescents are particularly at risk to be raped” and that “male rapists, like their victims, are found disproportionately in the adolescent and young-adult age groups” (Salter, 1988: 20). Thus, Salter considers that studies that exclude “unwanted sexual activity between peers and only rely on an age differential as the sole criterion for sexual abuse will underestimate the extent of the problem by excluding significant numbers of victims who have been forcibly raped by peers” (1988: 20-21).

5 Anderson et al (1993) consider that the use of multiple questions allows “for a comprehensive picture to emerge of” types of abuse, since loss of recall or loss of accuracy over time “can be countered to some extent by asking a sufficient number of event-specific questions to trigger recall of the abuse experience itself and the related details” (Anderson et al, 1993: 916).

6 For example, Wyatt and Peters (1986b) postulate that if a study is described as a study to do with child sexual abuse, “nonabused individuals might perceive their own experiences as being outside the researcher's sphere of interest and thus be less likely to participate”, resulting in artificially high prevalence rates (1986b: 245).
Looking at the studies in more detail, overall, the prevalence rates of the sexual abuse of girls reported by Russell (1983) and Wyatt (1985) are from approximately one and a half to eight times greater than the rates reported by the other studies listed in Table 4.1. One of the intriguing issues, therefore, is to explain how different studies which all utilise random sampling techniques produce widely different prevalence rates, as exemplified by Finkelhor’s (1984) study (15 per cent prevalence rate for both contact and non-contact abuse for girls), compared to Wyatt’s (1985) study (62 per cent prevalence rate for both contact and non-contact abuse for girls).

One of the main discrepancies between these studies is due to the differences in the definition of child sexual abuse. For example, Russell (1983) and Wyatt (1985) define child sexual abuse as that occurring under the age of 18; the prevalence of child sexual abuse in these two studies is higher than all the studies listed in Table 4.1 where child sexual abuse was defined in relation to the upper age limit of 16 years or less (that is, the studies of Finkelhor, 1984; Baker and Duncan, 1985; Siegel et al, 1987; Mullen et al, 1988; Anderson et al, 1993; Fleming, 1997). In fact, Wyatt and Peters (1986a) have demonstrated that “differences in definitions of child sexual abuse do have an impact on prevalence rates” by re-computing data from Wyatt’s (1985) study using Finkelhor’s (1984) more restrictive definition of child sexual abuse, and finding that Wyatt’s prevalence rate dropped from 62 per cent to 54 per cent (1986a: 236). Nonetheless, because this reduced rate is still more than three times the prevalence rate reported by Finkelhor, differences in the definition of child sexual abuse are not the whole story.

Different rates are also likely to be produced if different interviewing methods are used, such as self-administered questionnaires, face-to-face interviews or telephone interviews. For example, Wyatt and Peters (1986b) consider that “differences in the method of data collection may be a highly significant factor contributing to discrepancies in prevalence rates” and showed that face-to-face interviews “were associated with higher prevalence rates than those derived from self-administered questionnaires” (1986b: 247). In particular, studies which did not employ face-to-face interviews (such as those of Finkelhor et al, 1990; Fleming, 1997 and Anderson et al,
1993;7) are unlikely to have uncovered those abuse experiences that a person does not define as abuse “due to their own attributions regarding victimization or their own perceptions of the definition of the type of experiences appropriate to the study” (Wyatt and Peters, 1986b: 250). In addition, Russell (1983) considers that “women may be less likely to disclose the more taboo experiences of father-daughter and other cross-generational incestuous abuse on a self-administered questionnaire ... than in a face-to-face interview with well trained interviewers who have had an opportunity to build a good rapport with the respondent” (1983: 144).

Thus, the studies listed in Table 4.1 which used self-administered questionnaires (at least at the initial screening stage) or telephone interviews produced a much lower prevalence rate. On the other hand, studies, such as those of Russell (1983) and Wyatt (1985) which used face-to-face interviews produced very similar prevalence rates8, although even studies which used face-to-face interviews but employed “crude ..., market-survey methodology using a single, vague screening question” (Finkelhor, 1994: 411), as did the Baker and Duncan (1985) study, are likely to produce an underestimation of the prevalence of child sexual abuse.

Differences in prevalence rates may also be produced by regional and cultural differences between sample populations. For example, the British study by Baker and Duncan (1985), the Australian study by Fleming (1997) and the two New Zealand studies by Mullen et al (1988) and Anderson et al (1993) all report significantly lower prevalence rates of abuse against girls compared to the American studies of Russell (1983) and Wyatt (1985). Only one American study, that of Finkelhor et al (1990), produced a rate comparable to the British, Australian and New Zealand studies, although it must be noted that the type of interviewing method in the British, Australian and New Zealand studies was different to that of Russell (1983) and Wyatt (1985).

---

7 Although Siegel et al (1987) used face-to-face interviews they limited their study to those incidents of child sexual abuse experienced before the age of 16 which involved pressure or force.

8 Although Mullen et al (1988) used face-to-face interviews, their definition was extremely narrow since they confined their definition of child sexual abuse to experiences under the age of 13.
Finally, prevalence rates may vary depending upon the number of survivors of child sexual abuse in a sample population who refuse to reveal that they have been abused, who do not remember the abuse, who “do not interpret what happened to them as sexual abuse even though the acts clearly qualify” as sexual abuse (Gilmartin, 1994: 15; references omitted), or because severely traumatised individuals become part of hospital, street or prison populations which usually do not form part of random survey samples (Painter, 1986: 336).

(iii) The Studies: What They Say about Offender Types

In the first random sample survey conducted on the prevalence of child sexual abuse, Russell (1983) reported that out of 930 women from San Francisco, 38 per cent had experienced unwanted contact abuse before the age of 18. When compared with other studies discussed below, this is a relatively high figure, particularly given the narrow definition of extra-familial sexual abuse used in the study9 and given that contact abuse only is included. When unwanted non-contact sexual experiences were included, Russell reported that 54 per cent of the 930 women had had at least one experience of sexual abuse before the age of 18.

Of the 38 per cent of women who reported at least one experience of contact abuse before the age of 18, 31 per cent had experienced extra-familial abuse as opposed to intra-familial abuse (16 per cent10), which is contrary to what the fixated/regressed typologies would predict. In terms of the type of abusers, 29 per cent of all abusers were intra-familial (with only 5 per cent of all intra-familial perpetrators being female), with 4.5 per cent of the 930 women being abused by a father, stepfather or adoptive father, 3.2 per cent by either male or female cousins (2 per cent female), 2 per cent by brothers, 4.9 per cent by uncles, and 3.8 per cent by another male relative.

---

9 Russell defined extra-familial child sexual abuse as “one or more unwanted sexual experiences with persons unrelated by blood or marriage, ranging from petting (touching of breasts or genitals or attempts at such touching) to rape, before the victim turned 14 years, and completed or attempted forcible rape experiences from the ages 14 to 17 (inclusive)”, although a broader definition was given to intrafamilial child sexual abuse: “any kind of exploitative sexual contact that occurred between relatives, no matter how distant the relationship, before the victim turned 18 years old”, but excluding consensual sexual experiences with a peer. A peer was defined as someone who was less than five years older than the child in question (Russell, 1983: 135-136).
In relation to other offender types, 11 per cent were strangers and 60 per cent were known but unrelated to the victims (Russell, 1986: 216-219). Fathers did not, as the fixated/regressed typologies would predict, constitute the majority of perpetrators nor did they constitute a majority of the intra-familial abusers; in fact, only 4.5 per cent of the total number of abusers in this study can be explained by the ‘regressed’ father category of abusers.

In fact, the vast majority of abusers of the 930 women were extra-familial abusers: 17 per cent were strangers, 42 per cent were acquaintances and 41 per cent were either friends of the child, friends of the family, dates, boyfriends or lovers. Only 4 per cent of extra-familial abusers were female. Thus, Russell’s survey shows that the vast majority of abusers of girls cannot be explained by the regressed/fixed categories, since when all cases of intrafamilial and extra-familial child sexual abuse are combined, the majority of perpetrators are not relatives, let alone ‘regressed’ fathers.

What type of abuse did fathers engage in? Contrary to the stereotype of ‘regressed’ fathers abusing inadvertently or as a one-off response to stress, Russell (1986) reports that “fathers were the most likely to sexually abuse their daughters eleven times or more” (1986: 223) and the majority of fathers, uncles and grandfathers abused their victims over extended periods of time ranging from one year to five years or more (Russell, 1986: 224). Russell also compared the seriousness of the intra-familial and extra-familial abuse reported in her study and defined three categories of abuse: very serious (from forced penile-vaginal penetration to attempted acts of oral sex and anal intercourse, not by force), serious (from forced digital penetration of the vagina to non-forceful attempted breast contact (unclothed) or simulated intercourse) and least serious (from forced kissing, intentional sexual touching of various parts of the body including contact with clothed breasts or genitals to attempts of the same acts without the use of force) (1983: 14). Using these three categories of abuse, she found that “23% of all incidents of intra-familial sexual abuse were classified as Very Serious, 41% as Serious, and 36% as Least Serious” and that 41% of the intra-familial cases

---

10 Since the figures of 16 and 31 per cent do not add up to 38 per cent this indicates “there is some overlap between the respondents who ... experienced intrafamilial and extrafamilial child sexual abuse” (Russell, 1983: 137).
involved force or threats of force (1983: 140; emphases in original). In particular, she found that “when stepfathers abuse their daughters, they are much more likely than any other relative to abuse them at the most serious level”, with 47% of sexual abuse by stepfathers falling into the very serious abuse category (1983: 140).

In relation to cases of extra-familial abuse, 53% were classified as very serious, 27% as serious and 20% as least serious, indicating that “children who are sexually abused outside the family are abused in a significantly more serious manner” (1983: 142). Such data suggests that the fixated/regressed categories are greatly misleading, in that they ignore a substantial amount of the abuse, and the most serious forms of abuse, to which girls are subject. In other words, the prediction of father-daughter incest by fixated/regressed typologies appears to be over-exaggerated, relatively speaking, compared to the risk of extra-familial abuse to which girls appear to be more likely to suffer. As Russell’s data shows, almost twice as many women reported at least one experience of contact extra-familial abuse before the age of 18 (31 per cent) compared with those who reported at least one experience of contact intra-familial abuse before the age of 18 years (16 per cent).

In a community study of a random sample of Boston households with parents of children aged 6 to 14 years, Finkelhor (1984) found that 15 per cent of the women and 6 per cent of the men reported that they had been sexually abused before the age of 16¹¹, with 97 per cent of perpetrators being male. When compared with the prevalence rates of other studies listed in Table 4.1, these figures are extremely conservative, not least because only those experiences that the respondents themselves considered to have been sexual abuse were reported by Finkelhor as sexual abuse (Finkelhor, 1984: 71).¹²

¹¹ Respondents were asked in a self-administered questionnaire, “‘During the time before you were 16, were any sexual things done to you or with you by a person at least 5 years older than you?’” Respondents were also asked about “attempts to do sexual things” (Finkelhor, 1984: 71) and if they “reported any such sexual things or attempts to do sexual things, they filled out a more detailed questionnaire on up to three such experiences” (1984: 70-71).

¹² In a comparison of his study with that of Russell’s (1983), Finkelhor notes that the much higher rates of sexual abuse reported by women in Russell’s study may be due to first, the different definitions of abuse between the two studies (as discussed above), secondly, the fact that the respondents in Finkelhor’s study “had to label the experience as ‘abuse’” before it was counted (Finkelhor, 1984: 81), and thirdly, the differences in the study populations. Finkelhor observed
In terms of the relationship of the perpetrators to their victims, Finkelhor reports four categories of offenders but does not give details about which offender types abused boys compared to those who abused girls: 8 per cent of both girls and boys had been abused by a parent, 24 per cent by a relative, 35 per cent by an acquaintance and 33 per cent by a stranger (1984: 83). Nevertheless, neither the 'regressed' father category nor the 'fixated' stranger category account for the majority of perpetrators in this study.

In the British study by Baker and Duncan (1985)\(^{13}\), rates similar to those reported by Finkelhor were found, that is, 12 per cent of women and 8 per cent of men reported contact or non-contact abuse before the age of 16. Like the findings in Russell's study, the vast majority of abusers were extra-familial, with only 14 per cent of all cases of abuse being intra-familial and no information was given on the sex of the abusers. In addition, whilst Baker and Duncan report that "girls (78%) are significantly ... more at risk than boys (22%)" of abuse by close family members (natural parents, grandparents or siblings), both "[b]oys and girls seemed to be more or less equally at risk within the wider family" and "girls (56%) appear to have been slightly more at risk than boys (43%) of abuse by strangers" (Baker and Duncan, 1985).

---

\(^{13}\) Baker and Duncan considered that "[a] child (anyone under 16 years) is sexually abused when another person, who is sexually mature, involves the child in any activity which the other person expects to lead to their sexual arousal. This might involve intercourse, touching, exposure of the sexual organs, showing pornographic material or talking about sexual things in an erotic way" (1985: 458). Thus, Baker and Duncan's definition of child sexual abuse includes both contact and non-contact abuse and was "used to allow for the inclusion of abuse by a peer who was sexually mature, but not necessarily adult, but to exclude mutual sexual experimentation between prepubertal children" (1985: 458).
1985: 459), although the fixated/regressed classification would predict that boys would be at greater risk of abuse by strangers.

In summary, Baker and Duncan's study showed that more boys (44%) than girls (30%) were subject to extra-familial abuse, more girls (56%) than boys (43%) were subject to stranger abuse and both boys and girls (13% and 14%, respectively) reported almost identical rates of intra-familial abuse, contrary to what the fixated/regressed typologies would predict. In relation to boys, 57 per cent of abusers in Baker and Duncan's are not able to be explained by the fixated/regressed categories of child sex offenders and at least 86 per cent of abusers of girls are not able to be explained by these categories. In fact, these findings confirm those of Russell's that girls are less likely to be abused by fathers than extra-familial abusers, including strangers.

The study by Wyatt (1985) of 248 Afro-American and white American women reported the highest prevalence rate for girls out of all the studies listed in Table 4.1 for both contact only abuse (45 per cent) and combined contact and non-contact abuse (62 per cent). When incidents of peer abuse were deleted, Wyatt reports that the prevalence rate dropped to 59 per cent for both contact and non-contact abuse and, even when non-contact abuse incidents are deleted from the data, "the prevalence remains higher than previous reports", that is, 1 in 2.5 Afro-American women and 1 in 2 white women "experienced some form of abuse involving body contact" (1985: 518).

In relation to the types of perpetrators, 100 per cent of abuse incidents reported by white women and 97 per cent of abuse incidents reported by Afro-American women

14 Wyatt defined sexual abuse as those experiences prior to the age of 18 which involved "contact of a sexual nature, ranging from those involving non-body contact such as solicitations to engage in sexual behavior and exhibitionism, to those involving body contact such as fondling, intercourse and oral sex", as long as the abuser was 5 years or older than the subject. If, however, the age difference was less than 5 years, "only situations which were not wanted by the subject and which involved some degree of coercion were included" (Wyatt, 1985: 511). In addition, all experiences whether wanted or unwanted were considered abuse if the victim was 12 years or younger, whereas if the victim was from 13 to 17 years old, "experiences were considered abusive if the perpetrator was older and if the experiences were unwanted", so that "[c]onsensual, exploratory sexual behaviors between minors were not included in the definition of abuse" (1985: 511).
were committed by male offenders. The Afro-American women in the study were subject to abuse by strangers in 37 per cent of cases, by family members in 29 per cent of cases (with fathers, foster fathers, stepfathers or mothers' boyfriends accounting for 10 per cent of cases) and by unrelated but known men in 34 per cent of cases (2 per cent were authority figures and 32 per cent were babysitters, neighbours or friends of the family). On the other hand, white American women were abused by strangers in 51 per cent of cases, by family members in 19 per cent of cases (with fathers, stepfathers, foster fathers and mothers' boyfriends accounting for 6 per cent of cases) and by men known but unrelated in 30 per cent of cases (26 per cent were babysitters, neighbours or friends of family and 4 per cent were authority figures).

In terms of the type of abuse committed by each type of perpetrator, Wyatt reports that for white women, contact abuse was more likely to occur by fathers and stepfathers (100 per cent), followed by other relatives (90 per cent), acquaintances (85 per cent) and strangers (31 per cent). For Afro-American women, contact abuse was found to have been committed in similar proportions to that experienced by white women: 93 per cent fathers or stepfathers, 76 per cent acquaintances, 75 per cent other relatives and 15 per cent strangers (Wyatt, 1985: 517).

Wyatt’s study shows that both white and Afro-American women were at greatest risk of abuse by strangers and men known but unrelated to the victim, contrary to what the fixated/regressed typologies would predict. In fact, fathers accounted for a relatively small proportion of all abuse incidents reported by the women in this study and even of the intra-familial abuse reported. These figures confirm the findings of Russell (1983) and Baker and Duncan (1985) that girls are at much greater risk of abuse by extra-familial offenders than fathers.

Out of all the studies listed in Table 4.1, the lowest prevalence rates of sexual abuse in a community sample are reported by Siegel et al. (1987) who asked respondents: “‘In your lifetime, has anyone ever tried to pressure or force you to have sexual contact? By sexual contact I mean touching your sexual parts, your touching their sexual parts, or sexual intercourse?’” (1987: 146), thus using the narrowest definition of child sexual abuse of all the studies listed in Table 4.1.
In terms of types of perpetrators, of whom 93 per cent were male, Siegel et al reported that for girls, 13.1 per cent of offenders were a parent, 10.1 per cent were other relatives, whilst the vast majority of girls were abused by non-familial offenders, that is, acquaintances (29.5 per cent), friends (23.1 per cent), strangers (21.1 per cent), lovers (7 per cent) or spouses (3.4) per cent. Similarly, the vast majority of boys were abused by non-familial offenders, that is, acquaintances (15.6 per cent), friends (31.5 per cent), strangers (27.7 per cent) or lovers (7.7 per cent), whereas only 12.2 per cent were abused by a relative and none by a parent. In addition, the sex of the child was unrelated to the likelihood of reports of repeated sexual abuse during childhood and relatives were just as likely as extra-familial offenders to commit repeated abuse. Whilst girls were three times more likely to be assaulted by a relative than boys, both boys and girls were at greater risk of abuse by extra-familial offenders.

In the first prevalence study of New Zealand women, Mullen et al (1988)\textsuperscript{15} found that 20 of the 36 women who reported being sexually abused and were willing to give details of the abuse said their abuser was a stranger (56 per cent), 6 were abused by either a father or stepfather (17 per cent), 3 by a grandfather (8.3 per cent), 2 by older brothers (5.6 per cent) and 5 by other male relatives (13.9 per cent) (1988: 842). Again, this data confirms the findings in the studies discussed above in that it shows that the vast majority of abusers of girls were not 'regressed' fathers, that the subjects were more likely to have been abused by a stranger than by someone related to them and that girls are at greater risk of extra-familial abuse than intra-familial abuse.

In the second prevalence study of New Zealand women, Anderson et al (1993)\textsuperscript{16} also found that the majority of abusers were male (only 2\% of cases involved female

\textsuperscript{15} Mullen et al do not provide a definition of child sexual abuse other than to say that the subjects of their study were “asked whether they had experienced sexual abuse as a child or adult” (1988: 841).

\textsuperscript{16} The study by Anderson et al (1993) defined six types of child sexual abuse, that is, (i) non-contact abuse including “exposure, spying, indecent suggestions, pornography”; (ii) non-genital including “touching of breasts or buttocks, inappropriate kissing, and attacks with an obvious sexual motive that stopped before any sexual behavior occurred”; (iii) genital, that is, “touching of the child’s genital area, either clothed or unclothed”; (iv) genital touching involving “forcing or persuading the child to touch the abuser’s genital area”; (v) attempted intercourse, that is, “attempts at
abusers) and the majority of them were known to their victims: 38.3% of abuse episodes were intra-familial, 46.3 per cent of abuse episodes involved people known but unrelated to the victim ("family friends, neighbors, and people in some position of trust or authority such as babysitters, teachers, and close family friends as well as boyfriends and persons boarding with the family": Anderson et al, 1993: 915), whilst only 15 per cent were stranger abuse episodes. Intra-familial abuse (16 per cent of abusers were relatives living with the child, whilst 22.3 per cent were related but not living in the same household) by any relative “was more likely to be chronic than nonfamilial abuse ..., and this relationship was even stronger for abuse by a close family member living in the same household” (Anderson et al, 1993: 915), although fathers and stepfathers constituted only about 8 per cent of intra-familial abusers.17 Altogether then, only about 8 per cent of abusers could in any way be explained by the regressed category of offender. This study also confirms the finding that girls are at greater risk of extra-familial abuse than abuse by fathers.

In the national American survey conducted by Finkelhor et al (1990)18, 27 per cent of girls and 16 per cent of boys were found to have experienced at least one episode of contact or non-contact abuse before the age of 18. Boys were found to be more likely to be abused by strangers than girls (40% vs 21%) and girls were more likely to be abused by family members (29% vs 11%) (Finkelhor et al, 1990: 21), contrary to the findings of Baker and Duncan (1985). However, of the girls, only 6 per cent were abused by a father or step-father, indicating that the vast majority of girls were abused

---

17 This figure is approximate only, since Anderson et al do not provide exact figures on the breakdown of types of abusers, only a graph which is marked in intervals of five.
18 Finkelhor et al (1990) used a relatively broad definition of child sexual abuse which included both contact and non-contact abuse. Respondents to their survey were asked the following four questions: “1. When you were a child (elsewhere indicated to be age 18 or under), can you remember having any experience you would now consider sexual abuse - like someone trying or succeeding in having any kind of sexual intercourse with you, or anything like that? 2. When you were a child, can you remember any kind of experience that you would now consider sexual abuse involving someone touching you, or grabbing you, or kissing you, or rubbing up against your body either in a public place or private - anything like that? 3. When you were a child, can you remember any kind of experience that you would now consider sexual abuse involving someone taking nude photographs of you, or someone exhibiting parts of their body to you, or someone performing some sex act in your presence - or anything like that? 4. When you were a child, can you remember any kind of experience that you would now consider sexual abuse involving oral sex or sodomy - or anything like that?” (Finkelhor et al, 1990: 20).
by offenders who would not fall into the 'regressed' father offender category. In particular, 21 per cent of the abusers of girls were strangers, 41 per cent were unrelated but known to the child, and 32 per cent were other relatives (grandfather, uncle, siblings, cousins or other) (Finkelhor et al, 1990: 22), again confirming the finding of the five studies discussed above that girls are at greater risk of extra-familial abuse than abuse by fathers. Similarly, the majority of abusers of boys do not fall into the 'fixated' stranger category, since although 40 per cent of boys were abused by strangers, 44 per cent were abused by unrelated people known to the child and 16 per cent were abused by relatives (such as cousin, uncle/aunt, sibling or other).

Finkelhor et al also found that 30 per cent of the abused girls were abused more than once (from 1 month or less to more than 1 year) compared with 25 per cent of boys, indicating that repeat, rather than isolated abuse, was slightly more common for girls than boys, contrary to what the fixated/regressed categories of child sex offenders would predict. In other words, because fixated, homosexual offenders are considered to be repeat offenders whilst regressed heterosexual fathers are considered to commit abuse in isolated cases when under stress, it would be expected that more boys than girls would have been subject to repeat abuse. In addition, girls were found to have been subject to more serious forms of sexual abuse, with 14.6 per cent experiencing sexual intercourse (9.5 per cent for boys) and 19.6 per cent being touched, grabbed or kissed (4.5 per cent for boys) (Finkelhor et al, 1990: 21). Finally, in relation to the sex of the offender, only 1 per cent of abusers of girls were female, whilst 17 per cent of abusers of boys were female (Finkelhor et al, 1990: 21).

In the only community study of the prevalence of child sexual abuse in Australia, Fleming (1997) reports that 33 per cent of a community sample of 710 Australian children aged 12 years or younger were sexually abused. Fleming defined child sexual abuse as "all experiences of sexual contact occurring before the age of 12 with a person five or more years older, irrespective of consent, and all experiences of sexual contact occurring between age 12 and 16 years with a person five or more years older that were not wanted or were distressing" (1997: 66; emphases in original). Sexual contact was defined as "touching or fondling of the child’s body; attempts to have the child arouse the adult, or touch his/her body in a sexual way; the adult rubbing his/her genitals against the child’s body in a sexual way; touching the child’s genitals with the mouth, or having the child touch the adult’s genitals with the mouth; attempts to have anal or vaginal intercourse with the child; and completed anal or vaginal intercourse" (1997: 66).
women were found to have experienced either contact or non-contact sexual abuse before the age of 16, whilst 20 per cent experienced contact only abuse before the age of 16. In terms of the relationship of abuser to child (98 per cent of abusers were male), 41 per cent of perpetrators were relatives of the child, whilst 8 per cent of abusers were strangers (Fleming, 1997: 67). Like all other studies discussed above, the so-called regressed father type of offender appears to account for a very small proportion of all abusers, although Fleming does not give exact figures, except to say that the 41 per cent of intra-familial offenders were comprised of fathers, adoptive fathers, stepfathers, grandparents, uncles, siblings and cousins. Nonetheless, the figures for intra-familial abuse versus the figures for extra-familial abuse (which, it must be assumed accounted for 59 per cent of all abuse) confirm that girls are at greater risk of abuse by extra-familial offenders than fathers.

In fact, Fleming’s study suggests that the validity of the regressed offender category must be questioned on other grounds, since, when “the abuser was a relative [of the child], the abuse was significantly more likely to have occurred regularly” and “[t]hose abused by a relative were significantly more likely to have been abused more often ... than those abused by non-relatives” (1997: 67; emphases added). In other words, the fixated/regressed profiles would predict that intra-familial abuse would have occurred on an irregular basis as a one-off response to stress.

(iv) Conclusion: The Validity of the Fixated/Regressed Classification Scheme

Simon, Sales, Kaszniak and Kahn (1992) have criticised the fixated/regressed typologies on two grounds: first, the typology “forces a dichotomous label on the offender who might not behave like all other members of the group and fails to reflect what is known about the victim, interpersonal and situational factors”; secondly, such a typology is problematic if it is not able to explain and predict most cases of child abuse.

---

20 Fleming reports that 41 per cent (294) of the 710 respondents in her study reported they had had at least one sexual experience before the age of 16, although 45 (6 per cent) of these respondents were categorised as consensual sexual experiences with peers. Thus, “249 (35%) women reported some sexual abuse or experience that was unwanted or distressing during childhood” (Fleming, 1997: 66). However, 105 of these women were not considered to have experienced child sexual abuse, since 87 (12%) experienced non-contact abuse, and 18 (3%) experienced unwanted sexual contact with peers (Fleming, 1997: 66).
sexual abuse (1992: 212). In addition, there is no empirical evidence which verifies its accuracy in relation to non-incarcerated offender populations, there is a substantial amount of evidence that shows that so-called regressed offenders do not confine themselves to the sexual abuse of children within the family and that some also abuse male children, and a distinction based on the abuse of children within and outside the home is problematic, since it ignores the possibility that offenders may choose their victims because of access and opportunity.

In line with these observations, the victim report studies discussed above show that the majority of child sex offenders cannot be explained by the fixated/regressed typologies, since no study found that the majority of offenders of girls were fathers nor that the majority of offenders of boys were strangers and one study, at least, showed that both boys and girls were subject to almost identical rates of intra-familial abuse. In particular, it is noted that the fixated/regressed typology is based on unrepresentative populations of child sex offenders rather than "well-controlled empirical data" (Neidigh and Tomiko, 1991: 103), whereas the victim report studies discussed above are considered to be representative of the general community population in which the studies took place. When typologies based on unrepresentative samples of child sex offenders are compared with more rigorous empirical data, it is notable that the typologies do not explain, nor predict the types of offenders that are reported in these studies.

In fact, all studies listed in Table 4.1 showed that girls were at less risk of abuse by fathers than by other family members or extra-familial abusers and that for boys, abuse by strangers was less common than abuse by relatives, acquaintances and authority figures. In particular, the characteristics of the so-called regressed father category are seriously undermined by the studies of Russell (1983) and Finkelhor et al (1990) which found that fathers engaged in repeat abuse over long periods of time and

21 In fact, Simon et al have shown in a study of 136 incarcerated child sex offenders that such offenders do not readily fit into the two dichotomous groups of fixated and regressed offenders, but rather are distributed along a continuum of fixated and regressed characteristics, thus concluding that the fixated/regressed typology is unable to account for all cases of child sexual abuse (1992: 220).
by the study of Fleming (1997) which found that intra-familial abusers were significantly more likely to abuse repeatedly.

In fact, the type of offender to whom both boys and girls appear to be at most risk is the extra-familial offender who is known but unrelated to the child and who may be in a position of authority over the child, a category that the fixated/regressed typologies do not account for. In particular, one study, at least, showed that girls were more likely to be very seriously abused by extra-familial offenders than by family members, including fathers.

Finally, the fixated/regressed offender typologies do not tell the whole story about child sex offenders, since, as La Fontaine (1990) has observed, “the available evidence strongly suggests that, unlike physical abuse, the sexual abuse of children occurs at all levels of society” (1990: 104) and must, therefore, involve a wide range of men, rather than being confined to homosexual men with few adult contacts (the so-called fixated offender) or fathers with sexually unavailable wives (the so-called regressed offender). For example, Finkelhor (1984) found that “[e]ducation, ethnicity, religion, and race did not make a difference in rates of victimization” reported by the subjects in his study, although income did: “[w]omen from families with incomes under $10,000 had somewhat higher rates of victimization and women from families with incomes above $35,000 had clearly lower rates” (1984: 78). But Finkelhor considers that this does not necessarily amount to “evidence that sexual abuse is related to social class. The income levels measured here are levels of their current families, not the families in which they grew up. The finding may mean that sexual abuse increases one’s likelihood of ending up poor, not the other way around” (1984: 78). Furthermore, Baker and Duncan (1985) found no significant differences between those British men and women who reported abuse, those who reported no abuse and those who refused to participate in the survey “with regard to social class and area of residence” (1985: 459) and note that this data should “dispel the myth that child sexual abuse only occurs among the lower social classes in rural areas” (1985: 464). Similarly, Wyatt (1985) found no differences in prevalence rates as a function of her subjects’ educational levels; Mullen et al (1988) found that those New Zealand women who were sexually abused as children “did not differ from the population as a
whole in social class, educational background, or number of children and frequency of marriage” (1988: 842) and Fleming (1997) found that the subjects in her Australian study showed “a demographic distribution similar to that recorded in the Australian Bureau of Statistics (ABS) census data” (1997: 66). 22

Arguably, the discussion in Part B clearly shows that the fixated/regressed offender typologies do not account for the vast majority of offenders of both boys and girls nor provide a coherent understanding of the motivation behind child sex offending. Because the above victim report studies predict that (i) child sex offending is committed by a wide variety of men; (ii) child sexual abuse is not confined to particular racial or socioeconomic groups; and (ii) a significant minority of children (and possibly a majority of female children) will be subject to either contact or non-contact child sexual abuse before they reach adulthood, there is, arguably, a need for an explanation which is able to account for the different types of men who engage in sexual behaviour with children. It is contended that the power/powerlessness theory developed in Chapter Three provides such an explanation and it is subject to preliminary testing in Parts C and D.

C. THE CHARACTERISTICS OF CHILD SEX OFFENDERS: EVIDENCE OF DEVIANCE OR EXPERIENCES OF POWERLESSNESS?

(i) Introduction
Chapter Three argued that gender practices are representative of specific social relations of power, in that when individual men engage in masculine social practices, they are engaging with social structures of power and positioning themselves within the masculine gender order. Because the establishment of hierarchies of power is central to the social construction of masculinities, Chapter Three argued that those men who situate themselves within the masculine hierarchy have lives that are

22 Contrary to these studies, however, Siegel et al (1987) found higher rates of child sexual abuse amongst the non-Hispanic, white subjects in their study compared to the Hispanic subjects and found higher rates of child sexual abuse amongst persons with some college education or those who had graduated from college. Nonetheless, this study used the narrowest definition of child sexual abuse out of all the studies listed in Table 4.1 (that is, incidents before the age of 16 which involved pressure or force) which raises the possibility that these findings may have differed if a wider definition of child sexual abuse had been used.
characterised by a combination of powerlessness and power, depending on their particular socioeconomic and racial backgrounds. Further, Chapter Three argued that it is a man's experiences of powerlessness as a result of his relationships with other men that is the key to understanding child sex offending. This means that, because sexualities (as opposed to the ability to be sexual) are dynamic social constructs and important sites for the reproduction of masculinities, there can be no pre-existing tendency (biological or psychological) to engage in child sexual abuse. For these reasons, it was argued that because sexualities are key social practices for differentiation between masculinities, the alleviation of experiences of powerlessness and the establishment of relations of power with other men (real or imagined) can occur through sexual practices with less socially powerful objects of desire. In particular, it was argued that a man's particular attachment to the link between sexual prowess and experiences of masculinity and power will be a key factor for determining how he does sex and whom he chooses as a sexual partner. For these reasons, child sex offending can be understood as a particular masculine sexual practice that some men engage in to protect the vulnerable self that is created through the effects of the masculine social practices of other men, in a social context where 'true manhood' and, hence, power is experienced through the ability to impose relationships of power in social interactions and where the dynamic and constantly changing nature of masculine practices and structures of power may create vulnerable and elusive experiences of power.

The following discussion analyses the characteristics of child sex offenders that are documented in the psychological literature to determine the validity of their

23 As discussed in Chapter Three, whilst much of the literature on child sex offenders focuses on their deviance from the "biological imperative toward reproduction" (Fracher and Kimmel, 1995: 367) (which determines the fact that adult men are sexual), that literature ignores the "'how' of men being sexual, that is, the social practice to do with cultural learning" (Fracher and Kimmel, 1995: 367). Thus, the fact of being sexual in a biological sense and the 'how' of being sexual with adult women are equated, and both are assumed to be the biological imperative for 'normal' men. But it is argued here that the fact of being sexual (that is, the biological imperative to reproduce) is separate and distinct from the 'how' of being sexual, which is a cultural phenomenon and has cultural significance, so that any supposed psychological motivations behind masculine sexualities (that is, the variety of ways in which men are sexual) can be said to be themselves a product of active social practices. Sexualities, as social constructs, are understood to be social structures that are constituted by cyclical social practices which are in constant change and flux, whilst, at the same time, sufficiently cyclical to produce particular social phenomena at particular points in time and place.
explanatory power for understanding why men sexually abuse children. These characteristics are listed in Table 4.2.24 The discussion in Part C analyses the psychological characteristics of child sex offenders within a sociological context and argues that explanations which focus on individual characteristics do not provide an adequate causal explanation of child sex offending.

(ii) Discussion
Psychological theories on the causes of child sex offending generally propose that adverse experiences in childhood, in particular sexual victimisation, are responsible for subsequent child sex offending by both male adolescents and adult males. This attachment to explanations based on individual pathologies is strong, as evidenced by Bagley’s and Thurston’s (1996) review of research findings on child sex offenders:

[the origins of paedophile motivation are diverse, but for the majority lie in childhood factors (including those present from birth, in the case of certain temperaments or constitutions). Some men bonded to an abuser and internalized this role as they escaped from emotionally and physically abusive homes. Others acquired a powerful sexual motivation through the imprinting of sexual acts with peers or adults. The sexual motivation for many paedophiles is overwhelmingly strong ... . This sexual motivation may be linked to temporal lobe and pituitary gland abnormalities (found in about 25% of detected offenders). Genetic factors have also been implicated. Some paedophiles have experienced ‘distorted lovemaps’ ... . Normal sexual development is interrupted by abusive experiences. ... Incest offenders often had abnormal and abusive childhoods. Their sexual exploitation of children seems to represent a combination of lust and the expression of a fragile sense of dominance and power in men with poor self-esteem and low ego strength (1996: 303).]

However, when researchers describe a list of factors which are characteristic of the ‘typical’ incest or extra-familial child sex offender, it is necessary to interrogate “how much explanatory power” (Salter, 1988: 45; emphasis in original) such factors have. For example, as Salter observes, “[o]f all the responses ... to marital problems tried by unhappy husbands – counselling, divorce, drinking, work, depression, even

24 The studies listed in Table 4.2 are a sample of studies conducted on child sex offenders between the years 1985 to 1995 and were chosen either because they are studies frequently cited by other researchers in the area or because they are comparative studies of child sex offenders, other types of sex offenders and/or non-sex offenders. Non-comparative studies have generally not been included on the grounds that if control groups are not used as a comparison, it is impossible to know if and to what extent child sex offenders differ from men who have not committed a child sex offence (Katz, 1990: 568). This criterion was considered to be important in that the population of child sex offenders that is the subject of any one study is unrepresentative of the general population of child sex offenders, since they are drawn from highly specific locations such as gaols and clinical treatment programs for sex offenders.
### TABLE 4.2

**SUMMARY OF OFFENDER CHARACTERISTICS DERIVED FROM COMPARATIVE STUDIES ON CHILD SEX OFFENDERS**

<table>
<thead>
<tr>
<th>STUDY</th>
<th>TYPE OF STUDY</th>
<th>OFFENDER CHARACTERISTICS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Segal and Marshall, 1985</td>
<td>Comparative study of 20 rapists, 20 child molesters, 20 non-sex offenders (all incarcerated) and 20 community controls of low and high SES</td>
<td>Child molesters more anxious and less assertive in heterosexual interactions</td>
</tr>
<tr>
<td>Parker and Parker, 1986</td>
<td>Comparative study of incarcerated or clinical population of 56 incestuous fathers and 56 fathers with no known history of sexual abuse</td>
<td>59% of incest offenders suffered physical or emotional abuse as children compared with 9% of controls</td>
</tr>
<tr>
<td>Overholser and Beck, 1988</td>
<td>Comparative study of 12 convicted child molesters, 12 convicted rapists, 12 non-sex offenders, 12 low SES volunteers and 12 college students with few heterosexual contacts</td>
<td>58.3% of child molesters reported being sexually abused as a child compared with 25% of rapists and 5.5% of control groups</td>
</tr>
<tr>
<td>Dwyer and Amberson, 1989</td>
<td>Comparative study of 56 sex offenders (habitual pedophiles, incest offenders, single-event rapists, exhibitionists and voyeurs)</td>
<td>Close to 100% of offenders had low self-esteem and were highly self-critical, had poor social skills and exhibited timidity in dating and sexual relationships</td>
</tr>
<tr>
<td>Marshall, 1989</td>
<td>Review of the literature on sex offenders including child sex offenders</td>
<td>1. Deficient in intimacy; 2. Poor quality attachment bonds; 3. Emotionally and/or socially lonely</td>
</tr>
<tr>
<td>Barbaree and Marshall, 1989</td>
<td>Comparative study of erectile responses of clinical population of 21 incest offenders, 40 extra-familial offenders and 22 non-offenders</td>
<td>1. 40% of incest offenders displayed a sexual response to nude adult slides and none showed an exclusive attraction to children; 2. 35% per cent of extra-familial offenders displayed an exclusive sexual response to nude child slides</td>
</tr>
<tr>
<td>Study</td>
<td>Sample Description</td>
<td>Findings</td>
</tr>
<tr>
<td>-------</td>
<td>--------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Faller, 1989</td>
<td>154 incest offenders referred by child protection agencies, courts, law enforcement or mental health agencies</td>
<td>40% of fathers or father figures were sexually abused as children</td>
</tr>
<tr>
<td>Ballard, Blair, Devereaux, Valentine, Horton and Johnson, 1990</td>
<td>Comparative study of 383 incest offenders from two institutional and two community based sources</td>
<td>1. levels of education of the incarcerated offenders was statistically lower than those in the community; 2. less than one third of the total group &quot;could be considered involved with alcohol during the offense period&quot;; 3. self-esteem was generally observed to be low; 4. only 15.4 per cent had a psychiatric history; 5. 52% were physically abused as a child and 53.5% were sexually abused as a child; 6. the greater the social skills of the offender the more likely the offender was not imprisoned or in a mental health unit; 7. 59.5% of offenders described themselves as very or moderately social whilst 40.5% described themselves as minimally social or socially isolated</td>
</tr>
<tr>
<td>Katz, 1990</td>
<td>Comparative study of 31 convicted adolescent child molesters with 34 non-sex offending delinquents and 71 normal adolescents</td>
<td>1. Child molesters were more lonely, socially isolated, less assertive, anxious and distressed in social situations, self conscious, depressed, aggressive; 2. Child molesters were less socially competent; 3. Child molesters had lower self-esteem and greater negative self perception; 4. Child molesters had greater difficulties with authority</td>
</tr>
<tr>
<td>Awad and Saunders, 1991</td>
<td>Comparative study of 45 convicted male adolescent child molesters, 24 adolescent delinquents and 49 adolescent sexual assaulters</td>
<td>1. Child molesters of average intelligence; 2. Majority of child molesters had learning problems at school and socially isolated; 3. 50% had anti-social behaviour and dysfunctional families of origin</td>
</tr>
<tr>
<td>Awad, 1991</td>
<td>Comparative study of clinical populations of 49 adolescent male rapists; 45 male adolescent child molesters and 24 male adolescent</td>
<td>1. The child molesters had higher IQs, greater history of alcoholism and/or substance abuse than the other two groups; 2. Rates of</td>
</tr>
<tr>
<td>Study</td>
<td>Methodology</td>
<td>Findings</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Serin, Malcolm, Khanna and Barbaree, 1994</td>
<td>Comparative study of 33 incarcerated rapists and 32 child molesters (intra- and extra-familial)</td>
<td>1. Rapists had higher psychopathy ratings than the child molesters; 2. extra-familial child molesters showed higher levels of psychopathy and deviant sexual arousal compared to incest offenders</td>
</tr>
<tr>
<td>Seidman, Marshall, Hudson and Robertson, 1994</td>
<td>Comparative study of 15 non-incarcerated incest offenders, 15 non-familial child molesters, 17 rapists, 18 exhibitionists, 15 wife batterers, nonoffender males</td>
<td>Child molesters and rapists suffer from intimacy deficits and a higher degree of loneliness than other groups</td>
</tr>
<tr>
<td>Ford and Linney, 1995</td>
<td>Comparative study of 14 male juvenile rapists, 21 male juvenile child molesters, 26 male violent nonsex offenders and 21 male juvenile status offenders</td>
<td>1. Child molesters experienced significantly higher levels of intrafamilial violence than other groups; 2. Child molesters had been sexually victimized more often than other groups; 3. Child molesters reported more problems with behaviour, popularity with peers, self-concept and mood changes and anxiety</td>
</tr>
<tr>
<td>Hayashino, Wurtele and Klebe, 1995</td>
<td>Comparative study of 22 incarcerated incestuous molesters, 21 incarcerated extra-familial molesters, 33 incarcerated rapists, 27 incarcerated non-sex offenders and 26 laypersons</td>
<td>1. incestuous and extra-familial molesters found to have greater fear of rejection and negative criticisms; 2. no difference in levels of empathy; 3. Extra-familial offenders had higher level of cognitive distortion than all other groups</td>
</tr>
<tr>
<td>Williams and Finkelhor, 1995</td>
<td>Comparative study of 55 US naval incestuous fathers and 63 civilian incestuous fathers, with 53 US naval non-offenders and 63 civilian non-offenders</td>
<td>Incestuous fathers more likely than controls to have been physically abused, sexually abused or neglected as children</td>
</tr>
</tbody>
</table>

**NOTES TO TABLE**

SES = socioeconomic status
extramarital affairs – why do some men turn instead to incest?” (1988: 45). Is it legitimate to suggest or argue that “the reasons [for incest] will be found in the details of the unhappy marriage?” (Salter, 1988: 45) or in a ‘criminal’ or anti-social personality? To what extent are such reasons “more in the eye of the beholder than in the research literature” (Salter, 1988: 45), or embedded in essentialist assumptions about the sexual needs of men?

The fact that child sex offenders may face a number of non-sexual problems in their lives or have a history of non-sexual criminal behaviour (Weinrott and Saylor, 1991) does not explain the commission of child sexual abuse, since such factors are not unique to child sex offenders. In addition, how can researchers be sure that the non-sexual problems of child sex offenders are not the result of engaging in child sex offending, rather than being causative of it, given the degree of secrecy and deception that can be expected is necessary to conceal such sexual behaviour? Could it be that child sex offenders will commit child sexual abuse irrespective of lifestyle problems, particularly since some child sex offenders have been shown to demonstrate an attraction to children which is constant over many years “regardless of their life circumstances” (Salter, 1988: 46)?

Whilst attempts have been made to understand the individual offender in his social context within the psychological literature, generally speaking, no attempt is made to explain how an individual with particular characteristics interacts with that context to become a child sex offender, since we cannot assume that people who exhibit characteristics, such as poor social skills, loneliness, isolation and poor self-esteem are, by definition, sex offenders. Furthermore, the literature provides no explanation of why men, rather than women with poor social skills, become child sex offenders. For example, Becker and Kaplan’s (1988) model for explaining “sexual offending and abusive behavior by juveniles” proposes that such behaviour results from “a combination of individual characteristics (for example, poor impulse control, history of victimization, lack of social interactional skills); family variables (including poor

25 For example, Williams and Finkelhor (1995) found in a comparative study of incestuous and non-incestuous fathers that “[i]ncestuous fathers were more likely during their youth or teenage years to
parent-child bonding, domestic violence, child maltreatment, lack of boundaries); and socioeconomic factors (cultural acceptance of violence, violent role models, objectification of people) (Becker, 1994: 182). But the unanswered question is, how does such a combination of factors and characteristics cause a person to engage in child sex offending?

The most common characteristics of child sex offenders which are considered to be causative in child sex offending are set out below (Table 4.2 lists the studies which have identified these characteristics):

(a) sexual victimisation and/or physical abuse as a child;
(b) dysfunctional families of origin;
(c) fear of rejection and negative criticism;
(d) low self-esteem, self-consciousness, negative self-perception;
(e) poor social skills leading to social isolation and loneliness;
(f) high degree of anxiety and/or timidity in adult heterosexual relations;
(g) deficiencies in intimacy and empathy;
(h) passivity and non-assertiveness;
(i) sexual arousal to children and psychopathology;
(j) low IQ and levels of education;
(k) use of alcohol; and
(l) displays of anti-social behaviour in general.

The following discussion examines these characteristics in terms of their explanatory power for understanding child sex offending and to determine whether the power/powerlessness theory developed in Chapter Three provides the necessary link between an individual exhibiting one of the above characteristics and subsequent sexual behaviour with children.

---

have initiated sexual abuse of a child or rape of an adult than were nonincestuous fathers” (1995: 106).
Poor Social Skills

Poor Social Skills

Probably the most common explanation for child sex offending is “[t]he notion that sex offenders have a deficit in their heterosocial skills leading to difficulties in forming appropriate relationships and hence causing them to develop inappropriate sexual relationships”, despite the fact that “the research evidence for such deficits is scant” (Fisher and Howells, 1993: 123). In other words, child sex offenders are believed to be socially immature and to lack the necessary social skills to initiate and maintain relationships with adult peers and, because of their consequent social isolation and need for intimacy, turn to children as substitutes for adult intimacy (Finkelhor, 1984; Marshall, 1989; Marshall and Eccles, 1991).

Several studies also suggest that, like adult offenders, adolescent child sex offenders are more socially isolated, have low self-esteem and an inability to interact with peers (Deisher, Wenet, Paperny, Clark and Fehrenbach, 1982; Saunders, Awad and White, 1986; Awad and Saunders, 1991). In particular, it has been predicted that adolescent males who have poor social skills and experience low self-esteem, isolation and loneliness may turn to children for sexual gratification, because they are perceived to be less threatening than male adolescents’ peers (Deisher et al, 1982; Becker, 1988; Katz, 1990). As Worling (1995) observes, “[i]t is practically an article of faith that, when compared to adolescents who offend against peers or adults, those adolescents who assault children do so primarily as a result of social-skills deficits and a poor self-image” (1995: 286). But, as Fisher and Howells (1993) observe:

the evidence for social skills deficit having a causal role in determining general antisocial behaviour is far from conclusive ... . Several studies have indeed reported some social difficulties in paedophilic offenders. It remains difficult to know whether such deficits,
when they do occur, are generally causal or whether offender populations are biased in that poor social skills are a causal factor in being apprehended and sent to a penal or psychiatric facility (1993: 129).

For example, Segal and Marshall (1985) undertook a comparative study of the social skills of incarcerated rapists, child molesters, non-sex offenders and a group of community controls and found that those offenders with a lower socioeconomic status (SES) were generally less skilled and more anxious than those with a higher SES. Furthermore, the inmates as a group rated themselves and were judged to be less skilled, more anxious and less assertive than the community controls (1985: 61). In addition to these general findings, Segal and Marshall found that the child sex offenders rated themselves as being less socially skilled and more anxious in relation to adult heterosexual relationships and rated lower “in situations involving positive assertion or accepting praise” compared to the group of rapists who “did not differ from other lower SES males, whether in or out of prison” (1985: 61). However, the inadequacy reported by the child molesters was found to be “mainly a cognitive one”, that is, whilst the child molesters viewed themselves as inadequate, their behaviour was not judged by the researchers to be any different from the other inmates. Segal and Marshall consider that “[o]ne possibility is that these findings merely reflect the low status of child molesters in a prison setting, rather than reflecting issues relating to self-image”, yet dismiss this idea since, the rapists, with “an equally low status in prison” did not exhibit the same degree of inadequacy (1985: 61). However, their dismissal of the impact of institutionalisation on the child molesters’ self-image may have been unwise, since even among sex offenders, child sex offenders are known to have even less social status within the prison system than other sex offenders (Groth, 1983; Walsh, 1994). Another possibility is that Segal and Marshall’s findings could be said to be a function of the type of men who end up being convicted and imprisoned for child sex offences, rather than anything distinctive about child sex offenders in general. Thus, Segal and Marshall’s findings do not provide conclusive support for the view that child sex offenders are less socially skilled than other types of sex offenders, non-sex offenders and community controls.

Worling’s study of male adolescent rapists and child sex offenders also does not support the poor social skills hypothesis, since he found that both groups were
"similar with respect to variables of interpersonal functioning and self-perception" (1995: 286). As Worling observes, “[a]lthough Finkelhor’s (1984) notion of blockage – that the ability to form consensual age-appropriate sexual relationships is impeded by social-skills deficits – is certainly tenable, it does not necessarily follow that child-sexual offending will result when a socially awkward and isolated adolescent male commits a sexual offense” (1995: 286; emphasis in original).

Furthermore, in a comparative study of 46 non-incarcerated incestuous fathers and stepfathers and 30 non-offending fathers and stepfathers, Dadds, Smith, Webber and Robinson (1995) found no evidence of psychopathology in the incestuous fathers and found that the incestuous fathers did not differ significantly from the comparison group in relation to assertiveness and social skills (1995: 583). Although Dadds et al recognise the limitations in their study, ((i) that their population of incestuous offenders is unlikely to be representative of incestuous offenders in general since the offenders, along with their families, had agreed to participate in therapy after confirmation of the incest by a statutory body, and (ii) the comparison group could have been biased (1995: 584)), their study challenges the common assumption that child sex offenders are socially unskilled individuals. Indeed, a study by Vaupel and Goeke (1994) suggests that child sex offenders are not a homogeneous group that can be categorised by the identification of particular characteristics. Vaupel and Goeke found significant variation between two groups of incest offenders, those who admitted their offences and those who did not, using psychological testing to determine their psychopathology (1994: 76). On the one hand, they found that the admitters were socially isolated and/or dependent and inadequate and suffered from repressed anger and/or depression with unresolved gender identification issues (1994: 75) whilst, on the other hand, the non-admitters were found, on average, to be psychologically normal.

The most common problem associated with studies on child sex offenders is that they are invariably carried out on groups of offenders who have been dealt with by the criminal justice system and are, therefore, unrepresentative of offenders in the general community, since it is believed that only about 5 per cent of sexual offences against children are ever reported (Bagley and Thurston, 1996: 301). An even smaller
percentage will result in convictions and imprisonment, as shown in Chapter Five. Furthermore, incarcerated child sex offenders may show a particular selection bias, as a result of particular policing practices and any filtering processes within the prosecutorial system (as discussed in Chapter Six). In fact, Bagley and Thurston (1996) consider that incarcerated offenders or offenders who are in treatment as a result of a conviction “are likely to be the most persistent, impulsive, violent or incompetent abusers: those most likely to be caught, those whom the police are most likely to pursue, or those most likely to be subjected to trial proceedings” (1996: 301). For example, child sex offenders of low SES or with dysfunctional family problems may be more likely to come to the attention of government agencies and the criminal justice system, whilst it can be expected that offenders who have a relatively high SES will be better able to avoid detection and conviction, and imprisonment if convicted. Such factors suggest that studies that involve incarcerated or clinical samples of child sex offenders should be interpreted with a degree of caution, since they can only be said to define the characteristics of those offenders who have been convicted for child sex offences or have otherwise come to the attention of government authorities.

Consider, for example, a study by Katz (1990) who lists a range of characteristics that were found more frequently in a group of convicted adolescent child molesters compared with non-sex offending delinquents and so-called normal adolescent males: child molesters were found to have more problems with loneliness, to be more socially isolated, less assertive, more anxious and distressed in social situations, more self conscious, more depressed, more aggressive, less socially competent, and to have lower self-esteem, greater negative self perception and greater difficulties with authority. In fact, Katz considers that his study is one of the first to provide empirical support for the contention that social and emotional problems are contributing factors to child molestation (1990: 573).

Similarly, Dwyer and Amberson (1989) report fourteen salient factors which were identified in a group of 56 sex offenders, 52 of whom were referred by the criminal justice system and 80 per cent of whom were child sex offenders. They found that 80 per cent of the 56 offenders had been sexually abused as children, 80 per cent demonstrated psychological passivity, 98 per cent had low self-esteem and were
highly self-critical, 94 per cent had poor social skills and exhibited timidity in dating and adult sexual relationships and 93 per cent were considered to be manipulative and denied, lied or used external influences to explain their offences. The question is, what are these researchers actually reporting? The psychological effects of being detected and convicted as (socially undesirable) sex offenders? The characteristics of that particular group of offenders who are the least socially skilled at avoiding detection?

In other words, drawing conclusions about the causes of child sex offending from such studies is problematic if the studies are unable to assess the extent to which those characteristics that are considered to define child sex offenders (such as, low self-esteem, poor social skills and timidity) were exhibited by offenders at the time of their offences or, instead, are a result of being convicted and imprisoned for child sex offences. For example, does detection, conviction and imprisonment as a (socially undesirable) child sex offender cause or contribute to the particular social inadequacies found in child sex offenders? Do studies on child sex offenders take into account the effects on an offender of being institutionalised within a prison system that is hierarchical, with child sex offenders typically being placed at the bottom and being subject to verbal, physical and sexual aggression by other inmates (Groth, 1983)? Or do child sex offenders “appear guarded, unassertive or guilt-ridden while in prison, as part of a bid for parole” (Langevin, 1983; cited in Bagley and Thurston, 1996: 337-338) or to overcome the stigmatisation that the prison system places on child sex offenders?

The problems associated with generalising about child sex offenders from studies based on prison and clinical populations is highlighted by Ballard, Blair, Devereaux, Valentine, Horton and Johnson (1990) who found that the characteristics of incest offenders from studies of prison populations and mental health units cannot be “generalized to describe the ‘average’ incest perpetrator”, particularly when community-based studies indicate that “perpetrators vary considerably in their characteristics, abuse and criminal/mental health history, and social skills” (1990: 43-44). In their study of 373 incest offenders, Ballard et al collected demographic variables on four different incest offender populations: a prison group (N=63), a
mental health group (N=41), a Parents United group (N=240) and a private practice group (N=39), (97.9 per cent of whom were male) and showed that there was extensive variability between incest offenders. They found:

(i) the levels of education of the incarcerated offenders was “statistically lower than those in the community” (1990: 48);

(ii) the rate of sexual and physical abuse in the institutional samples was higher, with 65 per cent of incarcerated offenders and 61 per cent of offenders in a mental health unit reporting sexual abuse as a child, compared to approximately 50 per cent of the community groups;

(iii) community based offenders were found to have better social skills than the institutionalised sample;

(iv) the greater the social skills of the offender the more likely the offender was not imprisoned or in a mental health unit, suggesting that the more socially skilled the offender the easier it will be for him to manipulate the system for his benefit if he is apprehended; and

(v) the prison and mental health populations had more problems with self-esteem and social isolation compared to the community population.

Overall, this study shows the degree of heterogeneity amongst child sex offenders and supports the view that the less socially skilled offender is more likely to be incarcerated, that low self-esteem and social isolation may be a result of an offender’s institutionalisation and that the characteristics of incarcerated child sex offenders that are typically cited in the literature as being causative in child sex offending are more likely to be causative in an offender’s apprehension and subsequent imprisonment.

The heterogeneity found in the study by Ballard et al is supported by a study conducted by Fromuth, Burkhart and Webb Jones (1991) in which 582 college men were surveyed, with three percent (N = 16) reporting “activity that met the criterion for sexually molesting a younger child” (1991: 376). Fromuth et al found few differences in the family backgrounds of the offenders and non-offenders and report that “[a]lthough the clinical literature suggests that molesters are ‘loners’, in the current study, molesters and nonmolesters were equally likely to report having had more than two good friends at age 12” (1991: 380). In addition, “reports of the
molesters did not differ from the nonmolesters on items relating to the family structure on the parent-child relationship measures" (1991: 381).26

Indeed, studies on juvenile child sex offenders also show that many of the characteristics attributed to them are to be found in other juvenile offender populations; for example, “[i]n two studies that compared juvenile sex offenders to other violent and nonviolent juvenile offender populations, no significant differences were found regarding neuropsychological, intellectual, or psychological capacities” (Becker, 1994: 180; citing Tarter, Hegedus, Alterman and Katz-Garris, 1983; Lewis, Shankok and Pincus, 1979). In fact, such studies suggest that the characteristics that are considered to be typical of adolescent child sex offenders may well be the characteristics that are typical of those adolescent child sex offenders who are processed by the criminal justice system. As Watson and Stermac (1994) observe, “[i]t can be argued that persons who commit sexual offenses against children and who are incarcerated as a result of their actions are generally of a lower socioeconomic status than those who are given the option to seek help at a noncorrectional facility” (1994: 267). The possibility that incarcerated juvenile child sex offenders are more likely to come to the attention of authorities and more likely to be convicted and imprisoned because of their low SES background or because they exhibit particular ‘anti-social’ characteristics is also supported by the study of Hsu and Starzynski (1990) who compared the backgrounds of 15 adolescent rapists and 17 adolescent child sex offenders. They found that most offenders came from “severely disturbed” backgrounds and had a high degree of conduct disorder, with only one offender living with both biological parents, all of which is suggestive of social dislocation, and/or socioeconomic disadvantage and a greater likelihood of coming to the attention of policing authorities.

This view is also supported by a comparative study of juvenile sexual assaulters, child molesters and delinquents (matched for age and social class) conducted by Awad and Saunders (1991) who found that all three groups of offenders had “comparable and

26 Fromuth et al found that seven out of the sixteen child sex offenders “met the criteria for having been abused themselves” (1991: 381) and that this figure was found to be statistically significant
high rates of separation from their parents" prior to their offences, and high rates of parents with psychiatric disturbances and alcohol problems (1991: 451), suggesting that that juveniles from unstable backgrounds are more likely to come to the attention of authorities and more likely to be over-represented in prison. In fact, over 70 per cent of the combined groups of juveniles in Awad and Saunder’s study were found to show signs of moderate to severe maladjustment (from “‘marginal adjustment at school and home’” to “‘unable to function in a regular classroom, behavior difficult to control at home, seen as disturbed by school, psychiatric, or social agency’” (1991: 454)), supporting the view that disadvantaged social circumstances predispose a male adolescent to being apprehended and processed by the criminal justice system.

In addition, Awad and Saunders found that the sexual assaulters and child molesters “had comparable and high rates of having been physically abused” (33 per cent of sexual assaulters and 27 per cent of child molesters), both groups had a history of prior criminal activities, such as theft, although the incidence of past sexual victimisation was significantly higher among the child molesters (21 per cent) compared to the other groups and 66 per cent of molesters were considered to be socially isolated, with only 40 per cent having close friends (1991: 452). However, the question is whether these characteristics are typical of all child sex offenders or whether these characteristics are evidence of poor social adjustment which contributes to arrest and imprisonment. If that is the case, it cannot be assumed that these characteristics are typical of child sex offenders as a group and are causative in child sex offending. In fact, Awad and Saunders conclude that the psychopathology exhibited in the three groups they studied could not be “considered a cause of the offense because there was a wide range of psychopathology, including one case of psychosis, and the majority of male adolescents showing these disorders [did] not commit sexual offenses” (1991: 454).

The argument that poor social adjustment increases the likelihood of a child sex offender being processed by the criminal justice system is supported by a study of 43 juvenile incest offenders (81 per cent of whom were male) conducted by Pierce and compared to non-offenders. The significance of a child sexual abuse history in an offender’s background is discussed below.
Pierce (1990) who found that 43 per cent had been sexually abused by family members, 5 per cent by others, 11 per cent had been exposed to inappropriate sexual behaviour, 63 per cent had been physically abused and 70 per cent had suffered neglect (1990: 102). Indeed, the family backgrounds of these juveniles (54 per cent of the juveniles’ parents were judged to be mentally ill, 24 per cent were involved in substance abuse, 14 per cent were in prison, more than 50 per cent had financial problems and approximately 50 per cent needed better housing) suggest that adolescent child sex offenders from socially disadvantaged backgrounds are more likely to be processed by the criminal justice system.

However, juvenile child sex offending is not confined to those who have prior criminal records, a low SES background or a history of being physically or sexually abused as a child. In their non-comparative study of 12 male sibling incest offenders (83 per cent of whom were from middle to upper middle class primarily Caucasian families and with no prior involvement with the juvenile justice system), Adler and Schutz (1995) found that only one offender had a history, himself, of being sexually abused, although 92 per cent (11 of the offenders) had been physically abused by one or both parents (1995: 817). In addition, nearly half of this small sample had conduct disorders and 58 per cent had behavioural problems at school. Thus, whilst the studies by Awad and Saunders (1991) and Pierce and Pierce (1990) suggest that prior sexual victimisation may be a key factor in subsequent child sex offending, the study by Adler and Schutz suggests that factors such as social isolation and loneliness in the background of an offender are more likely to be a result of growing up in an abusive and neglectful environment (which may or may not include sexual abuse), and those families that are abusive, disturbed and socially disadvantaged are more likely to come to the attention of the authorities.

Timidity and Passivity

Another common belief about child sex offenders is that they are “typically passive, unassertive individuals who interact with children by mutual consent” (Becker, 1994: 179). However, this belief is more commonly held about incest offenders (whose behaviour and motivations are considered to be distinguishable from extra-familial offenders) and is based on the fixated/regressed profiles of child sex offenders which
assume that intra-familial child sex offenders do not sexually abuse children outside of the home and that "incest is the sexual expression of nonsexual needs" (Conte, 1990: 21). Generally speaking, it is believed that incest offenders are introverted, lack social skills and experience inadequacy in interpersonal relationships (Kirkland and Bauer, 1982; Scott and Stone, 1986), that they commit 'less serious' offences, such as "exhibitionism, fondling, or caressing, sometimes with the consent or initiative of an aggressive, seductive child" (Stermac, Davidson and Sheridan, 1995: 167; references omitted) and that incest victims are less traumatised by the abuse than extra-familial victims (Stermac, Davidson and Sheridan, 1995: 167). As Conte (1990) observes, "[t]hese core assumptions directly influence how professionals and society have chosen to respond to the incest offender" (1990: 21), since the assumptions mean that the incest offender is not seen as someone who will prey on children outside of the home and is considered to be less dangerous to the community generally speaking.27

But, as Bagley and Thurston (1996) observe, because many child sex offenders "take considerable risks in approaching and seducing children", child sex offending behaviours, "paradoxically, require considerable determination and are not the actions of timid men", although "no one has advanced a model to integrate these various paradoxical findings" (1996: 303).

Indeed, the so-called timidity and passivity of child sex offenders is brought into question by a number of studies, such as that of Langevin, Hucker, Ben-Aron, Purins and Hook (1985) who found no significant differences between a group of child sex offenders and non-sex offenders in relation to assertiveness, and that of DeFrancis (1969) (cited in Becker, 1994) in which half of a sample of 250 victims of child sexual abuse reported physical force associated with their abuse. Becker (1994) also reports an unpublished and undated study of 38 child sex offenders by Christie, Marshall and Lanthier in which 59 per cent of offenders reported using force against

---

27 These assumptions have also meant that issues to do with sexual arousal, sexuality and social context have been able to be ignored when considering the reasons why men commit incest. However, Conte (1990) warns that "many of the currently accepted concepts about incestuous offenders should be viewed quite cautiously as untested theories. It is premature to make assumptions about the number and sex of victims, the sexual or nonsexual nature of the interest that drives sexual abuse, or the associated features of the clinical problem based on an initial presenting problem of incestuous sexual abuse" (1990: 23).
their victims. Further, a study by Pierce and Pierce (1985) of 205 complaints to a child abuse hotline found that the use of force occurred in 45 per cent of cases involving the sexual abuse of male children and 30 per cent of cases involving the sexual abuse of female children. A study by Silbert and Pines (1981) of current and former sex workers working in San Francisco found that 60 per cent had been sexually abused before the age of 16, and of those, 82 per cent experienced force, threats or manipulation of authority by a caretaker, 31 per cent were hit or beaten to force them to comply and 68 per cent suffered cuts or bruises as a result of the abuse.

In an Australian community population study of the prevalence of child sexual abuse, 72 per cent of respondents stated that some coercion was used, with 64 per cent reporting verbal threats or threats of violence and 7 per cent reporting actual violence (Fleming, 1997: 67). Finally, in a study of extra-familial and intra-familial child sex offenders, Stermac, Hall and Henskens (1989) found that physical force was used in 89 per cent of cases, sexual penetration occurred in more than 50 per cent of cases, 21 per cent of incest victims went to hospital as a result of the abuse and that “[h]igher levels of physical aggression and verbal intimidation were found among incest offenders than among extra-familial offenders” (Stermac et al, 1995: 168). In fact, Stermac et al (1995) argue that because a number of studies, including theirs, have found that incest offenders frequently commit both physical and sexual abuse against their victims, it is important not to view incest in isolation from other abusive behaviour (1995: 176). A study by Goddard and Hiller (1993) of 206 child sexual abuse cases which presented at an Australian hospital found that 40 per cent of cases were associated with domestic violence in the child’s family and “in 79 per cent of cases where information was available, abuse of the victims’ siblings was either suspected or confirmed” (Goddard and Hiller, 1993: 27). As Goddard and Hiller observe:

[the close consideration of the role of violence in the situational context of child sexual abuse will ... alter some authors’ perceptions of the perpetrator. Howells suggests that aggressive behaviour is rare in child sexual abuse and believes that the public and professionals ‘are likely to over-estimate the degree of aggression involved in sexual offences against children’ (1981, p. 81). Lusk and Waterman also claim that incest is ‘typically non-violent’ (1986, p. 113). Virkkunen indeed proposes that the typical paedophile is ‘timid ... childish and immature’ (1981, p. 123) (Goddard and Hiller, 1993: 28).
Yet, the belief that child sex offenders are typically passive and timid is not supported by a considerable amount of empirical data. This means that such characteristics cannot be said to be sufficiently common to enable a conclusion to be made that they are causative in child sex offending.

**Deviant Sexual Arousal**

The proposition that child sex offenders abuse children because they are sexually aroused by children (thus, displaying deviant sexual arousal) is considered to be a significant factor in understanding the motivation of child sex offenders, but, other than stating the obvious, such a view does not actually answer the question, what motivates a man to engage in sexual behaviour with children? Although not explicitly stated in the psychological literature, sexual deviance is not an objective scientific measure but merely constitutes a subjective evaluation of what researchers consider, from their own subjective standpoints, to be socially unacceptable sexual behaviour, such as sexual arousal to depictions of rape and naked children.

In a review of the literature on studies of the sexual responses of child sex offenders, Barbaree (1990) observes that the studies have been quite consistent in their findings:

> [a]s a group, men who have molested nonfamilial female children have shown greater arousal to young girls than did matched nonoffenders, although they also responded quite strongly to adult women. Men who have molested nonfamilial male children have shown greater arousal to young boys than did matched nonoffenders, although again this group has shown at least moderate arousal to adult men and women. Incestuous child molesters, as a group, did not show strong responses to children, but their responses to adults were relatively weak. Nonoffenders have shown strong arousal to adult females and a sharp drop in arousal to adolescent and child targets (1990: 121).

Generally, it is assumed throughout the literature that there are different sub-groups of child sex offenders, each of which can be characterised by more or less deviant sexual arousal. This categorisation is based on the fixated/regressed offender profiles which consider that fixated homosexual offenders display greater deviant sexual arousal than regressed offenders who are believed to be primarily sexually attracted to women. However, most studies assume that the crime leading to conviction is representative of the sexual behaviour of the offender, and thus categorise offenders on that basis, although self-report studies on child sex offenders show that any one particular sex offender may have committed a *variety* of sexual offences. Thus, studies which
conclude that incest offenders are typified by one particular characteristic or extrafamilial offenders are typified by another characteristic are unreliable if they have not tested the extent to which the crime of conviction is representative of each individual offender’s behaviour. As Weinrott and Saylor (1991) observe, there is a problem with classifying offenders based on their most recent offence “given that those who have committed multiple types of sex offenses might be more the rule than the exception” (1991: 288).

For example, a growing body of research indicates that a significant proportion of incest offenders also sexually abuse children unrelated to them and engage in a wide variety of sexual behaviours. Such research suggests that it can no longer be assumed that incest offenders are a separate and distinct category of child sex offenders, since “current evidence indicates that a substantial percentage of child molesters offend in both spheres” (Becker, 1994: 177). This new research means that previous assumptions about incest offenders must be dropped (Becker, 1994: 180), since pointing to a particular characteristic to explain the behaviour of all incest offenders ignores the other sexual activities that some incest offenders engage in.

The studies on the types and frequencies of offences committed by child sex offenders show some interesting results. Abel, Becker, Cunningham-Rathner, Mittelman and Rouleau (1988) found that, out of a group of 159 incest offenders who attended outpatient treatment and whose victims were female children, 49 per cent admitted to extra-familial child sex offences, 12 per cent admitted to offences against male children, 19 per cent admitted to rape, 20 per cent to exhibitionism, 7 per cent to voyeurism, and 6 per cent to frottage, that is, rubbing against a person in public in a sexual way. This study also calls into question the assumption that incestuous offenders engage in isolated acts of sexual behaviour with their own children due to stress and/or marital problems, since 59 per cent of the incestuous offenders in their study admitted that their sexual interest in children commenced in adolescence and 49 per cent admitted to extra-familial child sex offences.

---

28 Relevant studies include those by Abel, Mittelman and Becker, 1985; Abel, Becker, Mittelman, Cunningham-Rathner, Rouleau and Murphy, 1987; Abel Becker, Cunningham-Rathner, Mittelman
The results of Abel et al's (1988) study are supported by a number of other studies, such as that of Weinrott and Saylor (1991) who found that, out of a group of 99 incarcerated sex offenders, 50 per cent who had been convicted for incest offences reported extra-familial child sexual abuse and 34 per cent who had been convicted for extra-familial child sex offences admitted to incest (1991: 291-292). In addition, Weinrott and Saylor (1991) report that 12 of those who had been convicted of rape (32%) also admitted to sexual abuse of a child and 8 of those convicted of child sex offences (12%) admitted to at least one attempted adult rape. Similarly, Abel, Mittelman, Becker and Cunningham-Rathner (1983) reported that 44 per cent of the incest offenders they studied had sexually abused female children unrelated to them and 11 per cent had abused male children unrelated to them. Further, Abel et al (1987) found that 44 per cent of incest offenders had sexually abused children outside the family, whilst a study by Ballard et al (1990) of 373 incest offenders found that 46.9 per cent had visited sex workers, 48.3 per cent had had extra-marital affairs, 19 had had a homosexual relationship and 43.4 per cent had engaged in bestiality.

All in all, a review of the literature on the variety of sex offences committed by child sex offenders, indicates that it is likely that a significant proportion will have committed one or more other type of sexual offence, as well as engaging in sexual behaviours with adults.29

Another problem associated with categorising child sex offenders based on the type of sex offence for which they have been convicted is that other studies have found that offenders have a tendency to deny and minimise their sexual offending history or will fail to report sex offences they have not been asked about (Salter, 1995: 17-19). For example, Abel, Becker, Cunningham-Rathner and McHugh (1983) showed that "offenders increased by 20% the number of types of sexual deviancy they described


29 Whilst it is noted that many of these studies involved incarcerated offenders, who cannot be said to be representative of the general population of child sex offenders, it is also the case that the fixated/regressed offender categories were developed in relation to unrepresentative samples of child sex offenders, indicating that the official labels of incest and extra-familial offender could have been inappropriately assigned at the time when these profiles were developed.
simply by being reinterviewed by experienced clinicians aware of the tendency for offenders to be involved in more than one type of deviancy” (Conte, 1990: 24).

Because of the belief that child sex offending is deviant, rather than normative masculine sexual behaviour, various studies have used sexual arousal methods to distinguish between child sex offender types, that is, to distinguish the ‘real’ paedophile from the man who, in response to stress, “‘regress[es]’ to sexual interactions with a child from an adult level of psychosexual development” (Barbaree and Marshall, 1989: 70). As might be expected, the results of these studies are equivocal; for example, in a study of a clinical population of 21 incest offenders and 40 extra-familial offenders (matched with 22 normal controls), Barbaree and Marshall (1989) found that there were five distinct sexual preference profiles exhibited by these groups: (i) the adult profile (characterised by substantial erectile responses to adult slides of subjects aged 16-24 years) was displayed by 68 per cent of non-offenders, 40 per cent of incest offenders and 12.5 per cent of extra-familial offenders (Barbaree and Marshall, 1989: 75); (ii) the teen-adult profile (characterised by minimal responses to children below nine years of age, moderate erectile responses to older children and by substantial erectile responses to subjects 14 years and over) was displayed by 15 per cent of non-offenders, 15 per cent of incest offenders and 25 per cent of extra-familial offenders (Barbaree and Marshall, 1989: 75); (iii) the non-discriminating profile (characterised by moderate sexual arousal to all depictions of subjects from age 5 to 24) was displayed by 40 per cent of incest offenders, 18 per cent of non-offenders and 15 per cent of extra-familial offenders; (iv) the child-adult profile (characterised by substantial erectile responses to children aged from 5 to 11 years, minimal arousal to adolescents and substantial erectile responses to adults) was displayed by only 5 per cent of incest offenders and 12.5 per cent of extra-familial offenders; and (v) the child profile (characterised by minimal responses to subjects over 12 years of age and substantial arousal to targets aged 5 to 11 years) was displayed by 35 per cent of extra-familial offenders, although some sexual response was evident in this group to teenage and adult subjects. Overall, there was considerable overlap between groups in terms of their sexual arousal to adults and children.
Barbaree and Marshall report that these “five distinct profile categories were meaningful in a clinical sense since men classified according to the profile procedure differed in offense history and demographic variables” (1989: 79). For example, the 35 per cent of extra-familial offenders who exhibited the child profile “reported a greater number of victims and had used more force in the commission of their offenses ... [and] were of lower socioeconomic status than men in the other profile groups” (Barbaree and Marshall, 1989: 79), thus providing evidence for the “classification of pedophilia as a meaningful clinical subgroup among these offenders” (Barbaree and Marshall, 1989: 80). Further, Marshall and Barbaree consider that this subgroup is made up of more dangerous child sex offenders, since they are “characterized by exclusive sexual arousal to children, a greater number of victims, a greater use of force in the commission of sexual crimes against children, lower socioeconomic status, and perhaps lower IQ” (1989: 80).

However, it is arguable that these extra-familial offenders cannot be said to be representative of a subgroup of offenders in the community, unless it is known (i) to what extent other offenders in Barbaree and Marshall’s study also committed extra-familial offences; (ii) to what extent the intra-familial offenders used force and offended repeatedly; and (iii) to what extent low SES and IQ are associated with extra-familial offences, generally speaking. For example, victim report studies discussed in Part B above do not show a distinction between types of abuse (that is, intra- or extra-familial) on the basis of the socioeconomic status of the victim; that is, children of lower SES were not found to be subject to more extra-familial abuse than those of a higher SES. Rather, what can be expected is that children are likely to be abused by extra-familial offenders of the same socioeconomic backgrounds, since victim report studies show that most extra-familial offenders are not strangers but are known to their victim (such as friends of the family) and are, therefore, likely to be of the same SES as their victims.

As a result of the findings in their study, Barbaree and Marshall also report that because the incest offenders were “equally divided among the adult and non-discriminating profile groups”, this demonstrates that “incest offenders as a group respond to these stimuli in much the same way as do normals but with less strong
responses to adults” (1989: 80), suggesting that incest offenders are closer to non-offenders in their sexual behaviour, with the occasional lapse. However, this data does not accord with the findings of studies by Abel et al (1987; 1988) and others which show that child sex offenders cannot necessarily be accurately categorised according to the sex offence which leads to their conviction or attendance at a treatment program. In fact, all the groups in Barbaree and Marshall’s study showed a degree of heterogeneity in terms of the sexual arousal categories they fell into, although it might be expected that men who have engaged in sexual behaviour with children will associate sexual arousal with depictions of children. But the interesting feature of Barbaree’s and Marshall’s study was that a majority of offenders (both incest and extra-familial) did not show exclusive sexual preferences for children; that is, 60 per cent of incest offenders showed sexual arousal to adults in addition to sexual arousal to children (with the remaining 40 per cent showing exclusive sexual arousal to adults), and 52.5 per cent of extra-familial offenders showed sexual arousal to adults in addition to sexual arousal to children (with 12.5 per cent showing exclusive sexual arousal to adults and 35 per cent showing exclusive sexual arousal to children, although this latter group did show a low but discernible sexual arousal to adults and teenage subjects).

When Barbaree and Marshall’s study is analysed in this way, that is, from the perspective of the similarities not the differences between offenders, its findings concur with the results of a study by Langevin, Hucker, Ben-Aron, Purins and Hook (1985) in which no significant differences were found between 14 heterosexual child sex offenders and 16 offenders with no known sexual offences. Both groups showed sexual arousal to adult women in sexual poses, although unsurprisingly the child sex offenders showed a preference for immature female characteristics. The findings in Barbaree’s and Marshall’s study also concur with a study conducted by Marshall, Barbaree and Eccles (1991) in which only 38.8 per cent of a sample of 129 child sex offenders (91 of whom were extra-familial offenders) displayed a strong attraction to children during an assessment of sexual arousal to depictions of children, suggesting that for a majority of this sample, sexual behaviour with children was likely to have occurred alongside normative masculine sexual practices. A recent study by Barsetti, Earls, Lalumiere and Belanger (1998) confirms this view and challenges the long-held
assumption that intrafamilial and extrafamilial offenders differ in terms of sexual attraction to children. In a study of both convicted (78 per cent) and non-convicted (22 per cent) child sex offenders and a control group, Barsetti et al. found that both groups of offenders not only showed a greater sexual response to images depicting consenting sex with a female adult but also that the two groups of offenders did not differ significantly in their responses to a variety of images depicting sex with children. In other words, the intrafamilial offenders were found to have a very similar pattern of sexual arousal to children to the extrafamilial offenders, a pattern which was significantly different from the arousal pattern of the non-offending control group (1998: 284).

Lack of Intimacy

One of the most comprehensive analyses of the causative role of individual characteristics in child sex offending comes from Marshall (1989) who considers that the failure to develop a capacity for intimacy is “critical to the development of sexual offending” because intimacy is “important in establishing effective emotional and sexual relations with other adults” (1989: 491). Marshall considers that it is the absence of adult relationships that induces “a sense of loneliness which appears to foster all manner of dysfunctional problems” (1989: 492), since “what [sex] offenders seek, although they may not all be able to articulate such motives, is an intimate and supportive relationship” (1989: 492).

However, an analysis of the relationship between gender and intimacy and loneliness reveals a very different picture. At the outset, Marshall assumes that men who sexually abuse children are socially dysfunctional, although an examination of masculine social practices would predict that those men who engage in competitive masculine practices with other men would experience deficits in intimacy to some extent. In other words, competitive masculine social practices (sexual and otherwise) establish dynamic relations of power between men, and between men and women, rather than relations involving equality and vulnerability and, therefore, intimacy. This becomes more apparent when we consider Marshall’s definition of intimacy:

1. the provision of a sense of security and feelings of emotional comfort;
2. companionship and a sense of shared experience;
3. the chance to provide nurturance to another person which gives meaning to life;
4. reassurance of self-worth and personal
competence; (5) guidance and support when facing adversity; and (6) a sense of kinship
which assures the continuation of the relationship (Marshall, 1989: 493; citing Weiss,
1974).

Such a definition suggests that men’s engagement in competitive masculine social
practices and the effect of these social practices on men do anything but encourage the
development of intimacy, since masculinities constructed on a competitive basis will
be characterised by relations of power and by a focus on individuality, toughness,
resilience, the non-expression of emotion and independence. In fact, it is arguable
that certain masculine social practices are more likely to engender experiences of
loneliness (due to emotional loneliness within a non-intimate relationship or social
loneliness due to the lack of a relationship: Marshall, 1989: 495), rather than intimacy,
since “intimacy motivate[s] people to be more egalitarian” (Marshall, 1989: 494). In
fact, it may be that experiences of lack of intimacy and loneliness encourage some
men to engage in competitive masculine social practices which establish relations of
power between themselves and others, because experiences of power may protect the
vulnerable self and compensate for lack of significant social attachments. For these
reasons, it is arguable that lack of intimacy and loneliness, of themselves, cannot
explain the phenomenon of child sex offending, since these experiences are likely to
be common for those men (both child sex offenders and non-offenders alike) who
engage in social practices that establish relations of power between themselves and
others. Indeed, Marshall considers that men, in general, experience a lack of intimacy
in their social relationships. In dismissing biological reasons which attempt to explain
the preponderance of male sex offenders compared to female, Marshall observes that:

a disbalance in the frequency of male vs female sexual offenders may be better understood
in terms of a more frequent failure to attain intimacy on the part of males. Of course, we
would then have to determine why it is that males relative to females fail to develop this
capacity but it no doubt has to do with the very different ways in which males are
socialized and particularly the quite different displays of affection between parents and
boy children compared with these displays between parents and girl children (1989: 497).

But why should loneliness and lack of intimacy produce child sex offending?
Marshall considers that:

sexual offenders seek (perhaps along with many other men) intimacy almost exclusively
through sexual interactions. These men equate physical intimacy with overall intimacy
and it is no wonder they fail to achieve a sense of satisfaction in their relationships. This
pursuit of, but failure to attain, intimacy through sex, no doubt causes them to persist in
their fruitless attempts since sexual release, however much it fails to achieve other goals,
does produce pleasure and may offer the continual promise of achieving the vaguely understood goal of intimacy (Marshall, 1989: 498).

Since Marshall’s comments are meant to be applicable to all sex offenders, it seems pertinent to ask, how can an act of rape of an adult or child, for example, be an attempt at intimacy? Indeed, adult victims of rape consistently report feelings of humiliation after being raped (Darke, 1990: 60-61) and offender preoccupations with power, hostility and humiliation of the victim indicate that some sex offenders, at least, are motivated by anything but a desire for intimacy (Darke, 1990: 61).

Statements such as, “I felt I had to have sex at any cost as a reversal of caring ..., to cheapen that person”, “I know I purposely degraded them”, “I made hate to her”, “I fantasized about stabbing her with a knife in the anus ... . Just a degrading thought. Put her down and put her in her place for challenging me”, “I was lowering them and making them look cheap ... and making them look like dirty tramps”, “‘Me and a friend want to fuck you while seven other men watch’”, “‘I know you like to do this, bitch’”, and behaviour such as shaving a victim’s pubic hair, and ejaculating or urinating on a victim’s face (Darke, 1990: 61-63) are difficult to equate with attempts at intimacy, as defined by Marshall above, as are threats and physical violence which, in some studies, have been shown to accompany child sexual abuse. In particular, if child sexual abuse in the home is frequently accompanied by other types of abuse, such as physical and emotional abuse (Goddard and Hiller, 1993; Ney, Fung and Wickett, 1994), it is difficult to conclude that child sexual abuse constitutes an act of intimacy and is unrelated to other abusive behaviours committed by the offender.

Furthermore, if, as Marshall suggests, men, in general, use sex as a way of seeking intimacy, why do rapists and child sex offenders express their desire for intimacy differently to other men and why does Marshall distinguish between the reasons why rapists and child sex offenders seek intimacy when committing sex offences? On the one hand, Marshall considers that a man who experiences emotional loneliness is considerably frustrated and “if this frustration is experienced as emotional isolation from effective relations with women, then it may express itself in violence or sexual aggression ... directed at women, since adult females may be seen by these men as the cause of their loneliness” (Marshall, 1989: 498). On the other hand, Marshall
considers that child molesters “may be constrained by all manner of factors from venting their frustrations toward adult females or, indeed, from expressing anger at all”, and, because of their lack of assertiveness, seek intimacy through sexual relations with children (Marshall, 1989: 498). However, as discussed above, several studies challenge this view in that coercion and violence are frequently associated with child sexual abuse. In fact, a study of sexually aggressive men by Lisak and Ivan (1995) suggests that “hypergendered males actively suppress emotions that they perceive as feminine”, such as intimacy and empathy, and thereby increase “their likelihood of acting out aggressive impulses”, that is, responses that are considered to be more acceptable masculine responses (1995: 304). Such a finding appears to contradict Marshall’s hypothesis that sex offenders actively seek intimacy through sex offending behaviour.

Furthermore, whilst it is just as likely for female children to experience inadequate parenting which produces, in adult life, the inability to form intimate relationships, no study has found that women sexually abuse children in significant numbers to support the view that lack of intimacy and loneliness, of themselves, are causative in child sex offending. Marshall’s hypothesis, therefore, cannot satisfactorily explain why the human experience of an inability to form intimate relationships becomes the predominantly male problem of child sex offending, and why, if men, in general, suffer intimacy problems, only some turn to child sex offending as a solution.

(iv) What is the Role of Alcohol in Child Sex Offending?

There is a prevailing view that alcohol abuse is generally associated with child sex offending and that men who only engage in isolated acts of child sex offending usually do so “in the context of alcohol or substance abuse, or during stressful situations such as psychiatric illness or marital problems” (Becker, 1994: 177). However, like other factors discussed above, it appears that it is not possible to

---

30 Seidman, Marshall, Hudson and Robertson (1994) have reported that both an incarcerated and a community population of child sex offenders showed a greater degree of loneliness and intimacy deficits than other offender groups and concluded that whether or not child sex offenders “are incarcerated or attending a community clinic, apparently makes no difference to their reported degree of intimacy or loneliness” (1994: 530). In other words, Seidman et al studied two different child sex offender populations to determine whether “incarceration itself produced loneliness”
conclude that use of alcohol or drugs is, in fact, causative in child sex offending. For example, Overholser and Beck (1988) found that only 45 per cent of child molesters in their study reported using drugs or alcohol at the time of their offences, compared with 100 per cent of non-sex offenders who had been convicted of violent crimes against the person (1988: 19-20). Further, Elliott et al (1995) found that only 22 per cent of child sex offenders in their study used drugs or alcohol as preparation for the commission of their offences (1995: 586) and Ballard et al (1990) found that less than one third of a group of 373 incest offenders “could be considered involved with alcohol during the offense period” (1990: 48). Further, alcohol problems and substance abuse are likely to be more widespread in the general community than the incidence of child sexual abuse, so that it is arguable that alcohol and/or drug abuse could be a feature of some child sex offenders lifestyles independently of their sexual behaviour. A further possibility is that if alcohol abuse is found to be high in a particular incarcerated population of child sex offenders it may be that it is indicative of (i) general social disadvantage or lifestyle issues that have led to their detection, conviction and imprisonment; (ii) the extent to which they were less able to cover up the abuse, (iii) or the extent to which they are more persistent or impulsive in their child sex offending behaviours and more likely to come to the attention of policing authorities.

La Fontaine (1990) considers that because “the prevalence of alcoholism among the general population is unknown ... one cannot compare [the rate within an offender population] against one which might occur by chance to demonstrate a statistical significance” (La Fontaine, 1990: 101). In particular, unless a study directly aims to identify the prevalence of alcohol in the general population, an impressionistic documentation of alcohol use by child sex offenders will be inconclusive (La Fontaine, 1990: 101). In other words, if the use of alcohol is gauged from the self-reports of child sex offenders, little reliability can be placed on that information, since it is possible that an admission to being an offender ‘overcome’ by the effects of alcohol is better than admitting, for example, “to a longstanding sexual preference for children and to a history of previous offences of different types” (Salter, 1988: 51).

(1994: 520). Even so, this finding does not explain how intimacy deficits and loneliness produce child sex offending.
In fact, La Fontaine considers that diagnoses of alcoholism in relation to child sex offenders are likely to be impressionistic and, thus, unreliable, “since alcohol is expected to be associated with sexual crimes” (1990: 101; emphasis added). As La Fontaine observes:

[i]t seems likely that the persistence of [alcohol as an] explanation and others like it owes more to popular stereotypes of the anti-social individual than to solid evidence on the question. As Maisch argued 15 years ago, the attempt to find explanations for incest and the sexual abuse of children in the “‘abnormal’ and socially undesirable personality traits” of individual offenders is the result of the “manifest incomprehensibility of the incestuous act to the average mind”, for generalizations from some of them do not apply to the majority (La Fontaine, 1990: 101; footnotes omitted).

(v) Is an Experience of Child Sexual Abuse Causative in Child Sex Offending or Evidence of the Degree of Powerlessness Experienced by the Offender?

A prevalent but controversial theory in the literature is that being sexually abused as a child is a common experience for child sex offenders and that such abuse is a pre-disposing factor for subsequent child sexual abuse by the offender, despite the findings from victim report studies that show that the vast majority of victims of child sexual abuse are female who do not go on to become the vast majority of male child sex offenders. Groth, Hobson and Gary (1982), for example, theorise that men who are sexually abused as children attempt to resolve the trauma of the abuse by sexually abusing a child themselves. In other words, as Marshall (1989) observes, the experience of being sexually abused as a child is “interpreted by behaviorists to affect adult sexual behavior in straightforward learning terms; that is, as an adult the victimized child either directly models the experienced sexually abusive behavior, or the experience of child molestation is associated with sexual arousal and through conditioning processes such behavior comes to be seen as attractive” (1989: 498).

Such an explanation is, however, unsatisfactory because not all child sex offenders have a sexual abuse history and few female victims of child sexual abuse become offenders. In fact, the essentialist nature of the reasoning would predict that all victims of child sexual abuse would repeat the pattern themselves, even though “only
a small proportion of men who are molested as children grow up to be themselves child molesters" (Marshall, 1989: 499). Conversely, Marshall offers the following interpretation:

it might very well be that a child who has himself experienced ineffective parenting, and thereby failed to achieve secure attachment bonds, will find the experience of sexual molestation by an adult as far more significant and attractive, since it clearly involves a form of intimacy, than will a child who has a secure attachment bond and whose need for intimacy is therefore satisfied in more appropriate ways. It is, perhaps, no accident that nonfamilial child molesters seek, as victims, children who appear to be in need of attention and affection. Usually this is understood as a factor which makes it easier for the child molesters to get the child's cooperation, and no doubt this is partly true. But it may also attract the offender who may see such a child as more likely than others, to satisfy his desperate needs for intimacy (1989: 499).

However, Marshall's explanation is still incapable of explaining why significantly more sexually abused men than women become child sex offenders. In addition, if a sexually abused man uses sex to gain intimacy, why would he choose to seek intimacy through sex with children rather than other adults? At the outset, then, such a theory does not adequately fit the observations it is designed to explain, since the most common characteristic of victims of child sexual abuse is that they are female and the most reliable predictor that someone will become a child sex offender is that they are male.

The conclusion that child sex offending is caused by a prior experience of sexual abuse in childhood is based on studies of incarcerated offenders or clinical populations of offenders who have been found to exhibit higher rates of being sexually abused themselves than comparison groups (Gebhard et al, 1965; Groth and Burgess, 1979; Barnard, Robbins, Newman and Hutchinson, 1985; Prendergast, 1993; Williams and Finkelhor, 1995), although the rates of child sexual abuse in the background of offenders is highly variable with some studies quoting figures as high as 100 per cent, whilst others quote figures as low as 8 per cent (Adler and Schutz, 1995). This considerable variability should be read in light of Hindman's study (1988) which found that the self-reported rates of sexual victimisation of a group of incarcerated child sex offenders decreased from 67 per cent to 29 per cent when they were told that their answers would be subject to a lie-detector test, suggesting that, if high rates of prior sexual victimisation are found in a study, it may be that offenders
are “inflating their reports of [child sexual abuse], possibly to justify their behavior” (Hanson, Lipovsky and Saunders, 1994: 166).31

Arguably, the major problems with attributing child sex offending to experiences of sexual abuse in childhood are, as Garland and Dougher (1990) observe, that the majority of sexually abused boys do not themselves become child sex offenders and that many child sex offenders do not report being sexually abused as children. In fact, whilst groups of incarcerated child sex offenders may report high rates of sexual abuse in childhood, incarcerated non-sex offenders report similar high rates (Garland and Dougher, 1990; Awad, 1991). By way of contrast, Becker (1994) reports that in her clinical practice “which includes primarily less serious, non-incarcerated juvenile offenders, about 19% report a history as sexual abuse victims” (1994: 179), a figure which is very similar to one study which reported the prevalence of child sexual abuse in the general male population (Finkelhor et al, 1990). Furthermore, in Worling’s (1995) study of male adolescent rapists and child sex offenders, it was found that sexual-victimization histories were approximately equal (about 25 per cent) in the two groups, suggesting that “sexual abuse does not necessarily predispose an adolescent offender to assault ... children” (1995: 286). Similarly, in Awad’s (1991) study of clinical populations of adolescent male rapists, child molesters and non-sex offenders, the rates of physical and sexual abuse experienced by the adolescents were similar across all three groups. As such, the studies of Worling (1995) and Awad (1991) support the view that something more than a childhood history of sexual abuse is necessary to explain why adolescent males and men engage in child sex offending. Indeed, because of the wide variability in the proportion of child sex offenders who have been reported as being sexually abused as children, Garland and Dougher (1990) consider that:

31 Such a view is consistent with the studies that show that child sex offenders typically minimise, deny, rationalise or justify their behaviour (Neidigh and Krop, 1992). Because of the socially aversive nature of the label of ‘child molester’, “there is tremendous motivation for ... [a] child molester to avoid acknowledging his crime to others, as well as to himself” (French, 1988: 29). For example, French (1988) documents the common defence strategies used by adolescent child sex offenders such as distortion (defined as the “gross reshaping of external reality to suit inner needs”) and lying (defined as the “process of consciously and deliberately deceiving another person”) and found from a study of 42 adolescents child sex offenders that “virtually all of them displayed” distortion and lying (French, 1988: 29-31).
The belief that sexual abuse causes sexual abuse ... is simplistic and misleading. The available evidence indicates that sexual behaviour between an adult and a child or an adolescent is neither a necessary nor a sufficient cause of similar behavior in the child or adolescent when he or she becomes an adult. If sexual behavior with an adult is at all related to a child’s or an adolescent’s repeating the behavior during adulthood, it is related only in the context of other, interacting variables (1990: 505).

Despite the fact that it is not possible to conclude that being sexually abused is a predisposing factor for child sex offending, the explanatory power of offenders’ experiences of sexual abuse is relied upon by a number of researchers. For example, Briggs (1995), who has devoted a book to showing how child sexual abuse victims become offenders, states that in a 1992 study of male prisoners who had been convicted for offences against the person, “all but one of the convicted child molesters revealed that they had suffered prolonged sexual abuse at the hands of several different adult offenders but that they had not defined that behaviour as abuse for a variety of reasons” (1995: vii). However, could an experience of sexual abuse in the background of a child sex offender actually be a pre-disposing factor that leads to their incarceration rather than their actual offending, as proposed above in relation to other characteristics that are said to be typical of child sex offenders? For example, it is arguable that the experiences of sexual abuse of the sample of men in Briggs’ study was causative in their subsequent lifestyles, that is, their low SES, and, hence, their detection, conviction and imprisonment for child sex offences (all had “histories of chronic ill health, unemployment and unsatisfactory sexual and social adult relationships” : Briggs, 1995: viii), rather than being causative in their sex offences, in light of the fact that Briggs also found from a survey of newspaper reports that when professional, middle-class men were convicted of similar offences, “they were much more likely to receive a good behaviour bond than a prison sentence” (Briggs: 1995: viii).

A similar reliance on prior sexual victimisation is demonstrated in a study by Ford and Linney (1995) who undertook a comparative study of male juvenile rapists, child molesters, violent non-sex offenders and status offenders (that is, those who had been subject to charges of incorrigibility, runaway, or truancy) to “identify characteristics that might be predictive of sexual offending as distinct from other types of juvenile
offenses” (1995: 57). On finding that child sex offenders had been sexually victimized more often than other offender groups, Ford and Linney concluded that:

[The most striking findings are those distinguishing child molesters from the other offender groups. Child molesters reported significantly more intrafamily violence and had experienced higher rates of physical and sexual abuse. Their earliest memories are characterized by themes of victimization and involvement in destructive activities...]. Child molesters reported earlier and more frequent exposure to pornographic materials and learned about sex by observing others. This early victimization experience may contribute to their reported desire for control in interpersonal relationships and their need to initiate relationships (1995: 66).

Although Ford and Linney consider that “[o]verall, it appears that childhood exposure to physical and sexual abuse, intrafamily violence, and media programming portraying inappropriate social, sexual, and aggressive behavior are important factors in the etiology of sexual offending” (1995: 68), alternatively it is arguable that the particular factors that are commonly cited as being characteristic of juvenile child sex offenders (that is, poor relationships with fathers, coming from a single-parent household, witnessing or experiencing violence in the home, a background of being sexually abused, low average range of intelligence, long-standing learning problems, chronic isolation for social peers and lacking social skills: Ford and Linney, 1995: 57 and references cited therein) are factors that are typical of those juveniles who come to the attention of the criminal justice system, since lower socioeconomic background, race and disruptive family life may be predictive of intervention by state authorities (Phillips, 1987).

The difficulties with relying on offenders’ own abuse experiences and the type of conclusions made by Ford and Linney to explain child sex offending is demonstrated in a study by Benoit and Kennedy (1992) who undertook a comparative analysis of the characteristics of a group of juvenile non-aggressive offenders, a group of aggressive juvenile sex offenders, a group of juvenile female child molesters and a combined group of juvenile male and female child molesters to assess the extent to which each group had been victimized sexually or physically. Benoit and Kennedy report that the incidence of sexual victimization and the incidence of physical abuse did not differ between the four groups (1992: 546), even though it had been expected that the groups of child molesters would show a higher incidence of being sexually victimized than the non-sex offender group. Indeed, Benoit and Kennedy found that the majority of
child molesters had been *neither* physically or sexually abused and concluded that "having been a victim of sexual abuse did not appear in itself to be a sufficient condition for sexually abusing others" (1992: 546). As they observe, "the relationship between being a victim of certain types of abuse and subsequent offending is not direct; [and] other factors must be in operation" (1992: 547).

The unsatisfactory nature of explanations of child sex offending based on offenders' own experiences of being sexually abused is also evident in a study by Faller (1989) who undertook an investigation of sexual abuse in the backgrounds of a clinical sample of 154 intrafamilial child sex offenders who were either the biological father of the victim and married to the mother of the victim, a stepfather, a live-in boyfriend of the mother or a non-custodial father. Interestingly, because she also investigated the sexual abuse backgrounds of the mothers of the victims, Faller found that "mothers were more likely than offenders to have experienced sexual abuse, [with] almost half having had sexually abusive experiences as children" (1989: 544), compared to 40 per cent of the father figures who reported being sexually abused as children. Faller concluded that because of the "high percentages of parents in the sample as a whole who had an experience with sexual abuse in their childhood, sexual abuse in the family of origin seems a fruitful avenue to pursue for understanding why intrafamilial sexual abuse occurs" (1989: 546), despite the fact that 60 per cent of father figures did *not* report being sexually abused as children and that the higher rate of child sexual abuse experienced by the mothers would predict that they should also have been sexually abusing their children, although there was no indication of such abuse.

Instead, Faller observed that sexual abuse in the background of a mother can "play a role in causing the sexual victimization of the children" (1989: 546; emphasis added) because, whilst those who had re-married or who had live-in boyfriends had:

extricated themselves from ... [previous abusive] relationships, [they] developed subsequent ones with men having comparable problems. Perhaps mothers in the stepfather group chose that which was familiar and consistent with their model of masculinity, and thus selected men like their own abusers and their children's previous abusers. In addition, because of their childhood victimization, they may gravitate toward men who will not make sexual demands upon them ... because the men's real interest is in children. Furthermore, because of their own vulnerability resulting from past
exploitation, they do not perceive that they put their children in situations where they are at risk when they introduce these men into the home (1989: 546).

As to why father figures abused, Faller attributed this to modelling, that is, modelling the sexual abuse they themselves experienced (but why didn't the mothers?), or loneliness but failed to discuss why the 60 per cent of offenders who did not report being sexually abused as children, sexually abused their own children, other than to say that this group might be denying their abuse experiences.

The contradictions inherent in Faller's study suggest that it is important for a history of sexual victimisation to be analysed in a broader context, as suggested by Hanson, Lipovsky and Saunders (1994) who undertook a study to analyse whether "differences in family of origin, current family functioning, and psychological adjustment would be related to a previous history of sexual abuse in perpetrators of father-child sexual abuse" (1994: 157). In their study of 74 male incest offenders32, Hanson et al found that only 24.5 per cent had been sexually victimised as children and that incest offenders "with an abuse history reported significantly more chaotic families of origin than their nonabused counterparts" (1994: 162). In addition, "[a]bused offenders had more problematic relationships with their parents and showed more clinically significant disturbances with their fathers" (1994: 162-164), although "both the abused and nonabused fathers scored significantly lower than the norm, indicating that perpetrators as a group report dysfunctional families of origin" (1994: 164). These results led Hanson et al to conclude that:

characteristics within the family of origin (i.e., conflict, lack of respect, restricted expression of affect, poor conflict resolution skills, etc.) may be important factors in the developmental path of perpetrators. Rather than a specific history of [child sexual abuse], other, more subtle, characteristics within the family of origin may be important in determining who commits incest (1994: 164).

Whilst Hanson et al do not attempt to explain why it is that boys from dysfunctional families of origin are set on the path to perpetration, rather than girls who are more likely to be victims of incest within the family home, their findings take the focus off an offender's own sexual victimization and suggest that a wider family context

---

32 The limitations of this study include that the group of incest offenders was non-representative of the general population, no control group was used to make comparisons, and data on the offenders' own abuse histories relied on self-reports.
(indeed, it could be said social context) needs to be examined to explain the sexual abuse of children by men.

Support for this proposition is found in the results of a study by Williams and Finkelhor (1995) who examined, amongst other things, the childhood experiences of naval and civilian incestuous fathers and naval and civilian non-offenders. Whilst they reported that 69 per cent of incestuous fathers had been sexually victimised as children (compared to 28 per cent of the non-offenders) and that “[f]athers who were sexually abused during their own childhood were more than five times as likely as nonabused fathers to incestuously abuse a daughter” (1995: 106), they also found that “other forms of childhood abuse were even more potent contributors” to the likelihood of a man having sexually abused his daughter (1995: 107). In other words, the incestuous fathers were “more likely than their nonincestuous counterparts to have experienced severe [physical] abuse by their own fathers ... and by their own mothers” and those men who had been severely abused by their fathers “were more than four times as likely to become incestuous fathers” (1995: 106). Furthermore, Williams and Finkelhor found that “[a]buse by their mothers nearly tripled the odds of men incestuously abusing a daughter” and of those men who had been rejected or neglected by their fathers, “[r]ejection by the father increased the odds of being an incestuous father more than four times, as did rejection by mothers” (1995: 106).

The above discussion indicates that the clear inconsistencies in the literature mean that it is not possible to conclude that child sexual abuse in the background of a child sex offender is causative in child sex offending. However, if there is a link between, not only sexual victimisation as a child and subsequent child sex offending, but also between other abusive experiences and subsequent child sex offending, it is contended that this link must be sociological, since no clear causal connection can be discerned through an examination of the individual characteristics of offenders. Furthermore, can it be said that the power/powerlessness theory provides that link? Arguably, a history of sexual victimisation as a child is evidence of experiences of powerlessness in the lives of some child sex offenders, although such experiences could be caused by other abusive childhood incidents. However, it is possible that a combination of such experiences of powerlessness with:
(i) how the abuse affects a boy’s relationships with his father, brothers, other male relatives and male peers;
(ii) the degree of powerlessness experienced in those relationships; and
(iii) a social environment that teaches a boy that sexuality is an important site for
the reproduction of power and masculinities
are related to masculine sexual practices in the form of child sex offending. It is also arguable that exploitative masculine sexual practices will be more important to experiences of power and adequate masculinity for some male child sexual abuse survivors than others.

Support for this view is gained from studies that document the effects of child sexual abuse on male victims, such as “low self-esteem, substance abuse, self-destructive behavior, difficulties in interpersonal relationships, and sexually related issues”, as well as depression and suicidal tendencies (Singer, 1989: 469). Such characteristics are suggestive of chronic experiences of powerlessness as a result of being sexually abused and may be common in the lives of boys who are sexually abused (although it must be remembered that not all male victims of sexual abuse will become offenders themselves). As Singer observes, the male victims of child sexual abuse in his study “view[ed] themselves as ‘damaged goods’ and may have difficulty in developing intimacy and trust. As children, they may have learned from the abuse that their worth is defined in sexual terms, and that sexuality is the vehicle for acceptance” (1989: 469) in the arena of interpersonal relationships.

Such evidence raises the possibility that low self-esteem coupled with experiences of powerlessness as a result of relationships with male peers and adult men and the importance of sexuality as a way of restoring self-esteem and experiencing power (manliness) provides an understanding of why some, but not all, men who are victims of child sexual abuse, themselves, commit child sexual abuse. In addition, because of the difficulties that male child sexual abuse survivors may have in maintaining interpersonal adult relationships, an experience of potency or manliness may not be possible in an adult relationship. For example, Singer documents the experiences of Jake who:
shies away from any closeness with males. He told the group he rejects friendships with males because he feels threatened by his sexual attraction toward some of them. Jake had consensual homosexual relationships prior to his marriage and had had masochistic, impersonal sexual encounters with men in adult bookstores in the last few years ... . Married, but often impotent with his wife, Jake refuses to consider bi- or homosexuality as an acceptable alternative (1989: 469).

Although Singer does not suggest that Jake is a child sex offender, Jake’s experiences of sexual impotence with his wife and the suppression of his homosexuality may be the type of precipitating experiences that lead to sexual practices with children as the only way in which such a man might gain an experience of sexual potency, depending on the degree of power and powerlessness he experiences in relation to other men and the centrality of sexuality to his sense of masculinity. In fact, Singer considers that:

[m]olestation is an act in which a person sexually controls a smaller, weaker, or younger individual, instilling a sense of powerlessness in the victim. Powerlessness is particularly threatening to the perception of masculinity in this society. Societal messages to boys are those of taking charge, fighting back, not crying, and condemning helplessness or passivity. Sexual victimization for a male therefore carries a message of reduced manhood. This can manifest itself in feelings of anger or rage toward self or others, inadequacy, guilt, and shame for being a victim. Identification with the aggressor is one means of regaining control or expressing power (1989: 469).

Arguably, in order to understand the child sex offending behaviour of the abused offender, it is necessary to understand to what extent he can, through child sex offending, confirm the link between sexuality and power. In other words, if an experience of sexual abuse as a boy is the antithesis of sexual experiences represented by normative masculine sexual practices, and if the boy is considered to identify with his abuser as a means of regaining control or expressing power, this can be understood as the boy’s aspiration to what the abuser represents, in a cultural context where the boy’s relationships with other males may be symbolised by his relationship with his abuser. In other words, it is arguable that it is not enough merely to understand the relationship of power/powerlessness between the male victim of child sexual abuse and his abuser. What is important to understand is that a boy’s experiences of powerlessness as a result of being sexually abused may affect the relationships he has with men in general and other boys, such that powerlessness and sexuality become central and defining features of his masculinity.
This argument is supported by a study by Dimock (1988) who, like Singer, has also documented the long-term effects of sexual abuse “in a clinical population of adult males identified as sexual abuse victims” (1988: 205). The self-reports of the 25 men in the study suggested three common characteristics: sexual compulsiveness, masculine identity confusion and relationship dysfunction (1988: 207). Eleven of the men reported sexually compulsive behaviours and many of them also reported “feelings of failure in portraying a stereotypical masculine identity”, suggesting that sexuality was central to their masculine social practices. One man reported:

‘deep down if I were a real man I should have been able to stop the abuse. It is hard for me as a male to tell people I was abused because I am afraid they’ll say I’m gay or that I’m a wimp for being stupid enough to let some fag abuse me. There is a part of me that keeps telling myself that I’m gay or a wimp because I let some asshole touch me’ (Dimock, 1988: 209).

Dimock describes these men as having:

few positive male role models with whom [they] identified. Their concept of masculinity was poorly defined and they often felt like outsiders when involved in a group of their peers. “I feel out of place around men because I am ashamed of what happened to me and that it still hurts so much. I also feel less than a man because I am not a success. I have no career, no car, no house, and no family.” ... Phil tried to live up to what he thought society viewed as the ideal male. He worked hard at his job and was a Vietnam veteran. He had many sexual conquests. ... Yet he had questions about what it meant to be a man, “as far as my masculine strengths are concerned, I’m not sure what are strengths and what are myths” (1988: 210).

Whilst there is no suggestion that these male victims of child sexual abuse were, themselves, offenders, Dimock’s study supports the argument that some men who have been sexually abused as children and who later become offenders are likely to have experienced sufficient powerlessness as a result of the abuse to later question their adequacy as men and to use sexual behaviours with children to compensate for their perceived lack of manhood. If researchers consider that prior sexual victimisation is causative in subsequent child sex offending, it is arguable that the relationship between experiences of powerlessness as a result of relationships with other men or boys and the need to assert power in order to protect the vulnerable self and experience adequate masculinity is central to understanding why some men who are sexually abused as children later become child sex offenders themselves. For those male victims who do, this would mean that, since sexuality is a central
masculine practice for experiencing power, masculine sexual practices are likely to be central to their conception of personal power and masculinity.

(vi) Juvenile Onset of Child Sex Offending: A Function of Poor Social Skills or the Development of Masculine Sexual Practices in Adolescence?
This section discusses the applicability of the power/powerlessness theory to a widespread belief in the literature that child sex offenders commonly begin their sexual practices in adolescence, in order to challenge the view that such adolescent sexual behaviour is evidence of a deviant sexual predilection as the result of poor social skills or a prior sexual abuse history.

Katz (1990) reports that in the United States “up to 56% of the reported cases of child molestation are committed by persons under the age of 18, the vast majority of them males” and that “studies of sex offenders ... indicate that the majority of them began to experience deviant sexual arousal patterns before they reached the age of 18” (1990: 567; see also Longo and McFadin, 1981; Longo and Groth, 1983; Abel, Becker, Mittelman, Cunningham-Rathner, Rouleau and Murphy, 1987; Abel and Rouleau, 1990; Marshall et al, 1991). For example, 58 per cent of 411 adult offenders who voluntarily attended an outpatient clinic reported interest in sexual behaviour with children in adolescence (Abel, Mittelman and Becker, 1985) and, in a study of 401 child sexual abuse cases, Rogers and Tremain (1984) found that 56 per cent of male child victims had been abused by a juvenile offender, compared with 28 per cent of female child victims. In a study of rapists and child molesters, Longo and Groth (1983) reported that child molesters tended to have a history of exhibitionism, with the mean age of this behaviour commencing at 16 years (1983: 151). Longo and Groth also report that, in a study of the extent to which sex offenders begin to act out sexually during their developmental years, 35 per cent of a sample of 128 child molesters “exhibited compulsive masturbatory activity as juveniles” (1983: 152), 35 per cent had “sexually exposed themselves repetitively as juveniles” (1983: 153) and 29 per cent “persistently spied on unsuspecting persons engaged in intimate activities” during adolescence (1983: 154). Longo and Groth conclude that at least one in three child sex offenders showed “evidence of progression from non-violent sex crimes during adolescence to more serious assaults as adults” (1983: 154).
Rather than constituting evidence of a predilection towards sexual deviancy, arguably, such data raises the issue as to whether child sex offending, as a particular masculine sexual practice, is related to adolescent masculine social practices in the male peer group. As Ageton (1983) observes, “[a]dolescent sexual norms generally are established by peers” and “[m]ale peer groups that place special emphasis on sexual prowess may encourage sexual aggressiveness among their members” (1983: 102). There is some empirical evidence that shows that sexually aggressive male adolescents have been subject to pressure from their peers “to display sexual prowess” (Ageton, 1983: 102) and Ageton considers that “involvement in and commitment to a delinquent peer group that emphasizes masculinity and rewards sexual aggression may be important in the explanation of adolescent sexual assault” (1983: 102). In a study of a group of delinquent adolescents (those with a prior record of sexual assault) and a non-offender group, Ageton found that the offender group had “significantly more commitment and exposure to delinquent peers, as well as less disapproval from peers for delinquent and sexually aggressive behavior” (Ageton, 1983: 107). Interestingly, she found that the “offenders ... experienced significantly more victimization than the controls” and that the offenders appeared to be “more estranged than the controls from conventional settings such as the home and school” (1983: 107), suggesting they may be estranged from important social sites for the reproduction of power.

For example, Messerschmidt (1993) argues that the masculine social practices of adolescent men within a peer group will be linked to “structured possibilities/constraints” and will depend upon “their access to power and resources” (1993: 87). In other words:

[c]ollectively, young men experience their daily world from a particular position in society and differentially construct the cultural ideals of hegemonic masculinity. Thus, within the school and youth group there are patterned ways in which masculinity is represented and which depend upon structures of labor and power in class and race relations. Young men situationally accomplish public forms of masculinity in response to their socially structured circumstances; indeed, varieties of youth crime serve as a suitable resource for doing masculinity when other resources are unavailable (Messerschmidt, 1993: 88).

Furthermore, Messerschmidt considers that, regardless of class and race, “[r]esearch on youth groups indicates that what young men ... do tends to mirror and recreate
particular gender divisions of labor and power and normative heterosexuality" (Messerschmidt, 1993: 88) which involves the establishment of hierarchical relationships between members of a peer group and adherence (or otherwise) to the mores of the group. In particular, it is likely that a peer group represents a site for the accumulation of public power for some adolescent men who have little opportunity for accumulating public power in other ways (such as at school or in the labour force), and that adolescence is a time when emerging masculine sexual practices will be linked to perceptions of power and powerlessness within the group. In particular, the male adolescent peer group is “unmistakably a domain of masculine dominance” (Messerschmidt, 1993: 89) through which various social practices, such as exploitative sexual behaviour, may be normalised as a way of experiencing power within the group.

Connell (1995) also discusses how, if adolescent men have “no qualifications or positional power, [and] therefore no leverage in the labour market” (1995: 96), they are likely to seek other ways of experiencing social power, such as crime. For example, Connell (1995) documents the life-histories of five young men who were marginal to the labour market and whose lives were typified by long periods of unemployment. They also had school experiences that were anything but empowering and “encounter[ed] school authority as an alien power and start[ed] to define their masculinity against it” (1995: 100), leading to violence against teachers, expulsion from school or criminal records, a pattern which is common for disadvantaged adolescents (Connell, 1995: 101). Connell observes that:

[the outstanding feature of this group’s experience of power relations is violence. ... The interviews mention bullying and outrageous canings at school, assaulting a teacher, fights with siblings and parents, brawls in playgrounds and at parties, being arrested, assaults in reform school and gaol, bashings of women and gay men, individual fist fights and pulling a knife. Speeding in cars or trucks or on bikes is another form of intimidation, with at least one police chase and roadblock and one serious crash as results (1995: 98-99).

Connell reports how some of the men talked about the “prestige to be gained among other boys” (1995: 99) as a result of adopting a strategy of violence during adolescence.
Similarly, it can be expected that adopting a strategy of sexual exploitation and/or sexual prowess would bring similar ‘prestige’ and hero status within an adolescent peer group. In particular, for adolescent men who have been marginalised within the labour force and/or at school, masculine sexual practices against socially inferior objects of desire may be one of the few ways to gain a sense of power in a social environment dominated by hegemonic masculine social practices. In other words, for marginalised adolescent men it can be expected that masculine sexual practices, whether consensual or non-consensual, will be central to their acceptance in a male peer group and proof of their masculinity, since male adolescent peer groups represent “a collective dimension of masculinity”, with the group becoming the “bearer of masculinity” (Connell, 1995: 107).

In fact, it can be expected that the more an adolescent man lives a life that is marginal to normative social sites of masculine power, the more he will define his masculinity in opposition to those he perceives as having power over him and the more socially unacceptable his masculine sexual and social practices can be expected to be. For example, Messerschmidt (1993) discusses how:

for lower-working-class, racial-minority boys in the process of opposing school, doing masculinity necessitates extra effort; consequently, they are more likely than other boys to accomplish gender within the school by constructing a physically violent oppositional masculinity. And in doing so, they turn to available hegemonic masculine ideals with which to construct such masculinity (1993: 105).

Arguably then, child sex offending could become a particular solution to the social alienation that results from other adult and adolescent men’s hegemonic masculine practices upon the adolescent offender. For example, Messerschmidt considers that “analyzing masculinity as behavior situationally accomplished under specific structural constraints is crucial to understanding which men (e.g. by age, class and race) are most likely to engage in which types of sexual assault” (1993: 116). In other words, for some male adolescents, child sex offending could represent “a claim to power where there are no real resources for power” (Connell, 1995: 111); for example, in circumstances where the offender’s masculinity is constructed in the context of “poverty, and with little access to cultural or economic resources” and where “the claim to power that is central to hegemonic masculinity is constantly negated by economic and cultural weakness” (Connell, 1995: 115-116). In fact,
Connell considers that such adolescent males can be said to have lost “most of the patriarchal dividend” and have “missed out on the economic gain over women that accrues to men through employment, the better chances of promotion, the better job classifications” (1995: 116). As Connell observes, “[o]ne way to resolve this contradiction is a spectacular display, embracing the marginality and stigma and turning them to account” (1995: 116). This suggests that if child sex offending begins in adolescence, then that behaviour needs to be examined in light of “the insistently masculinized public culture – in peer groups, schools, workplaces, sporting organizations, media – [which] sustains conventional definitions of [masculinity]” (Connell, 1995: 147) and from which adolescent men learn that masculine social practices establish relations of power with each other and female peers and/or children. Thus, if child sex offending begins in adolescence, rather than being indicative of deviant sexual behaviour, the power/powerlessness theory suggests that it may be indicative of the social marginalisation of some child sex offenders, as a result of the effects of hegemonic masculine practices upon them. However, as discussed in Chapter Three, because there are no racial nor class boundaries to child sex offending, it cannot be said that only those adolescent men who are socially marginalised will engage in exploitative sexual behaviours as a particular masculine sexual practice. This suggests that child sex offending, as an exploitative masculine sexual practice, may be an important resource for the accomplishment of masculinity even for those adolescent men who can make conventional claims to power through school and the labour market and that sexuality is a central masculine practice for deriving power, irrespective of the possibilities for deriving power from other social sites. This is discussed further in Part D, below.

(vii) Establishing Relations of Power: The Selection of Vulnerable Children
An important consideration for testing the power/powerlessness theory of child sex offending is the recognition that child sex offenders carefully choose their victims by selecting children with particular physical and emotional characteristics that enable them to be more easily manipulated and over whom power is more easily established (Conte, Wolf and Smith, 1989; Elliott, Browne and Kilcoyne, 1995).
Elliott et al (1995) summarised the strategies of 91 child sex offenders\textsuperscript{33} who had undergone therapy associated with their offences. They were interviewed in relation to the strategies they used for selecting and approaching their victims, where the abuse took place, the first sexual contact and the victim’s response, how they prevented disclosure of the abuse, encouraged secrecy and further contact, how they prepared themselves for the abuse, their feelings and concerns about the abuse and their own childhood history (Elliott et al, 1995: 580).

In relation to selection of their victims, 49 per cent of the offenders “reported they were attracted to children who seemed to lack confidence or had low self-esteem. As one commented, ‘‘you can spot the child who is unsure of himself and target him with compliments and positive attention’’ (Elliott et al, 1995: 580; emphasis in original), a view which accords with offenders’ accounts discussed in Part D, below. In addition, 42 per cent of offenders said that they selected “pretty” children and 27 per cent were influenced by the way the child was dressed; for example, one offender said “‘I am turned on by little girls wearing tights and mini skirts’” (Elliott et al, 1995: 580; emphasis in original). These comments suggest that a lack of confidence, the way a child is dressed and ‘prettiness’ are perceived by the offender as representative of the degree of power that the child has relative to the offender, although it can be expected child sex offenders read such ‘signals’ to suit their own ends. Overall, Elliott et al found that children were selected by the offenders on the basis of their vulnerability: “the child who was most vulnerable, had family problems, was alone, was nonconfident, curious, pretty, ‘provocatively’ dressed, trusting, and young or small” (Elliott et al, 1995: 580) was the child most likely to be selected for abuse.

\textsuperscript{33} In relation to the number of victims assaulted, Elliott et al report that 70 per cent of the offenders had committed offences against one to nine children, whilst 23 per cent had 10 to 40 victims. A minority, 7 per cent, had committed offences against between 41 to 450 children. All the offenders committed offences involving genital contact: 72 per cent masturbated the child and had the child masturbate them, 31 per cent made the child engage in oral sex and 57 per cent attempted or engaged in sexual intercourse, either vaginal or anal (Elliott et al, 1995: 580). In terms of the offenders’ backgrounds, Elliott et al report that 35 per cent had a professional background, 31 per cent were skilled or semi-skilled manual workers, 44 per cent were unskilled workers or soldiers, and, at the time of the offence, 48 per cent had been or were married, 58 per cent targeted girls, 14 per cent targeted boys, 28 per cent targeted both boys and girls, 66 per cent of the offenders knew their victims, with 32 per cent being parents or step-parents.
The strategies used by the offenders in the study by Elliott et al also suggest that child sex offending is a carefully planned activity in which the offender engages in various behaviours to manipulate or gain power over the child, such as bribes, gifts, threats, affection or love, coercion, portraying the abuse as a game or education, “accidental” touching, gaining a child’s sympathy and so on. In short, “the majority of offenders coerced children by carefully testing the child’s reaction to sex, by bringing up sexual matters or having sexual materials around, and by subtly increasing sexual touching” (Elliott et al, 1995: 581).

These selection criteria and targeting strategies support the theory that child sex offending is a particular masculine sexual practice that establishes relations of power between the offender and child and that child sex offending is consonant with normative masculine sexual practices. In other words, offenders’ accounts of how they target their victims suggest that the grooming of children is really a process by which the offender establishes a relationship of power over a child through a variety of subtle behaviours, such as gaining a child’s trust, promising them special favours, appearing to be more interested in a child than their parents, targeting a child who is neglected and unloved and who craves love and attention, using secrecy and blame to silence a child or playing on a child’s or parents’ sympathy for the abuser (Elliott et al, 1995: 589-590).

In addition, the reasons given by offenders about why they engaged in sexual activities with children, to some extent, support the theory that issues of power and powerlessness are central to a man’s motivation for engaging in child sex offending, since 41 per cent of the offenders said that sex with children was less threatening than sex with an adult and 25 per cent said that sex with children “gave them a new and positive experience, after having had bad sexual experiences with peers” (Elliott et al, 1995: 586-587; emphasis added), whilst the remainder said either that the child met the offender’s needs (18 per cent) or that children were more sexually attractive than adults (16 per cent) (Elliott et al, 1995: 587).

That vulnerable children are more likely to be targeted by child sex offenders is supported by the victim report study of Finkelhor et al (1990) who found that
"[g]rowing up in an unhappy family appeared to be the most powerful risk factor for abuse [since] both men and women who described their families this way were more than twice as likely to be abused" (1990: 24). Finkelhor et al consider that:

an unhappy family life may contribute to the risk for abuse outside as well as inside the family for two reasons ...: first, children in such families probably receive poorer supervision when out of the home; and, such children, who may have particularly strong needs for positive attention and affection, may be more vulnerable to the ploys of nonfamily perpetrators who offer attention and affection as a lure (1990: 24).

The argument that child sex offending is consonant with normative masculine sexual practices is also supported by studies, such as that of Gore’s (1988) (cited in Marshall and Eccles, 1991: 72) who found that child sex offenders were more likely than other sex offenders and non-offenders to view children as seductive, capable of consenting to sex with an adult, wanting sex with adults and as unharmed by sex with an adult. Similar findings were found in a study by Stermac and Segal (1989) who reported that child sex offenders believed that children were more responsible for the sexual contact than the offender. Furthermore, Neidigh and Krop’s (1992) study of 101 outpatient male child sex offenders shows that the most common type of justification offered by the offenders was one that involved blaming and constructing the victims as willing and responsible participants in the abuse, such as: “She enjoyed it”, “She is flirting and teasing me, she wants me to do it”, “She didn’t say no or tell, so it must be ok with her”, “There is no force involved, so this must be mutual”, “She is very mature for her age, she is much more like an adult than a child”, “She is sexually active with others”, and “She said yes to my requests so it is ok” (1992: 212).

Other justifications given by the offenders in Neidigh and Krop’s study can be said to be about control and/or sexuality, such as “It was my way of punishing her and controlling her”, “Children are suppose[d] to do what I want and serve my needs”, “I did it to get revenge on her and/or her mother”, or “I did it to help her grow up and mature”. The remaining justifications can be said to be largely about how the offenders absolved themselves of responsibility in other ways, such as “This won’t hurt her or affect her in any way”, “This is not so bad, it’s not really wrong”, “I was high on drugs or alcohol at the time”, “I wasn’t thinking at all or I wouldn’t have done it”, “I’m just providing sex education” “She is not my blood relation, so it’s not so bad”, “If I don’t do it someone else will do, so it might as well be me”, “She is asleep
so she will never know what I am doing”, “I am just curious about her development, this isn't really sexual” and “She is too young to remember this or know what I am doing” (1992: 212).

Nonetheless, so-called cognitive distortions about a child’s responsibility for a man’s child sex offending behaviour are not confined to child sex offenders. For example, Hayashino et al (1995) found, in a comparative study of incarcerated incestuous offenders, extra-familial child sex offenders, rapists, non-sex offenders and community controls with no known history of child sex offending, that 25 per cent of community controls believed that “a child who does not resist an adult’s sexual advances really wants to have sex with the adult, that a child’s flirting with an adult means she or he wants to have sex with the adult, and that if an adult has sex with a young child, it prevents the child from having sexual hangups in the future” (1995: 114).

Arguably, such justifications about the responsibility and participation of the sexually abused child supports the theory that child sex offending is based on the establishment of a relationship of power with the child and that child sex offending is consonant with normative masculine sexual practices, since, arguably, that relationship of power is reinforced through the construction of the child as provocative, flirtatious, passive and, hence, responsible. For example, some research on the beliefs of child sex offenders has found that they tended to view children as “undemanding” and “passive” compared to their beliefs about adults as being “demanding” and “domineering” (Howells, 1979; cited in Horley, 1988: 543). Similarly, in interviews with 27 volunteer informants who had had sexual contact with children, Li (1991) found that half the volunteers portrayed children “as gentle, warm, generous, innocent, truthful, broadminded, affectionate and perceptive, whereas adults [were] described as selfish, narrow-minded, materialistic and without depth of feeling” (Li, 1991: 133). In addition, the volunteers said that “[i]nteraction with children ... is much more enjoyable than that with adults because [they] do no have to put up a social facade, they can simply be themselves” (Li, 1991: 134). Such views suggest that some child sex offenders perceive that power and control are more easily established in sexual interactions with children and that child sex offending becomes one of the few social
practices in which some men can derive sufficient social power to experience adequate masculinity.

(xi) Conclusion

The studies reviewed in this chapter suggest that, rather than being a homogeneous group, child sex offenders show a diverse range of characteristics, which as explanations for child sex offending, are either contradictory or unable to explain the behaviour of the majority of offenders. In particular, this discussion has raised the possibility that the characteristics of child sex offenders which have been documented in the literature are merely typical of those child sex offenders who are convicted and imprisoned or diverted to treatment programs.

In other words, if poor social skills, passivity, low self-esteem and other such characteristics are typical of incarcerated populations of offenders, then such characteristics suggest that they may well be causative in the apprehension and conviction of those child sex offenders, rather than necessarily being causative in the actual offences committed by them. Alternatively, these characteristics could represent the impact of the effects of institutionalisation on child sex offenders in a prison culture that is known for its verbal and physical abuse of child sex offenders.

In particular, this discussion has argued that ascribing child sex offending to characteristics, such as timidity, passivity, alcoholism, low self-esteem, sexual deviance or incapacity for empathy and intimacy is problematic because (i) these characteristics are not confined to child sex offenders34; (ii) no study has shown that

---

34 It is to be noted that sexual attraction is not uniquely displayed by child sex offenders. For example, Hayashino et al (1995) found in a comparative study of incarcerated incestuous offenders, extra-familial child sex offenders, rapists, non-sex offenders and community controls with no known history of child sex offending, that 19 per cent of the community controls reported a likelihood of engaging in sexual activity with a child if they could avoid punishment. This figure is to be compared to 19 per cent of the incestuous offenders, 48 per cent of the extra-familial child molesters and 3 per cent of the rapists in their study who reported the same likelihood (Hayashino et al, 1995: 111). Similarly, Briere and Runtz (1989) found that out of a survey of 193 male undergraduate students, 21 per cent reported a sexual attraction to some small children, “9% described sexual fantasies involving children, 5% admitted to having masturbated to such fantasies, and 7% indicated some likelihood of having sex with a child if they could avoid detection and punishment” (1989: 65). Interestingly, Briere and Runtz found that these sexual interests “were associated with negative early sexual experiences, masturbation to pornography, self-reported likelihood of raping a woman, frequent sex partners, sexual conflicts and attitudes
women who display such characteristics become child sex offenders in numbers comparable to the numbers of male child sex offenders; (iii) many of the studies reporting such characteristics are internally contradictory35; (iv) incarcerated and clinical offender populations are unrepresentative of the general population of child sex offenders; and (v) the factors which are said to characterise child sex offenders can just as easily be described as those factors which led to their convictions and imprisonment. For these reasons, any study which suggests that a particular characteristic is causative in child sex offending must be treated with caution unless these five issues are addressed, in addition to other evidence that shows that child sex offenders are “a heterogeneous group, without any single, definitive profile” (Hanson, Lipovsky and Saunders, 1994: 156).

Furthermore, it is arguable that if social skills deficits, loneliness and lack of intimacy are in any way relevant to child sex offending (rather than being the effects of institutionalisation or the causes of conviction and imprisonment), then the connection between these characteristics and child sex offending needs to be examined in light of the gendered social context in which the offender commits his offences. If, as suggested by some researchers, experiences of loneliness and isolation are related to child sex offending behaviour, then it would be necessary to examine whether those experiences are a function of an offender’s relationships with other men and the extent to which sexuality is central to his experiences of adequate masculinity. If, for example, offenders commit their offences according to a particular pattern called a cycle of abuse consisting of a series of stages36, and if “the cycle is triggered by the individual feeling bad about himself in some way, which leads to a lowering of self-esteem, an expectation of rejection, and adopting a coping strategy of withdrawal in

35 For example, as discussed above, child sex offenders are believed to seek intimacy through their sexual abuse of children, yet men in general are said to suffer from intimacy deficits, leaving unanswered the question, why do child sex offenders choose sexual behaviour with children to meet their intimacy needs? Further, child sex offenders are said to sexually abuse children because they themselves have been sexually abused, leaving unanswered the question, why aren’t there more female child sex offenders than male and why don’t all male child sexual abuse survivors offend?
order to deal with the perceived and expected rejection” (Fisher and Howells, 1993: 126) and because it cannot be said that child sex offenders are the only people who have ever felt bad about themselves, suffered low self-esteem or have been rejected, then child sex offending as a coping strategy makes sense if experiences which trigger low self-esteem are linked to an offender’s relationships with other men, and the effects of other men’s masculine social practices on him.

It is arguable that the power/powerlessness theory of child sex offending developed in this thesis provides an alternative explanation which allows an understanding of a variety of different child sex offenders, from the socially disadvantaged, incarcerated offender to the socially advantaged offender in the community whose offences may never be reported, on the grounds that each offender’s sexual behaviour can be said to be related to the dynamic and changing relationships of power and powerlessness that exist between him and other men. This argument is made in more detail in Part D below.

In particular, this discussion has shown that the power/powerlessness theory is supported by a number of studies discussed in Part C and, at the very least, contradicted by none of them. Furthermore, the power/powerlessness theory was found to be consistent with masculine social practices in adolescent peer groups and suggests that if child sex offending commonly begins during adolescence, then, as a particular masculine social practice, it either provides an adolescent with prestige among a peer group and/or provides a claim to power where the adolescent has no material resources for power. Alternatively, for those adolescent men who have access to traditional social means for accomplishing masculinity, the power/powerlessness theory allows an examination of the extent to which those material resources for experiencing power are undermined because of the effects of other men’s masculine social practices upon the offender. The theory is also consistent with how child sex offenders select and target children and how they perceive children and justify their behaviour, since it appears that (i) the more

---

36 These stages are: “the period leading up to the offence, committing the offence, reconstituting after the offence, leading back to the stage of committing further offences” (Fisher and Howells, 1993: 126).
vulnerable a child, the more likely he/she will be targeted by an offender; (ii) targeting practices (grooming) involve the establishment of a power relationship between child and offender; (iii) offender justifications typically focus on enticement by, or lack of resistance of, the child and (iv) children are perceived to be more passive and controllable and, hence, less powerful than the offender.

In summary, in Parts B and C, this chapter has shown that, since child sex offending is not confined to particular social, racial or ethnic groups and it cannot be explained by resorting to the individual characteristics of child sex offenders, there is a need for a theoretical approach that considers men's sexual behaviour with children in a wider social context and as a relatively widespread social phenomenon. Arguably, the failure of psychological analyses to show conclusively that particular individual characteristics are causative in child sex offending leaves an explanatory vacuum in relation to why some men sexually abuse children.

The aim of Part D is to determine whether or not the power/powerlessness theory could fill this vacuum. Specifically, Part D aims to test the validity of the theory as an explanation for child sexual abuse as a widespread social phenomenon, in light of the empirical fact that child sexual abuse is not confined to particular social, racial or ethnic groups, and in light of the fact that no one individual characteristic can be said to be predictive of a man's engagement in sexual behaviour with children.

Briefly, Part D examines each offender's experiences of powerlessness as a result of his relations with other men; his need to assert power in order to protect the vulnerable self and experience adequate masculinity and the centrality of masculine sexual practices to his conception of personal power and masculinity.
D. IN THEIR WORDS: THE MASCULINE SOCIAL PRACTICES OF CHILD SEX OFFENDERS

(i) Introduction

The aim of Part D is to test the validity of the power/powerlessness theory developed in Chapter Three by re-analysing interviews conducted with child sex offenders by two British researchers, Colton and Vanstone (1996) who interviewed seven men convicted of child sex offences. A decision was made to re-analyse interviews conducted by other researchers rather than conduct my own empirical study for a number of reasons.

At the outset, it must be recognised that any sample of convicted child sex offenders is not representative of child sex offenders in the general community because of the extent to which child sexual abuse is under-reported, the large discrepancy between the numbers of reported cases of child sexual abuse and cases where charges are laid, and the relatively low conviction rates for child sex offences (see further Chapter Five). The unrepresentative nature of any sample of convicted offenders also arises from the possibility that child sex offenders may be more likely to be apprehended and convicted either because they commit less socially tolerated forms of child sexual abuse, such as homosexual offences or stranger abuse, or because their particular socioeconomic or racial background means they are more vulnerable to being apprehended and less likely to be able to manipulate the criminal justice system to avoid being charged, convicted or sentenced. As such, because any existing study on incarcerated child sex offenders is extremely limited in what it can say about child sex offenders in the general community, any new study would suffer from the same limitations. Nonetheless, a ‘trial run’ to test the validity of the theory was considered to be one way that the groundwork for future research could be built (as discussed in Chapter Seven) in order to allow some tentative conclusions to be drawn for the

---

37 It is assumed that offenders who are processed by the criminal justice system, whether incarcerated, on a bond, fined or diverted to a treatment program, are the only group of child sex offenders to whom access could be gained because of the expertise and costs needed to conduct a general population study. Such a study was considered to be beyond the scope of this Ph.D thesis. Another possibility would have been to advertise for volunteers, although there are ethical and legal issues associated with dealing with offenders who disclose child sex offences for which they have not been convicted. As well, a volunteer group would still be unrepresentative of child sex offenders in the general population.
purposes of considering the design and scope of any future qualitative study on a more representative sample of child sex offenders.

The hypotheses that are considered in this re-analysis are as follows:

(i) men who engage in sexual behaviour with children have experienced or do experience significant and/or chronic experiences of powerlessness in their lives as a result of their relationships with other men;

(ii) sexual expression that is consonant with the Masculine Ideal is central to sex offenders' conception of themselves as men and their masculinity;

(iii) child sex offending is central to alleviating experiences of powerlessness and creating an internal experience of power relative to other men; and

(iv) children are chosen as sexual partners on an occasional or permanent basis because of the ease with which relations of power can be established with them, since lack of power is the dominant erotic image that informs the Masculine Ideal.

The Colton and Vanstone Interviews as a Data Source

It is important that the data source that is chosen to address one's research questions is actually capable of doing so. As Mason (1996: 40) observes, in order to gain information about people's social experiences, interviews are the only method for doing so. Using interviews as a data source also means that, ontologically speaking, "people's knowledge, views, understandings, interpretations, experiences, and interactions are meaningful properties of the social reality" which one's particular research questions are designed to explore (Mason, 1996: 39). Therefore, the interview material chosen for this re-analysis had to be sufficiently detailed to describe the relationships that child sex offenders had with other men. To this end, the depth and scope of the open-ended interview material published by Colton and Vanstone enabled me to identify key incidents in a group of offenders' lives which described their relationships with other men and boys during childhood, adolescence and adulthood and thus allowed me to consider the effect, if any, of these relationships on the offenders' sexual behaviour with children. In addition, the interview material revealed some information about the beliefs the offenders had about their cultural experiences as men prior to their offending behaviour and how they negotiated their
masculine identity with fathers, brothers, friends, authority figures, work colleagues etc. The open-ended interviews are also compatible with the ontological position adopted in this chapter that the type, nature and quality of social relations and social and cultural practices influence men's sexual behaviour.

Another feature of the Colton and Vanstone interview material that makes it a suitable data source is that the interviews were conducted with as little interference by the interviewers as possible, in that the offenders were interviewed on a voluntary and confidential basis using “unstructured interviews informed by the long tradition of life story work” (Colton and Vanstone, 1996: 4). At the same time, as Mason (1996) observes, it is recognised that it is not possible to “separate the interview from the social interaction in which it was produced” (1996: 40); that is, “interviews are always social interactions, however structured or unstructured the researcher tries to make them” (Mason, 1996: 40). Nonetheless, Colton and Vanstone made attempts to minimise their influence on the offenders’ narratives. For example, they assert that “[t]he men in this study talked very easily, fluently and openly with a minimal level of prompting from us as interviewers. We speculate that this was because the process of interviewing, in part at least, satisfied the three conditions distinguished by Moser and Kalton [(1983)]” for the successful completion of survey interviews: accessibility, cognition and motivation (Colton and Vanstone, 1996: 175). Thus, Colton and Vanstone consider that:

the interviewees had access – in fact exclusive access, to the information sought, because the content was essentially their life stories; the narrative style of their responses is evidence of the fact that they understood what was required of them [cognition]; and the amount of time that they devoted to the process suggests that they felt valued enough to talk for several hours into a tape recorder [motivation] (Colton and Vanstone, 1996: 175).

Further, Colton and Vanstone state that they:

consciously adopted a non-directive and reflective style of interview and used ... focused interviews. These are sometimes referred to as informal interviews. Their potential lies in the fact that they create the opportunity for interviewees to develop their own agenda, express their central concerns and to talk relatively unconstrained by the structure of predetermined questions. ... [In other words,] they allow people to talk within their own frame of reference and contribute to a more fundamental understanding of their view of the world (1996: 175).
Colton and Vanstone, thus, aimed “to be facilitators as opposed to questioners and to be as unobtrusive as possible, thereby restricting [their] influence over the shape and direction of the subjects’ contributions” (1996: 4), although, in the book published as a result of their work, the prompts and questions they put to the men during each interview are omitted (1996: 6).

At the outset, it is important to recognise that different social explanations could be generated from the interview material of Colton and Vanstone and that each explanation will be constrained by the ontological and epistemological framework established by different researchers. For example, an ontological position that considers that masculine sexuality and sexual practices are unimportant to the epistemological question of why some men sexually abuse children will, arguably, interpret and produce social explanations of offenders’ motivations that are markedly different to the explanations produced in this chapter. The explanations offered in this chapter are posed in light of the ontological position that masculine sexuality and men’s relationships with other men are central to understanding men’s sexual behaviour with children. In light of this position, the interview material is interpreted according to two main themes: (i) the offender’s masculine social practices and the extent to which he was subject to the masculine practices of other men; and (ii) the relationship between power, powerlessness, sexuality and child sex offending in each offender’s life.

It is also important to note that “a researcher cannot be neutral, or objective, or detached, from the knowledge and evidence they are generating” (Mason: 1996: 6) so that it is necessary to recognise that the interpretation I make of the interview material will be influenced to some extent by my own subjectivities. Nonetheless, the influence of researcher subjectivity can be addressed, as Mason (1996) recommends, by ensuring that the researcher undergoes “critical self-scrutiny, or active reflexivity” by “constantly tak[ing] stock of their actions and their role in the research process” (1996: 5-6). Arguably, I have addressed this issue by clearly stating the objectives of my re-analysis (as set out below), by the systematic approach I undertook to the interpretation of the interview material (which is also described below) and by
recognising the extent to which the interview material either did, or did not support the power/powerlessness theory.

The Institutional Context in which the Interviews Took Place

Colton and Vanstone set out to investigate the motivations of those offenders who had been entrusted with the care of children either in a paid or voluntary capacity. The offenders who participated in Colton’s and Vanstone’s study did so on a voluntary basis with no financial incentives (they were merely “offered the opportunity to make a positive contribution to child protection”) and were fully informed about the nature of the research they participated in (Colton and Vanstone, 1996: 4). The men were given a guarantee of confidentiality (to preserve the vulnerability of both the offenders and the victims) and each offender gave their written permission to publish the outcomes of the interviews as long as confidentiality was maintained (Colton and Vanstone, 1996: 5). Although Colton and Vanstone interviewed seven men, only five of those men’s life histories are discussed here, because these five presented the most detail about their childhood and adult experiences as men; the interviews of the other two men did not contain sufficient information about their relationships with other men and boys to examine the hypotheses set out above.

Four out of the five offenders discussed in this chapter had been involved in a prison-based treatment program “designed to challenge the distorted thinking that offenders bring to bear on their abusive behaviour” (Colton and Vanstone, 1996: 6), whilst a fifth offender was on a waiting list for the same treatment program. At the time of the interviews, all five were serving prison sentences for their offences. Although Colton and Vanstone do not describe how they recruited the interviewees, it appears they were recruited in conjunction with the prison-based treatment program.

The narratives gathered by Colton and Vanstone took place in a custodial context and may have been influenced to some extent by the treatment program the offenders had participated in, particularly since the program was designed to challenge distorted beliefs, enhance the offender’s awareness of the effects of sexual abuse, encourage offenders to take responsibility for their offending and to develop relapse prevention strategies (Colton and Vanstone, 1996: 155), although guarantees of confidentiality
may also have had an important influence on the openness and honesty of the offenders’ narratives. It appears from the offenders’ interviews that parole was conditional upon participation in the treatment program, although few details are given about this by Colton and Vanstone.

Some indication of the influence of the treatment program on the interviews is available, although the narrative of each offender appears to have been affected in different ways by the institutional context in which the interviews took place. For example, compared to some of the other offenders, Kim considered that the treatment program had not convinced him that he had damaged his victims:

I have now done two core programmes, and I’ve got an ongoing one to start as soon as I get out. When I’ve finished that one, I shall then go on to an offenders’ course which I think is a monthly thing; it’s like an alcoholics anonymous type thing, which is ongoing *ad infinitum*, apparently. To be perfectly honest, I’m still not yet fully convinced of the mental and physical damage that I’ve done to my victims; that hasn’t really convinced me. The victim awareness section of the course showed us a couple of videos relating to a daughter, or a step-daughter, who was abused over a long period – and I do mean abused. It certainly wasn’t comparable to the type of activity that I’ve been carrying on with. I couldn’t remotely relate it to that. I didn’t see my children – my boys – as being abused at all (Colton and Vanstone, 1996: 156).

On the other hand Kim believed that:

[t]he core programme has done a great deal for me, apart from the sexual side, I know. ... How many people can sit back for four years and have professional help to have a look at their lifestyle of the past and set up a lifestyle of the future? It’s not many people have that opportunity, and I’ve taken full advantage of it. With my wife and family, I have counselling as well and we’ll all do counselling together when we’re out of here. So we’ve set up the basis of a whole new life – one without this therapy. So – yeah, the therapy has been worth its weight in gold quite honestly, because there are years of my life, you know, that did need looking at (Colton and Vanstone, 1996: 157).

Compared to Kim, Dafydd’s experience of the treatment program was markedly different so that his experiences of guilt and remorse create a uniquely different context in which his narrative needs to be read:

[t]he core programme actually forced me to look at myself and think all sorts of really bad things about myself, you know. ... I think, devious bastard, how could you, knowing that she was a victim in the first place and then to compound that? ... [T]here was a point where it wouldn’t have taken much for me to have got sheets up on the window. I was really distraught, saw myself for what I’ve done and it hurt, what I was looking at in the mirror and I couldn’t see any way out. ... And it’s one of those things that for the rest of my life, I don’t think I’ll ever be able to forgive myself. They say that carrying guilt around is sort of damaging. To me it’s a necessary part of paying your debt to your victim. Not to society, to your victim (Colton and Vanstone, 1996: 157-158).
James’ experiences of relief in the treatment program indicate a different perspective yet again:

the first time I sat in the core programme ... it was just like a light inside of me that said, ‘At long last you have a chance to really talk about what’s gone wrong in your life and what you think of it and to sort yourself out ...’. And from then on I could accept the blame, the damage I’d caused, everything. And ... nice – it’s like somebody had picked a 20-ton weight off my shoulders. I think what I needed was somebody to say, ‘Look, stop your bullshit, because we know it’s bullshit. Come on, just for your own sake, put the victims aside for a minute. Just for your own sake, admit what you’ve done and let’s talk about it. Let’s get it all out in the open.’ I think if they’d have gone for the victim’s perspective straight away I wouldn’t have admitted it. But at long last, here was somebody who seemed genuinely interested and genuinely wanted to know what had gone wrong with me (Colton and Vanstone, 1996: 159).

David brings yet another perspective to the influences of the treatment program on him, suggesting that each offender's narrative is likely to have been influenced by what they did or did not get out of the treatment program:

I think what I have virtually learnt is that I want to be a social animal, whereas before I felt I was my own man. I could cope on my own. I didn’t need anyone else. Now I realise that I do need other people. I need to be part of a group and share where I am with people. And I’ve found that one of the benefits of the core programme is the fact that I have related to people - my own peer group, really - and spoken deeply about me; who I am, what I am, what I’ve done; in ways I’ve never done in my life before. ... Whereas I’d describe myself in the past as diseased within myself; I’m much more at one with myself now, here. Happier. I link that with the opportunity the core programme’s provided in actually forcing me to look at my upbringing, my disciplines, my background - everything. Even in my work, you’re taught to shut up and keep quiet about yourself and about others. So it’s a completely alien experience. And yet, that alien experience has, I feel, reaped me more benefits as a person than anything I’ve done (Colton and Vanstone, 1996: 160).

And Ronnie, who at the time of being interviewed had not yet participated in a treatment program, said in relation to anticipating his experience in the program:

[It’s got to be essential, and it’s got to make you face things, like I’m trying to do with you today. See, I couldn’t stop talking. I needed to talk today. You coming here has helped me. It’s ridiculous really. I’m supposed to be the one helping you (Colton and Vanstone, 1996: 165).]

Kim considered that participation in the treatment program ought to have been voluntary and that use “of the parole system to manipulate people into cooperation is counter-productive. He sees this as undermining the value of the course and encouraging dishonesty and game playing” (Colton and Vanstone, 1996: 161).
example, Kim gives an interesting insight into the institutional system in which the offenders lived and how they manipulated that system:

[i]f therapy is the only option that you have of getting out, you’ll do it. If you’re forced into therapy in that way, you can play one off against the other and you can come through therapy, if you’re articulate enough, with a whole pack of lies and run everybody round in circles. ... You’ll say the right things in the right places. ... And I’ve seen that happen without a shadow of doubt, because what we talk about back on the wings has got nothing to do with what we talk about in therapy. Some people are very, very well aware of what they talk about in the therapy. It can be taken down and used in evidence against you, basically. And there’s a lot of those guys that have got crimes all locked in the cupboard. They’re still there undiscovered and they’re staying there. ... The system they’ve got at the moment whereby you do therapy or you don’t get parole, it’s a carrot that dangles in front of another carrot. Parole itself is a huge carrot ... [b]ut the therapy on top of that is another carrot that you’ve got to take before you look at the next carrot – and it’s not on. And as I say, people will abuse the system and do. ... We’re the best con-merchants in the world. There’s no doubt about that. But you can’t con a con-man and they can talk their way through most therapy groups if they want (Colton and Vanstone, 1996: 161-162).

Another aspect of the influence of the institutional context in which the offenders lived is identified by Dafydd:

I’m not the only one, there’re a lot of people who have heard officers talking about us behind our backs, or openly to other officers. And there are officers here and they go, ‘You bloody beast’, you know. ‘You should be hung, N nonce’, you know, which is prison slang for sex offender. The chaplain also has noticed this and also some of the officers’ actions towards their female colleagues in uniform. In a place like this, it’s not on. They need to look at themselves very carefully, at the way they run their side of things, you know. They’re telling us one thing in the core programme and they’re doing exactly the opposite with their female colleagues – openly (Colton and Vanstone, 1996: 173).

The above reflections suggest that the specific institutional context in which the interviews took place (a prison setting in which the offenders were required to attend a specifically designed, mandatory treatment program for sex offenders in order to gain parole) had a major influence on the narrative of each offender. Presumably the reflections of a group of non-convicted offenders or a group of incarcerated offenders who had not attended a treatment program would be significantly different in relation to issues such as motivation, blame and responsibility. Generally speaking, the offenders in Colton’s and Vanstone’s study speak a particular language in the interviews, one grounded in notions of self-reflection and responsibility which arguably makes this material limited in what it can tell us about why some men choose to engage in sexual behaviour with children, particularly if, as one offender observed, offenders learn to “say the right things in the right places” (Colton and Vanstone, 1996: 162), or, as another offender suggests, they are affected by what other
people think about their sexual behaviour and, accordingly, monitor what they reveal. Nonetheless, it should be borne in mind that, first, the offenders who participated in Colton’s and Vanstone’s study did so on a voluntary basis, independently of the treatment program and were given no inducements to do so and, secondly, that in re-analysing these interviews, my primary focus was on the offenders’ accounts of their relationships with other men in lives, rather than on what they said about their offending behaviour.

Description of the Processes Involved in My Re-analysis
My re-analysis of the interviews conducted by Colton and Vanstone involved a systematic reading of the published material several times. My initial reading enabled me to gauge the scope and depth of the life-stories contained in the interview material which Colton and Vanstone had divided under the following headings: the offenders’ early life experiences, their sexual development, educational and employment careers, how they perpetrated the sexual abuse for which they had been convicted and the impact of a treatment program upon them. I was primarily interested in the interview material which concerned early life experiences, sexual development, educational and employment careers and how the abuse was perpetrated, because it was in relation to those aspects of the offenders’ lives that I considered that issues concerning their experiences of masculinity would be found. Thus, my re-analysis of the interview material proceeded by looking for evidence in the offenders’ life histories of their experiences of masculinity: their conception of themselves as men, their gender practices, the centrality of sexuality to their concept of masculinity, their experiences of powerlessness as a result of their relationships with other men, and the ways in which they dealt with those experiences. In my reading and re-reading of the interview material (which comprised approximately 114 pages including some commentary by Colton and Vanstone), I systematically extracted all the information that appeared to me to be relevant to these issues, including material that both supported and did not support my central contention that sexual behaviour with children is related to the contradictory experiences of power and powerlessness that characterise men’s lives. The information I extracted was then used to assess whether or not the offenders’ sexual behaviour with children can be said to be a particular gender practice that is related to the degree of powerlessness they experienced as a
result of their relationships with other men. In the analysis set out in the following pages, I discuss the inconsistencies that I found in the interview material and the implications of those inconsistencies. I also address the issue that some offenders did not provide sufficient information in their life histories to enable any conclusions to be drawn about the links between their sexual behaviour with children and their experiences of masculinity.

In particular, my analysis focused on the following issues:

(i) Did the offenders acquire masculinity through active social practices ('doing gender') in their social interactions with others?

(ii) Were social relations of power established in the offenders' lives as a result of their gender practices? In other words, did the active acquisition of gender (in the real or imagined presence of others) constitute a measure of each offenders' social power? Was their social power vulnerable and were their lives a combination of power and powerlessness as a result of their relationships with other men? Did culturally dominant ideals of manhood (such as that represented by white, middle-class, heterosexuality) affect the degree of social power they were able to exercise? Was there evidence of how the offenders failed to reproduce normative masculine practices, giving rise to experiences of low self-esteem and powerlessness?

(iii) What social and economic possibilities were open to each offender for practising gender, as a result of their particular socioeconomic and racial backgrounds? If these possibilities were limited, did they engage in acts of masculinity by dominating and controlling other less socially powerful people? Was sexual behaviour with a child both an expression of each offender's public power (in terms of, for example, their ability to gain access to children, silence a child or collude with other men in covering up the abuse), as well as an expression of their lack of power?

(iv) Had the offenders been subordinated and shamed by dominant masculine practices? For example, what was the effect of homophobia on the sexual practices of the homosexual offenders?

(v) Did the offenders have a particular attachment to the link between sexual prowess and experiences of power? Did they equate sexual practices with
power? Was there evidence of how their child sex offending practices were a way of overcoming experiences of powerlessness?

(vi) Can it be said that these offenders, through their sexual behaviour with children, were engaging in normative masculine sexual practices, given that sexuality is an important cultural site for the reproduction of masculinity and the acquisition of experiences of power?

(vii) Can it be shown that there is a link between each offender's experiences of powerlessness as a result of his relationships with other men and his subsequent choice of a child as sexual partner? Was there evidence of chronic experiences of powerlessness in the offenders' lives, leading to chronic experiences of sex offending?

The Validity of My Methodology

The epistemological framework in which my re-analysis takes place is clearly stated and my re-analysis consistently refers to it when interpreting the interview material. As Mason (1996) observes, “judgements about validity are, in effect, judgements about whether you are ‘measuring’, or explaining, what you claim to be measuring or explaining” (1996: 146). For example, since I claim that I am attempting to explain the effects (if any) of offenders' relationships with other men on their sexual behaviour, I examine the interview material from the perspective of what it tells me about the offenders’ relationships with fathers, brothers, other male relatives, male school friends, male authority figures, male work colleagues, etc and what it tells me about the effect of those relationships on the offenders’ sexual practices. Thus, my analysis is consistent with the epistemological questions I have posed, although it would not be if, for example, I used the interview material to examine the effects of the offenders’ relationships with women on their sexual behaviour. Arguably, the validity of my analysis is based on the fact that the interview material contains sufficient material to examine the epistemological questions I pose without the need to make claims to ‘ultimate truth’. The following analysis describes how, as Mason (1996: 150) recommends, I have interpreted the interview material from the perspective of the ontological and epistemological questions I have posed. Furthermore, I demonstrate how different parts of the interview material have been woven together to produce an interpretation of how those parts may be read together.
to provide an explanation of the significance of the offenders’ relationships with other men. Arguably, the following analysis demonstrates that my particular standpoint (that child sex offenders’ relationships with other men are central to understanding their sexual behaviour) influences the particular interpretations I make about the offenders’ life experiences. In the conclusion to Part D, I also discuss why Colton and Vanstone’s interpretations are, in my view, less compelling than my own.

Since the interviewees are not statistically representative of the general population of child sex offenders, my analysis cannot be said to be based on data derived from a sample that is representative of that general population. Therefore, it is not possible to make any empirical generalisations from my analysis. Indeed, there appear to be good reasons to believe that, as discussed above, any incarcerated offender population is atypical and non-representative of offenders in the community. In addition, the sampling strategy of Colton and Vanstone (the selection of incarcerated offenders from only one particular prison) is another reason for saying that no generalisations are able to be made from the interpretations I make about the offenders’ sexual behaviour, particularly since the effects of this specific institutional context and the nexus between the treatment program and parole will not necessarily be replicated elsewhere. Nonetheless, the making of such generalisations was not one of the aims of this re-analysis. Rather, as discussed above, it was to undertake a ‘trial run’ of my theory with a sample of convicted child sex offenders, albeit unrepresentative, to allow some tentative conclusions to be drawn about the validity of the theory and to set the groundwork for future research. Thus, it is recognised that any conclusions that are drawn from a sample of convicted offenders will only be tentative until the theory is tested on a more representative sample of offenders, such as that drawn from a study on the prevalence of child sex offenders in the general community. Such a study, with all of its inherent difficulties (in terms of ethical, legal and confidentiality issues and in terms of study design to maximise the willingness of offenders to self-report their child sex offending activities), is beyond the scope of this thesis, although such a study could well be the subject of post-doctoral work, as discussed in Chapter Seven.
(ii) Analysis

The following discussion proceeds by way of an analysis of the above issues by reference to each offender’s life history. The men are referred to by their first names only and the life histories are presented in the following order: Kim, Dafydd, Ronnie, James and David.

(a) KIM

*Kim’s masculine social practices and the extent to which he was subject to the masculine practices of other men*

As a child, Kim was seriously ill and, in his words, was “coddled” by his mother. His elder brother bullied him (which Kim appears to attribute to the amount of attention his brother missed out on) and he was told by his elder brother many times that he was a “cissy”. His brother used to tie him up to tickle him and he and his brother’s mates verbally abused him on the street. He describes himself as a “softie” and “as the weakling of the family. I was never interested in the macho side of life. I hated sport with a vengeance, didn’t like football, cricket, that sort of thing. I went out collecting butterflies, and went fishing” (Colton and Vanstone, 1996: 39).

Kim’s descriptions of his childhood experiences suggest that masculine social practices characterised his relationship with his brother, with his brother engaging in various behaviours to establish a hierarchy between himself and Kim. Kim’s life history suggests that his brother and his brother’s friends were ‘doing gender’ through their physical and verbal abuse of Kim and their construction of Kim as a cissy, that is, as a boy who was less than masculine which may have been associated in Kim’s brother’s mind with Kim’s physical frailty. In other words, it appears that because of his physical weakness as a result of illness, Kim was seen by his brother and his brother’s friends as being different from them, as lacking masculinity. As a child, Kim’s social power relative to other boys appears to have been determined by his inferior status in relation to his brother and his brother’s friends. This inferior status appears to have been, either initially established, or at the very least reinforced by Kim’s father’s masculine social practices, since, consistent with Kim’s brother’s gender practices, Kim describes his father as “very much a macho man”:
I never felt that my father loved me. He never showed any affection to me. He never cuddled me, told me he loved me, anything like that. ... This was brought home very, very strongly to me when I left home. ... I gave Mum a cuddle and a kiss. I went to cuddle my Dad and he pushed me away - shook my hand, pushed me on the train. ... [T]hat hurt - that’s hurt ever since (Colton and Vanstone, 1996: 40).

In a way that can be said to be consistent with Kim’s experience of himself as a ‘cissy’, Kim’s gender practices involved eschewing ‘macho’ activities possibly because it was clear to him that he could not successfully compete with other boys to prove adequate masculinity in a socially acceptable way. He also tells of not being noticed in his middle-class family (who were preoccupied with “keeping up with the Joneses” and holding “loads of parties”) as he grew older which appears to have exacerbated his sense of powerlessness within the family, and he spoke of seeing and experiencing great inequality in his life and others.

Kim’s father’s behaviour towards Kim can be said to be consistent with the concept of the hegemonic Masculine Ideal that has significant cultural currency in countries, such as Australia and the USA, within particular masculine milieux: unemotional, non-affectionate, and ‘macho’. His father’s overtly masculine behaviour within the family and towards Kim appears to have established clear relations of power between father and son, even though Kim considers that his father’s behaviour did not have a direct impact on him (Colton and Vanstone, 1996: 40). Nonetheless, Kim states that:

I did make a desperate effort when I was a kid to try and come up to my father’s expectations of what his young son should be, and I joined the school rugby team. Now surprise, surprise, I quite enjoyed playing rugby - a big shock to my self, let alone anybody else. ... My father was never interested in coming to watch a rugby match, whereas he’d go and watch my brother play football, which niggled a bit and I nagged him and nagged him. And one Saturday he actually came to school - it was just a rainy Saturday afternoon - I don’t know what the score was, but I scored a try. Now I felt like a dog with two dicks; I played rugby and scored a try in front of my Dad. Now I felt ten foot tall and I came off the pitch and my father’s only remark was, ‘Bloody cold night, don’t understand that silly game you’re playing.’ You know, even to an imbecile it was quite obvious that I’d done something pretty spectacular out there and there was no sort of recognition of it. And that bloody hurt and that was the end of my rugby (Colton and Vanstone, 1996: 41; emphases added).

Note here the association in Kim’s mind between genitalia and masculinity (“dog with two dicks”) and size and masculinity (“felt ten foot tall”) and the sense of power or adequacy Kim felt at having scored a try in front of his father, and the way in which the relationship of power between father and son appears to have been reinforced
through the father’s dismissal of his son’s masculine achievement (“that silly game you’re playing”). For Kim, as he describes it, that was the end of him trying to measure up to the masculine ideal represented by his father. Arguably, Kim’s father’s unemotional response towards his son was another way of maintaining the relationship of power between them, and Kim’s inferior position relative to his father. Kim’s view of himself as a failure also appears to have affected his performance at school; in his words: “I came bottom of the class every year, in every subject except art. ... I was not interested in school. Nobody was interested in me. So, I thought, why should I do all this?” (Colton and Vanstone, 1996: 55).

As an adult, Kim acquired a considerable degree of social power through a successful career and it appears that his career was a central part of his life as a man:

I’ve been in the ----- 30 years. ... Wonderful life, absolutely wonderful life - very exciting. ... I wore many hats as the -----, and so I had a pretty big job. Now I’ve left, there are three people doing my job. Yep. Yes, it was very stressful in a lot of areas. I felt that I was doing a worthwhile job, most of the time (Colton and Vanstone, 1996: 88-89).

From this description of his work life, Kim appears to be used to exercising a degree of authority and control in his life. The social power he derived through work was recognised by the authority given to him to become involved with children in a voluntary capacity. His description of his involvement with children suggests he enjoyed the position of authority he had. For example, Kim describes how he was invited by the headmaster of a boys’ school to introduce the sport of climbing and he “became the most popular thing since sliced bread in that school, and the kids and I got on like a house on fire” (Colton and Vanstone, 1996: 124). Kim describes these kids as having “no bloody hopes” and how he was giving them something to look forward to: “I suppose you could say that every kid in that school was a vulnerable target” (Colton and Vanstone, 1996: 124).

In terms of his offences against children, Kim chose children whom he described as “ideal victims”, that is, children “from less fortunate families” who were “easy to get at”, although he considers his “relationships” with boys were motivated by “sheer

---

38 Colton and Vanstone (1996) have concealed each offender’s employment where it might identify them.
affection” and “good fun” (Colton and Vanstone, 1996: 113). Nonetheless, his awareness of the vulnerability of the children he chose suggests he was also aware of the dynamics of power between himself and his victims and that, in order to initiate sexual contact, he had to manipulate the vulnerability of boys from less fortunate families. He appears to have used his position of power within the school to gain access to boys, such as one particular victim whom he was asked to look after as a father-figure, suggesting that experiences of power were central to his sexual behaviour with children. However, Kim describes himself, not as an abuser who possibly caused harm to his victims, but as someone who provided constant support for them:

I was a huge pillar of strength to a lot of these people. They used to phone me up, write to me expressing their problems as the time. And I used the best place I could to try and help them, guide them, sort them out. Very rarely by material things. I didn’t buy them expensive presents or anything like that. No form of bribery at all. When I took them out, you know, it was really to enlighten them on a better side of life. ... I showed them what makes things tick out in the real world, took them swimming, fishing, walking (Colton and Vanstone, 1996: 156).

Nonetheless, this description of his role in his victims’ lives suggests that the establishment of a relationship of power, through helping and showing his victims about life, was an essential part of his sexual behaviour with them. He also admits that he’s “still having great difficulty in believing that I have done so much damage, mentally, to these children – well, they are now adults” and, in his account of the reasons for abusing boys, he vacillates between statements such as “I wouldn’t hurt a fly”, a belief in the love he had for the boys, that he was helping his victims and a dawning realisation of the damage he has done (Colton and Vanstone, 1996: 114-115).

The relationship between power, powerlessness, sexuality and child sex offending in Kim’s life

Kim, who describes himself as homosexual, realised “at a very young age that [his sexuality] was not socially acceptable” and developed a “smoke-screen” to hide it (Colton and Vanstone, 1996: 70): “I was able to pull girls like mad; they went overboard for me and I pandered to their wishes, which looked publicly acceptable, but I was really having my fun with the boys and that has been basically the pattern of
my life” (Colton and Vanstone, 1996: 70). Kim appears to be aware of the subordination of homosexual masculinity in the society in which he grew up, since he went to great lengths to hide his sexuality by living “a double life from middle childhood through to his imprisonment in middle age” (Colton and Vanstone, 1996: 69), and, although he eventually married and had four children, he continued to have homosexual relationships and engaged in sexual behaviour with boys.

During the courtship with his wife “he maintained homosexual relationships” but describes how he “got into awful trouble with [his wife-to-be] through being a flirt with the other girls that she was working with, but that was all part of my front” (Colton and Vanstone, 1996: 88). As Colton and Vanstone observe, “[t]his seems to have marked the beginning of what appears to have been a rather extraordinary double life. His public face became that of the happily married man who was successful in a respected occupation. This front masked a clandestine life of homosexual relationships and sexual abuse of boys” (1996: 87) and suggests that sexuality was important to Kim’s experiences of masculinity and power. Outwardly, Kim acquired the social power associated with white, middle-class, heterosexual masculinity. At the same time, Kim’s awareness of the social unacceptability of homosexuality suggests that he was aware of the social ramifications of practising a subordinated form of masculinity, particularly since he had been shamed by his brother for displaying apparent ‘cissy’ qualities. Thus, it is likely that he was aware of the social power to be gained from appearing to be heterosexual. In other words, Kim enhanced his masculine social status by maintaining a heterosexual ‘front’.

Kim considers that his sexual abuse of children was not immoral: “what I was doing was giving love and affection, in every sense of the word. It wasn’t just a physical thing, it was a feeling, a total relationship, with a huge commitment on my side ... to their needs” (Colton and Vanstone, 1996: 135). Nonetheless, the need for control and power appears to have been central to his ‘relationships’ with children:

[i]f I saw that they were getting into trouble in any way, I would be quite stern with them and you know, I would discipline them as well, not physically, no, no physical discipline, but by my actions I would, you know. I used to take them out and give them treats occasionally, and if they’d done something wrong I wouldn’t do that. They’d know they’d done this and the trip would be off for the next ... whenever it was, which used to cut them pretty hard, because those trips were quite important to them, because most of
their homes were ... There was none of that sort of thing around in their homes. There was no love, or compassion, or treats. Some of them lived in complete squalor (Colton and Vanstone, 1996: 135).

Thus, despite Kim’s certainty that his sexual offences were about commitment and love, they appear to have been on his terms. In particular, his relationships with his victims appear to resemble a father-son relationship with a clear power differential between Kim and his victims as a result of his position of trust and authority and economic power. Because the boys he chose were from deprived backgrounds, it is likely that his exercise of control over them would have had an even greater impact on them, as he describes above. In other words, he had the economic capacity to give them ‘treats’ that their own parents could not afford and, hence, the power to control their lives in such a way as to satisfy his own needs: “You know, because they were living like that, they were easy victims; and the other way that I was looking at it, because they were living like that, I was giving them something that they wouldn’t otherwise have had” (Colton and Vanstone, 1996: 135).

Although Kim considers his sexual involvement with his victims was “a completely natural progression of feelings between two people” (Colton and Vanstone, 1996: 139), his victims’ emotional and economic vulnerability appears to have been essential to his sexual attraction to them, as was his ability to control their lives. In addition, his justifications that he did not initiate sexual contact appear disingenuous given the level of control he was capable of exercising over the boys he abused: “I never asked or required them to do it to me – sometimes they did, sometimes they wanted to, but it was never indicated that that’s what I wanted” (Colton and Vanstone, 1996: 139) and “[t]hey came to me quite willingly, and the sex developed quite openly and willingly. There was no force, coercion, stress or anything to with it at all. ... And if they ever said, ‘I don’t want this any more’, right, it stopped and the friendship continued” (Colton and Vanstone, 1996: 156).

In summary, it can be said that Kim’s life shows evidence of the effects of the masculine social practices of his brother and father which appear to have established a hierarchical relationship between Kim and his brother and Kim and his father. In fact, Kim’s early life appears to have been characterised by experiences of powerlessness,
despite his white, middle-class background. Nonetheless, as an adult he appears to have exercised significant social and economic power because of this background and because of his ability to construct a 'front' as a heterosexual, family man. The existence of his double life, however, suggests that he perceived that his homosexuality was a potential source of subordination in a masculine culture dominated by heterosexuality, particularly since he had been subject to ridicule as a child because of his apparent homosexual qualities. At the same time, his homosexual practices appear to have been central to his masculine social practices and his conception of himself as a man. The question is, why did Kim choose child sex offending for expressing his sexuality, rather than adult homosexual practices?

From Kim’s own accounts of his ‘relationships’ with his victims, Kim was able to exercise a considerable degree of power over their lives and it can be surmised that his experiences of powerlessness and vulnerability as a homosexual man would have been alleviated through sexual practices with socially inferior partners. In fact, the power he appears to have experienced through these sexual practices was congruent with the power he exercised in the world as a white, middle-class, apparently heterosexual man. But it can be argued that Kim’s adult power in the world as a result of the hegemonic, heterosexual practices of other men was tenuous and insecure because of his homosexuality. In fact, it may be that his particular experiences of powerlessness with other men (such as his brother and father), the centrality of sexuality for gaining power and proving adequate masculinity (through both his apparent heterosexuality and his child sex offending) and his choice of socially powerless boy-victims are linked. In addition, Kim’s life suggests that the sexual abuse of boys in his care was both an expression of his public power (in terms of his social power in gaining access to children, being trusted by the school authorities and his economic manipulation of his victims), as well as an expression of his lack of power as a result of the social relations of power between him and socially dominant, heterosexual men.
DAFYDD

Dafydd’s masculine social practices and the extent to which he was subject to the masculine practices of other men

Dafydd grew up with his mother and stepfather in Australia after the family migrated there (leaving his father whom he “idolised”). His early childhood appears to have been characterised by the poor relationship with his stepfather:

[n]othing that I did agreed with him. I went overboard, maybe this is part of my problem; I went overboard in trying to please him. And everything just fell. Nothing at all got his approval. And indeed, quite often, ‘You’re goddamned useless!’ Yes, I picked up on that. Certainly a failure in High School; my biggest achievement in High School, sports-wise, was making the third football team. ... I couldn’t make the first or second team, just the third team. And this didn’t endear Dad to me, nor me to Dad either (Colton and Vanstone, 1996: 49).

This account of Dafydd’s relationship with his stepfather has resonances with Kim’s experiences with his father, with both Kim and Dafydd, as boys, trying to please their fathers through sporting activities, although neither were considered to have made the grade, apparently demonstrating inadequate masculine behaviour. Like Kim’s, Dafydd’s early childhood appears to have been characterised by the relationship of power between him and his stepfather, and by his failure to live up to normative masculine practices, even though he had “been brought up with a macho image. Yeah. All my uncles – from my earliest recollections – all my uncles were miners. Wow! You know. Talk about hard men. And all my boys, all my cousins, all hard men” (Colton and Vanstone, 1996: 150). This information suggests that Dafydd was involved in a number of relations of power with boys and men during his childhood, in that he appears to have been aware of a need to measure up to a particular concept of masculinity as practised by, not only his stepfather, but also his other male relatives.

Dafydd is one of the two men in Colton’s and Vanstone’s study who reported being sexually abused as a child, although in his case he was sexually abused by a female friend of the family, an experience in which he reported feeling powerless and frightened.
Dafydd’s work history was concentrated in all-male environments involving danger and/or violence and he describes his training in the forces as “doing crazy things like jumping out of airplanes – you know, real macho stuff; it was good fun” (Colton and Vanstone, 1996: 96). He also describes himself in very confident terms, such as the leadership roles he assumed in relation to the community work he undertook with juvenile delinquents, suggesting that he exercised some degree of social power in the world.

The relationship between power, powerlessness, sexuality and child sex offending in Dafydd’s life

Dafydd is heterosexual and undertook voluntary work as a leader at a local youth centre where he targeted a 14 year old girl whom he admits he knew was vulnerable, since she told him and a colleague that her uncle had been “very seriously raping her since she was about 11 years old” but did not want to report the abuse to the police. Dafydd describes how the girl was also vulnerable because she “had lots of problems within the club ... she didn’t have any friends and certainly her mum and dad didn’t get on, or she didn’t get on with her mum and dad, she was always pushed to the side; nobody wanted to befriend her” (Colton and Vanstone, 1996: 129). Although Dafydd said that the girl was someone whose vulnerability he identified with, it is possible that the girl’s vulnerability was important to his choice of her as a victim because of the clear power differential that would have existed between him, as leader of the youth centre, and the girl who was a social outcast. In fact, he admits that “yes, I got into a position of trust – my victim trusted me very much” (Colton and Vanstone, 1996: 138) and he was the one who rescued her when other children were verbally abusive towards her. He said of his abuse of her: “I got her to the position where she trusted me implicitly and consummated the relationship. ... I knew that she was already a victim and I still went ahead”, thus taking advantage of the position of power he exercised, both as a person she trusted and as an authority figure: “[t]he things I was telling myself – she won’t tell; nobody would believe her because she’s a known liar – a troublemaker; she’s had it before, it’s not going to hurt her” (Colton and Vanstone, 1996: 143). In fact, Dafyyd admits that the girl’s reputation (that she was thought of as a troublemaker and a liar) is something that he tried to exploit in the hope that he would not be convicted (Colton and Vanstone, 1996: 148).
In summary, it can be said that Dafydd’s life shows evidence of the effects of other men’s masculine social practices upon him which appear to have manifested in experiences of powerlessness and inferiority. Such experiences may have been exacerbated by his experience of powerlessness when he was sexually assaulted by a female friend of the family. At the same time, he appeared to endorse and attempt to live up to normative masculine social practices, at least in terms of his work history. It is possible that sexuality was also important to Dafydd’s masculine social practices and for experiencing power, since his sexual abuse of a 14 year old girl was based on her vulnerability and his social power; it is difficult to imagine a more vulnerable victim of sexual abuse than one who has been sexually abused before, is rejected by her parents and is a social outcast. However, it appears that Dafydd’s construction of the girl as sexually experienced (“she’s had it before”) enabled him to ignore her social and emotional vulnerability and to characterise her as socially inferior, thus confirming his superior masculine status. In addition, Dafydd’s account suggests that his sexual abuse of a girl in his care was an expression of his public power, in terms of his social power as a youth leader and his ability to gain her trust and confidence.

Nonetheless, it is difficult to conclude that there is a direct link between Dafydd’s experiences of powerlessness as a result of his relationships with other men during both his childhood and adulthood and his choice of a vulnerable 14 year old girl as a sexual partner, since he does not give sufficient information to enable this conclusion to be made.

(c) RONNIE

Ronnie’s masculine social practices and the extent to which he was subject to the masculine practices of other men

Ronnie, an only child, describes a relationship with his father in which they “never hit it off” (Colton and Vanstone, 1996: 49). His father resented him and he was terrified of his father’s drinking bouts and the arguments that ensued. He described himself as “a very timid child” and “easily upset in the little things” (Colton and Vanstone, 1996: 80) and reports that he:
never enjoyed what you can call, what would be understood as the rough boys’ games, etc. I felt I was somehow different, from an early age, before I understood what the difference was. And I remember at one period, even worried myself, ‘Am I a cissy?’ - you know, that was the big word in those days – and I remember being worried about this (Colton and Vanstone, 1996: 80).

He reports that “even when I went through the secondary school, I didn’t enjoy things like soccer and those things. I used to find those very difficult indeed; I wasn’t good at them anyway – I was far happier if I could have been left with a book – and I’d find ways of getting out of those things” (Colton and Vanstone, 1996: 80). He describes himself as having an “inferiority complex”, having no confidence in himself and not liking himself: “I always had a dreadful inferiority complex and felt I wasn’t as good as other people; I used to believe that strongly. ... But for some reason I didn’t like myself at all. I used to think I was ugly” (Colton and Vanstone, 1996: 103).

His mother went out to work to support Ronnie at school, since his father did not encourage his continuation at school. As a child he wished his father had died in the war and, when his father did die, he reports he had the following thoughts:

I remember saying –‘Well this bastard won’t hurt us any more.’ And I was very ashamed of my own feelings then. ... What I wanted more than anything was for him to like me. What I wanted more than anything was for him to touch me, to get hold of me. I’ve never had any memory of him every touching me in my life (Colton and Vanstone, 1996: 50).

He describes the mental cruelty he and his mother suffered at the hands of his father, how he was hurt by his father’s rejection of him and how his “father always, every week, week after week after week, ran me down” (Colton and Vanstone, 1996: 104). Although Ronnie was good at school and received “very good results” for his O levels which were published in the local paper, his father “never even asked what I’d got” (Colton and Vanstone, 1996: 104). This account of Ronnie’s life suggests that his father’s masculine social practices in the form of showing no affection, emotional rejection and constant criticism created a relationship of power between Ronnie and his father which greatly influenced Ronnie’s masculine identity.
The relationship between power, powerlessness, sexuality and child sex offending in Ronnie's life

Ronnie is homosexual and reports that “from an early, early age I did realise of course, that I wasn’t following my friends in the sense that they were ... becoming interested in girls and I wasn’t. I couldn’t understand that, you see, because such a thing as homosexuality was something one never heard about” (Colton and Vanstone, 1996: 80). He reports being “very upset” when he heard a radio programme about homosexuality and realised “that what they had been talking about on that programme was me” and because he could not talk to anyone about his discovery, he went “through a tremendous depression” (Colton and Vanstone, 1996: 80-81). He had adolescent sexual relationships in which his emotions were not reciprocated by the other boys, and considered that his homosexual feelings were not normal (Colton and Vanstone, 1996: 82). As an adult he had a fear of other adult men: “[t]here was a rugby club not far from where I lived and people would say, ‘You should come up with us’ and that kind of thing. I could never let myself go and visit those places ... . There was always fear of going into pubs, clubs, places where male-orientated dominated [sic]” (Colton and Vanstone, 1996: 83). This comment appears to reflect Ronnie’s sense of powerlessness in what might be said to be normative, heterosexual masculine environments and his awareness of his place as a homosexual man in masculine hierarchies.

In relation to his sex offences, Ronnie finds “it hard to accept that I harmed those people”, that is, his victims who were school pupils whilst he was a teacher (Colton and Vanstone, 1996: 119). He, like Kim, justifies his offences on the grounds that he really liked his victims and would have done anything for them, although he does admit “that it was nothing more than just pure lust on my part” (Colton and Vanstone, 1996: 120). Although his victims were aged between 11 and 16, he saw what he had with them as relationships and describes one relationship as being started by the boy: “He wanted it to start. He took all the lead. I followed” (Colton and Vanstone, 1996: 120), suggesting that he misinterpreted the power relationship that exists between pupil and teacher, even if some of his victims were ex-pupils at the time he became sexually involved. In hindsight he wonders: “[w]ere they all somehow vulnerable, in the sense that they were turning to me as another kind of father-figure? ... I think some
of them were looking for a father-figure, or a leader of some sort and they chose me and I let them down” (Colton and Vanstone, 1996: 129). Nonetheless, he maintains that he “wasn’t the one that introduced sexual matters. Possibly, once they introduced something in a broad way, I picked on it. They made sexual remarks. Somehow, whereas I should have shut it out, I didn’t do it. So I was – in that sense – I was picking up something which I should have stopped” (Colton and Vanstone, 1996: 130). Nonetheless, Ronnie does admit that he was aware his behaviour was not right, that he was “getting something out of this, regardless of the poor victim”, insights which are tempered by justifications, such as “I never wanted to hurt anybody in my life” (Colton and Vanstone, 1996: 146).

Ronnie describes how he “found it so difficult to make relationships with adults ... adult males, and how easy it was to make a relationship with non-adult males” and how his “ego was definitely given a boost that these people wanted my company, wanted to tell me their private lives, wanted to confide in me, wanted to lean on me” (Colton and Vanstone, 1996: 121). Such comments suggest that Ronnie’s low self-esteem derived comfort from the attention he received from his victims and from their emotional dependency on him which can be expected from the nature of the pupil/teacher relationship. In other words, Ronnie appears to have felt less vulnerable in sexual relationships with boys and to have chosen boys who needed someone to lean on.

In summary, Ronnie’s early life can be said to have been characterised by experiences of powerlessness as a result of the relationship of power between him and his father. Similar relationships of power are also likely to have existed between him and his school peers, since he describes himself as different, as not fitting in with the masculine culture in his school. As such, it is arguable that the strong inferiority complex he developed in childhood was a result of his relationships with other males, such as his father and male peers.

It appears that homophobia was another source of Ronnie’s experiences of powerlessness and low self-esteem. In particular, because of the social unacceptability of homosexuality in hegemonic masculine cultures, it can be expected
that Ronnie’s ‘different’ sexuality affected his experiences as a man and was influential in the particular masculine social practices he engaged in. For example, it is possible that his fear of adult male relationships can be attributed to his previous experiences of powerlessness as a boy. Arguably, one way that these experiences were able to be alleviated was by engaging in sexual practices with socially inferior boys in circumstances where he exercised the public power of a school teacher. Thus, like Kim, Ronnie’s sexual abuse of boys can be said to be both evidence of his social power and authority, since his role as a teacher enabled him to gain access to the children he abused, as well as an expression of his lack of power, as a result of the relationships of power that existed between him and socially dominant, heterosexual men. Thus, it is arguable that there is a link between Ronnie’s experiences of powerlessness as a result of the social practices of other, culturally dominant men and his sexual practices with socially vulnerable boys.

(d) JAMES

James’ masculine social practices and the extent to which he was subject to the masculine practices of other men

James describes a childhood in which he was rebellious, although at the same time he was “very much a Mummy’s boy”. He describes his childhood as very happy, “very supportive, fairly strict, but not overly so. ... I always think of my home as a kid, as one that’s full of laughter; that’s the vital childhood memory” (Colton and Vanstone, 1996: 52). James gives no specific information about his masculine social practices as a boy nor his relationship with other boys and his father, although his parents’ description of him as a ‘Mummy’s boy’ suggests that relationships of power may have existed within the family home.

The relationship between power, powerlessness, sexuality and child sex offending in James’ life

James, who describes himself as heterosexual, was sexually abused as a child and considers that from then on he “had a very warped sense of sexuality” (Colton and Vanstone, 1996: 84). He worked at a school, although not as a teacher, and says that because his “sex life was ... pretty well non-existent”, he started looking to children
“as perhaps a substitute, well not perhaps, as a substitute” (Colton and Vanstone, 1996: 130). He describes how he manipulated the system to get access to children:

I can admit now, I was manipulating the system. ... I manipulated the staff to the extent that, you know, doing every sleep-in – Monday, Tuesday, Wednesday, Thursday, right, because I was in the senior year now. The staff thought nothing of seeing me around the school at night. ... I was manipulating everybody really, the school rules, the staff and obviously the victims (Colton and Vanstone, 1996: 131).

He also describes how he manipulated parents by gaining their trust and confidence: “I had become very close with one of the kids. The parents used to come round and say, ‘Oh, he’s being a little sod, will you come down and sort him out?’ So I was getting, I was manipulating the parents. I was worming my way in” by getting parents used to having him around their children (Colton and Vanstone, 1996: 132). In fact, it appears that the rapport he established with the children in his care was a central part of how he targeted children for sexual abuse:

[t]his young lad – must have been about ten when he came in to the school – he was brought up by the police and the Social Services. So I sat there for three hours with this child and he just talked, and gradually I get the response back, you know and obviously from then on, I could do no wrong, you know, in the child’s eyes (Colton and Vanstone, 1996: 131).

In relation to another child, he describes more blatantly the power game he was engaged in: “there’s one child we’ve got in the school, and he was a real bad boy and I thought, ‘Now, wait a minute, if I can be seen to be able to handle you, to cope with you, and get you in my unit ... And once you’re in my Unit, I’m in complete control of you’” (Colton and Vanstone, 1996: 132).

Like Kim, Dafyyd and Ronnie, it appears that James took advantage of the emotional vulnerability of his victims: “there was an occasion with one of the boys – he was very upset, there were a lot of problems at home, Dad had split; he was apparently very violent – and he got a letter and I happened to be on sleep-ins you see. And he came to me and he was very, very upset and I read the letter and I took advantage of the situation” (Colton and Vanstone, 1996: 144). Nonetheless, James attributes his sex offending to his own abuse when he was 11: “I think a lot stems from what happened myself when I was 11. I think that was the planting of the seed, you could say, and it was just a question of time really, before it grew” (Colton and Vanstone,
1996: 144), a view which appears to contradict the degree of planning and manipulation that was involved in his sexual behaviour and his admission: “I was in control” (Colton and Vanstone, 1996: 147).

James reflects on how nobody confronted him directly with his behaviour, even though he’d been warned at one stage not to “touch up” the boys (Colton and Vanstone, 1996: 170). He thinks that if there had been someone in authority who was prepared to challenge his behaviour, this might have prevented him from abusing his position of power:

[now if he had those suspicions, then why the hell didn’t he do something? You know, if he thought that I was touching up the child, surely an investigation should have happened then. You know, looking back on it now, there were warning signs there. The staff must have picked up on it. I think if somebody had come up to me then and said, ‘What the bloody hell’s going on?’ I’d probably be frightened there and then, which would have saved ... (Colton and Vanstone, 1996: 170).

With this comment, James appears to recognise that lack of supervision encouraged him to continue to abuse his position of power. He also displays an acute awareness of the vulnerability of the children in his care: “[b]ut you’ve got to care. You can’t just leave a child bawling his eyeballs out. You can’t just walk in to watch and say, ‘I’m sorry, ... I’m off duty now. It’ll keep to the morning.’ You cannot do that. You are just reinforcing that child’s rejection” (Colton and Vanstone, 1996: 170), a view which suggests that he was also aware of the ease with which vulnerable children could be manipulated for his sexual gratification.

In summary, James’ account does not suggest as clearly as the accounts of Kim, Ronnie and Dafydd that his childhood was characterised by experiences of powerlessness as a result of relationships with male peers or father figures. Although Colton and Vanstone warn that James’ account of his happy childhood should temper any tendency to read “too much into ... [the other offender’s accounts of unhappiness during childhood] in terms of the possible relationship between early childhood experience and later acts of child sexual abuse” (Colton and Vanstone, 1996: 52), it is argued here that it is experiences of powerlessness as a result of an offender’s relationships with male authority figures and his peer group, rather than family
unhappiness, that should be focused on to understand the motivations behind child sex offending behaviour.

For example, James' description of himself as a 'Mummy's boy' and his experience of being sexually abused by a male adult (about which he gives few details, except to say his personality changed and he became very secretive: Colton and Vanstone, 1996: 84) suggests that he experienced powerlessness at the hands of other men. James' belief that his own sexual behaviour with children stemmed from being sexually abused also suggests that he may have learnt that power and sexuality were central to masculine social practices and experiences of power as a man.

James describes how he used the social power he had to manipulate the system where he worked in order to obtain access to children, particularly those who were vulnerable and over whom power could easily be exerted. In other words, James' story suggests that the sexual abuse of boys in his care was, at the very least, an expression of his public power, in terms of his social power within the school, the trust invested in him by the school authorities and his ability to manipulate parents and 'the system'. Although it is harder to argue because of the lack of information provided by James about his childhood, there may be a link between James' experiences of powerlessness as a result of his relationships with other men (particularly as a child), the centrality of sexual practices for gaining an experience of power and his subsequent grooming and sexual abuse of vulnerable male children.

(e) DAVID

David's masculine social practices and the extent to which he was subject to the masculine practices of other men

David describes a childhood in which he was the youngest of a large family living in his grandmother's house. He lived in what he calls "the matriarchal society of a grandmother" and was the "last in the pecking order" and describes relationships of power between himself and other members of his family, in particular his older brothers:

[in a mining village, you had to conform, you had to have the macho sort of image -- you had to be one of the lads, one of the gang. And I found it very difficult to blend the fact
that I could compete on the physical side with my intellectual side, which wasn’t acceptable within that culture (Colton and Vanstone, 1996: 54).

Relationships of power within his family appear to have been enforced through physical violence: “getting punched about and things like that ... you had to take the punches, you’d have to keep it to yourself” (Colton and Vanstone, 1996: 54). In particular, he talked about the pressure “to conform to the image of home, of a male in a working-class family ... To look to the club, to sport, to work as my goals in life” (Colton and Vanstone, 1996: 66) and describes how he conformed to survive: “I knew how they were playing the rules, therefore I’d play by their rules and survive” (Colton and Vanstone, 1996: 67). For example, he describes how his academic achievements at school did not fit in with his family’s expectations of him as a tradesman, so much so that he down-played his exam results to hide his academic ambitions from his family (Colton and Vanstone, 1996: 60).

Despite these constraints upon him, David describes how he rebelled within the family, since: “I wanted to be an individual, I didn’t want to do what everybody else did. I suppose it just manifested itself in my teenage rebelliousness” and because he couldn’t cope with the physical abuse of his older brothers he became more and more rebellious (Colton and Vanstone, 1996: 54). When he went into a large comprehensive school he used the same tactics of conforming to survive: “it was a matter of the fittest survives and you just had to adjust to your environment. I suppose you just get to know the hard boys and you make them your friends. You learn ... [to] make sure that the bullies are on your side, basically” (Colton and Vanstone, 1996: 67). For example, David discusses the particular masculine social practices that appear to have been dominant within his peer group:

[macho culture would have meant for me that you never showed your emotions. Yes, I think emotions would have been the main thing which were suppressed. And on the whole, it would have been more doing macho things all the time, which you didn’t particularly want to do; playing sport, getting up to boy-type mischief; you know, fighting, gangs, that sort of thing; just living the image of the street-wise and hard, you know, that sort of thing. I was a part of that upbringing, and that spilled over into my school. I mean, you had to be very street-wise and very hard (Colton and Vanstone, 1996: 67).

In this observation, David appears to be identifying the hierarchical characteristics of male adolescent peer groups and the particular strategies he used to cope with the
imposition of a hierarchical structure upon him, although he sees his desire to conform as a “flaw within myself” (Colton and Vanstone, 1996: 67). Interestingly, David recognised the effect of this masculine culture on his subsequent offending behaviour:

I think that what I identified within myself and my past were contributory factors, through my making a choice to offend. It’s my choice in the end, not the factors, I decided. But lots of people have been brought up in the same situation ... I think it was the need ... I can identify the need to fulfil an image, a macho image and a role which I could no longer do. I mean, with the stress and the strain of maintaining that image, it was finally giving in. I think the need to find some sort of ‘love’ or emotional outlet and contact, which I hadn’t got, which I’d suppressed all those years; and my chosen profession multiplied that suppression (Colton and Vanstone, 1996: 151).

David also makes a clear link between his experiences of powerlessness as a result of the masculine social practices of other men and the power he derived from child sex offending:

[b]ut there I see how I developed into David the abuser and suddenly I think all the pent-up envy as a kid, of the older brother – older uncles come abusive brothers – came into the fantasy. The fact that the macho image, male culture, everything, I think, contributed then to this fantasy world of opting out to something which I could fulfil (Colton and Vanstone, 1996: 151).

The relationship between power, powerlessness, sexuality and child sex offending in David’s life

Contrary to what was encouraged in his working-class background, David succeeded academically at school and went on to teacher’s college, finally becoming ordained as a religious Minister. He describes how the culture of the church encouraged child sexual abuse:

I think there is a certain degree of inculturalisation [sic] between people who are abusers. I think that to a certain degree you pick up sounds and you pick up, well, ideas ... There is definitely, I would think, a culture within the Church. It has a great deal to do, I think, with the fact that there are a lot of single clergy, a lot of clergy who are living on their own, in a situation where they can abuse. ... There seems to be something within the system which encourages, if that’s the word, almost gives permission for others to do it and get away with it. Therefore, you think, ‘why won’t I?’ (Colton and Vanstone, 1996: 109).

Although David states that he resisted the culture of the church at first, it appears that it influenced his decision to sexually abuse children, although David describes its influence on him in such a way that he appears to believe he had no choice, thereby appearing to abdicate responsibility for his actions:
And I felt also a certain degree — again, it's not an excuse — but you felt almost a certain degree of, 'Damn, it's got to me.' It's like an infection. You feel you are part of it now and the sub-culture consumes you as well. It's like an amoeba, swallowing you too. You suddenly were included within that sub-culture. And you came to be in a powerless situation. Well, it wasn't a powerless situation, but you convinced yourself that you were powerless to do anything about it (Colton and Vanstone, 1996: 110).

This description suggests that sexual practices with children gave the members of the sub-culture a way of relating to one another and it can be surmised that child sex offending within the sub-culture was centred around men's hierarchical relationships with each other through their sexuality, specifically the medium of sex with children.

Interestingly, David describes how the fantasies of sex with children he had in his teens and early twenties were incompatible with the working-class, heterosexual, masculine culture in which he grew up, but when he joined the Church, the sub-culture of (homosexual) child sex offenders gave him a new set of values, all of which supports the argument made in Chapter Three that child sex offending, like normative heterosexual practices, can be an expression of power and masculinity within a particular masculine hierarchy. Indeed, David describes how he “didn’t think it was wrong or unacceptable for somebody training for the priesthood to have these thoughts, because others were doing it. Again, you see, it confirms within you, ‘Oh well, I’m just like everybody else.’ The sub-culture provided me with my answers, basically” (Colton and Vanstone, 1996: 111). By knowing that there were other priests who were offending, he considers that this gave him “permission to offend” (Colton and Vanstone, 1996: 151). In other words, “[w]ell if they can get away with it, so can I” (Colton and Vanstone, 1996: 151-152). Although David said that he experienced some discomfort because of his sexual behaviour, he chose to talk to colleagues whom he knew would give him the sort of advice he wanted:

I think you choose those you go to, who'll give you the advice you want rather than the advice you need. And so I think, that's where I looked to colleagues who I knew - subliminally, or quite openly - would give me the answers I wanted, or wouldn't say, ‘Hey, this is wrong.’ ... If you think you are right, you choose somebody who's going to help you in a positive way for wrong. And I think, well I know, looking back now that I chose people who I knew wouldn’t stop me in my tracks, basically (Colton and Vanstone, 1996: 152).

In fact, he considers that he was “empowered to abuse” by colleagues who told him what he wanted to hear (Colton and Vanstone, 1996: 153).
David does accept, however, that what he did was wrong: “I know what I did was wrong, but I still did it” (Colton and Vanstone, 1996: 122), although he “chose to disabuse the concept of victim and replace it with the concept of consensual – consensual acts .... And the fact that there was never any physical force, or violence, I did have a consensual lie. But now you identify the fact that there is no need for violence, because you ‘groom’ people, you prepare people, you normalise things” (Colton and Vanstone, 1996: 122). He recognises that “what I did was that I conditioned them. I normalised my abuse so they didn’t really have any choice” (Colton and Vanstone, 1996: 123) which appears to be an acknowledgment of the power differential between him, a priest, and the boys he abused. In fact, David admits that “[t]he fact that I was working with people who I could take advantage of because of my trust and my position obviously made an easier situation than if I’d been a coal miner or a bus driver, or whatever” (Colton and Vanstone, 1996: 134). Arguably, the position of trust and power that he had over his victims as an authority figure was central to his sexual behaviour with children and is supported by the lack of emotional involvement that David desired: “[s]omehow the normal progression of needs wasn’t fulfilled. Therefore it deviated off at a different tangent, which at the time was easier. That sounds a bit callous, but [the abuse] was almost easier and required less emotional involvement, commitment and time, than if it had developed on a normal level” (Colton and Vanstone, 1996: 153-154).

In other reflections, David considers that his abuse of children was:

very much to do with being isolated from friends, family, the whole system. Having moved from a city situation, surrounded by friends, into a country situation; suddenly being on your own and actually craving company. I believe that the abuse developed through this craving company, and finding it so much easier to make company with youngsters, who are part of your world anyway, who relate to you. And then progressing that need for company into fulfilling other needs within yourself. The friendship and the trust that youngsters put in me. Upping their age, downing my age and then finding that I could satisfy other needs within myself – sexual gratification needs – by abusing (Colton and Vanstone, 1996: 153).

However, David describes himself as someone who chose to be socially isolated: “before I felt I was my own man. I could cope on my own. I didn’t need anyone else” (Colton and Vanstone, 1996: 160), suggesting that the abuse, rather than being a
substitute for adult relationships that he was incapable of forming was something he chose so as not to develop emotional attachments. This proposition is supported by David’s view that, as a result of a treatment programme, he has found:

the confidence to expose myself and be accepted. Because the one thing it has taught me is that for the first time I can weigh where I am, who I am, what I am and people still like me; whereas before, it was unacceptable, in both my work and my family; and I feel much more a rounded person, much more at ease. Whereas I’d describe myself in the past as diseased within myself; I’m much more at one with myself now, here (Colton and Vanstone, 1996: 160).

In summary, David’s childhood appears to have been characterised by experiences of powerlessness as a result of the relations of power within his family, within his school and within the social class of which he was a part. David’s life suggests that there is a link between experiences of powerlessness as a result of relationships with other males, the centrality of sexuality to alleviating experiences of powerlessness and proving adequate masculinity and engagement in sexual behaviour with children. In particular, David’s social power as a religious minister and the culture of silence and permission within the Church is evidence of the social power he was able to exercise to gain access to his victims. It can be argued that David’s experiences of powerlessness as a man were likely to have been the necessary pre-condition to his subsequent sexual behaviour with children, since it appears that such experiences were able to counteracted by the degree of power he exercised over his victims as an authority figure, suggesting that a need for power was an essential part of the motivation for his sexual behaviour. In particular, David hints at the fact that his homosexual masculine practices were affirmed in an environment where homosexual child sex offending was condoned, a situation that would not have occurred in his heterosexual, working-class background.

(iii) Conclusion

At the outset, it can be argued that men who sexually abuse children are likely to “share a set of ideological beliefs which entails a certain view of manhood, involving on the one hand preoccupation with achieving and maintaining status” (Archer, 1994: 321), whilst, on the other, viewing children as legitimate objects of sexual attraction, a proposition that is supported by some of the offenders’ accounts about the so-called ‘normality’ of their relationships with boys. In other words:
Beliefs about masculinity prescribe the behaviour of men by offering a set of standards ... to which to aspire, and a set of actions which are prohibited by sanctions. From early in life, avoidance of femininity is an important motivation for young boys. ... Similarly, aspiring to be 'tough' is an important motivation for young boys, to be replaced by achievement in a wider sense later in life (Archer, 1994: 321; emphasis added).

Both of these standards can be said to be evident in the accounts of most of the above offenders’ accounts, in that avoidance of femininity appears to have been central to their experiences of masculine power, lack of masculinity appears to have been central to their experiences of powerlessness with other men and demonstrations of ‘toughness’ and sexual prowess were associated with adequate masculinity, that is, “the proper activities of ‘real men’” (Archer, 1994: 322).

The above accounts suggest that each offender, whether homosexual or heterosexual, encountered experiences of powerlessness as a result of gender dynamics between themselves and fathers, brothers, school teachers or school peers as they were growing up, that is, as a result of the masculine social practices of male peers and male authority figures. It can be tentatively concluded, therefore, that these offenders, at times, experienced a lack of social power as a result of the social practices of other men and, as a consequence, were considered either by themselves or other men to exhibit a lack of masculinity. At other times, the offenders were able to acquire social power by exerting power over others who were socially inferior, suggesting that their lives were a combination of experiences of both powerlessness and power. Some offenders, in particular those who practised homosexual masculinity, appeared to experience chronic levels of powerlessness in their lives, although, at the same time, some of them had a considerable degree of public power as a result of their class and race, since all were middle-class and white. In other words, despite their subordinate masculine status as a result of hegemonic masculine practices by heterosexual men, the homosexual offenders were able to engage with hegemonic masculinity to derive power in other ways. In fact, it can be argued that it was this hegemonic power that gave them access to the children who subsequently became their victims and that their sexual practices with children confirmed this hegemonic power. In other words, in most cases, there was evidence in the offenders’ accounts of the inferior social status of their victims and in every case it can be said that a relationship of power existed between offender and child as a result of the public power each offender derived from
the dominant masculine culture as a result of their particular class and racial backgrounds.

In addition, most offenders discussed how they had been shamed by hegemonic masculine culture and some of them demonstrated a need to live up to the normative masculine practices of that culture. In some cases, it was particularly clear that sexuality was a central masculine social practice that enabled them to exert power and control and to derive an experience of adequate masculinity. In particular, for three out of the five offenders (Kim, Ronnie and David), it appears that avenues for adult sexual relationships were closed, that is, relationships in which they would have been able to exercise the same degree of control and authority they exercised over their child victims. The same could also be said of James, since the degree of control and authority he exercised and sought to exercise over his victims indicates that power was central to the way he experienced his sexuality. On the other hand Dafydd, who sexually abused a 14 year old girl in his care, appears to have taken advantage of the opportunity he considered was presented by the girl’s vulnerability and was able to construct her as a legitimate target for sexual abuse because of her apparent ‘sexual experience’. Unfortunately, Dafydd does not provide sufficient information to determine whether avenues for adult sexual expression were closed to him, whether the abuse of the 14 year old girl was a one-off instance or whether he had sexually abused other children.

Interestingly, for all offenders, the degree of authority and control they exercised over the children they abused was arguably consonant with the public power they derived from their employment, suggesting that the way they expressed their sexualities was the only way they could experience the same degree of power and control they experienced in their work lives.

Although Colton and Vanstone (1996) consider, first, that the most pervasive theme in the offenders’ accounts is “how the men conceive of themselves as males, and how they construct their own sense of masculine identity within both a personal and socio-political context” (Colton and Vanstone, 1996: 176) and, secondly, that “it is important to place the stories of these men within an understanding of the
heterosexual, white, male hegemony that dominates the social and professional settings within which their offending occurred” (Colton and Vanstone, 1996: 176). Colton and Vanstone do not adequately explain why masculine identity is important to understanding child sexual abuse, nor how a dominant white, heterosexual, male context gives rise to child sex offending. In other words, whilst they recognise the existence of “a hierarchy of power in which children are less powerful than [the offenders] and, therefore, less threatening”, as well as “a culture which maintains the ideal male role of dominance, and the acceptability of heterosexual relationships in which women are the subordinates and men the dominators” (1996: 176), they fail to interrogate the effect of the relationships of power that existed between the offenders and other men in their lives and how these relationships are created, such that child sex offending can be understood to be a particular consequence. In other words, Colton and Vanstone do not discuss the contradictory experiences of power and powerlessness that can be said characterised the offenders’ lives nor do they allude to the role that experiences of powerlessness and inadequate masculinity (as a result of the offenders’ relationships with other men) play in child sex offending behaviour, nor the role that particular masculine sexual practices appear to play in alleviating such experiences of powerlessness.

In conclusion, it can be said that the analysis in Part D provides support for the theory developed in Chapter Three that child sex offenders’ experiences of powerlessness, as a result of their relationships with other men, are central to understanding a man’s motivation for child sex offending. Whilst these conclusions can only be said to be tentative because of the small and unrepresentative sample studied, they provide the groundwork for further work to test the theory.
E. “YES, BUT WOMEN SEXUALLY ABUSE CHILDREN TOO”

(i) Discussion

Feminism has been criticised for ignoring the evidence that shows that boys are also victims of child sexual abuse and that a significant proportion of the perpetrators are female (Banning, 1989; Allen, 1990; McConaghy, 1993), although non-feminist researchers over the years have ignored or dismissed the possibility that women could have a sexual interest in children or that it would be possible to engage in child sexual abuse without a penis (Mathis, 1972; Walters, 1975; Sarles, 1975; Freund, Heasman, Racansky and Glancy, 1984). As Banning (1989) observes, references in the literature about female child sex offenders “were few and usually dismissive, with only individual case histories reported” (1989: 564).

Despite this evidence, Allen (1990) considers that “barriers to the recognition of female perpetration develop when feminist perspectives are presented as the only viable explanations for child sexual abuse, and female sexual abuse is consequently considered nonsignificant” (1990: 111). However, the “‘doctrine of passive female sexuality’” (Edwards, 1981; cited in Nelson, 1994: 71) has been adhered to by feminists and non-feminists, alike, as a way of denying the fact that women also commit child sexual abuse. No doubt, because “[m]others are perceived as nurturing and asexual to their children” (Banning, 1989: 567), this has contributed to the belief that women would not sexually abuse their children.

At the same time, however, feminists have recognised a legitimate social problem which no empirical data has yet refuted: that the vast majority of child sex offenders are male and the vast majority of victims are female, as evidenced by the studies discussed in Part B above. Add to this the fact that even when male children are sexually assaulted, the vast majority of their abusers have been found to be male, then social researchers, whether feminist or not, must account for the large disparity between the numbers of male and female child sex offenders.

However, Allen (1990) believes that “[e]xplaining child sexual abuse solely in terms of male dominance and aggression makes it difficult to explain the behavior of female
perpetrators, especially those who sexually abuse children without the involvement of a male partner" (1990: 111). Even so, an understanding of the relationship between gender and sexualities means that explanations of child sexual abuse need no longer depend on (i) a denial of sexual abuse by female offenders; (ii) a simplistic analysis of male dominance and aggression, nor (iii) the rather defensive position exhibited in Allen's (1990) article which challenges the validity of feminist explanations for understanding why men and male adolescents constitute the vast majority of child sex offenders.

Clearly, child sexual abuse is also committed by some women and female adolescents. However, mere speculation that the beliefs and attitudes of researchers have prevented full recognition of the extent of abuse committed by female offenders must ultimately be confirmed by empirical data. If, for example, Allen considers that cases of mother-son incest escape the attention of professionals because of a bias against recognising abuse by mothers, and there is no empirical data to confirm this, it might just as easily be said that such cases are much more infrequent than cases of father-daughter incest.

The criticism of feminism's denial of female child sex offenders parallels the argument that domestic violence is not exclusively perpetrated by men against women, an argument which is based on:

an impressive and convincing array of statistics that purportedly demonstrate that women are also violent, or that men are victims too, leading to a "popular but irrelevant argument of who is more violent"... . The rationale is that, if women can be proved to be as violent as men, gender is not a powerful explanatory construct (Bograd, 1990: 132; references omitted).

Feminists need to respond to similar arguments in relation to child sexual abuse by analysing, first, whether men and women are equally sexually abusive, and secondly, if they are, whether "gender should be excluded as a crucial explanatory variable" (Bograd, 1990: 132).

In the area of domestic violence, when "incidents of domestic violence [are put] back in the particular situational and social contexts in which they occurred," Bograd reports that "compelling gender differences emerge" (Bograd, 1990: 133). For example:
Wives suffer significantly more physical injuries than do husbands. Their patterns of violence differ from men's: wives often did not use severe violence until after experiencing 10 or more acts of "minor" violence at their husbands' hands; an increase in their own minor violence was associated with a sharp increase in the number of severe assaults by their partners... Wives' motives differ from husbands': wives are more likely to use physical force against a violent partner than towards a nonviolent one and to report that they employed physical force in self-defence... More than half of all women homicide victims are killed by current or former partners, often after they are separated... women who kill [their partners] have often suffered extreme chronic physical abuse by their mates... These data suggest that men may use extreme violence to control and dominate while women use lethal violence in order to escape (Bograd, 1990: 133; references omitted; see also Dobash and Dobash, 1979; 1992).

Similarly, Dobash, Dobash, Wilson and Daly (1992) report that victimisation surveys show that women are significantly more likely to be assaulted by their husbands than husbands are by their wives and that women are more likely to be injured as a result of these assaults. Messerschmidt (1993) observes that domestic violence "develops within a setting of prolonged and persistent intimidation, domination, and control over women" (1993: 144; references omitted), and considers that domestic violence arises from "gendered subordination", as well as "women actively contesting subordination", such that "the more traditional the gender division of labor [within the home] (regardless of class and race position) the greater the likelihood of wife beating" (Messerschmidt, 1993: 145; references omitted).

Such information takes us beyond the "who is more violent" argument to demonstrate the gendered context and experience of violence, and to show that the violence of women "may tell us more about the response of women to their husbands' violence (and about the problems of abstract measurement and scaling) than they do about any persistent or severe pattern of husband beating" which is analogous to the "persistent, systematic, severe, and intimidating force men use against their wives" (Dobash and Dobash, 1988: 60; cited in Bograd, 1990: 133; emphasis added).

Arguably, a similar analysis should be undertaken in relation to the "women are as sexually abusive as men" argument. At the outset, the raw numbers do not support such a proposition as is evident from the studies discussed in Part B above, and there has been controversy over whether the numbers of female perpetrators are as high as...
some researchers suggest (Finkelhor and Russell, 1984: 173-176). Generally, surveys of child sexual abuse report very low rates of sexual abuse committed by female offenders. Even so, Finkelhor and Russell showed, in relation to two studies conducted in the late 1970s, that rates of abuse committed by women had been inflated because a woman was classified as an offender if she had permitted sexual abuse to occur, or because women had sometimes been classified as offenders when their male partners had sexually abused a child and the women had committed some kind of non-sexual maltreatment (Finkelhor and Russell, 1984: 173). In addition, these studies did not distinguish between lone female offenders and female co-offenders, and thus failed to differentiate between sexual abuse initiated by a female offender and sexual abuse committed by a female co-offender under possible coercion by a male offender.

Nonetheless, Lawson (1993) has criticised the argument that general population surveys show that female child sex offenders are rare, on the grounds that “[q]uestions in such surveys tend to be nonspecific regarding maternal sexual abuse and neglect to include a broad range of specific maternal behaviors that could be labeled as seductive abuse but were experienced as pleasurable” (1993: 261). In fact, along with Allen (1990), Lawson considers that “data from general surveys (and reported cases) do not accurately reflect the prevalence of mother-son sexual abuse” (Lawson, 1993: 261) because more and more clinical cases of sexual abuse by female offenders have been documented over the years, reflecting the belief that “cases of mother-son sexual abuse are more likely to be disclosed in long-term therapeutic treatment” (Lawson, 1993: 261) than reported in surveys or to the authorities.

Nonetheless, the same arguments can be made in relation to father-daughter sexual abuse which has a long, well-documented history of not being taken seriously and of being extremely difficult to prosecute (Herman, 1981; Russell, 1986 and see discussion in Chapters One and Two). Because of this history, there is every reason to think that daughters would be just as reluctant as sons to report their abuse. In other words, if the stakes are equal in terms of the reluctance of sons and daughters to report

Australia which involve spouses (Wallace 1986; cited in Graycar and Morgan, 1990: 278).
and/or acknowledge the abuse (because of the belief that no-one will believe them, threats made by the offender, or the shame associated with revealing the abuse), then we would expect that general population surveys would fail to accurately reflect the true prevalence of abuse experienced by both sons and daughters. This would mean that both types of sexual abuse are likely to be under-estimated in such surveys. Arguably, therefore, whilst these surveys may only be an approximate indication of the prevalence of sexual abuse perpetrated by male and female child sex offenders in the general community (in particular, mothers and fathers), they may be a fairly accurate reflection of the ratio of male to female child sex offenders, given that the problems associated with remembering, acknowledging and reporting the abuse can be expected to be the same for both male and female victims of child sexual abuse.

There are also dangers associated with extrapolating from the more frequent reports of female sexual abuse in the clinical literature, since “raw numbers are seductive” (Bograd, 1990: 133), and when presented in a theoretical vacuum, they allow conclusions to be drawn that may suit particular prejudices. However, by examining the raw data in a gendered context, it may be that apparently similar behaviour on the part of men and women may not, in fact, be equivalent in form or meaning. For example, when we hear that a woman has sexually assaulted a child, what is gained by concluding that sexual abuse is a “human issue” and that feminist explanations of male child sex offenders are invalid? As Bograd observes, “[a]dd gender to the equation and a wide range of questions emerge” (Bograd, 1990: 134), such as, what types of sexual activities do sexually abusive women engage in, and are they the same types of activities as men? What are the proportions of sexually abusive women who operate as lone offenders compared with those who are co-offenders with men? When women are co-offenders, do they engage in different or similar sexual behaviour and are they, themselves, subject to sexual or physical abuse by their male co-offenders? Do sexually abusive women subject their victims to the same levels of persistent, systematic, severe, intimidating, physically mutilating and life-threatening forms of sexual abuse performed by men? Do female offenders sexually abuse alone, as well as in gangs or so-called paedophile rings? Will female child sex offenders be considered to be more accountable for their offences because they have defied the normative prescription of passive feminine sexuality? What does child sexual abuse
by female offenders tell us about the social practices of feminine sexuality? Do female child sex offenders draw on a similar power base to that of male sex offenders in cultures dominated by hegemonic masculine social practices?

A gendered analysis might reveal, for example, that:

(i) a large proportion, or even a majority of female offenders, are found to be co-offenders with men40;  
(ii) some so-called female offenders are, in fact, accomplices not offenders, in that they do not engage in sexual behaviour with children but are aware of the abuse and take no steps to report or prevent it41 or in some way make their children “available for abusive purposes” (Kaufman et al, 1995: 330);  
(iii) the vast majority of female child sex offenders were themselves sexually abused as children (McCarty, 1986; Johnson, 1989; Nelson, 1994) and, as a result, some female child sex offenders are emotionally dependent and treat their sons as adult sexual partners42;

40 For example, McCarty (1986) reports that out of a non-representative clinical population of 26 female child sex offenders, 35% (9) were co-offenders with a male offender, a further 23% (6) may have had male co-offenders and 19% (5) were accomplices to male offenders but did not commit child sexual abuse. This amounts to a total of 77% of the female child sex offenders in McCarty’s study (1986: 448). This high rate of female co-offenders is confirmed by Faller’s (1987) study which found that 73% of female child sex offenders in her study were co-offenders. In addition, Nelson’s (1994) study of police case files on child sex offences found that where there were multiple offenders, female offenders appeared most frequently, although in the proportion of 96% male offenders to 4% female offenders (1994: 70). However, whilst a study by Kaufman, Wallace, Johnson and Reeder (1995) also found a high rate of female co-offenders, their rate of 25% is considerably lower than that found by Faller and McCarty. Further, all the co-offenders in McCarty’s sample had been sexually abused as children, and all demonstrated a strong need to be taken care of which took precedence over the needs of their children (McCarty, 1986: 457), suggesting that emotionally dependent female co-offenders may be coerced into sexual abuse by their partners because of their considerable dependence and vulnerability to threats (Nelson, 1994: 81). Similarly, McCarty found that all the accomplices in her study demonstrated this need to be taken care of and its precedence over their children’s needs.

41 For example, McCarty (1986) reports five mothers whose “roles in enabling the abuse were so extensive that law enforcement officials treated them as offenders” (1986: 448). In such cases, the question to be asked is, not why women are sexually attracted to children, but what prevented them from protecting the child?

42 Such findings suggest that gender, that is, the social practices of normative femininity (such as, childlike dependency and the need to be looked after) is important to understanding female co-offenders’ sexual behaviour. Indeed, the finding that some female offenders become emotionally dependent on their sons after separation from a male partner (McCarty, 1986: 450) suggests that gender is also important in understanding the subsequent sexual abuse of these sons, since McCarty reported how some female offenders saw and treated their sons as adult sexual partners (that is, “age-mates”), in circumstances where they were looking for someone to look after them (McCarty, 1986: 450; 455). See also Banning (1989) who describes the sexual abuse of a four
(iv) there is a discrepancy between the type of behaviour that is considered to constitute child sexual abuse when performed by a woman and the type of behaviour that is considered to constitute sexual abuse when performed by a man;  
(v) there are other aspects to feminine sexuality that do not accord with normative prescriptions of passive female sexuality; or 
(vi) women who have been sexually abused may confirm their experiences of sexual objectification and hence social powerlessness through the sexual abuse of children (Higgs, Canavan and Myer, 1992).

A gendered perspective would be able to analyse the specific effects of child sexual abuse in the background of female offenders, in terms of their subsequent feminine sexual practices, given that it does not appear that the vast majority of female victims of child sexual abuse go on to become offenders themselves. For example, Higgs et al (1992) describe the case of an adolescent female child sex offender who herself had been raped as a child, as well as being a victim of sibling incest over an extended period by "an older brother she perceived as powerful in her male-dominated family" (1992: 138). Higgs et al describe how "Carol’s family had taught her that males [were] superior, and her role, as well as that of her mother, was to cater to the needs of the male members of the household" (1992: 137). Such information suggests that it is important to understand this girl’s subsequent extensive sexually active behaviour with male peers and her sexual abuse of a seven year old male cousin in the context of growing up in a "paternally dominated" family and living a life of sexual victimisation and objectification by more socially powerful males (Higgs et al, 1992: 137). Given her life experiences as a disempowered female child in a family where family roles were clearly divided along gender lines, her motivations for sexually abusing a child

---

43 For example, Nelson (1994) documents the case of an American woman who was charged with the sexual abuse of her two year old daughter because she reported feelings of sexual stimulation when breastfeeding her daughter (1994: 65). It is doubtful that comparable behaviour on the part of a father (such as, feelings of sexual stimulation upon hugging his daughter) would result in charges being laid for child sexual assault.

44 For example, Nelson (1994) documents the case of a female child care worker who was charged with 235 counts of child sexual abuse in relation to 30 children in her care (1994: 65). Further,
do not appear to be the same as that of a male adolescent child sex offender, particularly given the social sanctions that discourage adolescent girls from exhibiting sexually aggressive behaviours or from initiating sexual interactions. In other words, unlike a male child sex offender, Carol’s behaviour defied normative feminine sexual practices. Although, Higgs et al describe how Carol eventually tried to gain control over her brothers by bribing them with the promise of sex and threatening to tell their parents when they succumbed, it can be argued that this was an illusory form of control since it appears that her only way of gaining acceptance, attention and power was by sexually objectifying herself or allowing herself to be sexually objectified by others (1992: 138). In other words, the social context of Carol’s life suggests that she had very little social power and was not in a position to wield power, through sex, over others; that is, it can be argued that there was no correspondence between her attempts at gaining control or power through sexual behaviour and her actual social status.

A gendered perspective is, arguably, also important to prevent distortion of the data from victim report studies which tell us that the vast majority of child sex offenders are male and that the vast majority of victims of child sexual abuse are female. As discussed in Part B, such a perspective reveals that when males are victims of sexual abuse, the vast majority of offenders are also male, not female as a ‘humanist’, non-gendered approach might imply. Thus, even when the raw numbers of who abuses whom are taken into account, there appears to be no sound basis to the argument that sexual abuse is not an issue of gender and, in the case of male offenders, a particular masculine sexual practice. Indeed, the argument that sexual abuse is a gender issue is not contradicted by the argument that men are victims of female sexual abuse, since “[g]ender as an explanatory variable goes beyond the sex of individuals to analyse how male/female relationships are socially constructed” (Bograd, 1990: 134).

When gender is included as a variable in an analysis of the child sexual abuse perpetrated by women, it can be shown that the data on the prevalence of female sexual abuse “do not exist in a vacuum nor represent some permanent truth; scientific

Matthews, Matthews and Speltz (1989) describe one type of female child sex offender as the “Teacher/Lover” who instructs young adolescent males in sex.
methods of data interpretation are as much a question of social commitment as of objective” (Bograd, 1990: 134; references omitted). For example, if an argument is made that because female offenders commit the same types of offences as male offenders (that is, they “wash, fondle, lick and kiss the child’s breasts and genitals, penetrate vagina and anus with tongue, fingers and other objects: dildos, button hooks, screwdrivers ... give unnecessary enemas and make (children) dance naked” (Vanderbilt, 1992: 62; quoted in Nelson, 1994: 66)), therefore, the sexual abuse of children by men has nothing to do with gender, power and masculine social practices, what implicit beliefs inform such a view? In relation to the issue of domestic violence, Bograd comments:

when authors argue that domestic violence is a human issue, they are not simply stating the obvious, but are arguing, intentionally or unintentionally, that an openly acknowledged politically conscious and specific focus on the experiences of battered women is either unwarranted or unscientific (Bograd, 1990: 134).

Similarly, this comment applies to people who attempt to discredit feminist theory for analysing child sexual abuse in terms of gender: feminist theory is seen as having a particular barrow to push, is characterised as anti-male, hostile to masculine sexuality and unscientific. For example, McConaghy (1993) asserts that “[s]ome feminists have dismissed the need for any research to support their beliefs on the ground that such research is ‘busy work’ establishing what women already know” (McConaghy, 1993: v). Nonetheless, subsequent research following on the heels of feminist work which broke the silence surrounding women’s experiences of rape and child sexual abuse did, in fact, establish empirically what women had already reported, that is, that girls were more likely to be victims of child sexual abuse and were primarily abused by male offenders. However, feminists appear to be damned if they do not have recourse to scientific methodology and damned if they do. For example, in relation to the relatively high prevalence rates for child sexual abuse obtained in the general population study by Russell (1983) and her methodology for collecting data (that is, face-to-face interviews), McConaghy (1993) alleges that “interviewers were given special training in ideologically correct attitudes” (1993: 243; emphasis added) and implies that such training could be associated with the high prevalence rates that were obtained:

[j]it would be of sociological interest to investigate whether the current absence of questioning of possible bias by interrogators trained to detect child abuse was
paralleled by absence of questioning of the possible bias of interrogators trained to detect witchcraft in the seventeenth and eighteenth centuries (McConaghy, 1993: 243; emphasis added).

The analogy used here is disturbing given the systematic involvement of the state in the persecution of women through allegations of witchcraft in Europe and the American colonies (Cohn, 1975; Rush, 1980) and the attempt to compare that widespread phenomenon with one feminist study that trained its interviewers about the nature of sexual abuse. Yet McConaghy’s comments are made under the guise of scientific “objectivity” as evidence to discredit feminist research, despite his appeals that:

[researchers in all areas of sexuality need to acknowledge the influence of political pressures, and to seek to determine and maintain the appropriate methodology that will enable [their] findings ... to remain unbiased by it (McConaghy, 1993: 267).]

Nonetheless, there may be some confusion on his part about the difference between political bias in the interpretation of data and explanations which attempt to locate data within a theoretical framework. In particular, critics of feminism’s approach to child sexual abuse ignore the fact that gendered assumptions are common in the non-feminist clinical literature on the sexuality of male and female child sex offenders. For example, consider Groth’s (1982) assessment of the differences between male and female child sex offenders: on the one hand, Groth “characterizes the father-daughter offender as unable to negotiate sexual relationships with adults. This offender turns to his daughter because she is less demanding and more compliant” (McCarty, 1986: 452), suggesting an acceptance of the normality of male sexual needs, irrespective of how they are expressed. On the other hand, “Groth lists ‘a history of indiscriminate or compulsive sexual activity on the part of the mother’ as a factor that may contribute to the evolution of mother-child incest” (McCarty, 1986: 452). Such a view exemplifies how the sexual behaviour of female child sex offenders is measured against the cultural norm of passive feminine sexuality, a view that McCarty, for example, appears to subscribe to in her descriptions of the “indiscriminate” and “sexually indiscreet” sexual behaviour of some of the female child sex offenders in her study (1986: 452).
Arguably, other gendered assumptions are apparent in the various theories which attempt to explain the hidden nature of female sexual abuse. These theories are listed by Finkelhor and Russell (1984: 177-180) as follows:

1. Is sexual abuse by adult female perpetrators less often perceived as abusive?
2. Can women mask sexually inappropriate behaviour more easily than men?
3. Do women commit particular types of sexual abuse that are not recognised as sexual abuse?
4. Are sexual offences by female offenders less likely to be reported because they are primarily intra-familial?
5. Is sexual abuse by female offenders obscured because they more often abuse boys who, compared to girls, are more reluctant to report?

Researchers who propose that child sexual abuse committed by women is more widespread than reported in the literature suggest that victims may perceive sexual abuse by a female offender as non-abusive (and even pleasurable) and that victim report studies are not designed to detect such experiences. However, as Finkelhor and Russell note, this objection can only be sustained if such surveys design questions which only ask for reports of abusive sexual experiences; in two studies reviewed by them, they found there was no such bias present (1984: 178). Furthermore, in the victim report studies of Baker and Duncan (1985) and Finkelhor (1984) (both of which reported the prevalence of child sexual abuse in the general male population), definitions of child sexual abuse were not restricted to abusive experiences; yet both studies reported lower rates of sexual abuse for males than the study by Finkelhor et al (1990) which did use a more restrictive definition, suggesting that the lower prevalence rates reported by men compared to those reported by women may not be a function of the way child sexual abuse is defined in a study.

A number of researchers (Allen, 1990 and references cited therein) have proposed that “female abuse might be easier to hide and/or mask as role-appropriate behavior” (Allen, 1990: 112). As Finkelhor and Russell (1984) observe, however, “it seems very unlikely that women could mask very well the kinds of activities which compose the vast majority of kinds of abuse engaged in by men: having the child fondle the adult’s genitals, putting the penis on or in the vagina, engaging in oral sex. A woman
engaging in such activities would have a hard time disguising these as normal mothering” (1984: 178). But the salient question, is “from whom would the woman be masking the abuse?” (Finkelhor and Russell, 1984: 178). It is hardly likely that either male or female child sex offenders engage in public acts of child sexual abuse, so that, to the outside world, all child sex offenders will be adept at hiding and concealing sexually abusive behaviour with children. If it is considered that women are more adept than men at hiding sexually abusive behaviour from their victims, Finkelhor and Russell (1984) suggest that children “are very good at distinguishing touch that is affectionate from touch that is sexual” (1984: 178) and it is difficult to believe that women, any more than men, would be able to mask sexual behaviour (that is, behaviour that involves some form of genital contact) from the victims themselves.

The third theory to explain the hidden extent of female sexual abuse is that women commit more subtle forms of sexual abuse. However, a study by Rudin, Zalewski and Bodmer-Turner (1995) of the victims of lone female and male perpetrators found that “there was no difference in the severity of abuse among victims of lone female perpetrators, lone male perpetrators, and coperpetrators” (1995: 969). In other words, abuse by lone female perpetrators was not found to be “necessarily less severe than abuse by males” (Rudin et al, 1995: 970). Similarly, Kaufman et al (1995) found no differences “between male and female perpetrators in the frequency of vaginal intercourse, the occurrence of fondling by the victim or abuser, genital body contact without penetration, and oral contact by the assailant. Consequently, with few exceptions, the findings of this study ... suggest that the types of abuse perpetrated by males and females does not differ on many dimensions” (1995: 330).

Despite these findings, it appears that researchers who consider that many more female offenders exist than have been reported in victim report studies, believe that women commit more types of so-called subtle sexual abuse. In other words, the clinical literature defines a whole range of non-genital behaviours by mothers that are considered to amount to sexual abuse but which are not included in the definition of sexual abuse in general population surveys. For example, some of the clinical literature uses the term “subtle maternal sexual abuse” which involves no genital contact, does not involve coercion, may not be experienced as traumatic and involves
behaviours “that may not intentionally be sexual in nature but serve to meet the parent’s emotional and/or sexual needs at the expense of the child’s emotional and/or developmental needs” (Lawson, 1993: 265). There is, however, a question as to whether such behaviour should be defined as sexual abuse at all, as opposed to emotional abuse, and, indeed, it is doubtful whether similar behaviour by a father would be considered to be sexual abuse either by his victim or any investigating authorities. Lawson (1993) describes examples of so-called subtle maternal sexual abuse, such as “allowing the son to sleep in the mother’s bed; massaging the child or asking the child to massage the mother; bathing son during latency or beyond; and/or mother bathing with the child” (1993: 266). Although Lawson recognises that such behaviours “could be appropriate for the child during certain periods of development or under special conditions” (1993: 266), I consider that assigning the label of sexual abuse to these behaviours, in circumstances where no genital contact is involved, trivialises the serious nature of actual sexual abuse and takes us down the paranoic path of looking for child sexual abuse in every corner. As Finkelhor and Russell (1984) observe, “[i]n their extreme forms, these activities are types of psychological abuse rather than situations where children are used for the direct physical gratification of an adult’s sexual needs. They are different from having intercourse with a child or having the child engage in oral sex” (1984: 180). If the above behaviours with a mother do occur during a male child’s childhood with no genital contact, then it is unlikely that he would report such behaviours as sexual abuse. Therefore, Lawson’s argument that mother-son sexual abuse is likely to be considerably under-reported is problematic, if she considers that men and boys are failing to report these types of so-called maternal sexually abusive behaviours.

Another category of maternal sexual abuse reported in the literature is that which is “intended to emasculate and humiliate the child’s sexuality” and includes behaviour such as “forcing the boy to wear female clothing, criticizing the child’s rate of sexual development, threatening the child with fears of homosexuality, and generally discouraging the child’s identification with males” (Lawson, 1993: 266). Whilst these behaviours may well be emotionally abusive, unless they also involve genital contact with the child, the classification of such behaviours as sexual abuse trivialises the seriousness of actual sexual abuse. Again, if men and boys are failing to report these
behaviours as sexual abuse, there are no grounds for saying that maternal sexual abuse is being under-reported. In fact, Lawson’s recommendation that questionnaires for ascertaining the true prevalence of mother-son sexual abuse should include specific questions to elicit these type of behaviours is problematic and would set an unfortunate precedent in the arena of sexual abuse detection and prevention. Indeed, it is not clear that women engage in more so-called seductive behaviours than men who are just as likely to engage in seductive relationships with their daughters but who never cross the line into actual genital contact (Finkelhor and Russell, 1984: 180). As Finkelhor and Russell observe, “[i]f the question of abuse is to be broadened to a wider range of psychological sexual abuses, then the behavior of both men and women, not just women, needs to be submitted to this kind of broader scrutiny” (1984: 180; emphases added).

Fourthly, in relation to the argument that abuse by females is less likely to be reported because it is intra-familial, Finkelhor and Russell consider that there is “no good evidence to substantiate the idea that abuse by females is preponderantly intrafamilial” (1984: 180) and, as discussed below, there is no evidence to suggest that boys, more than girls, would be more reluctant to report intra-familial abuse.

This takes us to the final explanation which has been used to justify the belief that female sexual abuse is underreported; that is, that, generally speaking, “females might be more likely to abuse boys, but boys might be less likely to report the abuse” (Allen, 1990: 112). However, several studies challenge this justification. First, the National Incidence Study of Child Abuse and Neglect (1981) and the American Humane Association study of 1979 both showed that “female perpetrators more frequently sexually abuse girls than boys” (Finkelhor and Russell, 1984: 174; emphasis added). Secondly, Mayer (1992) (cited in Rudin et al, 1995) found that female adolescent offenders abused an equal number of boys and girls, Fehrenbach and Monastersky (1988) found that female adolescent offenders abused more girls than boys, whereas Knopp and Lackey (1987) (cited in Rudin et al, 1995) found that adult female offenders were more likely to abuse boys and adolescent female offenders were more likely to abuse girls. However, Rudin et al (1995) found from an analysis of victims’ reports of child sexual abuse that, like male offenders, “[I]one female perpetrators ...
abused more girls (62%) than boys (38%)” which they consider confirms several other studies in the literature (1995: 968). In addition, Finkelhor and Russell note that the argument that boys are less inclined to report abuse by females is unconvincing, since “if anything, ... sexual contacts between young boys and older women would seem to be among the least stigmatized of the cross-generational contacts ... [and] we might expect candor about such experiences in self-report studies to be even higher” (1984: 180-181). If anything, it would be expected that boys would be more reluctant to report abuse by male offenders because of the implications of homosexual contacts in cultures dominated by heterosexual masculine practices.

The fact that empirical data show that vastly more men than women sexually abuse children supports the arguments made in Chapter Three that child sex offending by men is related to the relationship between masculine social practices and men’s contradictory experiences of power and powerlessness. In particular, a focus on gender suggests that there are differences between masculine and feminine sexual practices and that “[w]omen simply don’t look to sex to prove [or derive social] power” (Ross, 1980: 29; cited in Liddle, 1993: 118) in the same way that some men do. However, the fact that some women do sexually abuse children suggests that, for these women, feminine sexual practices are associated with sexual desire for children.

If, as argued in Chapter Three, sexualities are dynamic and changing social constructions, then it can be said that there is nothing inherent in the nature of female desire that makes the sexual abuse of children impossible. However, gender structures in many cultures “arguably result in broad differences between men and women at the level of desire, with masculinities involving structures of desire that are more or less compatible with adult-child sex, while femininities have tended to be formed from within processes which deny the reality or the importance of independent or autonomous ‘female desire’” (Liddle, 1993: 121-122). In other words, it can be argued that femininities have not, historically, been constructed through exploitative sexual practices, particularly in light of the dominance of women’s social practices as ‘good’ wives and mothers in many Western cultures at various historical times. Generally, it can be said that cyclically reproduced structures of masculine power have tended to afford “greater freedom to men than women in the satisfaction of their
"desires" (Liddle, 1993: 117), so that the construction of structures of power through cyclical and exploitative sexual practices has not, generally, been a normative feature of feminine social practices. Thus, although some researchers predict that there are many more female child sex offenders than have yet been reported\(^{45}\), an analysis of the relationship between sexuality, power and feminine social practices would predict that this would not be the case.

At the same time, it is acknowledged that the culturally dominant construct of passive feminine sexuality may prevent law enforcement agencies and researchers from entertaining the possibility of active, coercive, physically harmful sexual behaviour by women. As recognised by Nelson (1994), such a construct may mean that the sexual behaviour of female child sex offenders is “invisible [to] or trivialized” by police and other agencies (1994: 71).\(^{46}\) For example, Nelson has shown how cases of child sexual abuse by female child sex offenders are easily minimised and transformed by police officers from an act of abuse to an experience of sexual initiation by the male child who probably enjoyed it (1994: 74-75).

The casting of child sexual abuse solely as a human issue and the attempts to implicate feminist theory in a political conspiracy to advance its ‘crusade’ against men is to create a particular ideology (Bograd, 1990: 134) which presupposes that the motivations of sexually abusive women is analogous to the motivations of sexually abusive men, implies that equal numbers of men and women are sexually abusive and denies the existence of the pervasive, historical differences in the expressions of masculine and feminine sexualities in Western cultures. The casting of sexual abuse as an issue of gender permits both a recognition of those differences and any commonalities that may, but have not yet been shown, to exist. For these reasons, it is contended that the power/powerlessness theory of why men sexually abuse children is not invalidated by the fact that some women also commit child sexual abuse.

\(^{45}\) As Nelson states, “[a]t various times, academics and others have suggested that the ‘dark figure’ of female sexual abuse of children may be much larger than that previously anticipated” (1994: 80). See, for example, references cited in Nelson, 1994; Lawson, 1993.
Conclusion

This analysis has argued that the feminist preoccupation with male child sex offenders is supported by empirical data which shows that child sexual abuse is predominantly a male sexual activity. This analysis suggests, therefore, that the power/powerlessness theory developed in Chapter Three is a valid theoretical device for explaining the motivations of male offenders. Whilst Allen (1990) has contended that sexual abuse by female offenders has been largely ignored by feminist and non-feminist researchers alike, as Finkelhor and Russell (1984) observe, until feminist theorists entered the field, male child sex offending was considered to be a deviant form of male sexuality and to have “hardly ever been the subject of theoretical interest” (1984: 181). Whilst both feminist and non-feminist researchers can no longer ignore the existence of female child sex offenders, theories about why men sexually abuse children and theories about why women sexually abuse children, arguably, need to acknowledge the significant disparity between the numbers of male child sex offenders compared to the numbers of female child sex offenders. As Finkelhor and Russell observed in 1984, “the explanation of male preponderance is important to virtually every theory of child molesting” (1984: 181). The prevalence studies discussed in Part B show that this view still holds true fourteen years later.

Arguably, an important way to explain that disparity, whilst, at the same time, acknowledging the phenomenon of female child sex offending, is to begin with gender: “[e]very theory of child molesting needs to explain not just why adults become sexually interested in children, but why that explanation applies primarily to males and not females” (Finkelhor and Russell, 1984: 181). This chapter has argued that this is, in fact, what the power/powerlessness theory of male child sex offending achieves.

Nelson (1994) suggests that biases within the criminal justice system screen out those people, such as women, who do not ‘fit’ the ‘identikit’ of the ‘typical’ child sex offender, thus distorting the real picture of the extent of child sexual abuse committed by female offenders.
CHAPTER FIVE

THE GAP BETWEEN SEXUALLY ABUSED CHILDREN AND THE CRIMINAL JUSTICE SYSTEM

"I would ... think, God, ... you’re molesting your daughter, you can go to prison for this. But then I thought about back home, nobody goes to prison for messing around with a kid, unless you mess around with somebody else’s kid - that’s when you go to prison where I’m from. As long as it was in your family nobody gave a shit."

"[Incest] doesn’t seem like child abuse, it seems more like ... a family problem. It’s worse when someone molests a child outside of the family. It’s not a family thing."

"I would have problems with that (molesting a child outside family) ... it would be interfering with the parent’s right to raise the kids the way they wanted to raise them."¹

A. INTRODUCTION

It is widely accepted in Australia that the crime of child sexual assault has particular features which make it, arguably, one of the most difficult crimes to prosecute (Parliament of Victoria, Crime Prevention Committee, 1995; Cashmore, 1995; Royal Commission into the New South Wales Police Service, 1997). This suggests that conviction rates for child sex offences will be lower than for most other criminal offences. The aim of this chapter is to determine whether statistical data on the prosecution of child sex offences supports this proposition, in order to set the groundwork for the theoretical analysis undertaken in Chapter Six which assesses whether the crime of child sexual assault is processed differently by the criminal justice system² compared to most other criminal offences. In doing so, and using the New South Wales (NSW) jurisdiction as a case study, this chapter will test the following hypotheses:

¹ The views of three fathers in an American treatment program for sexually abusing their daughters quoted in Phelan, 1995: 14-15. There is no reason to expect that these views are confined to American fathers.

² As noted in Chapter Six, the criminal justice system is not one coherent system or process and comprises many components: the police, prosecutors and courts (which include committal proceedings, trial proceedings and appeal proceedings); these different components do not necessarily operate as a coherent whole. My use of the term, ‘criminal justice system’, in this chapter refers to the trial process, that is, that part of the criminal justice system that decides the guilt or innocence of a person charged for a particular offence, in circumstances where they plead not guilty.
(i) the vast majority of cases of child sexual abuse do not result in charges being laid; and

(ii) when child sex offence charges are laid, they are less likely to be successfully prosecuted compared to most other criminal offences.

In order to test these hypotheses, this chapter analyses:

(i) the number of substantiated cases of child sexual abuse reported by the New South Wales Department of Community Services (NSWDOCS) to the Australian Institute of Health and Welfare (AIHW) for the five year period 1991-92 to 1995-96; and

(ii) data provided by the New South Wales Bureau of Crime Statistics and Research (NSWBCSR) on the outcome of child sexual assault charges dealt with by NSW lower and higher courts for the five-year period January 1992 to December 1996.

For the purposes of testing the first hypothesis, the incidence of child sexual abuse in the NSW community is compared to the number of cases of child sexual assault prosecuted in NSW courts using the data reported by the AIHW and the NSWBCSR. In order to test the second hypothesis, conviction rates for child sex offences are calculated from the data provided by the NSWBCSR and then compared to conviction rates for all criminal offences (excluding sex offences against children) in the same period. In light of the findings in this chapter, Chapter Six then examines the possible barriers to, or filtering processes for, the successful prosecution of child sex offences within the trial process, in particular whether low conviction rates for child sex offences are related to specific gender practices within the trial process.

---

3 This particular five year period was chosen since data compiled by the NSWBCSR in previous years for sex offences against children do not reliably match the data collated in subsequent years, according to Karen Freeman, Information Officer at the Bureau. At the time of writing, data for the years 1997 and 1996-7 were not available from the NSWBCSR and the AIHW, respectively. Data for 1998 and 1997-98 will not be reported until 1999.

4 See below for a discussion of the term, 'barrier'.
B. INCIDENCE OF CHILD SEXUAL ABUSE IN AUSTRALIA AND NSW

For the five year period, 1991-92 to 1995-96, the AIHW reported 25,941 substantiated cases of child sexual abuse, Australia-wide, as set out in Table 5.1 (Angus, Wilkinson and Zabar, 1994; Angus and Zabar, 1995; Angus and Woodward, 1995; Angus and Hall, 1996; Broadbent and Bentley, 1997). Of these 25,941 cases, 61.6 per cent (15,968 cases) were reported in NSW which has the largest population of all Australian States and Territories. As shown in Table 5.2, substantiated cases of sexual abuse for the period 1991-92 to 1995-96 involved a significantly greater number of female children than male, with a total of 75.2 per cent of the substantiated cases of child sexual abuse involving female children under the age of 16.

However, the data on the number of substantiated cases of child sexual abuse Australia-wide are considered to be a conservative estimate for several reasons. First, different State and Territory agencies have different reporting practices in relation to child abuse; secondly, different jurisdictions use different definitions of what amounts to substantiation of child sexual abuse, and thirdly, the data reported by the AIHW include

---

5 Child sexual abuse is defined by the AIHW (the body that collects and publishes statistics from all Australian jurisdictions on child abuse and neglect) as "any act by a person having the care of the child which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards" (Broadbent and Bentley, 1997: 75). This definition is broad enough to include both contact and non-contact abuse, such as exhibitionism or showing a child pornography, but is limited to people who have the care of a child. The definition does not include acts of sexual abuse committed by non-carers in circumstances where the child's carer is not involved in the abuse in some way. However, the definition is broad enough to include behaviour where the child's carer does not actually sexually abuse the child but allows another person to carry out the abuse. Because of the broadness of the definition, there will be cases of child sexual abuse that are substantiated by community service agencies but which would not necessarily give rise to the commission of a criminal offence under a State's or Territory's criminal laws, such as a threat of sexual abuse or voyeurism. In any case, such types of abuse do not constitute the majority of cases reported to the AIHW. For example, in NSW for the period 1995-96, out of the 2,776 cases of substantiated child sexual abuse, 3% of cases involved threats of sexual abuse, 2% involved genital exposure or voyeurism and 2% involved exposure to or use for pornography. The vast majority of cases (67%) involved sexual fondling, vaginal or anal penetration or oral sexual behaviour (Broadbent and Bentley, 1997: 61). This is also the case for substantiated cases of child sexual abuse in NSW for the years 1992-93, 1993-94 and 1994-95 (Angus and Woodward, 1995; Angus and Zabar, 1995; Angus and Hall, 1996). Data on types of abuse are not provided by the AIHW for the period 1991-92.

6 The AIHW defines a substantiated case as one "where there is reasonable cause to believe that the child has been or is being abused or neglected" (Angus and Hall, 1996: 54).
TABLE 5.1

SUBSTANTIATED CASES OF CHILD SEXUAL ABUSE IN AUSTRALIA
1991-92 TO 1995-96

<table>
<thead>
<tr>
<th>Year</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
<th>Aust (Total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>91-92</td>
<td>3,126</td>
<td>259</td>
<td>482</td>
<td>432</td>
<td>320</td>
<td>174</td>
<td>29</td>
<td>54</td>
<td>4,876</td>
</tr>
<tr>
<td>92-93</td>
<td>3,809</td>
<td>589</td>
<td>286</td>
<td>489</td>
<td>526</td>
<td>142</td>
<td>54</td>
<td>84</td>
<td>5,979</td>
</tr>
<tr>
<td>93-94</td>
<td>3,302</td>
<td>586</td>
<td>209</td>
<td>442</td>
<td>572</td>
<td>154</td>
<td>37</td>
<td>58</td>
<td>5,360</td>
</tr>
<tr>
<td>94-95</td>
<td>2,955</td>
<td>655</td>
<td>253</td>
<td>340</td>
<td>542</td>
<td>104</td>
<td>22</td>
<td>53</td>
<td>4,924</td>
</tr>
<tr>
<td>95-96</td>
<td>2,776</td>
<td>644</td>
<td>301</td>
<td>328</td>
<td>600</td>
<td>70</td>
<td>49</td>
<td>34</td>
<td>4,802</td>
</tr>
<tr>
<td>Total</td>
<td>15,968</td>
<td>2,733</td>
<td>1,531</td>
<td>2,013</td>
<td>2,560</td>
<td>644</td>
<td>191</td>
<td>283</td>
<td>25,941</td>
</tr>
</tbody>
</table>

Sources of data:
Angus, Wilkinson and Zabar (1994); Angus and Zabar (1995); Angus and Woodward (1995); Angus and Hall (1996); Broadbent and Bentley (1997).

Notes to table:
1. This table contains data reported to the AIHW by the community services agencies of each Australian State and Territory for the period 30 June 1991 to 30 June 1996.
2. All cases of child sexual abuse reported in this table were the subject of finalised investigations and found to be substantiated. A substantiated case is defined as one "where there is reasonable cause to believe that the child has been or is being abused or neglected" (Angus and Hall, 1996: 54).
3. Sexual abuse is defined as "any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards" (Angus and Hall, 1996: 58).
### TABLE 5.2

**SEX OF CHILD IN SUBSTANTIATED CASES OF CHILD SEXUAL ABUSE IN AUSTRALIA 1991-92 TO 1995-96**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>MALE (%)</th>
<th>FEMALE (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991-92</td>
<td>1226 (25.2)</td>
<td>3646 (74.8)</td>
</tr>
<tr>
<td>1992-93</td>
<td>1390 (23.3)</td>
<td>4583 (76.7)</td>
</tr>
<tr>
<td>1993-94</td>
<td>1387 (25.9)</td>
<td>3969 (74.1)</td>
</tr>
<tr>
<td>1994-95</td>
<td>1186 (24.1)</td>
<td>3737 (75.9)</td>
</tr>
<tr>
<td>1995-96</td>
<td>1245 (26.1)</td>
<td>3548 (73.9)</td>
</tr>
<tr>
<td>TOTAL (%)</td>
<td>6434 (24.8)</td>
<td>19483 (75.2)</td>
</tr>
</tbody>
</table>

**Sources of data:**
Angus, Wilkinson and Zabar (1994); Angus and Zabar (1995); Angus and Woodward (1995); Angus and Hall (1996); Broadbent and Bentley (1997).

**Notes to table:**

1. This table contains data reported to the AIHW by the community services agencies of each Australian State and Territory for the period 30 June 1991 to 30 June 1996.

2. All cases of child sexual abuse reported in this table were the subject of finalised investigations and found to be substantiated. A *substantiated case* is defined as one “where there is reasonable cause to believe that the child has been or is being abused or neglected” (Angus and Hall, 1996: 54).

3. *Sexual abuse* is defined as “any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards” (Angus and Hall, 1996: 58).

4. The total figures in columns 2 and 3 do not add up to the total 25,941 substantiated cases of child sexual abuse reported for all Australian jurisdictions for the period 1991-92 to 1995-96, as set out in Table 5.1. This is due to the fact that for some reported cases of substantiated child sexual abuse, the sex of the child was not known (Angus and Hall, 1996: 26).
only those cases reported to the community service agencies of each State and Territory. This means that reports of child sexual abuse that are made directly to the police or non-government welfare agencies would only be included in the data compiled by the AIHW if those cases were also referred to the relevant government community service agency.

However, as Broadbent and Bentley (1997) observe:

[the level of referral varies from State to State, depending on the statutory requirements and policies in each jurisdiction. In general, notifications of child abuse and neglect are referred to the community service department by the police or other organisations if the person believed responsible for the abuse or neglect is the child’s guardian or from within the child’s family, or where there is concern for the child’s protection (for instance, where the parent(s) or guardian(s) are unable or unwilling to protect the child from abuse or neglect by a third party) (1997: 2).

Broadbent and Bentley give the example of Queensland which, for the period 1995-96, “had a relatively low proportion of sexual abuse substantiations because in [that] State sexual abuse by a person outside the family (where the parents act protectively) is dealt with as a police matter rather than a familial child protection matter and does not appear in [the 1995-96] statistics” (1997: 21). As well, “[a]ssaults of a child by a ‘stranger’ or someone with no responsibility for care of the child and where there are no protective concerns regarding the child are generally dealt with by the police rather than the community service department and are generally not included in the statistics” (Broadbent and Bentley, 1997: 3).

The other important qualification that must be made about the data reported by the AIHW is that different Australian jurisdictions use different definitions of ‘substantiation’. For example, Broadbent and Bentley (1997) report that “[t]here is some variation between the States and Territories as to what is included as an unsubstantiated notification since ... some jurisdictions include as unsubstantiated those notifications which others classify as

---

7 For example, under s 22 of the Children (Care and Protection) Act 1987 (NSW) it is mandatory for certain professional people (such as, doctors, teachers and social workers) to report allegations or a reasonable belief of child abuse to the NSWDOCS. When such a report of child abuse is made, “its professional staff decide whether the report warrants investigation, and if so, a determination is made as to whether abuse is considered ‘on the balance of probabilities’ to have occurred, that is, whether or not the complaint is substantiated. Given that victims may not wish to pursue the matter or that it may be appropriate to deal with the matter as a welfare issue, not all substantiated reports are referred to police” (Gallagher and Hickey, 1997: 4).
'children at risk'" (1997: 16). In addition, "[t]erms such as ‘significant harm’ or ‘substantial risk’ are used in some States while others refer to ‘harm’ or ‘in danger of being harmed’" (1997: 3). In effect, the number of substantiations reported by each Australian jurisdiction will be affected by the particular policies and practices of each, such as “attitudes towards and beliefs about child abuse and neglect within Australia and also internationally” (Broadbent and Bentley, 1997: 23). Thus, where notifications of sexual abuse are not able to be substantiated by a community services agency, it cannot be assumed that such cases necessarily represent false reports because of the differences between jurisdictions in relation to the definition of ‘substantiation’, and the difficulties associated with coming to a conclusion that there is reasonable cause to believe a child has been sexually abused, particularly if the report of sexual abuse has been made by someone outside the family. For example, for the period 1995-96, Broadbent and Bentley (1997) report that “[n]otifications made by the police or the subject child were more likely to be substantiated than those from other sources”, such as friends, neighbours, parents, guardians or school personnel (1997: xiii). Broadbent and Bentley also note:

> [r]ecent research indicates that the likelihood of reporting may depend on the type of abuse and the child’s situation. Adult respondents may be more likely to report severe sexual and physical abuse to the authorities than severe emotional abuse and neglect. Older children may be less likely to approach authorities, being more aware of the consequences for themselves and their families. In addition, it has been suggested that incidences of abuse involving children with disabilities may be less likely to be reported to child welfare or law enforcement authorities ... . There are also indications that child abuse is often not reported in country areas because of factors such as the closeness of the community, associated difficulties for workers in the areas and a widespread lack of resources (1997: 4; references omitted).

All these factors indicate that the figures tabulated in Table 5.1 are, at best, a conservative estimate of the extent of child sexual abuse within the Australian community, particularly since these data primarily represent intra-familial cases of child sexual abuse. In particular, it can be expected that less severe forms of sexual abuse are under-reported and that cases of sexual abuse committed by relatives not within the child’s immediate family, as well as those cases involving abuse by friends of the family, teachers, priests, 

---

8 For example, “New South Wales includes in their 1995-96 statistics notifications of a broader nature, including general concerns for children as well as notifications where children are reported to have suffered actual harm. However, it is expected that New South Wales data will conform more closely to the national definition in future years” (Broadbent and Bentley, 1997: 4).
scout masters, youth workers and so on will not be included in the statistics, unless these people are considered to be responsible for the care of the child, or, if not, unless the child’s carer is involved in allowing the abuse to occur. It can also be expected that the data set out in Table 5.1 are a conservative estimate of the incidence of child sexual abuse in Australia because of the likelihood that cases of child sexual abuse in welfare-dependent families are more likely to be reported, since such families are more socially ‘visible’ and more likely to be scrutinised (Broadbent and Bentley, 1997: 4) than middle and upper class families who are independent of the welfare system. For example, Clark (1995) (cited in Broadbent and Bentley, 1997: 8) reports that in Victoria there is an over-representation of children from poor, single parent families who are reported as being sexually abused.

Another factor that affects the representativeness of the data reported by the AIHW is that “the categorisation of substantiated abuse and neglect is in some cases subjective”, since “many children suffer more than one type of abuse or neglect. ... [For the period 1995-96,] the type of abuse and neglect is recorded as the one most likely to be most severe in the short term, or most likely to place a child at risk in the short term, or the most obvious” (Broadbent and Bentley, 1997: 21). In other words, it is possible that sexual abuse will not be detected or investigated by a community services agency in circumstances where physical abuse or neglect appears to be the most severe or obvious type of abuse suffered by a child.

---

9 In making this observation, Broadbent and Bentley (1997) do not make any distinction between Commonwealth and State welfare systems, although a family in NSW can be welfare-dependent because it is a recipient of Commonwealth Department of Social Security payments, because it is reliant on non-government, welfare ‘handouts’ (those supplied by certain charities) or because it has come to the attention of the NSWDOCS for some reason, financial or otherwise.

10 Data on the family type in which a child who is the subject of a notification of abuse resides is not provided by all States and Territories (Broadbent and Bentley, 1997: 35), so this possibility cannot be confirmed from the data published by the AIHW.
C. THE PROSECUTION OF CHILD SEX OFFENCES IN NSW

(i) Introduction

In relation to the cases of sexual abuse that are substantiated by community services agencies, the obvious question is, how many such cases are reported to the police and how many result in charges being laid, prosecution and conviction? Using the NSW jurisdiction as a casestudy\(^{11}\), of the approximately 3,000 cases of child sexual abuse reported by the NSWDOCS annually, how many are actually processed by the police, prosecutors and the courts?

Where a community services agency decides that a case of sexual abuse has been substantiated after being investigated, it generally means that “there is reasonable cause to believe that the child has been, or is being, abused”, although substantiation “does not require sufficient evidence for a successful prosecution” (Broadbent and Bentley, 1997: 13), indicating that some substantiated cases will not be able to be prosecuted because of the evidence required to meet the standard of proof within a criminal trial and the operation of other rules of evidence, such as the hearsay and corroboration rules.\(^{12}\) For example, some cases of substantiated sexual abuse in NSW are categorised by type of abuse, such as “child’s inappropriate sexual behaviour indicates abuse” (Broadbent and Bentley, 1997: 61), a category of abuse that would not be the subject of prosecution unless other evidence was available.

Apart from such cases, the answer to the above question (of the approximately 3,000 cases of child sexual abuse reported by the NSWDOCS annually, how many are actually processed by the police, prosecutors and the courts?) is not easy to answer because of the difficulties associated with obtaining information about investigations undertaken by the NSWDOCS and when cases investigated by the Department are reported to the NSW

\(^{11}\) The jurisdiction of NSW was chosen as a casestudy because, as set out in Table 5.1, it has the largest proportion of substantiated cases of child sexual abuse and, therefore, it is likely to prosecute a higher number of child sexual assault cases per year compared to other Australian jurisdictions. This means that the NSW sample of cases is likely to be representative of child sexual abuse cases throughout Australia.

\(^{12}\) The operation of these rules in the child sexual assault trial are discussed in Chapter Six.
Police Service. These difficulties include identifying the NSWDOCS cases that result in charges being laid by the police and, of those, the cases that result in committal proceedings and, of those, the cases that proceed to trial.

Because the gathering of such information would require considerable resources and the co-operation of the NSWDOCS, the NSW Police Service and the NSW Office of the Director of Public Prosecutions, and because my aim is simply to determine whether conviction rates for child sexual assault are significantly lower than conviction rates for most other criminal offences (in order to test the hypotheses set out at the beginning of the chapter), I have decided to rely on statistics provided by the NSWBCSR, in order to calculate the conviction rates for child sex offences in NSW.

In attempting to compare conviction rates for child sex offences compared to other criminal offences and to assess how the criminal justice system processes the crime of child sexual assault, it should be noted that the term ‘criminal justice system’ is a general term which refers, not to one single, unified process, but to “a series of agencies, each of which makes decisions about and exercises discretion in the handling of cases” (Cashmore and Horsky, 1988: 241). In NSW, for example, after a complaint of child sexual abuse is made to the Police Service, the police make a decision as to whether criminal charges should be laid and the nature of those charges; the Office of the Director of Public Prosecutions makes a decision as to whether those charges will be prosecuted; a magistrate at a committal hearing in a Local Court will decide whether to commit the accused for trial, and, at the trial stage, a judge has discretionary powers in relation to the conduct of the trial, matters of evidence and sentencing. My aim is to assess how that part of the criminal justice system, referred to as the trial process (after committal), deals with the crime of child sexual assault.

(ii) Conviction Rates for Child Sex Offences in NSW for the Period 1992 to 1996

For the period January 1992 to December 1996, 403 people (2 female) were convicted (that is, pleaded guilty or were found guilty) of sex offences against children in NSW.
Local Courts out of 1,251 persons (21 female) charged with 1,577 charges, as set out in Table 5.3. This amounted to an overall conviction rate of 32.2 per cent for that five year period. Of those found guilty, 94 (23.3 per cent) received a custodial sentence, that is, either imprisonment or periodic detention.

For the same period, 920 people (8 female) were convicted (that is, after a guilty plea or verdict) of sex offences against children in NSW higher courts out of 1,922 people (23 female) charged in relation to 4,056 sex offences, as set out in Table 5.4. This amounted to an overall conviction rate of 47.9% for that period. Of those found guilty, 674 or 73.3% received a custodial sentence (that is, imprisonment or periodic detention), although imprisonment sentences were highly variable, ranging from under one year to under 13 years. This rate of imprisonment is considerably higher than the rate at the lower court level for sex offences against children and is likely to reflect the fact that the higher courts deal with more serious charges which carry more serious penalties. \(^{13}\)

However, these conviction rates, which were calculated by reference to persons found guilty (by plea or verdict) as a proportion of total number of persons charged, do not necessarily represent an accurate conviction rate, since the data published by the NSWBCSR only lists the number of people found guilty of a child sex offence where that offence was the principal offence (that is, the offence which received the most serious penalty). This means that any offenders who were convicted of a child sex offence in addition to a more serious offence are not recorded in the data relating to numbers of people found guilty of child sex offences, if their more serious offence (for example, attempted murder) attracted a greater penalty. Thus, the number of persons found guilty of child sex offences in the published data does not necessarily correspond to the number of charges which were successfully prosecuted, nor the number of persons actually found guilty of a child sex offence.

\(^{13}\) For example, sexual intercourse with a child under the age of 10 years (s 66A, Crimes Act 1900 (NSW)), which is an indictable offence prosecuted in the higher courts, carries a maximum penalty of 20 years.
TABLE 5.3

PERSONS CHARGED AND CONVICTED OF SEX OFFENCES AGAINST CHILDREN IN NSW LOCAL COURTS 1992-1996

<table>
<thead>
<tr>
<th>Year</th>
<th>No. Persons Charged</th>
<th>% Male Persons Charged</th>
<th>No. of Charges</th>
<th>Persons Convicted</th>
<th>% Male Persons Convicted</th>
<th>Persons Receiving Custodial Sentences (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>223</td>
<td>98.2%</td>
<td>289</td>
<td>73 (32.9%)</td>
<td>98.6%</td>
<td>9 (12.3%)</td>
</tr>
<tr>
<td>1993</td>
<td>253</td>
<td>98.4%</td>
<td>321</td>
<td>91 (36%)</td>
<td>100.0%</td>
<td>22 (24.2%)</td>
</tr>
<tr>
<td>1994</td>
<td>244</td>
<td>100.0%</td>
<td>316</td>
<td>86 (35.3%)</td>
<td>100.0%</td>
<td>24 (27.9%)</td>
</tr>
<tr>
<td>1995</td>
<td>218</td>
<td>98.6%</td>
<td>262</td>
<td>58 (26.6%)</td>
<td>98.3%</td>
<td>19 (32.8%)</td>
</tr>
<tr>
<td>1996</td>
<td>313</td>
<td>96.8%</td>
<td>389</td>
<td>95 (30.4%)</td>
<td>100.0%</td>
<td>20 (21.1%)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1251</td>
<td>98.3%</td>
<td>1577</td>
<td>403 (32.2%)</td>
<td>99.5%</td>
<td>94 (23.3%)</td>
</tr>
</tbody>
</table>

Sources of data:

Notes to table:
1. For the five year period, 1992-1996, a total of 1230 male offenders and 21 female offenders were charged with sex offences against children in NSW lower courts. A total of 401 male offenders and 2 female offenders were convicted. A conviction refers to a person found guilty which refers to “those persons who, for at least one offence charged, either pleaded guilty or were found guilty after a defended hearing” (NSW Bureau of Crime Statistics and Research, 1993: 5).
2. The data in this table contain all finalised cases of child sexual assault offences dealt with by NSW Local Courts for the period January 1992 to December 1996. A finalised charge is “one which has been fully determined by the court and no further court proceedings are required” (NSW Bureau of Crime Statistics and Research, 1993: 3). A charge “refers to an instance of a particular type of offence being charged against a person” (NSW Bureau of Crime Statistics and Research, 1993: 3). A person charged “refers to a group of one or more charges, against a single
individual, which are finalised by the court on a single day” (NSW Bureau of Crime Statistics and Research, 1993: 3).

3. The custodial sentence is that penalty imposed for a principal offence which is defined as “that offence charged, which received the most serious penalty”, if an offender was found guilty of more than one offence. If an offender was found guilty of two or more offences which received the same penalty type, “that offence which received the greatest quantum of that penalty type is the principal offence” (NSW Bureau of Crime Statistics and Research, 1993: 5-6).

4. Figures for the number of people convicted who received a custodial sentence include figures for those who received either imprisonment or periodic detention for a principal offence.
### TABLE 5.4

**PERSONS CHARGED AND CONVICTED OF SEX OFFENCES AGAINST CHILDREN IN NSW HIGHER COURTS 1992-1996**

<table>
<thead>
<tr>
<th>Year</th>
<th>No. Persons Charged</th>
<th>% Male Persons Charged</th>
<th>No. of Charges</th>
<th>Persons Convicted</th>
<th>% Male Persons Convicted</th>
<th>Persons Receiving Custodial Sentences (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>443</td>
<td>99.5%</td>
<td>967</td>
<td>199 (44.9%)</td>
<td>100.0%</td>
<td>135 (67.8%)</td>
</tr>
<tr>
<td>1993</td>
<td>425</td>
<td>98.4%</td>
<td>929</td>
<td>217 (51.1%)</td>
<td>98.8%</td>
<td>156 (71.9%)</td>
</tr>
<tr>
<td>1994</td>
<td>419</td>
<td>98.8%</td>
<td>863</td>
<td>211 (50.4%)</td>
<td>99.1%</td>
<td>151 (71.6%)</td>
</tr>
<tr>
<td>1995</td>
<td>341</td>
<td>98.8%</td>
<td>684</td>
<td>170 (49.9%)</td>
<td>98.8%</td>
<td>128 (75.3%)</td>
</tr>
<tr>
<td>1996</td>
<td>356</td>
<td>98.6%</td>
<td>809</td>
<td>172 (48.3%)</td>
<td>98.8%</td>
<td>137 (79.7%)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1922</td>
<td>98.8%</td>
<td>4056</td>
<td>920 (47.9%)</td>
<td>99.1%</td>
<td>674 (73.3%)</td>
</tr>
</tbody>
</table>

**Sources of data:**

**Notes to table:**

1. For the five year period 1992-1996, a total of 1899 male offenders and 23 female offenders were charged with sex offences against children in NSW higher courts and a total of 912 male offenders and 8 female offenders were convicted. A conviction refers to a person found guilty which refers to "those persons who, for at least one offence charged, either pleaded guilty or were found guilty after a defended hearing" (NSW Bureau of Crime Statistics and Research, 1993:5).

2. The data in this table contain all finalised cases of child sexual assault offences dealt with by NSW District and Supreme Courts for the period January 1992 to December 1996. A finalised charge is "one which has been fully determined by the court and no further court proceedings are required" (NSW Bureau of Crime Statistics and Research, 1993: 3). A charge "refers to an instance of a particular type of offence being charged against a person" (NSW Bureau of Crime Statistics and Research, 1993: 3). A person charged "refers to a group of one or more charges, against a single
individual, which are finalised by the court on a single day” (NSW Bureau of Crime Statistics and Research, 1993: 3).

3. The custodial sentence is that penalty imposed for a principal offence which is defined as “that offence charged, which received the most serious penalty” if an offender was found guilty of more than one offence. If an offender was found guilty of two or more offences which received the same penalty type, “that offence which received the greatest quantum of that penalty type is the principal offence” (NSW Bureau of Crime Statistics and Research, 1993: 5-6).

4. Figures for number of people convicted who received a custodial sentence include figures for those who received either imprisonment, detention in a juvenile institution and periodic detention.
For this reason, it is necessary to use data which records the number of charges laid and the proportion of charges resulting in a conviction, in order to determine an accurate conviction rate for child sex offences against children. In relation to charges dealt with by NSW lower courts, a total of 1,529 charges\textsuperscript{14} were finalised during the period January 1992 to December 1996, as set out in Table 5.5. Of those, 539 charges resulted in a conviction (as a result of a guilty plea or verdict), giving rise to an overall conviction rate of 35.3 per cent.\textsuperscript{15} Interestingly, this rate is very similar to the conviction rate calculated by reference to persons convicted, which was 32.2 per cent for the same period (see Table 5.3), indicating that a child sexual assault offence was the principal offence for the majority of persons convicted of child sex offences in Local Courts between January 1992 and December 1996.

In relation to charges dealt with by NSW higher courts, 2,641 charges\textsuperscript{16} were finalised between January 1992 and December 1996, as set out in Table 5.6. Two conviction rates

\textsuperscript{14} This figure of 1,529 charges is slightly lower than the figure of 1,577 charges listed in column 4 of Table 5.3. The discrepancy is due to how a finalised case is defined in the data published by the NSWBCSR which is the source of the data for figures tabulated in Table 5.3. However, data tabulated in Table 5.5 is not published and was supplied by the NSWBCSR at my request on 24/2/98. Using that data, I did not include in my definition of finalised cases those cases where the accused died before a hearing or where the accused failed to appear. There were 43 such cases in the data supplied by the NSWBCSR for the period January 1992 to December 1996 which accounts for most of the discrepancy between the figure of 1,534 charges in Table 5.5 and the figure of 1,577 charges in Table 5.3. The remaining 5 cases cannot be accounted for other than to say that the data supplied to me by the Bureau may have been recalculated as suggested by Karen Freeman, Information Officer at the Bureau.

\textsuperscript{15} Data supplied by the NSWBCSR on 24/2/98 did not distinguish between guilty by verdict and guilty by plea.

\textsuperscript{16} This figure of 2,641 charges is much lower than the figure of 4,056 charges listed in column 4 of Table 5.4. The discrepancy is due to how a finalised case is defined in the data published by the NSWBCSR which is the source of the data for figures tabulated in Table 5.4. However, data tabulated in Table 5.6 is not published and was supplied by the NSWBCSR at my request on 24/2/98. On the advice of Karen Freeman, Information Officer at the NSWBCSR, in order to gain an accurate picture of the conviction rate at trial in the higher courts using that data, I decided to include in my definition of finalised cases only those cases which involved: guilty pleas before or during trial; guilty finding by verdict; not guilty finding by verdict or by direction, and, for 1992 data only, guilty plea to other charge. Cases not included in the definition of finalised case were those cases where no further proceedings were directed on application of the Crown or otherwise, where the accused failed to appear or died before trial, where the charge was determined not appropriate and where a case was remitted to a Local Court. The cases not included in the definition totalled 1,415 cases which together with the figure of 2,641 (in column 2 of Table 5.6) adds up to 4,056 charges (in column 4 of Table 5.4). Thus the discrepancy in finalised cases is accounted for. It would not have been appropriate to use the definition of finalised case used by the NSWBCSR (that is, "one which has been fully
## Table 5.5

**Outcome of Charges for Sex Offences Against Children in NSW Lower Courts 1992-1996**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No. Cases Finalised</th>
<th>Not Guilty</th>
<th>Offence Proven</th>
<th>Overall Conviction Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>274</td>
<td>184</td>
<td>90</td>
<td>32.9%</td>
</tr>
<tr>
<td>1993</td>
<td>315</td>
<td>192</td>
<td>123</td>
<td>39.1%</td>
</tr>
<tr>
<td>1994</td>
<td>307</td>
<td>192</td>
<td>115</td>
<td>37.5%</td>
</tr>
<tr>
<td>1995</td>
<td>255</td>
<td>182</td>
<td>73</td>
<td>28.6%</td>
</tr>
<tr>
<td>1996</td>
<td>378</td>
<td>240</td>
<td>138</td>
<td>36.5%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1529</td>
<td>990</td>
<td>539</td>
<td>35.3%</td>
</tr>
</tbody>
</table>

**Source of data:**
*Outcome of Charges Data* supplied by the NSWBCSR upon requests dated 24/2/98 and 21/4/98.

**Notes to Table:**
1. *Total cases finalised* includes cases dismissed and cases in which an offence was proven, but does not include cases where the accused died before hearing and cases where the accused failed to appear.
2. *Not guilty* includes cases dismissed after: hearing; no evidence offered; recognizance forfeited; application of Mental Health Act; stood out of list.
3. Data from which *overall conviction rates* for child sex offences were calculated includes those cases out of all cases finalised where the offence was proven. No distinction is made between guilty pleas and guilty by verdict in the data supplied by the NSWBCSR.
at trial were calculated from this data. As set out in column 5 of Table 5.6, the figures in
brackets represent the conviction rate at trial calculated by reference to cases that resulted
in a finding of guilty by verdict as a proportion of all cases that went to trial and resulted
in a jury verdict (either guilty or not guilty). The non-bracketed figures in column 5 of
Table 5.6 represent the conviction rate at trial calculated by reference to cases that
resulted in a finding of guilty by verdict as a proportion of cases that went to trial and
resulted in either a jury verdict (guilty or not guilty) or a finding of not guilty by direction.
The calculation of both conviction rates excluded cases that resulted in a guilty plea
during trial, in order to gain a picture of guilty verdicts by the trier of fact. It can be seen
from Table 5.6 that by excluding cases which resulted in a finding of not guilty by
direction, the conviction rate at trial increases.

Of the 2,641 charges finalised in the higher courts between January 1992 and December
1996, 414 resulted in a guilty verdict at trial, which represents a non-bracketed conviction
rate at trial of 34.1 per cent (and a bracketed conviction rate of 38.4 per cent) compared
with an overall conviction rate (guilty pleas plus guilty verdicts by direction and by jury)
of 69.7 per cent, as a result of 1,427 guilty pleas. Interestingly, this overall conviction
rate is significantly higher than the overall conviction rate calculated by reference to
persons charged (that is, 47.9 per cent) (see column 5, Table 5.4), indicating that a child
sexual assault offence was not the principal offence for a significant proportion of persons
prosecuted for such offences in the NSW higher courts.

As can be seen from Tables 5.5 and 5.6, for the five year period January 1992 to
December 1996, the conviction rates for child sex offences in both lower and higher
courts have remained more or less steady, although in the higher courts, the rate dropped
considerably from 36.5 per cent (bracketed: 38.8 per cent) in 1993 to 28.6 per cent
determined by the court and no further court proceedings are required": NSW Bureau of Crime
Statistics and Research, 1993a: 3), since to include all such cases would have resulted in an artificially
low conviction rate calculated by reference to those cases that did not actually go to trial. In other
words, it would not have been appropriate to calculate conviction rates at trial for child sex offences by
reference to cases that did not proceed to trial. Had all 4,056 finalised cases been included, the
conviction rate at trial would have been 15.8 per cent.
(bracketed: 34.3 per cent) in 1994 but increased again to 33.3 per cent (bracketed: 37.6 per cent) in 1996. In the lower courts, the conviction rate dropped from 37.5 per cent in 1994 to 28.6 per cent in 1995 but increased again to 36.5 per cent in 1996.

In addition, the number of persons charged with and prosecuted for child sex offences by the higher courts has not markedly increased over that five year period, as set out in Table 5.4, although some minor fluctuations are evident, with the numbers decreasing from 443 persons charged in 1992 (967 charges) to 341 persons charged in 1995 (684 charges) and rising slightly in 1996 to 356 persons charged (809 charges). Similarly, in the lower courts, there has been a relatively steady number of persons charged with and prosecuted for child sex offences in that five year period, as set out in Table 5.3, except for 1995 to 1996 when the number of persons charged jumped from 218 in 1995 (262 charges) to 313 in 1996 (389 charges), an increase of 43.6 per cent.

When the overall conviction rates in the NSW lower and higher courts are compared for the five year period January 1992 to December 1996, (see Tables 5.5 and 5.6) it can be seen that the rate in the higher courts (69.7 per cent) is considerably higher than the rate in the lower courts (35.3 per cent). In Victoria, a similar finding was made by the Parliament of Victoria, Crime Prevention Committee (1995) who observed:

> [t]he high conviction rates for sex offences before Higher Courts is perhaps not surprising given that the majority of prosecutions which are successful result from a guilty plea. For example over 94% of successful prosecutions for sexual penetration of a child under 10 years, were pleas of guilty. Only 37.5% of charges of sexual penetration of a child under 10, where the accused did not plead guilty, resulted in a conviction (1995: 52).

Similarly, the relatively high overall conviction rate of 69.7 per cent for child sex offences prosecuted in NSW higher courts results from a high rate of guilty pleas, since the conviction rate at trial was only 34.1 per cent (bracketed: 38.4 per cent), indicating that the vast majority of successful prosecutions for child sex offences were the result of guilty pleas for the period January 1992 to December 1996.
The relatively high overall conviction rate in the higher courts may also be due to a variety of factors associated with prosecutions in the higher courts. For example, the Parliament of Victoria, Crime Prevention Committee noted that in the higher courts in Victoria there is:

a variety of assessment processes in place which ensure that the standard of evidence is high. Following a Committal Hearing, a transcript of the evidence is examined in detail by a Prosecutor for the Queen who will decide what, if any, charges are presented by the State. These prosecutors overturn, modify and amend the decision of the Magistrate where considered appropriate. The matter is then listed as a case for trial in the County or Supreme Court. If the case has survived these assessment processes to the stage of being presented at a Higher Court, it can be assumed to be a very strong case against the accused (1995: 52-53).

This analysis provides a plausible explanation for the higher conviction rates for child sex offences in the NSW higher courts compared to the lower courts, in particular the likelihood that an accused person is more likely to plead guilty if the prosecution’s case is strong. Although data supplied by the NSWBCSR does not distinguish between guilty by plea and guilty by verdict in relation to charges dealt with by lower courts, the low overall conviction rate of 35.3 per cent in the lower courts for the period January 1992 to December 1996 indicates that guilty pleas are not as common in the lower courts in relation to sex offences against children. Interestingly, the NSW lower courts figures are consistent with those reported by the Parliament of Victoria, Crime Prevention Committee (1995) which found for the year 1993, of the 3,052 sex offences against both adults and children brought before the Magistrates’ Courts, 64.5 per cent were dismissed or struck out (1995: 47).

(iii) A Comparison of Conviction Rates for Child Sex Offences and All Other Criminal Offences in NSW

One way to determine whether child sex offences are more difficult to prosecute than other criminal offences is to compare the conviction rates for child sex offences with conviction rates for all other criminal offences (Cashmore and Horsky, 1988; Cashmore, 1995). Nonetheless, there are some problems with making such a comparison, since combining all other criminal offences into one category combines a vast range of disparate offences which are likely to have widely differing guilty plea rates and
conviction rates. Indeed, some offences, such as assaults committed by police, have lower conviction rates than conviction rates for child sex offences (Anderson, 1995: 339).\textsuperscript{17} Clearly then, the fact that there are difficulties associated with prosecuting child sex offences is not unique to the crime of child sexual assault.\textsuperscript{18}

However, a comparison between conviction rates for child sex offences and all other criminal offences is undertaken here in order to compare my findings with those of Cashmore (1995) who undertook a similar comparison. In addition, such a broad comparison avoids the charge that might be made had I selected particular offences with relatively high conviction rates, such as assault against the person or armed robbery (Heenan, 1997), since it could easily be argued that I had chosen those particular offences for comparison purposes because it suits the particular argument I want to make.

In order to undertake a comparison of conviction rates for child sex offences and conviction rates for all other criminal offences, it is necessary to be able to calculate conviction rates as a function of guilty verdicts for all criminal offences (excluding sex offences against children) by reference to \textit{charges} successfully prosecuted in both higher and lower courts.

As set out in Table 5.7, the overall conviction rate (guilty by verdict and plea) for all criminal offences (excluding sex offences against children) prosecuted in the NSW lower courts for the period January 1992 to December 1996 was 80.6 per cent, a figure that is significantly higher (by a factor of 2.3) than the overall conviction rate for sex offences against children for the same period (35.3 per cent, column 5, Table 5.5).

In the NSW higher courts, as set out in Table 5.8, the conviction rate \textit{at trial} for all criminal offences (excluding sex offences against children) for the period 1992 to 1996 was 40.3 per cent (bracketed: 45.1 per cent), compared to 34.1 per cent (bracketed: 38.4 per cent).

\textsuperscript{17} Anderson (1995) reports of 1092 complaints of police assault and harassment in NSW between 1991-1992, only 4.4 per cent were sustained and comments: "[t]hese figures remind us of the extent and formidable unaccountability of state violence" (1995: 339).
## TABLE 5.7

OUTCOME OF CHARGES FOR ALL CRIMINAL OFFENCES (EXCLUDING SEX OFFENCES AGAINST CHILDREN) IN NSW LOWER COURTS 1992-1996

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No. Cases Finalised</th>
<th>Not Guilty</th>
<th>Offence Proven</th>
<th>Overall Conviction Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>129,590</td>
<td>23,872</td>
<td>105,718</td>
<td>81.6%</td>
</tr>
<tr>
<td>1993</td>
<td>135,029</td>
<td>25,470</td>
<td>109,559</td>
<td>81.1%</td>
</tr>
<tr>
<td>1994</td>
<td>126,257</td>
<td>24,573</td>
<td>101,684</td>
<td>80.5%</td>
</tr>
<tr>
<td>1995</td>
<td>129,589</td>
<td>26,124</td>
<td>103,465</td>
<td>79.8%</td>
</tr>
<tr>
<td>1996</td>
<td>139,041</td>
<td>28,058</td>
<td>110,983</td>
<td>79.8%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>659,506</td>
<td>128,097</td>
<td>531,409</td>
<td>80.6%</td>
</tr>
</tbody>
</table>

Source of data: Outcome of Charges Data supplied by the NSWBCSR upon requests dated 23/6/98.

**Notes to Table:**

1. *Total cases finalised* includes cases dismissed and cases in which an offence was proven, but does not include cases where the accused died before hearing and cases where the accused failed to appear.
2. *Not guilty* includes cases dismissed after: hearing; no evidence offered; recognizance forfeited; application of Mental Health Act; stood out of list.
3. Data from which *overall conviction rates* for all criminal offences (excluding sex offences against children) were calculated includes those cases out of all cases finalised where the offence was proven. No distinction is made between guilty pleas and guilty by verdict in the data supplied by the NSWBCSR.
TABLE 5.8

OUTCOME OF CHARGES FOR ALL CRIMINAL OFFENCES (EXCLUDING SEX OFFENCES AGAINST CHILDREN) IN NSW HIGHER COURTS 1992-1996

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Finalised</th>
<th>Guilty Pleas (before or during trial)</th>
<th>Guilty by Verdict</th>
<th>Conviction Rate at Trial</th>
<th>Overall Conviction Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>4844</td>
<td>3126</td>
<td>749</td>
<td>43.6% (48.2%)</td>
<td>80.0%</td>
</tr>
<tr>
<td>1993</td>
<td>4770</td>
<td>3002</td>
<td>696</td>
<td>39.4% (43.6%)</td>
<td>77.5%</td>
</tr>
<tr>
<td>1994</td>
<td>4329</td>
<td>2864</td>
<td>611</td>
<td>41.7% 47.3%</td>
<td>80.3%</td>
</tr>
<tr>
<td>1995</td>
<td>3811</td>
<td>2548</td>
<td>479</td>
<td>37.9% (42.5%)</td>
<td>79.4%</td>
</tr>
<tr>
<td>1996</td>
<td>3367</td>
<td>2169</td>
<td>454</td>
<td>37.9% (43.2%)</td>
<td>77.9%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>21,121</td>
<td>13,709</td>
<td>2989</td>
<td>40.3% (45.1%)</td>
<td>79.1%</td>
</tr>
</tbody>
</table>

Source of data: Outcome of Charges Data supplied by the NSWBCSR upon request dated 6/7/98.

Notes to Table:
1. Total finalised charges includes guilty pleas before or during trial; guilty by verdict; not guilty by verdict or by direction.
2. Non-bracketed conviction rate at trial was calculated by including all cases going to trial except cases involving guilty pleas during trial in order to gain a picture of guilty verdicts made by the trier of fact. Thus, the conviction rate was calculated as a proportion of cases that went to trial (not including guilty pleas). Bracketed conviction rate at trial represents cases that resulted in a finding of guilty by verdict as a proportion of cases that resulted in a guilty or not guilty verdict by a jury.
3. Overall conviction rate represents cases which resulted in guilty by verdict and guilty pleas as a proportion of all cases finalised.
per cent) for sex offences against children (Table 5.6). The overall conviction rate in the higher courts for all criminal offences (excluding sex offences against children) for the same period was 79.1 per cent (Table 5.8), compared with 69.7 per cent for sex offences against children (Table 5.6). The differences in these conviction rates for sex offences against children and for all other criminal offences are not as marked in the NSW higher courts compared to conviction rates in the NSW lower courts; for conviction rates at trial in the higher courts, a difference of between 6 to 7 per cent is discernable for the five year period 1992 to 1996 and for overall conviction rates a difference of around 10 per cent is discernable for the same period. Nonetheless, from this analysis it can be said the second hypothesis set out in the introduction to this chapter (that when child sex offence charges are laid, they are less likely to result in a successful prosecution compared with most other criminal offences) is supported by the statistical analysis undertaken in this chapter.

(iv) A Comparison of Charges Laid, Conviction Rates and Substantiated Cases of Child Sexual Abuse

As set out in Table 5.1, for the period 1991-92 to 1995-96, a total of 15,968 cases of child sexual abuse were substantiated by the NSWDOCS, an average of 3,194 cases per financial year. However, between 1992 to 1996, an average 635 persons\(^{18}\) per calendar year period were charged with sex offences against children in NSW. Since the numbers of substantiated cases per financial year and the numbers of persons charged per calendar year have remained relatively steady over each five year period, a comparison of data from the two different time periods appears to be justified, in order to show that there is a large discrepancy between the extent of child sexual abuse in the community and the number of cases of child sexual abuse dealt with by the criminal justice system. This discrepancy will be even greater depending on the number of substantiated cases that are not reported to the police; in other words, cases reported to the police which result in a person being charged are not necessarily a sub-set of the cases of child sexual abuse substantiated by the NSWDOCS, since, as discussed above, the data reported by the

---

\(^{18}\) I am grateful to David Brown for this observation.

\(^{19}\) This figure of 635 is calculated by adding the total figures in column 2 of Tables 5.3 and 5.4 and dividing by 5.
Department primarily represent cases of child sexual abuse within the family and the basis on which the Department decides that a report of child sexual abuse is substantiated will not necessarily be a sufficient basis on which to lay charges.

Out of the, on average, 635 persons who are charged with child sex offences per calendar year in both higher and lower courts in NSW, an even smaller proportion of persons charged is prosecuted successfully, with an average of 265 persons either pleading guilty or being found guilty per calendar year in both higher and lower courts.\(^{20}\)

Overall, it can be seen that there is a large disparity between the number of substantiated cases of child sexual abuse reported in NSW each year, the number of charges laid for child sex offences and the number of charges which result in a conviction, either by way of a plea or guilty verdict. Although, as discussed above, it is clear that the cases that are reported to the police do not necessarily represent a sub-set of substantiated cases of child sexual abuse reported by the NSWDOCS, this analysis does indicate that there is a large number of cases of child sexual abuse that are never dealt with by the criminal justice system.

The data discussed in this chapter support the first hypothesis set out in the introduction, that is, that the vast majority of cases of child sexual abuse do not result in charges being laid and successful prosecutions.\(^{21}\) Future work, discussed in Chapter Seven, is needed to confirm this hypothesis by tracking the fate of all substantiated cases of child sexual abuse reported by the NSWDOCS (over a particular time period) in order to determine the proportion that are reported to police, of those, how many result in charges being laid and a successful prosecution and the reasons why the remaining cases are not reported to

\(^{20}\) This figure is calculated by adding the total figures in column 5 of Tables 5.3 and 5.4 and dividing by 5.

\(^{21}\) The possibility that there may be a backlog of child sexual assault cases in that a majority of the substantiated cases of child sexual abuse will eventually be prosecuted is not supported by data tabulated in columns 2 and 4 of Tables 5.3 and 5.4, since there has been no significant increase in charges laid or persons convicted during the period January 1992 to December 1996 that is comparable to the approximately 3,000 cases of child sexual abuse that are substantiated in NSW each year.
police. Even so, the analysis undertaken in this chapter shows that even if all persons charged with child sex offences per calendar year represented a sub-set of substantiated cases of child sexual abuse, the hypothesis that the vast majority of cases of child sexual abuse do not result in charges being laid and successful prosecutions is still supported.

(v) Previous Studies on Conviction Rates for Child Sex Offences

This section examines three previous studies which have analysed the prosecution of child sex offences in NSW courts. The main focus of this section is to compare the conviction rates for child sex offences from previous studies with those obtained in the analysis undertaken in this chapter.

Cashmore and Horsky (1988) carried out a study on all indictable cases of sexual assault finalised in NSW higher courts during 1982 where the complainant was under the age of 18 (1988: 242), in order to, amongst other things, (i) “provide some information on the processing of cases of child sexual assault by the criminal justice system ... prior to the changes in legislation relating to child sexual assault” and (ii) “examine several factors which affect the way in which cases of child sexual assault are dealt with once they enter the criminal justice system”, such as “the relationship between the perpetrator and the victim, the age and sex of the victim, the agency to which the initial report was made and the seriousness of the offence” (1998: 241-242; references omitted).

Cashmore and Horsky’s study analysed 191 cases, involving a total of 223 victims under the age of 18 and 191 male defendants, although, altogether, Cashmore and Horsky analysed 235 complainant-defendant pairs. The defendant-complainant pair was “used as the unit of analysis because it takes account of cases where there are multiple defendants and/or multiple complainants, treating each defendant/complainant pair within each case as the equivalent of a separate hearing or case within a case” (Cashmore and Horsky, 1988: 242).22

22 Of the 223 victims, 68.6 per cent of complainants were female and the average age of the complainants was 11.1 years. “The majority of alleged offenders were known to their victims, either as a member of the victim’s family or household (25.1% of defendants), as a close friend of the family (8.9%), or as a
Out of the 235 complainant-defendant pairs studied, Cashmore and Horsky (1988: 244-245) found that:

- 28 cases (11.9%) lapsed before trial or sentencing
- defendants pleaded guilty in 173 cases (73.6%) at committal or before trial
- 34 cases involved trial by jury and 20 defendants (58.8%) were found guilty of the principal offence or a lesser charge
- the overall conviction rate (by plea or verdict) was 82.1 per cent
- only 62 of those convicted (40.3%) received a custodial sentence.

Overall, Cashmore and Horsky found that the relationship between the complainant and the defendant and the age of the complainant affected the fate of charges prosecuted.

First:

Cases involving intrafamilial assault were more likely to proceed and guilty pleas were more common than for cases involving offenders unrelated to their victims. Intrafamilial offenders were also more likely to be convicted following a not guilty plea, and they were more likely to receive custodial sentences than "unrelated" offenders (Cashmore and Horsky: 1988: 250).

Secondly:

Cases involving younger complainants were more likely than those involving older complainants to proceed beyond committal. They were less likely to go to trial, but if they did, they were more likely to result in a conviction. This suggests, though more evidence is needed to support it, that older children were seen as less credible, more likely to lay false complaints, or more blameworthy than younger complainants (Cashmore and Horsky: 1988: 250).

As will be seen from the discussion of the following two studies, both the conviction rate at trial and the overall conviction rate obtained by Cashmore and Horsky are significantly higher than conviction rates obtained in the 1990s.
In a second study, Cashmore (1995) carried out a survey of all cases of child sexual assault reported by solicitors prosecuting such cases for the NSW Office of the Director of Public Prosecutions (DPP) for the period April 1991 to April 1992 (Cashmore, 1995: 33). Her survey documents convictions rates for child sex offences during that period in both local and higher courts in NSW, as well as the nature of the offences, the sex of the complainant and the relationship between each accused person and complainant.23

Of the 254 cases dealt with by NSW lower courts (the majority involving committal hearings), Cashmore (1995: 35) reports that:

- 10 cases were terminated and the defendants discharged of all charges
- 32 were dealt with as summary matters and, of those, 17 resulted in a conviction (53.1 per cent conviction rate at summary level)
- 41 resulted in a guilty plea
- 150 (59 per cent) were committed for trial in higher courts
- in total, 83.9 per cent of cases resulted in conviction or committal for trial or sentence, although the overall conviction rate for matters finalised in the lower courts was 65.9 per cent.

Cashmore’s study is consistent with the findings of Cashmore and Horsky (1988), in that the age of the complainant and the relationship between the complainant and the defendant had an effect on the above outcomes in the lower courts. In relation to terminated cases, the children were younger (average age of 8.4 years) than those children involved in cases which proceeded to trial (average age of 11.9 years). In addition, Cashmore reports that “in 31.8% of cases involving children under five, the case either did not proceed beyond committal or did not result in a conviction in summary

23 Cashmore (1995) reports that, of the 254 cases from local courts, 79.3 per cent of complainants were female and of the 263 cases from higher courts, 77.8 per cent of complainants were female. Just over a quarter of accused persons were unknown to complainants, with the remainder being a member of the family or household of the complainant, a family friend or babysitter, or a friend, neighbour or acquaintance of the complainant (Cashmore, 1995: 34). The relatively high percentage of strangers charged with child sex offences in Cashmore’s survey suggests that “cases involving defendants outside the family may be more likely to be prosecuted than those involving family members”
proceedings compared with only 15.3% of cases for older children” (1995: 36). However, Cashmore found “little difference in age ... between cases heard summarily which resulted in a conviction (average age of 12.2 years) and those in which the defendant was discharged (average age of 12.7 years)” (1995: 36). Cashmore also found that “close family members were more likely to be committed for trial than other defendants. For example, 70.4% of cases involving family members (but not brothers/cousins) were committed for trial compared with an overall average of 59% for non-family members” (1995: 36).

Of the 263 cases dealt with by higher courts, Cashmore (1995: 36-40) reports that:

- 129 cases (49.1 per cent) were committals for sentence, with 3 cases being no billed (8.5 per cent)
- 131 cases went to trial
- 5 of those 131 cases did not proceed “because the child complainant was unable to give evidence or refused to do so” (1995: 36), one case resulted in a hung jury and three cases resulted in no conviction being recorded (although the charge was proved)
- 61 cases resulted in acquittal by a jury and 10 cases resulted in acquittal by direction, a total of 71 acquittals (54.2 per cent of trials)
- 46 out of the 131 cases that went to trial resulted in a conviction (38.0 per cent)
- an overall conviction rate (by plea or verdict) of 66.5 per cent.

Again Cashmore identifies that the age of the complainant affected “both the acquittal rate and the ‘type’ of acquittal”, although contrary to the study of Cashmore and Horsky (1988), Cashmore found that acquittal by direction was highest for complainants under the age of 5 years, although the small numbers, that is, 3 out of 8 trials, mean that this observation “should be treated with some caution” (Cashmore, 1995: 36). However, Cashmore found that “[t]he overall conviction rate (taking pleas into account) was not ... affected significantly by age although the conviction rate for cases involving

(Cashmore, 1995: 34), particularly since prevalence studies show that strangers constitute a much lower proportion of offenders, compared to all offender types, as discussed in Part B of Chapter Four.
complainants aged 10 to 11 years (61.5%) and 15 to 17 years (59.4%) tended to be lower than that for 5 to 9 year-olds (72.0%) and 12 to 14 year-olds (71.8%)” (1995: 36). In addition, there was a slightly “higher conviction rate for strangers (73.8%) than for family members and defendants in positions of trust (64.7%)” (Cashmore, 1995: 37), contrary to the findings of Cashmore and Horsky (1988).

The second aspect of Cashmore’s study involved a comparison between conviction rates at trial for child sex offences in higher courts with conviction rates at trial for all criminal offences in higher courts. Cashmore found that the conviction rate for child sex offences for the period April 1991 to April 1992 (38.0 per cent) compared unfavourably with conviction rates for all criminal offences for the three periods, 1990/91 (44.9 per cent), 1991/92 (46.7 per cent) and 1992/93 (45.9 per cent).

Cashmore also compared the conviction rates at trial for child sex offences during the period April 1991 to April 1992 with conviction rates at trial for child sex offences for the calendar years 1982, 1984 and 1988-1992 in the NSW higher courts. She reports that while the number of trials for child sexual offences increased markedly between the early 1980s and the late 1980s, from 34 trials in 1982 to 148 trials in 1988 and a high of 233 trials in 1990 (after “legislative reforms and community and government initiatives in relation to child sexual assault in the mid-1980s”: Cashmore, 1995: 40), there was a concomitant “sharp decrease” in the guilty plea rate” (Cashmore, 1995: 40; emphasis added) by defendants and a marked decrease in the conviction rate at trial. Drawing on the results from Cashmore and Horsky’s (1988) study, Cashmore observes that “the percentage of guilty verdicts fell from a high of 58.8% in 1982 to a low of 33.8% in 1988 and a gradual subsequent increase to 43.4% in 1992” (1995: 40).

Cashmore canvasses the possible reasons for the relatively low conviction rate at trial obtained in her study, such as warnings given to juries about uncorroborated evidence and the reliability of children’s evidence, although, she found:

[s]omewhat surprisingly, the [corroboration] warning seems to have had little effect on the verdict. The conviction rate for cases in which a warning was given was 42.9% compared
with 34.4% of cases in which no warning was given, and varied with the age of the child and the strength of the warning given (1995: 43).

Only in cases involving children under the age of 10 did a warning appear to have an impact on the conviction rate, leading Cashmore to conclude that “removing the warning about the danger of convicting on the uncorroborated evidence of a child did not lead to an increase in the conviction rate” (1995: 49). Similarly, the issue of contamination of a child’s evidence was more likely the younger the child; in trial matters, “it was raised in 23.8% of cases involving children under 10, and in only 4.7% of trials involving children between the ages of 15 and 17” (Cashmore, 1995: 44).

The other surprising aspect of the relatively low conviction rate at trial obtained in Cashmore’s study is that her study was conducted after reforms removed or reduced some of the major obstacles for child witnesses in child sexual assault cases. These obstacles included:

- the difficulty of the test for receiving the (sworn) evidence of young children and the inability to convict on the uncorroborated unsworn evidence of a child. Previously if a child was too young to understand and take an oath and there was no material evidence to corroborate the child’s evidence, there was no point prosecuting. With legislative reform, the test for the child’s competence to testify has been eased, and unsworn evidence has the same weight as sworn evidence. The requirements for corroboration and for the judge to warn the jury of the danger of convicting on the uncorroborated evidence of a child were also removed. As a result, it is now possible for even very young children to give evidence. Before these amendments, it was rare for children under 10 to give evidence (Cashmore, 1995: 49).

Cashmore considers that the increase in the number of young children who gave evidence after these reforms may:

- explain the decrease in the plea rate and the consequent rise in the number of cases going to trial. Since younger witnesses are generally seen to be more vulnerable and less reliable, the defence may be more inclined to put their evidence to the test at trial, with the expectation that the child will not come up to proof. (The increase in penalties may also have encouraged this approach) (1995: 49).

In fact, Cashmore considers that the decrease in the conviction rate which occurred between 1982 (58.8 per cent) and 1991/92 (38.0 per cent) supports her view, since “[c]ases involving young children are probably harder to prosecute successfully” (1995: 49). It may have been that, because far fewer cases went to trial in those years before the
reforms compared with later years, only those cases considered to be strong enough to result in a conviction were actually prosecuted.

Nonetheless, it cannot be assumed that because child sexual assault cases involving younger children appear to be harder to prosecute, it is, therefore, inevitable that such cases will result in lower conviction rates at trial, since such an assumption obscures the context in which such cases are heard and which may make them harder to prosecute. In other words, this assumption obscures the possibility that it may be something about the the trial process and the adversarial system that makes them harder to prosecute, rather than anything inherent in the cases themselves.

For example, although the above reforms documented by Cashmore were designed to remove the traditional barriers or filtering processes that have prevented the successful prosecution of child sex offences and have, according to Cashmore’s study, significantly increased the number of child sexual assault cases going to trial, the reforms have not “necessarily had any effect on the probability of a conviction” (Cashmore, 1995: 50). Such a finding suggests that difficulties in prosecuting child sexual assault cases can be attributed to the way the child sexual assault trial is conducted, rather than to the fact that the complainant is a child, or even a young child. Overall, Cashmore’s study shows that, with increased numbers of children now testifying in child sexual assault cases, the child sexual assault trial is now “heavily dependent on oral evidence”, with “a decreased chance of a conviction at the end of the process” (1995: 50). Chapter Six analyses what it is about a child’s oral evidence within the context of the trial process and the adversarial system that may contribute to the relatively low conviction rate at trial for child sex offences.

The findings in Cashmore’s study are, generally, consistent with the conviction rates calculated by reference to outcome of charges for sex offences against children in the NSW higher courts for the period January 1992 to December 1996, as set out in Table 5.6. For example, for that five year period, the conviction rate at trial was 34.1 per cent, a
figure which is lower than the conviction rate of 38.0 per cent obtained by Cashmore in NSW higher courts for the period 1991-1992. Such a discrepancy can be accounted for by recognising that Cashmore’s rate is calculated across a one year period, compared to the five year period used in this chapter. Interestingly, the conviction rate at trial for the one year period January to December 1992 (39.8 per cent) (Table 5.6) is much closer to Cashmore’s figure of 38 per cent for the period 1991-1992.

As set out in Table 5.6, except for 1992, conviction rates for each calendar year from January 1992 and December 1996 are lower than the conviction rate obtained by Cashmore; that is, 36.5 per cent in 1993, 28.6 per cent in 1994, 33.5 per cent in 1995 and 33.3 per cent in 1996. This means that it can be said that the decreasing trend observed by Cashmore in her 1991-1992 study has continued, that is, since 1992, the conviction rate for child sexual abuse offences in the NSW higher courts has continued to decrease from 39.8 per cent in 1992 to 28.6 per cent in 1994, although it rose slightly in 1995 to 33.5 per cent and to 33.3 per cent in 1996. Based on the data from Cashmore’s study and the study in this chapter, it can be predicted that there is just slightly more than a one third chance of obtaining a conviction in NSW higher courts for a child sex offence where the accused pleads not guilty.

There is, however, a marked difference between the overall conviction rate obtained for child sex offences prosecuted in NSW Local Courts in Cashmore’s study (65.9 per cent) and the overall conviction rate (35.3 per cent) set out in Table 5.5 for the period January 1992 to December 1996. This difference can be attributed to the fact that the data published by the NSWBCSR (on which conviction rates listed in Table 5.5 are based) includes a number of categories of total charges finalised not included in the sample of cases studied by Cashmore. In other words, Cashmore’s study does not include cases dismissed after: no evidence was offered, recognizance forfeited, cases stood out of list and cases to which the Mental Health Act 1990 (NSW) applied. If such cases had not been included in the definition of finalised cases set out in Table 5.5, a higher overall conviction rate would have been obtained for child sex offences prosecuted in the NSW
lower courts. However, there was no way of clearly determining from the data supplied by the NSWBCSR those cases that had been dismissed as a result of difficulties associated with the prosecution of the case, in order to include such cases in the definition of finalised cases and eliminate the other dismissed cases.

A third study on the prosecution of child sexual assault cases in NSW was conducted by Gallagher and Hickey (1997) who analysed those cases prosecuted and finalised in the District Court of NSW during 1994. Gallagher and Hickey report that, for the calendar year 1994, 501 alleged offenders were charged in relation to 1,039 offences against 630 victims (1997: 2-3; 11; 29). By way of contrast, in the same calendar year, Gallagher and Hickey report that there had been 6,949 notifications of child sexual abuse to the NSWDOCS and, of those, 3,351 cases were substantiated by the Department. There is, however, no data available on the number of complaints of child sexual assault made to the NSW Police Service for the calendar year 1994, out of which the 501 alleged offenders were charged. Curiously, however, Gallagher and Hickey use data on the

---

24 This figure differs from the figures listed in Table 5.1 which tabulates 2,955 cases of substantiated child sexual abuse for 1994-95 and 2,776 cases of substantiated child sexual abuse for 1995-96. The figures in Table 5.1 represent cases reported per financial year compared to the calendar year reported by Gallagher and Hickey (1997).

25 Of the 630 alleged victims in these cases, Gallagher and Hickey report that 75 per cent (455) were female and 25 per cent were male (156); of those, 404 were proven victims, that is 281 (72 per cent) were female and 111 (28 per cent) were male (1997: 24). These figures indicate that trials in which there was a male complainant were more likely to result in a conviction than trials involving a female complainant. In other words, of the 455 alleged female victims, only 281 (61.8 per cent) were proven victims, compared with 111 proven male victims of the 156 alleged male victims (71.2 per cent). These figures are suggestive but certainly not conclusive of the possibility that homosexual offenders are more likely to be convicted than heterosexual offenders. However, it is not possible to discern from Gallagher and Hickey's data what proportion of proven male victims and proven female victims are the result of a guilty plea by the offender or the result of a guilty finding at trial. This is an issue that warrants further research, as discussed in Chapter Seven. In addition, most proven victims (46 per cent) had been abused by family members (mostly fathers) or those known to them in their own homes over a prolonged period, compared to male victims who were most often the victims of single assaults by those known to them or known to their family in the home of the accused (Gallagher and Hickey, 1997: xi). Forty-one per cent of female victims had suffered prolonged assaults, 25 per cent occasional incidents and 34 per cent single assaults. Forty-one per cent of male victims had suffered single assaults, 31 per cent occasional assaults and 28 per cent prolonged assaults.

number of complaints of child sexual assault made to the NSW Police Service in 1995\textsuperscript{27} to show that there is a linear decrease between the number of notifications made to the NSWDOCS, the number of cases substantiated, the number of complaints made to police, the number of alleged victims and the number of proven victims. Thus, they compare 6,949 notifications with 3,351 substantiated cases, 2,143 complaints to police, 630 alleged victims and 404 proven victims, even though, as discussed above, complaints made to police are not necessarily a sub-set of substantiated cases, and even though the 2,143 complaints to police pertain to the 1995 calendar year. This is, of course, problematic, since Gallagher and Hickey assume, without any explanation, that the numbers of complaints made to police in 1995 is comparable to the numbers made in 1994. I have made a decision to take that assumption on face value, in order to calculate the figures listed in Table 5.9.

Gallagher and Hickey report that, of the 501 offenders charged, 407 were committed for trial and 326 (65.1 per cent) were convicted of at least one charge, as a result of a guilty plea or verdict: 94 offenders entered guilty pleas in the Local Court and 153 pleaded guilty either at arraignment or sometime before trial, a total of 247 (Gallagher and Hickey, 1997: 11).\textsuperscript{28} This represents a very low plea rate of 49.3 per cent compared with that found in earlier studies (Gallagher and Hickey, 1997: 11), such as that of Cashmore and Horsky (1988) who found that the majority of offenders in their study pleaded guilty either at committal or trial in child sexual assault matters finalised in NSW in 1982

\textsuperscript{27} Data on complaints of sexual assault made to police agencies in each Australian jurisdiction as a function of the sex and age of the victim were collated for the first time in 1995 by the Australian Bureau of Statistics according to Adrian Serraglio of the Australian Bureau of Statistics, in a conversation on 1/4/98.

\textsuperscript{28} Fifty-six of convicted offenders “received a full-time custodial sentence in relation to the principal proven offence. An additional 13% received periodic detention, 15% received a common law or s 558 bond (usually with supervision) and 12% were sentenced to a community service order” (Gallagher and Hickey, 1997: 16). Gallagher and Hickey’s analysis of the sentencing patterns for convicted offenders shows that the more invasive the act of sexual abuse, the more likely it was for the offender to receive a full-time prison sentence (1997: 18-19). In addition, they found that “[b]oth natural and non-biological fathers were far more likely to receive a full-time custodial penalty for their principal proven offence than strangers. The relative proportions were 74% of natural fathers (n=42) and 73% of non-biological fathers (n=52) gaol, compared with 33% of strangers (n=15)” (Gallagher and Hickey, 1997: 20).
TABLE 5.9

THE FATE OF ALL COMPLAINTS OF CHILD SEXUAL ASSAULT
REPORTED TO THE NSW POLICE IN 1994

<table>
<thead>
<tr>
<th></th>
<th>N</th>
<th>Percentage of Original Complaints Made</th>
<th>Percentage of Persons Charged</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Complaints</td>
<td>2,143</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Persons Charged</td>
<td>501</td>
<td>23.4%</td>
<td>N/A</td>
</tr>
<tr>
<td>Guilty Pleas before Trial</td>
<td>247</td>
<td>11.5%</td>
<td>49.3%</td>
</tr>
<tr>
<td>Persons Charged who No-Billed</td>
<td>62</td>
<td>2.9%</td>
<td>12.4%</td>
</tr>
<tr>
<td>Trials Conducted</td>
<td>190</td>
<td>8.9%</td>
<td>37.9%</td>
</tr>
<tr>
<td>Convictions at Trial</td>
<td>79</td>
<td>3.7%</td>
<td>18.1%</td>
</tr>
<tr>
<td>Persons Found Guilty and Pleading Guilty (Overall Conviction Rate)</td>
<td>326</td>
<td>15.2%</td>
<td>65.1%</td>
</tr>
</tbody>
</table>

Source of data in column 2:
Gallagher and Hickey (1997). Figures in columns 3 and 4 were calculated using the data reported by Gallagher and Hickey (1997).

Notes to table:
1. Figures in column 3 were calculated as a proportion of the 2,143 complaints made to police in 1995; see text for a discussion of the problems associated with using this figure. Figures in column 4 were calculated as a proportion of the 501 persons charged (out of the 2,143 complaints made).
2. The conviction rate at trial was calculated as a proportion of the 437 persons who were charged but does not include the 2 persons who died before trial and the 62 persons were no-billed.
that is, 74.9 per cent pleaded guilty at committal and of the cases that were committed for trial, 25.1 per cent of accused persons pleaded guilty at trial.

Out of the cases that proceeded to trial in Gallagher and Hickey's study, 62 were 'no billed', 2 accused persons died before trial, and 190 trials took place. Out of those 190 trials, there are several points that should be noted from the data reported by Gallagher and Hickey and from the figures that I have calculated in Table 5.9:

- a very small proportion of the assumed 2,143 complaints of child sexual assault made to police (23.4 per cent) resulted in charges being laid;
- out of the assumed 2,143 complaints of child sexual assault made, only 326 offenders\(^{29}\) (15.2 per cent) either pleaded guilty or were convicted at trial;
- of the 190 trials conducted, only 79 resulted in a conviction. This figure of 79 represents 3.7 per cent of the assumed 2,143 complaints of child sexual abuse made to police, and represents 15.8 per cent of persons charged and a conviction rate at trial of 18.1 per cent\(^{30}\);
- an overall conviction rate of 65.1 per cent.

Altogether then, these calculations suggest that only a very small proportion of complaints of child sexual assault made to the police in NSW will result in charges being laid or a conviction and that the vast majority of child sexual assault cases will remain outside the criminal justice system. Given the high number of substantiated cases of child sexual abuse in NSW each year (as discussed above) and the prevalence of child sexual abuse in Australia (33 per cent of female children can be expected to experience contact or non-contact abuse before the age of 16: Fleming, 1997\(^{31}\)), it cannot be assumed

\(^{29}\) Of the 319 offenders analysed in detail by Gallagher and Hickey (1997), three were female, although only two engaged in contact abuse, with the other being found to have incited her daughter to commit an act of indecency (Gallagher and Hickey, 1997: 13).

\(^{30}\) Calculated by reference to Gallagher and Hickey's figures of 501 accused persons (minus the 2 persons who died before trial and the 62 persons who were no-billed) and 79 persons convicted at trial and based on Gallagher and Hickey's calculation of their overall conviction rate of 65.1 per cent which was calculated by reference to the 326 persons convicted by plea or verdict out of 501 persons charged (Gallagher and Hickey, 1997: 11).

\(^{31}\) For example, using Fleming's (1997) data from her study of the prevalence of child sexual abuse within the general population of Australian women (as discussed in Chapter Four), in Australia it can
that those complaints that do not result in either charges being laid or a successful prosecutions are false complaints.

As a result of their findings, Gallagher and Hickey conclude that (i) child sexual assault “is being taken more seriously, with more frequent reporting, more rigorous prosecution and a less lenient penalty profile” (1997: ix) and (ii) “more prosecutions are occurring and more convictions are recorded in New South Wales than was the case in 1982” (1997: ix). Nonetheless, it is important to note that an increase in the number of prosecutions has not resulted in an increase in the conviction rate at trial. In fact, with the increase in the numbers of cases prosecuted, there has been a lower guilty plea rate “compared with that found in earlier studies of child sexual assault, reflecting perhaps the increased readiness of agencies to prosecute cases where a guilty outcome is not assured” (Gallagher and Hickey, 1997: ix) and a lower conviction rate as a result of fewer guilty pleas (Gallagher and Hickey, 1997: ix-x).

In a comparison of the studies of Cashmore and Horsky (1988), Cashmore (1995), Gallagher and Hickey (1997) and the study undertaken in this chapter, the conviction rate at trial obtained by Gallagher and Hickey (18.1 per cent) is significantly lower than that reported by Cashmore and Horsky (58.8 per cent), Cashmore (38.0 per cent) and this chapter (34.1 per cent).32

This discrepancy can be explained by the fact that this comparison of conviction rates is not comparing like with like. In other words, Gallagher and Hickey do not specify the

---

32 A direct comparison between the conviction rate calculated by Cashmore and Horsky (1988) and conviction rates tabulated in Table 5.6 (by reference to charges successfully prosecuted) appears to be valid, since by analysing complainant-defendant pairs, Cashmore and Horsky take account of all

be expected that at least 33 per cent of female children presently under the age of 16 will have experienced either contact or non-contact sexual abuse before they turn 16; that is, of the 1,994,949 female children who were under the age of 16 as at 6 August 1996 (Australian Bureau of Statistics, 1997: 36; this is the date of the last census conducted in Australia (Australian Bureau of Statistics, 1997: 1)), it can be expected that 658,333 will have had at least one experience of either contact or non-contact sexual abuse by the time they reach 16 years of age. Using Fleming’s figure of 20 per cent prevalence for contact abuse, of those 658,333 female children, 398,990 will have had at least one experience of contact sexual abuse before they turn 16.
number of charges per each accused person that were successfully prosecuted, so that the conviction rate at trial (which I calculated using the same method they used to calculate their overall conviction rate) and the overall conviction rate calculated by them (65.1 per cent) are conviction rates calculated by reference to persons charged, rather than charges successfully prosecuted. Hence, no direct comparison between conviction rates reported by Gallagher and Hickey can be made with the conviction rates obtained in the studies by Cashmore and Horsky (1988) and Cashmore (1995) and the analysis in this chapter.

However, because Gallagher and Hickey report that 1,039 charges were prosecuted in NSW District Courts during 1994 with 571 offences proved (1997: 31), an overall conviction rate of 55.0 per cent can be calculated by reference to charges proved, although, because Gallagher and Hickey do not specify which proven offences were the result of a guilty plea or verdict, it is not possible to calculate a conviction rate at trial by reference to charges successfully prosecuted.

This overall conviction rate of 55.0 per cent is considerably lower than the overall conviction rate of 82.1 per cent reported by Cashmore and Horsky (1988) for finalised cases of child sex assault in NSW higher courts during 1982, as well as the overall conviction rate of 66.5 per cent reported by Cashmore (1995) for child sexual assault offences prosecuted in NSW higher courts for 1991-92 and the overall conviction rate of 69.7 per cent for child sexual assault offences prosecuted in NSW higher courts between January 1992 and December 1996.

charges which were prosecuted successfully during 1982. Similarly, conviction rates set out in Table 5.6 are based on charges (not persons) successfully prosecuted.
D. CONCLUSION: IS THE ADVERSARIAL SYSTEM A BARRIER TO THE SUCCESSFUL PROSECUTION OF CHILD SEX OFFENCES?

This chapter has shown that overall conviction rates and conviction rates at trial for child sex offences are significantly lower than similar conviction rates for the category combining all other criminal offences, although my earlier caveat is repeated here, that is, that this category of all other criminal offences will include some offences that are even more difficult to prosecute than child sex offences.

Using outcome of charges data supplied by the NSWBCSR, this analysis found that, for the period January 1992 to December 1996, the overall conviction rate for sex offences against children in the NSW lower courts was 35.3 per cent, compared to an overall conviction rate of 80.6 per cent for all criminal offences (excluding sex offences against children). For the same period, this chapter found that the conviction rate at trial for sex offences against children in the NSW higher courts was 34.1 per cent, compared to 40.3 per cent for all criminal offences (excluding sex offences against children). The overall conviction rate in the NSW higher courts for sex offences against children was 69.7 per cent, compared with 79.1 per cent for all criminal offences (excluding sex offences against children). Thus, the second hypothesis stated at the beginning of this chapter (that when child sex offence charges are laid, they are less likely to result in a successful prosecution compared with most other criminal offences) was found to be supported by this analysis.

The conviction rate at trial in the higher courts reported in this chapter was found to be very similar to the conviction rate obtained by Cashmore (1995) who reported that, for the period 1991/92, the conviction rate at trial for sex offences against children was significantly lower than conviction rates for all criminal offences for the same period, despite reforms that had been implemented in the 1980s to remove some of the major obstacles for child witnesses in child sexual assault trials.
In addition, this chapter found that the decreasing trend observed by Cashmore in her 1991-1992 study has continued, that is, since 1992, the conviction rate for child sex offences in the NSW higher courts has continued to decrease from 39.8 per cent in 1992 to 28.6 per cent in 1994, although it rose slightly in 1995 to 33.5 per cent and to 33.3 per cent in 1996. Based on the data from Cashmore’s study and the study in this chapter, it can be predicted that there is just slightly more than a one third chance of obtaining a conviction in NSW higher courts for a child sex offence where the accused pleads not guilty.

Generally speaking, this chapter found that conviction rates for sex offences against children and for the category of all other criminal offences have remained relatively steady for the five year period January 1992 to December 1996; that is, only minor fluctuations from year to year are discernable such that it can be argued that the relatively low conviction rates for sex offences against children are likely to be attributable to the way the child sexual assault trial is conducted. This proposition is supported by the fact that whilst Cashmore found that reforms in the 1980s significantly increased the number of child sexual assault cases going to trial, these reforms did not increase the probability of conviction which suggests that difficulties in prosecuting child sexual assault cases can be attributed to the way the child sexual assault trial is conducted, rather than to the fact that the complainant is a child, or even a young child.

The re-analysis undertaken in this chapter of data reported by Gallagher and Hickey (1997) indicates that only a very small proportion of complaints of child sexual assault made to the police in NSW will result in charges being laid or a conviction and that the vast majority of child sexual assault cases will remain outside the criminal justice system. Indeed, given the incidence of substantiated cases of child sexual abuse in NSW each year and the prevalence of child sexual abuse in the general community, it cannot be assumed that those complaints that do not result in either charges being laid or a successful prosecutions are false complaints. Such data suggests that the criminal justice system only deals with a tiny proportion of child sexual abuse cases each year in NSW.
which raises the following questions: how should the criminal justice system respond to a crime whose hallmark is an imbalance of power between the offender and victim? Are there particular practices within the trial process that prevent the successful prosecution of the vast majority of child sex offences that proceed to trial? Are the rules of evidence too far weighted in favour of the presumption of innocence of the alleged offender? Do we need specific rules of evidence that recognise the unique features of the crime of child sexual assault? Should an entirely different system for the prosecution of child sex offences be devised?

In posing these questions, it seems important to recognise that the reasons why the majority of substantiated cases of child sexual abuse do not result in charges being laid will be due to, not only particular practices and filtering processes within the agencies that comprise the criminal justice system, but also particular practices within the NSWDOCS, as well as the fact that some substantiated cases will not proceed any further than an investigation by the NSWDOCS due to non-disclosure by the child in question, retraction by the child, young age of the child and/or lack of corroborating evidence. For example, there may be filtering processes within the NSWDOCS that prevent some substantiated cases of child sexual abuse from being reported to the police. The Royal Commission into the New South Wales Police Service (1997) observed that the system for the management of child sexual abuse and “for the protection of children is enormously complicated and fragmented” and identified a number of problems associated with the responses of the key agencies involved in dealing child sexual abuse (1997: 606). For example:

[The different interests, philosophies and goals of [the Police Service, the DPP and the NSWDOCS] when combined with a discretion whether to investigate or report suspected child sexual abuse to the Police Service, can:

- result in a gap between policy and practice;
- lead to individual cases falling between the cracks with consequent trauma to children and families; and
- provide an opportunity for corruption (Royal Commission into the New South Wales Police Service, 1997: 607).
The Parliament of Victoria, Crime Prevention Committee (1995) has observed that, in Victoria, "sexual assaults on children have tended to be viewed as welfare matters" (1995: 14) and has made the following observations in relation to the tendency in Victoria to treat child sexual abuse as a welfare issue:

[t]reating sex offenders and sexual offending as a social or institutional problem, instead of a criminal assault, has enabled sex offenders to avoid being made to account for their criminal behaviour. This has reinforced the sex offender’s belief that what they are doing is justifiable, and that their behaviour is neither criminal nor harmful to the victims. As a result it was, and still is, very easy for sex offenders to continue their sexual offending virtually unchallenged (1995: 29).

In order to improve methods for the collection of evidence in relation to child sexual abuse allegations, in 1994 the New South Wales Government set up joint investigative teams (JITs) in a pilot scheme for the purposes of interviewing child victims of sexual or physical abuse. The JITs are comprised of a worker from the NSWDOCS and a member of the Police Service both of whom receive special training in investigating child sexual abuse. In October 1996, JITs were endorsed “as the preferred model for investigating serious child abuse throughout New South Wales” (Royal Commission into the New South Wales Police Service, 1997: 865) and by July 1997, JITs were to be set up in four new areas around NSW (Parramatta, Liverpool, Ashfield and Penrith) and another four were to be established by November 1997 (NSW Child Protection Council, 1997: 2). The teams undertake investigations into those cases of sexual and physical abuse where a criminal offence has been alleged (Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, 1997: 311).

33 In other Australian jurisdictions, there are particular policies and practices for the joint investigation by police and community services agencies of cases of child sexual abuse (Broadbent and Bentley, 1997: 6). However, probably the most impressive model for the joint investigation of child sexual abuse is that represented by the Child Advocacy Centres which have been established in various jurisdictions in the USA (ALRC and HREOC, 1997: 312). As the ALRC and the HREOC observe, “[t]hese centres aim to develop a comprehensive, multidisciplinary response to child abuse, to prevent or reduce trauma to children caused by multiple contacts with professionals and courts and to provide services to child victims and their families. They consist of representatives from the District Attorney, police and family services department as the core response team that investigates allegations of child abuse. They also employ a director and often additional persons are involved as trial co-ordinators or witness advocates, counsellors, doctors or nurses and mental health professionals. Child Advocacy Centres provide a single, child-friendly location for interviews and evidence collection away from hospitals and police stations, with all agencies sharing information and providing support and assistance for the individual child. ... Most Child Advocacy Centres have specially designed interview rooms with video-
It can be expected that the joint investigation of substantiated cases of child sexual abuse in NSW will help to overcome some of the problems associated with reporting substantiated cases of child sexual abuse to the Police Service. However, such improvements in the investigation of child sexual abuse cases may not necessarily have the effect of changing the particular practices within the trial process that prevent the successful prosecution of the vast majority of child sex offences that proceed to trial. In other words, whilst it can be expected that, as a result of the JITs, more cases of child sexual abuse will be prosecuted in NSW, and that more reliable and uncontaminated evidence will be presented at trial, it can also be expected that particular practices within the trial process that affect the likelihood of obtaining successful prosecution for child sex offences will remain unchanged.

For this reason, Chapter Six undertakes a socio-legal analysis of the significance of the data discussed in this chapter, in order to identify the particular practices, filtering processes or barriers within the trial process that are likely to be responsible for the relatively low conviction rates of child sex offences compared to most other criminal offences. Whilst the use of the term ‘barrier’ may be considered too rigid a metaphor for describing the practices of the criminal justice system (and the trial process in particular), I am reminded of Connell’s (1987) view here that “[s]tructure is always emergent from practice and is constituted by it. Neither is conceivable without the other” (Connell, 1987: 94) and each varies as a function of time (history) and place. Furthermore, the concept of social structure (such as a social barrier) is a way of expressing “the constraints that lie in a given form of social organization” (Connell, 1987: 92). In other words, I use the term ‘barrier’ here whilst keeping in mind that:

[s]ocial structures originate, are reproduced, and change through social practice. In short, we can only speak of structured action: social structures can be understood only as constituting practice; social structures, in turn, permit and preclude social action. ... Thus, as we engage in

---

332
social action, we simultaneously help create the social structures that facilitate/limit social practice (Messerschmidt, 1993: 62; emphasis in original).

And so to Chapter Six.
CHAPTER SIX

A GENDERED DIVISION OF RIGHTS AND RESTRAINTS WITHIN THE CRIMINAL JUSTICE SYSTEM

A. INTRODUCTION

The analysis in Chapter Five showed that there is a considerable gap between the annual number of substantiated cases reported by the NSWDOCS, the annual number of charges that are laid for child sex offences in NSW and the number that result in a conviction, in particular, those that result in a guilty verdict at trial. Such a finding is consistent with that of the Parliament of Victoria, Crime Prevention Committee (1995) who report that, in Victoria, "perpetrators who offend against children are less likely to be tried for the offences, less likely to be convicted if tried and if convicted, more likely to receive lighter sentences than if their victims had been adults" (1995: 13-14). It is also consistent with the view of the NSW Director of Public Prosecutions that children are:

vulnerable ... to abuse by the legal system. It is less likely that their complaints will result in convictions than those made by adults. Despite all our knowledge of child development gained especially during the 20th Century there is still a pervasive myth that children are essentially unreliable and untruthful, hence juries frequently find it very difficult to convict in these matters where it is usually the child’s word against that of an adult who has usually established over a much longer lifetime a reputation that can be called in aid (Royal Commission into the New South Police Service, 1997: 22; quoting Cowdery).

In fact, Chapter Five showed that, for the period January 1992 to December 1996, conviction rates for child sex offences in NSW lower and higher courts were consistently lower than the conviction rate for all other criminal offences combined which suggests that reforms during the 1980s to the way the child sexual assault trial is conducted have not increased the likelihood of conviction. Arguably, such evidence raises the question as to whether child sex offences are processed differently by the criminal justice system,
compared to other criminal offences. If so, the likely reasons for the criminal justice system's differential treatment of child sex offences is the subject of this chapter.

It is hypothesised that child sex offences are less likely to be successfully prosecuted because of the way the child sexual assault trial is conducted and the characteristics of the crime, since:

> [t]he offences of sexual assault of children have certain dynamics which make them different from almost all other offences. These include, the relationship between victim and offender, the limitations of victim credibility in adult courts, the lack of forensic evidence in most cases and the recidivist nature of the offender (Parliament of Victoria, Crime Prevention Committee, 1995: 178).

It is clear from the data discussed in Chapter Five that the vast majority of child sex offenders are unlikely to ever come before the criminal justice system, a fact which highlights a serious social problem in terms of the welfare of a significant minority of Australia's children. No doubt the solution to this problem is complex, requiring the implementation of coordinated policies and action on the part of both community services agencies and the agencies that comprise the criminal justice system. However, the empirical research discussed in Chapter Five has shown that, despite increased numbers of child sexual assault cases going to trial (Cashmore, 1995; Gallagher and Hickey, 1997), there has been no corresponding increase in the conviction rate for child sex offences.

It is argued in this chapter that, even if improvements to the detection, reporting and investigation of child sex offences are made, particular practices or filtering processes within the adversarial trial process will continue to prevent the successful prosecution of the majority of child sex offenders who plead not guilty at committal and trial. The question is, therefore, what reforms are necessary to increase the effectiveness of the trial process as it pertains to the prosecution of child sex offences? Before such a question can

---

1 As discussed in Chapter Five, this chapter recognises that there are various component parts to the criminal justice system, that they do not all act in unity and that the term is, generally speaking, too abstract. For these reasons, and for want of a better term, the use of the term 'criminal justice system' in this chapter refers to the trial and appeal processes within the courts, unless specified otherwise.
be answered, it is necessary to understand how and why the adversarial trial process produces consistently lower conviction rates for child sex offences compared to most other criminal offences.

It is proposed that an explanation for the relatively low conviction rates for child sex offences can be sought by examining the criminal justice system from the perspective of the theoretical propositions used to explain the behaviour of male child sex offenders. In doing so, this chapter analyses first, whether the criminal justice system is a site for the institutional practices of hegemonic masculinity and, secondly, whether hegemonic masculine practices within the criminal justice system create particular practices or filtering processes which prevent the successful prosecution of the vast majority of child sex offences. In other words, it is hypothesised that the criminal justice system, as a particular social site for the reproduction of hegemonic masculinity, creates a gendered division of rights and restraints between the (predominantly) male offender and the female or male complainant of child sexual abuse, which, within the child sexual assault trial, operate to protect the accused, rather than address the sexual exploitation of children. This hypothesis will be tested by examining to what extent relationships of power within the child sexual assault trial are created through the application of particular rules of evidence and the use of particular gendered constructs. Finally, this chapter will analyse the implications of this hypothesis for the prosecution of cases of child sexual assault.

In order to test the above hypotheses, this chapter undertakes the following theoretical tasks:

(i) an examination of the concept of the institution and institutional gender practices;
(ii) a study of the "institutionalization of gender" (Connell, 1987: 120) within the criminal justice system;

---

2 Arguably, the role of the criminal justice system in preventing or addressing the sexual exploitation of children is extremely limited, in that the most that a successful prosecution of a child sex offender can produce is incarceration for a certain period and/or involvement in a treatment program.
(iii) an analysis of whether and to what extent a gender regime operates within the criminal justice system;

(iv) an analysis of the sexual assault trial as an example of the operation of the gender regime within the criminal justice system;

(v) an analysis of how a gendered division of rights and restraints operates within the child sexual assault trial, in order to determine whether the gender regime within the criminal justice system creates filtering processes which affect the successful prosecution of the majority of child sex offences.

In establishing this framework, I recognise that I am creating a particular structural analysis in which to understand particular practices of the criminal justice system, such that it could be argued that the creation of such a ‘meta-narrative’ has the effect of predicting that the criminal justice system is unified in seeking to produce particular ‘logical’ outcomes. However, I think it is possible to identify and understand structure without then arguing that all practices will then conform to that structure, if, at the outset, it is accepted that structure is a product of cyclical social practices which are also in constant change and flux (as has been argued in Chapter Three). At the same time, if structure is understood as a fluid metaphor, arguably, it can also be understood, at one and the same time, to be sufficiently cyclical to produce particular phenomena at particular points in time and place, such as relatively constant conviction rates for particular types of criminal offences. In other words, I do not think it can be assumed that constantly changing social practices are never capable of coalescing to produce specific social phenomena, nor that structure is not as much subject to change as the social practices that constitute it.
B. THE CRIMINAL JUSTICE SYSTEM: AN INSTITUTIONAL SITE FOR THE PRACTICES OF HEGEMONIC MASCULINITY?

(i) Sites of Masculine Social Practices

Messerschmidt (1993) has observed that:

[the state and its plurality of agencies is rarely seen as a gendered milieu. Yet feminist research over the past decade demonstrates that gender is a major characteristic of the state and a principal domain of its operations. ... Indeed, in terms of personnel, style, and function, the state is a masculine-dominated institution (1993: 155; references omitted).

Similarly, Connell (1987) has observed that the institutions of the state have rarely been analysed in terms of gender and sexuality (1987: 119), but considers that it is no longer tenable to ignore the fact that “[g]ender relations are present in all types of institutions” (1987: 120; emphasis in original). At the outset, Connell considers that:

[the notion of institution classically signifies custom, routine and repetition. Anthony Giddens in The Constitution of Society follows this by defining institutions as practices with ‘the greatest space-time extension’ within societies, or ‘the more enduring features of social life’. But practice does not have the long duration Giddens attributes to institutions; practice is of the moment. What persists is the organization or structure of practice, its effects on subsequent practice. This can either depart from, or reproduce, the initial situation; that is to say, practice can be divergent or cyclical. ... [I]t is not a logical requirement that social reproduction occurs; that is simply a possible empirical outcome (1987: 140; emphasis added).

In order to understand the notion of the institution, Connell emphasises the practice-based formation of the institution; if one possible outcome of practice is social reproduction, then:

the cyclical practice that produces it is what is meant by an ‘institution’. The process of ‘institutionalization’ then is the creation of conditions that make cyclical practice probable. ... Putting these bits together, gender is institutionalized to the extent that the network of links to the reproduction system is formed by cyclical practices. It is stabilized to the extent that the groups constituted in the network have interests in the conditions for cyclical rather than divergent practice (Connell, 1987: 140-141).

In light of this definition of ‘institution’, it is necessary to consider the notion of gender, as discussed in Chapter Three. Connell defines gender in the following way:

‘[g]ender’ means practice organized in terms of, or in relation to, the reproductive division of people into male and female. It should immediately be clear that this does not demand an overriding social dichotomy. Gender practice might be organized in terms of three, or twenty,
social categories. Indeed our society recognizes a fair variety — girls, old men, lesbians, husbands and so on (1987: 140).

Gender is, therefore, “a process rather than a thing” and the “process’ here is strictly social, and gender a phenomenon within sociality. It has its own weight and solidity, on a quite different basis from that of biological process, and it is that weight and solidity that sociology attempts to capture in the concept of ‘institution’” (Connell, 1987: 140). Importantly, for the purposes of understanding the practices of the criminal justice system, the very practice of gender is the practice of creating, in specific individual interactions, a dynamic of equal, less or more power, depending on the specific gender practices involved. This means that gender can only be accomplished (practised) in the real or imagined presence of other people and constitutes a measure of a particular person’s social power in social interactions. Further, gender, as a social practice, is subject to change, although ‘doing’ gender is unavoidable in a society that institutionalises the practice of gender; that is, is structured in a way that differentiates between the sexes on the basis of power.³

However, gender is not just the property of individuals but is collective: gender is “also a property of collectivities, institutions and historical processes” (Connell, 1987: 139). Thus, if the criminal justice system can be defined as an institution because it is constituted by cyclical social practices and represents a social site which creates conditions that make cyclical practice possible, then the criminal justice system can be said to reproduce gender (and gender can be said to be institutionalised within the criminal justice system) to the extent that it links its practices to differences based on sex.⁴ In other words, it is argued that gender affects the particular practices of the

---

³ In Chapter Three, it was noted that because “society is partitioned by ‘essential’ differences between women and men and placement in a sex category is both relevant and enforced, doing gender is unavoidable” (West and Zimmerman, 1991: 23-24; emphasis added). The construction of gender is, therefore, a process which involves individuals actively participating in the social practices of a particular gender in order to acquire it. Thus, gender is not biologically or even socially imposed but actively constructed by the individual in question.

⁴ This argument is not to be equated with the “law is sexist” approach that is critiqued by Smart (1992: 31-32). In other words, this argument does not propose nor endorse the idea that “law [merely] suffers from a problem of perception [in relation to women] which can be put right such that all legal subjects are treated equally” (Smart, 1992: 31). As Smart explains, the fulcrum of the ‘law is sexist’ argument
criminal justice system, in that the criminal justice system has, historically, differentiated between people on the basis of sex, and also on the basis of sexuality and sexual practices (such as homosexual practices, lesbian practices, so-called promiscuous sexual practices, virginity and so on). In particular, if social action "never occurs separately from, or external to, social structures" (Messerschmidt, 1993: 77), judicial and jury decision-making cannot be said to be independent of those practices of the criminal justice system which are cyclical.

Nonetheless, a range of cyclical practices constitute the criminal justice system as an institution; different masculinities and femininities are constructed by the gender practices of the criminal justice system as a function of class, race, ethnicity, religion and sexual preference, so that it can be argued that the legal system differentiates between different 'types' of men (such as gay and heterosexual men; white and black men) and different 'types' of women (such as lesbian and heterosexual women; so-called promiscuous women and married women; white and black women). In other words, it can be said that the criminal justice system embodies a 'gender order', in that it constitutes "a historically constructed pattern of power relations between men and women" (Connell, 1987: 98-99), as well as between men⁵, although it is recognised that

```
"rests with the idea that women are treated badly in law because they are differentiated from men. It is often remarked that this means that men are retained as the standard by which women must be judged. Irksome and nonsensical as this may seem, pointing it out only leads us to imagine that judging women by the standard of women is the solution" (1992: 31; footnotes omitted). Such an argument constitutes a "fallacy of substitution", since in replacing one standard with another, the same problems of oppression remain (Smart, 1992: 31). Another problem with the 'law is sexist' argument is that "sexism implies that we can override sexual difference as if it were epiphenomenal rather than embedded in how we comprehend and negotiate the social order. ... If eradicating discrimination is dependent on the eradication of differentiation, we have to be able to think of a culture without gender. Thus what seems like a relatively easy solution such as the incorporation of gender-neutral terminology into law, masks a much deeper problem" (Smart, 1992: 32).
```

⁵ Whilst feminist writers, such as MacKinnon (1989), have "focused on connections between the state, law and gender, and have tended to view the state as being a sort of guarantor of male dominance, which reproduces gender hierarchies through a variety of legal and other mechanisms which allow for the 'social control' of women" (Liddle, 1996: 362; footnotes omitted), such a focus, with its emphasis on the social control of women, has failed to recognise the complexity of the gender relations between men and women within such gender hierarchies. For example, Messerschmidt (1993) has observed that "[t]he radical and cultural feminist focus on alleged differences between men and women acted to obscure differences among men. ... Moreover, radical and cultural feminism obscure the fact that men exercise unequal amounts of control over their lives as well as over the lives of women...". By concentrating on alleged differences between men and women, then, radical and cultural feminists fail to consider the
such a gender order, as a social structure, will be as much subject to change as the social practices that constitute it.

This 'historically constructed pattern of power relations' within the criminal justice system means that, as an institutional site for the reproduction of gender, the criminal justice system constitutes a "pattern of constraint on practice inherent in a set of social relations" (Connell, 1987: 97), in that, as an institution of the state, the criminal justice system regulates and carries out surveillance of particular social practices, even if that surveillance varies as a function of time and place. In relation to institutional patterns of constraint, Connell observes that "[t]he state of play in gender relations in a given institution is its 'gender regime'; that is, within any given institution there will be evidence of gender practices within the institution "that construct various kinds of femininity and masculinity" (1987: 120). For example, consider the gender regime in a school studied by Connell:

[e]specially clearly among the students, some gender patterns are hegemonic - an aggressively heterosexual masculinity most commonly - and others are subordinated. There is a distinct, though not absolute, sexual division of labour among the staff, and sex differences in tastes and leisure activities among the students. There is an ideology, often more than one, about sexual behaviour and sexual character. There are sometimes conflicts going on over sexism in the curriculum or over promotion among the staff, over prestige and leadership among the kids. The pattern formed by all this varies from school to school, though within limits that reflect the balances of sexual politics in Australian society generally. No school, for instance, permits open homosexual relationships (1987: 120).

It is possible to make similar observations about the criminal justice system, at one level, in terms of the gender relations between lawyers, judges, legal secretaries, tipstaff, cleaners and so on. In other words, in terms of labour relations, it can be argued that variations among men in terms of race, class, age, and sexual preference, focusing instead on an alleged 'typical male', as if he represents all men. ... Such an analysis regards 'masculinity as more or less unrelieved villainy and all men as agents of the patriarchy in more or less the same degree'" (1993: 45; quoting Carrigan, Connell and Lee, 1987: 140; other references omitted).

Since there are clear "linkages between gender, social order, and the state in history" (Liddle, 1996: 362), this suggests that gender is a product of history and gender practices change over time. This means that the gender regime within the criminal justice system will not always be static and that the criminal justice system may, at times, also be the object of change by gender practices within it, although such changes might be understood as a function of how structure becomes the object of practice, as discussed in Chapter Three. As Connell (1987) observes in relation to the sexual division
there are discernible gender relations between the men, and between the women and men who work within the legal system, although these may be subject to change over time. At another level, this chapter analyses how gender relations can be identified between the people who work within the criminal justice system (in particular, judges and lawyers) and those who enter it to assert particular rights (litigants, complainants of a crime and those accused of particular crimes). At the pinnacle of the gender hierarchy within the legal system is that form of masculinity that is culturally dominant and symbolised within the criminal justice system by the power of the sovereign or, in Foucauldian terms, juridico-discursive power (Bell, 1993: 60). However, Corrigan and Sayer (1985) consider that:

[the pervasive masculinity of 'the State' is a feature which has been neglected in almost all studies until the last ten or fifteen years. Yet consider, for a minute, what it means – for social identities, for subjectivities – to have had persisting lineages, routinized practices and normalized institutions which were exclusively (in all senses of the word) male for eight or nine hundred years (1985: 12; quoted in Liddle, 1996: 369).]

Furthermore, Connell (1995) considers that:

[the state ... is a masculine institution. To say this is not to imply that the personalities of top male office-holders somehow seep through and stain the institution. It is to say something much stronger: that state organizational practices are structured in relation to the reproductive arena. The overwhelming majority of top office-holders are men because there is a gender configuring of recruitment and promotion, a gender configuring of the internal division of labour and systems of control, a gender configuring of policy making, practical routines, and ways of mobilizing pleasure and consent (1995: 73).]

Arguably then, relationships of power within the criminal justice system have been and are created by reference to the hegemonic power of the state, represented by the sovereign whose power is exercised by judges within the criminal justice system in cyclical patterns of restraint, thus institutionalising the practice of hegemonic masculinity over many hundreds of years, and, no doubt, embodying evidence of both the fluidity of those

---

342

---
patterns of social restraint and their cyclical reproduction over time. If one of the pressing issues for feminist theorists has been "the numerical preponderance of males within the structure of power in current Western nations" (Liddle, 1996: 369), in analysing the criminal justice system as an institutional site for the practices of hegemonic masculinity, the historical dominance of men in terms of sheer numbers can be said to have given rise to specific gender practices which have given rise to specific cyclical relations of power, with those numbers creating conditions that have made those specific cyclical practices more probable. In other words, it can be said that the preponderance of men within the institutions of the state has given rise to specific and particular gender practices and contestations of power between dominant masculinities and other masculinities and between masculinities and femininities. At the same time, it can also be argued that those specific and particular gender practices embody their own fluidity which may coalesce at particular points in history, thus creating cyclical patterns of restraint, as well as both driving change and being the subject of change.

In summary, it has been argued that it is the cyclical practices of hegemonic masculinity within the criminal justice system that reproduce social relations of power based on "the reproductive division of people into male and female" (Connell, 1987: 140), and that, at the same time, these practices are not static and unchanging. Furthermore:

[i]f authority is defined as legitimate power, then we can say that the main axis of the power structure of gender is the general connection of authority with masculinity. But this is immediately complicated, and partly contradicted, by a second axis: the denial of authority to some groups of men, or more generally the construction of hierarchies of authority and centrality within the major gender categories (Connell, 1987: 109).

In other words, the denial of masculine authority to some men as a result of gender practices within the criminal justice system is evidence of the complex array of power relations that exist between men as a result of the construction of different masculinities within the criminal justice system.

This observation highlights the fact that the argument being made in this chapter is not to be understood as the "'law is male'" argument which "arises from the empirical
observation that most lawmakers and lawyers are indeed male” (Smart, 1992: 32). Indeed, Smart observes that the ‘law is male’ approach “perpetuates the idea of law as a unity” and “presumes that any system founded on supposedly universal values and impartial decision making (but which is now revealed to be particular and partial) serves in a systematic way the interests of men as a unitary category” (1992: 32; footnotes omitted). This means that “there lingers an unstated presumption that men as a biological referent either benefit or are somehow celebrated in the rehearsal of values and practices which claim universality while (in reality) reflecting a partial position or world view” (Smart, 1992: 32; footnotes omitted). An analysis of the complexity of the gender practices of the criminal justice system means that the law cannot be understood as, “serv[ing] the interests of men as a homogeneous category” at the expense of women as a homogeneous category (Smart, 1992: 32-33; emphasis in original).

In other words, in drawing attention to the institutional practices of gender within the criminal justice system, this analysis recognises that these practices “work in a variety of ways ... in which there is no relentless assumption that whatever [law] does exploits women and serves men” (Smart, 1992: 33). To the extent that the criminal justice system may appear to serve the interests of men over the interests of women and girls, this must be analysed in terms of the operation of the gender regime within the criminal justice system, in particular the specific and particular constructions of gender that are applied within the adversarial context. As Smart (1992) observes, to recognise the gendering practices within the criminal justice system (and the complexities of those practices in forming multiple masculinities and femininities) is to eschew “a fixed category or empirical referent of Man and Woman” (1992: 33). Thus, the aim of this analysis is to interrogate the law’s gender practices and how the law fixes “gender to rigid systems of meaning”, although, as Smart warns, the pitfall to avoid is to make sure we do not fall into that trap ourselves (Smart, 1992: 33). In other words, the recognition that the gender practices of the criminal justice system construct different genders as a function of biological sex should not be mistaken as an endorsement of this approach, so that, although the law assumes a “pre-cultural Woman” (Smart, 1992: 34) (the use of whom
can be said to justify the law’s discriminatory treatment of some women), this does not mean that this thesis endorses this form of biological determinism. This thesis, therefore, analyses “law as a process of producing fixed gender identities rather than simply as the application of law to previously gendered subjects” (Smart, 1992: 34). It also recognises the fluidity of those gender identities.

(ii) The Gender Practices of the Criminal Justice System
Connell (1987) observes that particular transactions of power, such as the criminalisation of homosexuality or a bank refusing a loan to a woman or rape “are not intelligible without ... structure”, that is, an understanding of the social practices which produce structures of power. Like power that is enforced through force, organisational control depends on ideologies and an essential component of social power is “[t]he ability to impose a definition of the situation, to set the terms in which events are understood and issues discussed, to formulate ideals and define morality, in short to assert hegemony” (Connell, 1987: 107).

In Chapter Three, this thesis discussed the concept of social structure which “expresses the constraints that lie in a given form of social organisation ... . ‘Constraints’ may be as crude as the presence of an occupying army. But in most cases the constraints on social practice operate through a more complex interplay of powers and through an array of social institutions” (Connell, 1987: 92). This means that the relevant inquiry is to determine: “[h]ow does gender work in law and how does law work to produce gender?” (Smart, 1992: 34). If the criminal justice system, as a social institution, produces, not only gender differences, “but quite specific forms of polarized difference” (Smart, 1992: 34), how does law bring “into being both gendered subject positions as well as ... subjectivities or identities to which the individual becomes tied or associated”? (Smart, 1992: 34).

Arguably, the operation of the criminal justice system in its many forms, its individual transactions if you like, are, in Connell’s words, unintelligible without understanding how
the complex relations of power within the criminal justice system function as a social structure, as well as the ideology on which the criminal justice system, as a social structure, is based. Arguably, the practices of the criminal justice system are sufficiently cyclical to impose constraints on social practice, but what is the ideology that informs who is constrained, when and why? For example, does a female sex worker who voluntarily gets into a man’s car and agrees to provide oral sex have the right to legal protection if she refuses to consent to the man’s subsequent sexual penetration of her? Does a mother of two, who is raped at knife-point in her own home, have a superior right to legal protection? If there is such a hierarchy of rights, what is the ideology that informs the construction of that hierarchy?

The criminal justice system is a social structure that operates as a constraint on a variety of social practices, and many of the constraints (in the form of the criminalisation of various behaviours) imposed by the criminal justice system serve specific social purposes; that is, the “processes of criminalization, and the form and content of legal administration and criminal justice themselves, are informed by interests articulated as part of the (gendered) struggle for hegemony” (Liddle, 1996: 362). In other words, social structures (in the form of social institutions) are “always emergent from practice and [are] constituted by it. Neither is conceivable without the other” (Connell, 1987: 94) and the institution of the criminal justice system in any given society will be constituted by those social practices that are the culturally dominant practices in that society. At the same time, these practices need to be understood, as Liddle (1996) observes, “in a relational and dynamic sense” (1996: 363). If the criminal justice system is to be understood as an institution of the state, then this thesis recognises that it is important to also understand the state “in a relational and dynamic sense”, rather than, as Liddle observes:
domination ... Not to see the state as in the first instance an exercise in legitimation is ... surely to participate in the mystification which is the vital point in the construction of the state (Liddle, 1996: 363; references omitted).

In particular:

the gender contestation which necessarily accompanies 'state-building' involves not just a deepening sexual division ... but also a 'differentiation of masculinities' – most notably between aristocratic and bourgeois masculinities during the rise of the capitalist state, but also between 'warrior masculinities' and more rational/calculative constructs, whose interrelationships can be traced back to feudal times. Although the outcome and direction of this differentiation are both historically specific and 'open', state and law play a central and dynamic role in the maintenance of hegemonic masculinity, and in the more general constitution of the social structure of gender (Liddle, 1996: 362-363; emphasis added).

Arguably then, the ideology that influences the gendered patterns of social constraint imposed by the criminal justice system will be an ideology that reflects, reinforces and maintains the cultural ascendance of hegemonic masculinity, although, both a ‘differentiation of masculinities’ and competition between masculinities can be charted as an historical pattern within the criminal justice system. In particular, Liddle (1996) argues that “the politicization of social reproduction” through state-formative processes (and social structures) “involves a more specific politicization of masculinity, and it is this feature of ‘state-building’ that is captured in remarks offered by writers such as Brita Gulli, who argues that the patriarchal state is sustained not so much by solidarity, but by competition among men” (1996: 364; footnotes omitted). Arguably, such a recognition means that the criminal justice system, rather than being understood as a rigid and unitary structure, must be understood as an institution that is characterised by cyclical but dynamic, competitive practices of masculinity.

In terms of an analysis of the criminal justice system as a social structure or institution which is constituted by and reproduces hegemonic masculine gender practices, I adopt Liddle’s view that:

the idea of ‘hegemonic masculinity’ is arguably one of the most useful theoretical contributions ..., since it can allow not only for linkages to be drawn between micro- and macro-level social phenomena (such as between individual violence or sexual preference, and state-supported gender oppression, for example), but also for a focus on the strategic role of ideological and other practices (and particularly, practices of censuring, idealization, and
For these reasons it is argued that the criminal justice system is a dynamic social structure that reproduces the gender practices of masculine competition through the reinforcement and maintenance of hegemonic masculinity, thus, historically, constraining or prohibiting particular social practices and enforcing its prohibitions through particular punitive measures. Arguably, in its contestations of power, the criminal justice system is selective about, not only what social practices it constrains, but also which particular social class, race or sex it will constrain in relation to particular social practices. This selectivity becomes intelligible by understanding how a dynamic gender regime operates within the criminal justice system. In other words, it can be said that particular hierarchies of power within the criminal justice system are reinforced through the constraints of the criminal justice system (as much between men as between women and men) and complex structures of power are established as a result of the dominance of white, heterosexual, masculine practices within the criminal justice system. Thus, in its reproduction of hegemonic masculinity, the criminal justice system at various historical times has regulated a variety of social practices which have been specifically directed against different classes, races, sexes and genders, such as Aboriginal men, adolescent men, homosexual men or women engaged in prostitution. For example, it can be argued that the state, through the criminal justice system, operates “as a repressive apparatus” on men in terms of rates of imprisonment of men versus women, as well as on particular types of men; for instance, in Australia and the USA, black men are imprisoned at rates much higher than white men (James, 1997; Sklansky, 1997). Indeed, as Connell observes, “the most persisting and general uses of state force are men against men” (1987: 128) which gives rise to:

---

Allen (1990), for example, has documented the historical ‘invisibility’ of many crimes committed by women as a result of policing practices which targeted men.
be understood in terms of relationships between masculinities: the physical aggression of front-line troops or police, the authoritative masculinity of commanders, the calculative rationality of technicians, planners and scientists (Connell, 1987: 128-129).

Arguably, one particular aspect of the operation of a dynamic gender regime within the criminal justice system is its construction of distinctive rights and protections as a function of sex, although such a focus is also evident in other social institutions. For example, Connell (1987) has observed that “detailed research on women’s subordination ... [has] traced the outline of two substantially different structures of relationship between men and women”, that is, the division of labour (“the creation of ‘men’s jobs’ and women’s jobs’” with the concomitant existence of “unequal wages and unequal exchange”) and “the hierarchies of the state and business, institutional and interpersonal violence, sexual regulation and surveillance, domestic authority and its contestation” (1987: 96-97). In other words, historically, clear identifiable social structures can be shown to exist which create a specific ordering of social relations and power between men and women. This means that power is institutionalised according to specific social and gendered relations, and the criminal justice system can be said to be one of the structures of power that creates specific gendered relations between men and women. These gendered relations of power are evident in many ways, such as the traditional criminalisation of the behaviour of female sex workers but not the men who bought their services9 and the differential treatment accorded to the female complainant of rape and the male accused (Smart, 1989; Bavin-Mizzi, 1995; Mason, 1995; Kaspiew, 1995; Jackson, 1995).

9 The regulation of female sex workers appears to have its roots in the belief in Victorian England (and elsewhere) that “women’s bodies, particularly those of working-class women, came to be regarded as sites of dangerous sexuality. Their danger was not only moral, but also medical in that they were seen as carriers of disease. These views were translated into draconian legislative measures which allowed local magistrates’ courts to imprison working-class women in lock hospitals and force punitive medical treatment upon them. ... The significance of women’s bodies, and the reasons why female rather than male bodies became problematic are clearly linked to gender domination, but also to the religious discourse of the moral crusades, superstition and medical knowledge about women’s reproductive functions, the Victorian association of sex with disgust and guilt, and the maintenance of male military morale. ... [For example,] [t]he Contagious Diseases Acts created prostitutes as a separate class of women, dislocating them from their working-class communities. Having created this pariah group, law was able to devise more and more specialized modes of regulation to control the behaviour of prostitutes ... . Its justification lay in the fact that prostitutes are a special group, outside the normal
The specific question addressed by this chapter, is, through what mechanisms are these gendered relations of power enforced? For example, Connell (1987) has shown how the social structure of labour allocates particular work along gender lines, thus creating the sexual division of labour: "[a]n employee entering a firm is given job X if a woman, job Y if a man. The working of such rules is found in almost every study of paid employment that has considered the issue of gender, and this is no primitive hangover found only in low-technology industries" (1987: 99). In other words, various studies have shown that the structure of labour applies specific rules of segregation as a function of the sex of the employee, rather than their skills, so that in some industries and professions, the only qualification needed for a better job is to be male (Connell, 1987: 99; quoting Cavendish, 1982).

In fact, in relation to the capitalist system, Connell argues that gender divisions "are a fundamental and essential feature" of it, "arguably as fundamental as class divisions" (1987: 104). Similarly, it is argued that gender divisions between men and women within the criminal justice system "are a fundamental and essential feature" of how the criminal justice system is organised as an institution, even if these gender divisions can also be shown to be, historically, dynamic and flexible. As such, can an ‘allocation’ of legal rights and restraints be identified within the criminal justice system as a function of the sex of the litigant, complainant or accused? In other words, are there similar rules of ‘segregation’ within the criminal justice system which are based, not on the strength of the legal case, but on the sex of the person?

10 Messerschmidt (1993) observes that “[t]he gender division of labor, a well-known and critical social structural feature of all Western industrialized societies, refers to the fact that the nature of labor performed for species survival is different for men and women. Historically, in Western industrialized societies labor has been divided by gender for (1) housework, (2) child care, (3) unpaid versus paid work, and (4) within the paid labor market and individual workplaces. However, this gender division of labor is not simply attached to an alleged gender-neutral class structure. Rather, like race, gender divisions are a fundamental feature of all forms of production” (1993: 64).
For example, Connell (1987) identifies the existence of a segregation rule within the social structure of labour which ultimately becomes self-serving because its application is used to justify its very existence; that is, "[a] segregation rule in operation becomes the basis of new forms of constraint on practice, such as differential skilling. Where women and men have been skilled or trained differentially, discriminatory employment becomes rational from the employer's point of view" (1987: 99-100). Is there a similar set of segregation rules within the criminal justice system that ultimately become self-serving, thus justifying their imposition? Are women and girls accorded differential treatment within the criminal justice system which is then used as an argument to justify their differential treatment? As Connell observes in relation to the structure of labour, through mechanisms such as differential skilling and training:

the sexual division of labour is transformed into an apparently technical division of labour, resistant to the more obvious antidiscrimination strategies. Where men are usually better prepared or trained than women for a given job, choosing 'the best applicant' will normally mean choosing a man. The almost complete dominance of the upper echelons of universities by men is a striking example of this indirect discrimination (1987: 100).11

It is hypothesised that there is a similar gendered division of rights and restraints within the criminal justice system, that is, a set of rights and restraints that are differentially applied to men and women, in particular the categories of Woman and Man as constructed by the criminal justice system (Smart, 1992). If "[s]killing and training is one of the mechanisms by which the sexual division of labour is made a powerful system of social constraint" (Connell, 1987: 100), then, similarly, it is argued that particular rules within the criminal justice system operate to make the sexual division of legal rights and restraints "a powerful system of social constraint".

11 Messerschmidt (1993: 65-71) has also documented how "in the paid-labor market the dominant position of men was maintained through gendered job segregation" (1993: 65).

12 Eleven years later, this almost complete dominance is still evident with a recent report showing that, nationally, in Australia, only 13 per cent of academics above the rank of senior lecturer are women (Garcia, 1998).
(iii) The Sexual Assault Trial: The Criminal Justice System’s Gender Regime in Practice

The extent to which the criminal justice system operates as a form of social constraint is, arguably, exemplified by the rationale behind sexual assault law reform and the documented difficulties of the implementation of those reforms on the grounds of the (usually) male accused’s right to a fair trial.

At the outset, like other criminal trials, gender lines within the sexual assault trial can be said to be drawn by virtue of the adversarial nature of criminal proceedings which involves a number of different and dynamic relationships of power within the framework of an institution dominated by hegemonic masculine practices: for example, between the state and the accused person and between the defence (on behalf of the accused) and the state’s witnesses. In effect, it can be argued that the adversarial nature of criminal proceedings creates a contestation of power between two different versions of events within a social structure that institutionalises hegemonic masculine practices. However, the adversarial nature of the criminal trial means that it does not necessarily constitute an inquiry into whether the alleged criminal behaviour occurred, since the standard of proof in a criminal trial (beyond reasonable doubt) means that a finding of not guilty by the trier of fact is, in fact, a finding that there is insufficient evidence to satisfy the standard; the

13 For the purposes of my argument, I have chosen to examine the gender relations of power between women and men within the criminal justice system by examining the rape trial where the complainant is female and the accused is male, since historically rape was only recognised as a crime committed by men against women or girls. As discussed below, this historical legacy is still evident in the way that sexual assault trials are conducted. At the same time, it is recognised that men have been victims of rape, although it is argued that different gender relations of power will exist between the male complainant of sexual assault and the male accused as a function of the historically different practices of gender between men.

14 Sexual assault law reform in Australia has been documented by Heath and Naffine (1994), Bargen and Fishwick (1995) and Mason (1995). The problems associated with implementing these reforms have been documented by the Law Reform Commission of Victoria, 1991a; 1991b; 1992a; 1992b; Standing Committee on Social Issues, 1996; Heath and Naffine, 1994; Bargen and Fishwick, 1995; NSW Department for Women, 1996; Henning, 1997; Heenan and McKelvie, 1997. As Mason (1995) observes, “both accomplishment and compromise characterise the history of rape law reform in Australia. Feminist campaigns for reform have generated a myriad of legislative victories but just as many have produced disappointing results” (1995: 50). Recently the NSW Law Reform Commission (1997) proposed that the safeguards embodied in the NSW rape shield provision (s 409B, Crimes Act 1900 (NSW)) should be wound back on the grounds of supposed injustice to the accused as a result of restrictions within the provision.
insufficiency of the evidence could mean, for example, that the prosecution case was poorly run, as much as it could mean that the accused person was actually innocent of the crime for which he or she was charged.\textsuperscript{15} Arguably, the range of power relationships that are constructed within the adversarial system, simultaneously results in the construction of a hierarchy of 'truths', such that the contestation between the different versions of the complainant and accused within a sexual assault trial allows for a range of issues to affect the outcome of the trial.\textsuperscript{16}

In particular, I want to consider how the criminal justice system's (dynamic) gendered division of rights and restraints manifests in the context of the adversarial proceedings of a sexual assault trial. Arguably, in such a trial, a relationship of power exists between the principal witness for the Crown (the female complainant) and the accused by virtue of the powers conferred on the accused by the criminal justice system, since the accused is “protected by the time-honoured subjective requirement of mens rea and the presumption of innocence” (Rush and Young, 1997: 108), although that relationship of power will vary from case to case. In addition, the criminal justice system permits the accused to have legal representation but not the complainant who, as a witness for the prosecution, does not play an active role in the proceedings. In other words, she is required to give evidence and be tested on her evidence but has no legal right to require the same of the accused. However, because these are features of criminal trials in general, the dynamic and gendered division of rights within the sexual assault trial is best exemplified by analysing the interests that rape law, historically, sought to protect and, hence, the rationale for the development of rules of evidence (such as, the delay in complaint and corroboration rules) which are specific to sexual assault trials.

\textsuperscript{15} Justice Thomas of the New Zealand High Court has observed, for example, “[i]t is, of course, an outdated error to persist with the claim that the adversarial system ascertains the truth. At times it may do so. But a criminal trial is not directed at ascertaining the truth. Its overt objective is to determine whether the Crown has established the charge beyond reasonable doubt. A fair and correct outcome in terms of that test may or may not coincide with the truth” (Thomas, 1994: 372).

\textsuperscript{16} As Smart (1990) observes, hierarchies of truth within the law are linked to power: “because of law’s position in the hierarchy of truths, it has the power to disqualify women’s experiences” (1990: 19) and the power to privilege the experiences (the ‘truth’) of the male accused.
Arguably, the criminal justice system’s construction of a gendered division of rights and restraints within the sexual assault trial can be traced to the fact that, historically, rape law was “designed to protect the property and class interests of men [which] meant that only women could be the victim of rape, only men could be the perpetrators, and if the woman and man were married the law refused to recognise that a crime had taken place” (Mason, 1995: 51; footnotes omitted). In particular:

what [was] protected by the prohibition of sexual offences [was] family property and its inheritance. Law was uninterested in protecting females; rather it was interested in protecting the interests that men had in women as property. That property was her capacity for the reproduction of the family. Thus, what was stolen when a woman was raped was her capacity to guarantee the male family line (the word rape derives from the law-latin for theft). Further, what had to be proved was a breaking of the hymen and the emission of seed. And since what had been stolen was family property, it was fathers and husbands who brought a ‘prosecution’ for rape. In short, to the extent that the law was interested in protecting women, it was interested in protecting them as an item of property possessed and used by their husbands (if married) or possessed and exchanged by their fathers (if unmarried) (Rush, 1997: 78).

Whilst the practices of sexual assault within a society “may differ due to historical, cultural, and situational causes” (Kersten, 1996: 383), the characteristics of sexual assault across Western societies has been summarised by Kersten as follows:

- perpetrators of hetero- and homosexual rape are nearly always male;
- across historical times and different cultures hetero- and homosexual rape has been identified as a domain where proof of masculinity and male domination are at stake;
- rape or seduction of females (as male properties) is a traditional origin of male feuds;
- sexual assault is situated at the borderline of state control of crime and gender policies;
- forcible rape of females occurs as a collective male practice at times of war and ethnic fighting, in police stations, or in criminal subcultures (e.g. bikers, organized crime). Collective practices of sexual abuse/assault perpetrated by white (also Japanese) males of upper- and middle class origin can be seen in sex tourism (1996: 383).

This is not to say that men who enter the criminal justice system as rape complainants are unaffected by the gender practices of the criminal justice system but that they are likely to be affected in different ways. Any argument that assumes that the gendered construction of the male rape victim within the criminal justice system involves the same social and historical processes as the gendered construction of the female rape victim, conflates male and female experiences of rape, denies the criminal justice system’s historical preoccupation with rape as a crime committed by men against women, and denies the specific gender relations of power that are likely to be involved in the sexual assault trial.
of the male victim, particularly since the act of rape of a woman by a man can potentially be construed by the criminal justice system, through the hegemonic (heterosexual) masculine lens, as ‘normal’ (and therefore consensual) heterosexual sex, compared to the act of rape of a man by a man. As Hanmer (1990) recognises:

[For women, women's studies involves the recognition of social powerlessness, not just victimization, but survival, under difficult and unequal conditions. For men the problem is different. The study of men involves the recognition of the use and misuse of social power that accrues to the male gender, of recognizing benefits even when none are personally desired. These basic patterns are obviously not uniformly experienced by all women or by all men and they are historically and culturally specific. As we all know, race, ethnicity, culture, religion, age, sexuality, social class, and many other factors mediate personal experience, but biological sex and its associate, gender, remain major social stratifying as well as individually possessed qualities for all of us (1990: 29-30; emphasis added).]

It can be argued that there are, therefore, material conditions associated with the feminine gender which serve to make the experience of being a female sexual assault victim within the criminal justice system different to the experiences of a male sexual assault victim, although at the same time it is recognised that different women, as a result of race, ethnicity, sexuality, class and religion, are also likely to experience rape differently; that is, the term 'woman' cannot be used to connote a common identity. However, in terms of the material conditions under which female sexual assault complainants are likely to be subject to the gendered practices of the criminal justice system, it appears necessary to recognise that “the control of the sexual expression of women is a fundamental aspect of [women's] social subordination” (Hanmer, 1990: 31) which, arguably, gives rise to gender practices within the criminal justice system that impose a gender-specific construction upon the complainant’s sexuality and thus specific relations of power between the female complainant and the male accused, even if those relations of power cannot be said, historically, to be fixed and unchanging and will vary depending on the race, ethnicity or class of the complainant. Generally speaking, however, such a construction has been based on beliefs about the unreliability of women’s testimony which has seen the development of specific rules of evidence which only ever applied in sexual assault trials and were developed at a time when rape was treated as a crime committed by men against women or girls. Arguably, such a construction is an example
of how a gender regime operates within the criminal justice system, in particular, of how a gendered division of rights and restraints is applied within the sexual assault trial.

In particular, rape law has reflected the historical social standing of women in societies which are dominated by hegemonic masculine practices, in terms of the degree of social power they possessed compared to men of their own socioeconomic and racial background. For example, a review of rape laws and law reform attempts in Australia during the 1980s\(^\text{17}\) shows that, historically, there were at least eight major barriers to the successful prosecution of rape, some of which still remain, and all of which, arguably, exemplify the operation of a gender regime within the criminal justice system, since the following rules were applied as a function of the sex of the complainant and the sex of the accused\(^\text{18}\):

(i) the marriage immunity against rape, now repealed in all Australian jurisdictions;

(ii) the historical definition of rape was confined to penetration of a vagina by a penis and did not include penetration of the anus or the mouth or penetration by objects other than a penis (Mason, 1995: 53)\(^\text{19}\);

(iii) "the criminal law has always held that a man cannot be guilty of rape if a woman initially consents, but at a later point withdraws her consent" (Mason, 1995: 54)\(^\text{20}\);

\(^\text{17}\) Heath and Naffine (1994) consider that Australian jurisdictions have "undertaken at least three major types of reform", that is, reforms which "have sought variously to strengthen the idea of a woman's sexual autonomy, to extend the range of proscribed sexual behaviour, and to increase women's credibility in the court room" (1994: 37; footnotes omitted).

\(^\text{18}\) A number of analyses and studies of the features of rape trials have been conducted over the years, such as Brownmiller, 1975; Rowland, 1986; Estrich, 1987; Adler, 1987; Kelly, 1988; Smart, 1989; Carmody, 1992; Heath and Naffine, 1994; Kaspiew, 1995; Jackson, 1995; Mason, 1995; Standing Committee on Social Issues, 1996; Law Reform Commission of Victoria, 1991a; 1991b; 1992a; 1992b; Bavin-Mizzi, 1995; Bargen and Fishwick, 1995; Bargen and Fishwick, 1995; NSW Department for Women, 1996; Heenan and McKelvie, 1997.

\(^\text{19}\) Such a definition has since been broadened in some Australian jurisdictions (South Australia, Victoria, NSW, ACT, Western Australia); see, for example, the definition of sexual intercourse under the Crimes Act 1900 (NSW), as set out in Table 6.1.

\(^\text{20}\) In some Australian jurisdictions (Tasmania, Queensland, Western Australia, Victoria and the Northern Territory) there have been attempts to create a statutory definition of consent. For example, s 36 of the Crimes Act (Vic) 1958, states that "a sexual act with another person takes place without that person's consent if he or she does not freely agree to it". Under s 37(a), consent does not include a situation where the complainant freely agreed on that or an earlier occasion to engage in a sexual act.
(iv) historically, the female rape complainant was always subject to cross-examination concerning her sexual reputation and her previous sexual history with the accused and/or with other men;

(v) the rule of evidence which imposed a judicial obligation to warn a jury that it was unsafe to convict on the uncorroborated evidence of a female rape complainant;

(vi) the rule of recent complaint "which allowed the court to assess the credibility of a complainant on the basis of how long she took to make her complaint" (Mason, 1995: 55);

(vii) the requirement that the prosecution prove beyond reasonable doubt that the complainant did not consent to the alleged sexual acts, in effect, creating a rebuttable presumption that a woman consents to sex with a man, even in circumstances where evidence of physical coercion is available;

(viii) the long-standing rule exemplified by the House of Lords decision in DPP v Morgan [1976] AC 182 that "even where it is established that the woman did not consent, if the accused honestly believed that she did consent, he cannot be found guilty, no matter how unreasonable his belief" (Mason, 1995: 60).

21 At common law, "a woman who alleged rape could be cross-examined about first, her general reputation and moral character; second, sexual intercourse between herself and the accused on other occasions and, third, sexual intercourse between herself and other men. ... Evidence of a woman's sexual history was admissible as relevant to two matters: (1) consent -- on the basis that consent to intercourse on prior occasions meant that there would have been consent to the act complained of; and (2) credit -- on the basis that a woman who was immoral was also untruthful and would have no personal difficulty with lying in the witness box" (Model Criminal Code Officers' Committee [MCCOC] of the Standing Committee of Attorneys-General, 1996: 157). As Bargen and Fishwick (1995) observe, "[a]ll States and Territories now absolutely prohibit questions on or the admission of evidence about a complainant's sexual reputation" (1995: 76), whilst "[a]ll States and Territories have modified the common law on the admission of evidence of sexual experience. All except NSW have started with the common law rules and introduced legislative modifications which, while supposedly designed to prohibit the admission of such evidence, still leave much to the discretion of a trial judge" (1995: 77). However, the meanings of the terms 'sexual experience' and 'sexual reputation' are not entirely clear, with no legislative definition having been given to them. In fact, Henning (1997), who conducted a study of the effectiveness of the Tasmanian rape shield provision (s 102A, Evidence Act 1910 (Tas)) reported that it is common for defence counsel, judges and prosecutors to use the terms interchangeably.

22 All Australian States and Territories, except Queensland, have introduced legislation that states that a judge is not obliged to warn the jury about the need for corroboration of a complainant's evidence in a sexual assault trial (Bargen and Fishwick, 1995: 70), although, as discussed below, a corroboration requirement has been resurrected in some circumstances.
Arguably, the historical application of such rules exemplifies how dynamic relations of power can be established through institutional gender practices. The coalescence of such gender practices into a gender regime within the sexual assault trial will, however, be dependent upon the cyclical nature of such practices and the rigidity with which they have been imposed over time. Indeed, as discussed below, the variable element of the 'morality' of the complainant appears to influence the rigidity of these power relations, and, as suggested by one study, the social class and race of the male accused may also affect the rigidity power relations (LaFree, Reskin, and Visher, 1985) within the sexual assault trial. Other rules, such as the non-recognition of rape within marriage, appear to have been applied irrespective of the social class, race or ethnicity of a woman.

For example, rape within marriage was not a criminal offence in Australia until 1976 when South Australia became the first jurisdiction to amend its criminal laws (Mason, 1995: 54). Historically, the marriage vow on the part of a woman constituted her consent to all types of future sexual relations with her husband, "thereby relinquishing autonomy of her own body" (Mason, 1995: 54). Even where it was legally possible for

---

23 Bargen and Fishwick (1995: 69) note that the common law rule of recent complaint has been superseded by statute in most Australian jurisdictions, although, as discussed below, that rule has been resurrected in some circumstances.

24 Criminal Law Consolidation Act Amendment Act 1976 (SA), s 73(3)-(5). As Bargen and Fishwick (1995) note, "all States and Territories have now abolished the old common law presumption that a man could not be charged or convicted for raping his wife" (1995: 61). Nonetheless, Heath and Naffine (1994) have observed that, although South Australia "has often been considered a progressive state in terms of law reform ... [it] has gradually been overtaken by other jurisdictions", so that "[b]y 1992, the South Australian Government was in the embarrassing position of having a statute dealing with rape in marriage that provided less protection to married people than the common law" (1994: 30). When the South Australian legislation was passed, it required "aggravating circumstances after numbers in the Legislative Council turned out to be insufficient to allow it to pass unaltered", so that "it was not until 1992 that South Australia ceased to require 'aggravating conditions' before a husband could be charged with rape" (Heath and Naffine, 1994: 41; footnotes omitted). Heath and Naffine (1994) also note that after the marital rape exemption was abolished in South Australia in 1976 "only four complaints of marital rape were made ... [between 1980-1984] by women still cohabiting with their husbands. Between 1976 and 1982, only two South Australian rape-in-marriage cases went to trial and there were again only two such cases that proceeded to trial between 1984 and 1992" (1994: 41; footnotes omitted).

25 "The marriage contract included an unretractable consent on the part of the woman to sexual intercourse with her husband at any time" (Hale, 1736: 629; quoted in Bargen and Fishwick, 1995: 61).
a woman to claim she had been raped, the criminal justice system appears to have accorded inferior rights of protection from rape to the sexually immoral woman and superior rights of protection from rape to the ‘morally superior’ virgin or virtuous, married woman. Thus, the gender regime within the criminal justice system has, historically, provided more protection to the married or single woman (the ‘moral’ Woman of legal discourse (Smart, 1992)), and has been more likely to impose legal restraints on those men who raped such women, compared to men who raped the ‘immoral’ Woman, thereby constructing some women as ‘unrapeable’ and some men as ‘unpunishable’ for sex offences.26

For example, in relation to a study of rape trials conducted in Victoria, Queensland and Western Australia between 1880 to 1900, Bavin-Mizzi (1995) found that conviction rates for rape appeared to have been influenced by the marital status of the female complainant, with cases involving women who were single mothers, widows, separated, or in de facto relationships less likely to result in successful rape prosecutions compared to cases involving married women and single women (Bavin-Mizzi, 1995: 25-26). Such a finding highlights the fact that “in a patriarchal gender order emphasizing monogamous marriage there is serious tension between men about issues of adultery; a structure that defines women as a kind of property makes men liable to reprisals for theft” (Connell, 1987: 108), suggesting that, in the cases studied by Bavin-Mizzi, the rape of married and single women made the rapists ‘liable to reprisals for theft’.

In addition, Bavin-Mizzi found that conviction rates were influenced by evidence that the complainant “was walking in the street at night when she was allegedly raped” (1995: 26), compared to cases involving women who were raped in their own home or in the street during the day, as well as being influenced by evidence of a complainant’s alcohol consumption prior to the alleged rape (Bavin-Mizzi, 1995: 27). Bavin-Mizzi concludes that:

26 More recently, it has been recognised that race constitutes another basis on which inferior rights of protection are accorded to black women who lay complaints of rape (Mason, 1995; NSW Department for Women, 1996).
[O]n the whole, it would seem that rape trials were greatly influenced, even in cases where consent was not at issue, by gendered perceptions of what constituted women's 'good character' and credibility. Defence counsel argued and juries deliberated within the context of their own understandings of women's behaviour. Women who transgressed the court's prescriptions for 'good character' (for example, by separating from their husband, by walking in the street alone at night or by drinking alcohol) were unlikely to be believed (1995: 27).

Such evidence provides support for the argument that the gender practices of the criminal justice system are sufficiently cyclical to create a gendered but dynamic division of rights and restraints within the sexual assault trial, in that the imposition of such rights and restraints have, historically, been based on specific gender practices that constructed a category of 'immoral' Woman who stepped outside the prescription of normative feminine social practice and was treated as unworthy of the law's protection, thus conferring on some men rights of sexual access to such women.

Arguably, Bavin-Mizzi's (1995) study also demonstrates the cyclical nature of the gender regime of the criminal justice system in terms of how it operated in relation to carnal knowledge cases, since:

[un]able to use the adult criteria of marital status and alcohol consumption, juries in carnal knowledge cases appear to have heeded (at least indirectly) the complainant's age. An examination of the verdicts awarded in late nineteenth century carnal knowledge cases testifies to this. Girls under 12 years of age were considerably more likely to obtain convictions than those aged 12 years or more (1995: 27).

The operation of a gender regime within the criminal justice system in relation to female child complainants during the period 1880 to 1900 is exemplified by defence counsel arguments that "juries should not accept the word of young complainants whose mothers were alcoholics, prostitutes or in any other way immoral. Poor maternal guidance, if not heredity itself, they claimed meant that girls as young as six years of age could become 'precocious' or 'forward'" (Bavin-Mizzi, 1995: 28; footnotes omitted). In addition, Bavin-Mizzi suggests that the more sexually experienced a girl appeared to be (through her knowledge of sexual matters) the less likely a jury would convict (1995: 29). In fact, she describes cases in which male juries misapplied the law of carnal knowledge, by acquitting some defendants on the grounds of consent by the complainant, even though consent was not a fact in issue in carnal knowledge cases. She suggests that:
These juries sympathised with men whom they believed had been tempted to commit what barely amounted to a misdemeanour. What is more, they were not alone in their sympathy. There were also judges who empathised with defendants and blurred the distinction between rape and carnal knowledge, insisting on the relevance of consent. Some judges went so far as to discharge carnal knowledge offenders in cases where they were convinced of the complainant’s consent. When a young labourer named James Bosse was tried in Beechworth in 1893, for instance, the 13 year-old complainant told the court that he had asked her, ‘Is it good enough?’ and she said, ‘Yes.’ They jury found Bosse guilty with a recommendation for mercy and the presiding judge ... discharged him without penalty (Bavin-Mizzi, 1995: 31; footnotes omitted).

Arguably, this evidence demonstrates that, historically, female victims of sexual crimes have been subject to an inquiry into their moral worthiness as a basis for a finding of guilt or otherwise in relation to the accused. Even female children were not to be protected by the law if there was any apparent evidence of ‘immoral’ behaviour on their part. As Bavin-Mizzi observes:

[i]n these carnal knowledge cases, as in rape cases, the onus was on the complainant to prove her non-consent. In other words, despite the increases in the age of consent which occurred in all of the Australian States during the late nineteenth and early twentieth centuries, girls as young as 12 continued to be regarded by some juries and judges as capable of, and responsible for, giving their consent. The understandings which these particular men brought to carnal knowledge cases might well have been the same understandings they would bring to rape cases – understandings in which justice seems to have meant ‘she asked for it’, or ‘he doesn’t deserve it’ (1995: 31).

Bavin-Mizzi’s study shows how relationships of power between a male accused and a female complainant in a sexual assault trial can be “structured on gender lines” (Connell, 1987: 122), the more so where an historical pattern of gender relations and power constitutes the context in which a sexual assault trial is located. In other words, it can be argued that a hierarchy of rights between the male accused and female complainant is enforced through the criminal justice system’s cyclical pattern of gender practices, such as through the application of specific rules of evidence that are designed to investigate the moral worthiness of the complainant and, hence, the veracity of her version of events. Arguably, such an inquiry has the effect of creating a gendered hierarchy of ‘truths’ and relations of power between the accused and the complainant, without constituting a fixed and rigid structure that can never be the subject of change (by way of law reform) nor never produce the result that the accused is found guilty by the trier of fact.
Nonetheless, the specific gender practices of the criminal justice system within the sexual assault trial which operate through specific rules of evidence are premised on the belief that an accusation of rape is very easy to make and very hard to refute; together with the cross-examination process, these rules place the focus of the rape trial, not on the guilt or innocence of the accused, but on the morality of the complainant. At the same time, the accused is protected (and his position of power relative to the complainant reinforced) by not being required to be tested on any assertions he may make about the complainant’s credibility, nor by being required to be cross-examined on issues to do with his sexual history and reputation, use of drugs and alcohol, mental health history or prior charges or convictions for sexual offences. This hierarchy of rights is based on what the criminal justice system defines as relevant. As Smart (1989) observes, “the student of law learns that it is relevant in cases of rape to know the ‘victim’s’ sexual history. If she has had a sexual relationship with the accused this must be made known, and even where it is not with the accused it may be deemed relevant” (1989: 22). Conversely, “the sexual history of the accused is ... never relevant” (Smart, 1989: 22) to the issue of whether the woman did or did not consent. Arguably, the gendered power structures within the sexual assault trial are unique, in that, although, as in all criminal trials, the accused is protected by the presumption of innocence, the complainant is treated as presumptively guilty of having made a false complaint (unless proved otherwise) through the moral inquiry that takes place within the framework established by the definition of consent27, the delay in

---

27 In relation to the issue of consent, Heath and Naffine (1994) observe that “the legal textbooks and the case law are replete with ... images of women ... as difficult creatures who barely know their own minds, or want their minds changed for them. Criminal texts reveal an understanding of women as essentially passive creatures who need to be shown what we really want by strong and hence erotically appealing men. This is a view of women which runs deep in the legal culture and helps to explain why Australian and English judges have found a woman’s consent to intercourse to be consistent with the application of a wide range of pressures and inducements falling short of (and at times including) violence” (1994: 37). As Bargen and Fishwick (1995) observe, in Australia, “[a]ll States and Territories except Victoria presume the complainant’s consent, by requiring that the prosecution prove non-consent” (1995: 65; emphasis in original). Victoria, however, “seeks to disturb the aggressive/passive model and recognise women’s sexual autonomy by reversing the presumptions about consent” (Bargen and Fishwick, 1995: 65). In Victoria, consent to sexual relations is defined as “free agreement” (s 36, Crimes Act 1958 (Vic)). This attempt to recognise women’s sexual autonomy has been followed by the MCCOC (1996) (which has drafted a Model Criminal Code for adoption by all Australian jurisdictions), since it has defined consent as “consent freely and voluntarily given”
complaint doctrine, the corroboration rule\textsuperscript{28}, the admissibility of evidence concerning a woman's sexual experience in certain circumstances\textsuperscript{29} and the methods of cross-examination which may also be said to be unique in a sexual assault trial.\textsuperscript{30} Historically, this framework, whilst subject to change and resistance, appears to be a sufficiently cyclical pattern or structure (as commentators on the difficulties of implementing sexual assault law reforms attest (see footnote 14 above)) to make the above claim.

As segregation rules, the specific rules of evidence that have historically governed sexual assault trials, together with the common law definition of consent, have placed female complainants within a specific gendered category. As Smart (1992) observes, "Woman is a gendered subject position which legal discourse brings into being" (1992: 34; footnotes omitted), in that, the criminal justice system, through the operation of its cyclically reproduced gender regime, places the rape complainant into a position of powerlessness relative to the accused. In making this claim, however, it is important to distinguish between the concept of Woman as a universal gender category (as constructed by the criminal justice system) and the different femininities practised by different women. In other words, "first we must concede a distinction between Woman and women. This is familiar to feminists who have for some centuries argued that the idea of Woman (sometimes the ideal of Woman) is far removed from real women" (Smart, 1992: 35; emphases in original). Secondly, we must recognise that even the term 'women' does not denote "a common identity" (Butler, 1990: 3; cited in Smart, 1992: 35), so that women do

\begin{itemize}
\item \textsuperscript{28} Although in NSW and other Australian jurisdictions, legal reforms have attempted to ameliorate the effect of two rules, as discussed below in the context of the child sexual assault trial, these two rules are still applicable in all sexual assault trials.
\item \textsuperscript{29} Although evidence concerning a complainant's sexual reputation is inadmissible in all Australian jurisdictions (Bargen and Fishwick, 1995: 76), evidence concerning a complainant's sexual experience is admissible where 'relevant' and at the discretion of a judicial officer in all States and Territories except NSW (Bargen and Fishwick, 1995: 77-78). In NSW, sexual experience evidence is absolutely prohibited except in six specified circumstances (s 409B(3)(a)-(e) and (5), \textit{Crimes Act} 1900 (NSW)).
\item \textsuperscript{30} For example, cross-examination within the rape trial has been described as "cruel and inhumane" and acts of "(verbal) violence" (Thomas, 1994: 371), which, as argued below in the context of the child sexual assault trial, is a function of the gendered relations of power within the sexual assault trial.
\end{itemize}
not, as a result of different races, classes, ethnicities, religions and sexual preferences, constitute a homogenous category. Thus:

if we accept that Woman and women are not reducible to biological categories or – at the very least – that biological signs are not essences which give rise to a homogeneous category of women, we can begin to acknowledge that there are strategies by which Woman/women are brought into being. These strategies (in which I include law as well as discipline) vary according to history and culture, they are also contradictory and even ambivalent (Smart, 1992: 35).

Arguably, in a sexual assault trial, the female complainant is constructed by particular segregation rules (that is, gender practices) as a “type of Woman” (Smart, 1992: 36; emphasis in original), that is, the immoral and dishonest Woman who cries rape and who is differentiated by the gender practices of the criminal justice system from other women. At the same time, She is invoked as “Woman in contradistinction to Man” and becomes what every woman could potentially be (Smart, 1992: 36). Thus, the Woman of legal discourse is constructed as “both kind and killing, active and aggressive, virtuous and evil, cherishable and abominable, not either virtuous or evil. Woman therefore represents a dualism, as well as being one side of a prior binary distinction” (Smart, 1992: 36; emphases in original). For example, “in legal discourse the prostitute is constructed as the bad woman, but at the same time she epitomizes Woman in contradistinction to Man because she is what any woman could be and because she represents a deviousness and a licentiousness arising from her (supposedly naturally given) bodily form, while the man remains innocuous” (Smart, 1992: 36; footnotes omitted). As a gender construct, the Woman of legal discourse is inherently contradictory: she represents that which is not Man (the unitary category into which the male accused is placed), she is to be distinguished from other (moral) women, as well as representing everything all women could be. The dangerous, dishonest Woman of legal discourse simultaneously “invokes the proper place of men” (Smart, 1992: 39) (who, in legal discourse, have a right to consensual heteroerosexual sex with women) and, at the same time, becomes the problem of the sexual assault trial, since as Galvin (1986) observes:

[d]istrust and contempt for the unchaste female accuser was formalised into a set of legal rules unique to rape cases. The most prominent rule allowed the use at trial of evidence of the complainant’s unchaste conduct. These rules combined to shift the usual focus of a criminal
Thus, it can be argued that within the cyclically reproduced gender regime of the sexual assault trial, the complainant, whatever her individual experiences, is subject to a set of segregation rules which have the potential to construct her, on the one hand, as the aggressive, revengeful Woman who accuses an innocent man of rape and to distinguish her from the ‘moral’ Woman and the Man of legal discourse. On the other hand, the female complainant may be constructed as a passive but willing participant in sex who failed to fight back – a contradictory dualism and what every woman could potentially be. Thus, the sexual assault complainant “enters into an established web of meanings which make instability and dangerousness virtually self-evident and matters of common sense” (1992: 39), although Smart warns that “much work needs to be done in tracing how women have resisted and negotiated constructions of gender, since we should not slip into a new form of determinism which suggests that, because power constructs, it produces women in some predetermined, calculated, powerless form” (Smart, 1992: 40).

Arguably, through the cyclical reproduction of a gender regime, and most notably through the application of specific segregation rules, the sexual assault trial places certain complainants into the category of Woman of legal discourse (depending on the social class, race, marital status and ‘moral’ behaviour of the complainant), thus creating a gendered division of rights and restraints and relations of power between the complainant and the male accused who is presumptively placed into the unitary category of Man of legal discourse. Even though different types of men, as a function of class and race, may not be able to derive the same advantage from the category of Man of legal discourse, the sexual assault trial’s focus on the complainant’s moral worthiness means that any male accused may resort to the criminal justice system’s construction of the Woman of legal discourse, in order to undermine the complainant’s credibility. In other words, the unitary category of Woman becomes the “static container” (Kimmel and Messner, 1995a: xix) for judging the ‘moral’ behaviour of all women who complain of rape. A complainant’s dress, sexual history, social behaviours (such as drinking and dancing) and sexual behaviour are judged according to the prescription of that ‘static container’, without any
explicit recognition of normative masculine sexuality against which the 'static container' of 'immoral' feminine behaviour is constructed. Arguably, such constructs of sexual behaviour, in creating "a false cultural universalism" (Kimmel and Messner, 1995a: xix), are fundamentally based on, and reproduce relations of power. In particular, this discussion has focused on the cyclical patterns of gender practices within the criminal justice system, and has argued that such cyclical patterns, whilst not necessarily determinative of the outcome in any one particular sexual assault trial, create a context in which the continued reproduction of that pattern is more likely to occur through the application of gender-specific segregation rules and the Woman of legal discourse construct.

Smart (1989), for example, has shown how the construction of 'pornographic vignettes' (in which a woman’s initial resistance is turned into 'pleasure' at being overpowered: Smart, 1989: 37) and the construction of sexually promiscuous behaviour (for example, if a woman has sex with one particular man in her social environment, she is likely to have sex with any other man in that social environment, or even any man) place the complainant in the category of Woman of legal discourse, at the same time as distinguishing her from rational Man (the category into which the accused is presumptively placed). Arguably, these particular gender practices are also based on gender specific segregation rules which, historically, deemed that a woman’s sexual history and reputation were relevant to the accused’s guilt or innocence.

The gender practices which are involved in creating these pornographic vignettes (for example, "You said you were a bad woman and ripped open your blouse": Smart, 1989: 39; quoting Adler, 1987: 110), can be said to disempower the complainant relative to the accused, since, although a complainant can deny the construction of her as a ‘wanton’ woman, she has no power to test the accused about his assertions (through his counsel) that she behaved in an immoral or provocative manner, nor to test the relevance of such assertions to the facts in issue, and no power to counteract the likely prejudice that may be placed in the minds of the judge and jurors from such a construction. In other words,
the gendered framework within which the moral inquiry of the sexual assault trial takes place can be said to re-create the material (gendered) conditions of powerlessness that have historically constrained some women's sexual expression and contributed to their social subordination relative to some men.

In particular, pornographic and sexually promiscuous constructions of the complainant mean that she is locked into the gender category of the 'immoral' Woman and is, thus, irrespective of her experiences, "required to deny her part in a standard soft porn fantasy scenario" (Smart, 1989: 40). As Smart observes:

[such] account[s] [are] common currency, not only in pornographic magazines, but in downmarket tabloid newspapers. Accounts of 'sexy housewives' and 'frustrated nymphettes' abound. In these accounts the women became lascivious and reveal, usually after the minimum of encouragement, that their sole enjoyment is sexual intercourse with total strangers, often in the most unlikely circumstances. ... The problem is that the wide currency of such accounts adds to their plausibility. One might imagine that this is how many women lead their lives. More importantly for the rape trial, the jury only has to believe that this is how the woman in the dock leads her life (1989: 40).

In the context of the operation of the rules of evidence within the adversarial system, there are limited ways in which the female complainant can counteract the construct of the Woman of legal discourse and thus counteract the extent to which such popular accounts of women's sexual behaviour are reinforced in the minds of jurors. Even the word 'no' may not be a convincing antidote to the criminal justice system's cyclical pattern of gender practices, as the following cross-examination of a female rape complainant demonstrates (NSW Department for Women, 1996: 168-169; emphases in original):

<table>
<thead>
<tr>
<th>Defence counsel</th>
<th>Complainant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was my client circumcised?</td>
<td>Sorry?</td>
</tr>
<tr>
<td>Was my client circumcised?</td>
<td>I don't know.</td>
</tr>
<tr>
<td>You just didn't make any observations?</td>
<td>No.</td>
</tr>
<tr>
<td>The portion of his body being his penis that was, you say, about to enter you...didn't notice that?</td>
<td>No.</td>
</tr>
<tr>
<td>One way or the other was he wearing anything?</td>
<td>What do you mean?</td>
</tr>
<tr>
<td>Did he have a watch on?</td>
<td>I don't remember.</td>
</tr>
</tbody>
</table>
As the above cross-examination shows, defence tactics involve invoking the criminal justice system’s construction of the immoral, dishonest or unreliable Woman of legal discourse, in order to distinguish her from the Moral Woman and from the category of Man into which the accused is placed. The tone of the above cross-examination suggests to the reader that there is something remarkable (and therefore unbelievable) about a woman who does not ‘notice’ and record in her mind details about the penis that was about to enter her, as if the act of sex/rape involves a dispassionate, objective study of all events (and body parts) leading up to the act of penetration, including the circumcised status of the penis, whether the man was wearing a watch, the scars on his body and so on. Within this construction, there is no room for acknowledgment of the act of rape as an experience “which strikes at the core of a woman’s humanity” (Thomas, 1994: 368) and for the overwhelming emotions that accompany threats to bodily integrity.

Arguably, the cyclical reproduction of a gendered division of rights and restraints within the sexual assault trial is reinforced by the fact that rape laws presume that all heterosexual sex is consensual unless proved otherwise.\textsuperscript{31} In other words, the construction of the ‘immoral’ Woman of legal discourse is used as the standard by which the legal requirement of lack of consent is proved, so that the standard effectively amounts to a segregation rule whose very application then justifies its existence. In other words, the standard of consent in the law:

\textsuperscript{31} In relation to sexual offences, Rush and Young (1997) observe that consent is presumed unless lack of consent is proved, whereas “in assault offences consent is presumed not to exist in the serious
sets up (i) a presumption that sexual activity is consenting sexual activity and (ii) a prohibition on sexual activity which departs from this norm of consensual sex. The effect of this dual structure is that, as many have noted, it amounts to presuming that women want sex— that to be a woman is to desire sex. But if the victim did not consent to sexual activity, that lack of consent is not the end of the matter for law. It says that, although the victim was not consenting to sexual activity, nevertheless the defendant at the time may have honestly believed that the victim was consenting. Law then draws the conclusion that, if the defendant honestly believed that the victim was consenting, then there was no rape or no indecent assault. As a result of this legal caveat, ... it is the belief of the accused as to the victim's consent which legally represents the moral quality of sexual activity— so that law can then distinguish between legal and illegal sex. In short, the law of rape and indecent assault identifies with the honest and mistaken belief of the accused and defends itself against the honest and correct belief of the victim (Rush, 1997: 87).

If it is accepted that the criminal justice system's gender regime embodies the presumptions that “to be a woman is to desire sex” (Rush, 1997: 87) and that a denial of consent is indicative of a false allegation (unless proved otherwise), use of the standard represented by the Woman of legal discourse in order to make a finding about the issue of consent is consistent with these presumptions, thus justifying the very existence of the standard and reinforcing the gendered division of rights and restraints within the sexual assault trial. Arguably, in the construction of the complainant as the Woman of legal discourse and her contradistinction to Man (who is permitted an honest and mistaken belief as to consent), it is clear, as Rush identifies, that the accused is placed in the category of (rational) Man of legal discourse. In this way, the accused's mental attitude is equated with the law's mental attitude (Rush, 1997: 87) and this mental attitude is what defines consent/non-consent and legal/illegal sex. The subjective experience of the complainant is irrelevant to this assessment. If, for example, a man can be found not guilty in circumstances where a woman is found to have not consented, then the gender practices of the criminal justice system can be seen to be cyclically reproduced in the form of a division of gendered rights, as a function of the sex of the complainant and the sex of the accused. Indeed, the power differential thus created would be seriously undermined, if “consistent with the approach taken in ordinary assaults ... consent is [treated as] irrelevant where the accused intends to cause harm” (Mason, 1995: 61; citing Bronitt, 1992).
Arguably, the empirical research which has found that conviction rates for sex offences against women are lower rates than for other serious crimes (NSW Department for Women, 1996; Heenan and McKelvie, 1997) shows how influential the construction of the Woman of legal discourse is within the sexual assault trial. At the same time, however, the complexity and conflictual nature of the criminal justice system's gender practices become evident when it is clear that not all men are acquitted when prosecuted for sex offences and that the nature of the Woman of legal discourse construct appears to vary as a function of the race, class, ethnicity, sexuality and social behaviour of the complainant (Mason, 1995; Puren, 1997). In other words, the criminal justice system constructs more than one type of masculinity and more than one type of femininity through the operation of its gender regime; that is, it constructs a variety of different masculinities and femininities which represent different relations of power between different types of complainants and different types of accused men. Those different masculinities and femininities are likely to be a function of variables, such as class, race and age, although the analysis in this thesis and relatively low conviction rates for sex offences, together, suggest that the sexual morality of the female complainant may be the most compelling factor that influences conviction rates. Such a factor is likely to operate in conjunction with other variables such as race and class, in that black women and lower class women may be more susceptible to a 'moral inquiry' into their behaviour, although it appears that the issue of a complainant's sexual morality may even counteract privileged social variables, such as being white and middle-class, which can be expected in other social sites, to work to a woman's advantage. After all, according to the essentialism of the criminal justice system's gender regime, the essence of Woman of

32 Rape law reforms have arguably been aimed at reducing the cultural power of this construction of the female rape complainant and counteracting the beliefs attached to that construction, such as "women who have said 'yes' to a man will say 'yes' to any man; women who have said 'yes' to a particular man will continue to say 'yes' to that man; female sexuality is passive, and consent can be assumed from this state" (Puren, 1997: 139). However, a recent report by Heenan and McKelvie (1997) shows that "the distance between the text of the legislative changes and their enactment in the courtroom is very great" (Puren, 1997: 139). This report shows that the gender practices within the criminal justice system are able to subvert the intention behind attempts to reform how the rape trial is conducted,
legal discourse is that it is what all women could potentially be. For example, results from an American study of the attitudes of over 300 jurors (post-trial) by La Free et al (1985) showed that “a victim’s nontraditional behavior may act as a catalyst, causing jurors’ attitudes about how women should behave to affect their judgments under certain conditions” (1985: 400). In particular, La Free et al found that:

[although any evidence that a woman was forced to submit to a sexual act against her will (including use of a weapon or victim injury) might be expected to persuade jurors of the defendant’s guilt, neither variable significantly affected jurors’ judgments ... . In contrast, jurors were influenced by a victim’s “character”. They were less likely to believe in a defendant’s guilt when the victim had reportedly engaged in sex outside marriage, drank or used drugs, or had been acquainted with the defendant – however briefly – prior to the alleged assault (1985: 397).]

In conclusion, it can be argued that this analysis has shown how the cyclical reproduction of the criminal justice system’s gender regime, through the construction of the gender categories, Woman and Man of legal discourse, gives rise to a gendered division of rights and restraints within the sexual assault trial. As stated above, whilst not necessarily determinative of the outcome in any one particular sexual assault trial, such cyclical patterns create a context in which the continued reproduction of that pattern is more likely to occur through the application of gender-specific segregation rules and the Woman of legal discourse construct. This argument is made, not for the purposes of predicting that the trial process is unified in seeking to produce outcomes that accord with its gender regime but for the purposes of identifying the possibility, as predicted by Connell (1987), that sufficiently cyclical reproductions of gender will produce particular cultural phenomena at particular historical times and places, such as segregation rules and gender

supporting Smart’s (1992) observation that attempts to merely eradicate discrimination through law reform mask the deeper cultural problems that exist within the criminal justice system.

The corollary of these findings was that “jurors were influenced by defendants’ characteristics. Defendants who had few social ties and presented a negative courtroom appearance (i.e., the ‘losers’) and those who had criminal records that were mentioned in court were significantly more likely than other defendants to be thought guilty by jurors” (La Free et al, 1985: 397), suggesting that social class is likely to be a factor that affects the determination of ‘guilt’ or ‘innocence’ of a man accused of rape. Rush and Young (1997) also observe that beliefs in the validity of the construction of the female rape complainant are evident in the government and bureaucratic understandings of rape, such as the view of the Model Criminal Code Officers’ Committee (MCCOC) (1996) who distinguish between ‘real rape’ and ‘lesser rape’, that is, between cases of a stranger leaping from behind a bush with a knife and cases where the rapist and complainant have been in a relationship and no physical violence was used (Rush and Young, 1997: 103).
constructs within the sexual assault trial. This analysis, therefore, suggests that a similar examination of the child sexual assault trial will enable an understanding of the gender dynamics therein, in order to explain the relative difficulty of obtaining convictions for child sex offences. This task is undertaken in the rest of the chapter.

C. THE RELATIONSHIP BETWEEN CONVICTION RATES FOR CHILD SEX OFFENCES AND THE GENDER REGIME OF THE CRIMINAL JUSTICE SYSTEM

(i) Introduction

It is hypothesised that the conduct of the child sexual assault trial will be managed along specific gender lines in ways that are similar to the conduct of the sexual assault trial, since as discussed in Chapter One, child sexual assault has, historically, been perceived by legislators and the criminal justice system as a crime committed by men against female children. Like the crime of rape, it is argued that this historical “sex and gender specificity” (Edwards, 1996: 178) has affected the way child sex offences are prosecuted and rates of conviction.

For the purposes of this discussion, I will focus on the child sexual assault trial involving the male accused and the female complainant which reflects the fact that the majority of child sex offenders are male and the majority of victims are female and that, historically, child sexual assault was only ever criminalised where the offender was male and the victim was female. Chapter One discussed how the primary objection to

34 As discussed in Chapter Four, victim report studies show that the vast majority of child sex offenders are male. Chapter Five has shown that relatively few women have been prosecuted for child sex offences in NSW between 1992 and 1996.

35 Whether the male child is disadvantaged to the same extent as the female child in the child sexual assault is difficult to say, since child sexual assault trials have, historically, involved complaints made by female children (Bavin-Mizzi, 1995). A broad study of child sexual assault trials involving male children would need to be undertaken to determine the nature of the power relationships constructed by the criminal justice system between the male child complainant and the male accused to determine whether or not homosexual child sex offenders are more likely to be convicted. A study by Walsh (1994) on the differential sentencing patterns of homosexual and heterosexual child sex offenders suggests that it is possible that issues concerning the homosexuality of the accused (the vast majority of abusers of boys are men or male adolescents as discussed in Chapter Four) may affect the nature of the
criminalising incest and raising the age of consent at the end of last century focused on the need to protect men from the perceived immorality and vice of ‘corrupt’ girls and how certain protections were embodied in age of consent laws for the sole purpose of protecting men from allegations of rape by girls. Given this historical legacy, it is hypothesised that, because of the cyclical reproduction of gender patterns within the criminal justice system, a gendered division of rights and restraints operates within the child sexual assault trial which prevents the vast majority of child sex offences from being successfully prosecuted. This hypothesis will be tested by an analysis of the specific rules of evidence which govern the child sexual assault trial.

At the outset, this hypothesis highlights a contradiction in relation to the criminalisation of child sexual assault, in that whilst child sexual abuse is “publicly deplored ... the criminal law seems designed to make it almost impossible to prosecute” (Smart, 1989: 51). The contradiction between the criminalisation of sexual behaviour with children and the difficulties associated with prosecuting child sex offences can be said to have resulted from particular “moral panics” (Smart, 1989: 52) that saw changes to age of consent legislation and the criminalisation of incest in a social context in which it was simultaneously believed that certain types of girls had a biological propensity for immorality and deceit. As discussed in Chapter One, such legislation had more of a symbolic than a practical effect at the time, given the economic necessity of prostitution for working-class girls and the difficulties associated with prosecution, thus explaining the criminal justice system’s “uneven response to child sexual abuse. On the one hand there are examples of almost hysterical concern for children, on the other the danger to them is utterly ignored or glossed over” (Smart, 1989: 52).

relationships of power that are constructed by the criminal justice system in the child sexual assault trial where the victim is male (see, further, discussion in Chapter Seven on this issue). For example, the Royal Commission into the New South Wales Police Service’s (1997) review of child sex offences in NSW found that, on their face, they “place less value on the protection of young females compared with young males; [and] operate in a way that is discriminatory against male homosexuals” (1997: 1071). A similar analysis would need to be undertaken of trials in which the child is male and the accused is female and in which the child is female and the accused is female.
The difficulties associated with the prosecution of child sex offences take place within a cultural context where child sexual abuse is believed to be deviant sexual behaviour (as discussed in Chapter Three), so that the complainant of child sexual abuse must overcome the criminal justice system’s apparent desire to protect the accused man from false accusations in the context of the entrenched, cultural belief that women and girls commonly lie about being sexually assaulted and that child sexual abuse is committed by ‘deviant’ men. This suggests that the truth/fiction dichotomy will be central to the gendered construction of the complainant and the accused within the child sexual assault trial.

Since consent is not a fact in issue in relation to the majority of provisions which criminalise sexual behaviour with children (as discussed below), the main factual issue in a child sexual assault trial will be whether the sexual behaviour constituting the alleged offence actually occurred, unlike rape where the major fact in issue is not whether the sexual act occurred but whether it occurred with the consent of the complainant (Model Criminal Code Officers’ Committee [MCCOC] of the Standing Committee of Attorneys-General, 1996: 31). This means that the focus of the child sexual assault trial is on whether the complainant is telling the truth about the occurrence of the alleged sexual behaviour, so that the “truth/lie” distinction (Edwards, 1996: 188) becomes central to the

36 As argued in Chapter Three, the distinction that is made between so-called deviant sexual behaviour and normal sexual behaviour is a blurred distinction, although it is widely employed both at an empirical and cultural level to distinguish between child sex offenders (‘deviant’ men) and so-called ‘normal’ men. Arguably, the construct of the normal, respectable, ‘sex-less’ ‘family man’ is premised on a masculine authority that is consonant with hegemonic masculinity (Connell, 1987: 109): the “class-based construct of masculinity ... has been central to the discursive power of appeals to the ‘family man’, that is, the otherwise respectable ‘family man’ who is to be reunited with his family notwithstanding evidence of child abuse” (Collier, 1993: 10). With this conception of masculinity goes the assumption that ‘family men’ could not sexually abuse their children, so that ‘paedophiles’ (generally, understood to be non-family men) represent all that is expelled from ‘wholesome and sex-less family man-type’ masculinity. The social construct of the ‘paedophile’ is assigned all those qualities that are eschewed in fatherly masculinity; the ‘paedophile’ is the over-sexed, dangerous, predatory stranger who is likely to strike at any moment, even though, as discussed in Chapter Four, victim report studies show that child sexual abuse by strangers is the least common form of child sexual abuse and the majority of child sex offenders are either related to the child or extra-familial offenders who are known to the child. Thus, it is clear that ‘paedosexuality’, as a stigmatised and deviant form of masculinity, is as much a social construct as ‘family man’-type masculinity.
trial. For example, Smart (1989) considers that under England's first child sexual assault laws, the sexually abused child became:

as much of a focus of surveillance as the abuser. Under this regime the abused child came to pose a particular problem. Having been abused it was feared that she might contaminate other 'innocent' children because she had knowledge which it was unfitting for children to have; she was morally damaged. Such attitudes persist, transforming the abused child into the problem which needs regulation. ... [T]his [then] creates a situation of blaming the child for her abuse since, by being abused, she forfeits the protection of innocence (1989: 52-53; references omitted).

This focus was evident at the time in England and Australia when sexual abuse between family members was first criminalised, since the arguments against criminalising intra-familial sexual abuse were based on unsupported assumptions that incest was a rare occurrence, that to criminalise it “would put ideas into people’s heads which otherwise they would never have thought of and that it would create new opportunities for blackmailing innocent men” (Smart, 1989: 54) by girls. As discussed in Chapter One, it is likely that these historical beliefs about the so-called propensity of girls to falsely claim they have been sexually abused were the basis for the application of rules which protected the men accused of such crimes, such as the corroboration rule which required a girl’s evidence to be corroborated by independent evidence before a man could be convicted of a child sex offence. This means that it can be argued that the female complainant of child sexual assault “does not enter the witness box on neutral terms, she/he is already partially disqualified” (Smart, 1989: 57), if it is accepted that the cyclical reproduction of gender patterns within the criminal justice system create a context in which the continued reproduction of that pattern is more likely to occur.

The following discussion analyses whether and how specific rules of evidence operate to reproduce those cyclical patterns, in particular how they operate to construct the male accused and the female complainant within the child sexual assault trial and the likely effect of these constructions on the outcome of a child sexual assault trial.
(ii) The Prosecution of Child Sex Offences

Apart from the issue of identity, the key issue that the prosecution must prove in a child sexual assault trial is the *actus reus* element of each alleged offence. In all Australian jurisdictions, consent is not a defence to sexual behaviour with children, unless the defence based on ages of restricted consent is available (MCCOC, 1996: 105). The prosecution must prove beyond reasonable doubt that the sexual act the subject of the charge in fact occurred; for example, that sexual intercourse, attempted intercourse or indecent assault took place. The criminal law of NSW contains a number of provisions which criminalise specific sexual acts with children and these provisions are listed in Table 6.1.

In each Australian jurisdiction, the agencies that are involved in the prosecution of child sex offences (as with other criminal matters) are the police, the Office of the Director of

---

37 Where a female child falls within the age range of restricted consent (in NSW, 15 years: s 77(1) *Crimes Act* 1900 (NSW)), the accused can raise the defence of reasonable belief as to age. Otherwise, consent is not an element of the offences listed in Table 6.1. Under s 77(2), a defence is available to an accused who is alleged to have had sexual intercourse or attempts to have sexual intercourse with a girl aged over the age of 14 years but less than 16 years, in circumstances where the girl consented to the offence and the accused had reasonable cause to believe and did in fact believe that the girl was aged 16 years or older. This defence is also available where the male accused allegedly assaults a girl aged 15 years with intent to have sexual intercourse (s 72(2)), and where a male commits an act of indecency, an aggravated act of indecency, an indecent assault or an aggravated indecent assault on a girl aged 15 years. The defence is gender specific in that it is not available where both the offender and child are male (s 78R) but is available where the offender is female and the child is either male or female.

38 The MCCOC (1996) has issued a discussion paper which proposes that each jurisdiction in Australia adopt a Code for sexual offences against the person, including child sex offences. At the time of writing, the Committee had not made its final recommendations on the exact constitution of the Code, although adoption of it would certainly simplify the complex array of provisions which presently criminalise a variety of sex offences against children in NSW. However, one disturbing proposal by the Committee is for the creation of a defence of consent where “the child concerned was 10 years of age or older, and ... the child consented to the act, and ... the person was married to the child (or reasonably believed he or she was married to the child) or the person was not more than 2 years older, nor more than 2 years younger, than the child” (MCCOC, 1996: 118). According to the Royal Commission (1997), this defence will also apply “if the child was 10 years or above, consented and the accused held a mistaken but reasonable belief that the child was aged 16 years or above” (1997: 1074). The Royal Commission has observed, however, that “a ‘threshold’ age of 10 years, as proposed in the Model Code, as a point at which a defence based on mistaken but reasonable belief of consent might become available is too low. It is in the area of pre-pubescent and pubescent children that the greatest risk of sexual abuse has been identified ... [and] ... the Commission does not believe that there are any circumstances where sexual activity involving pre-pubescent or pubescent children should be permissible, or should attract a defence of mistaken but reasonable belief as to consent” (1997: 1080-1081).
Public Prosecutions (DPP) and the courts. As Cashmore and Horsky (1988) observe, the criminal justice system is not a coherent system or process but is comprised of “a series of agencies each of which makes decisions about and exercises discretion in the handling of cases” (1988: 241). In relation to a complaint of child sexual assault, the police will make a decision as to whether or not criminal charges should be laid as a result of their investigations of the complaint. In NSW, charges may also be laid as a result of proactive investigations “based on the assembly and analysis of intelligence followed by physical and electronic surveillance and either undercover operations or conventional investigation” (Royal Commission, 1997: 596). Nonetheless, the Royal Commission has observed that “the policing of child sexual assault was formerly a low priority for the [NSW] Police Service. The work was unpopular, very stressful and extremely poorly resourced. With the advent of this Royal Commission and the formation of the [Child Protection Enforcement Agency] and the [Joint Investigative Teams] there has been an improvement” (1997: 597).

The DPP is the body responsible for prosecuting all criminal offences, including child sex offences. In NSW, for example, its functions involve the conduct of all committal proceedings in relation to indictable offences, the provision of advice, where requested, to the police “in relation to the sufficiency of evidence required to support a charge, and the appropriateness of particular charges”, the screening of “the brief of evidence provided by the Police Service” and allocation to an appropriate lawyer (Royal Commission, 1997: 597).

Since July 1992, the prosecution of all indictable child sex offences in NSW has taken place in the District Court (Royal Commission, 1997: 600) and, since 1987, all committal hearings in relation to sexual assault offences have been conducted as so-called paper committals, in which witnesses give evidence by way of written statements instead of oral evidence, although a magistrate, upon application by the defence, has the power to direct
the attendance of a witness (including the complainant) if there are “special reasons” to require their attendance.39

In New South Wales, as at 5 June 1997, child sexual assault trials represented 17.4 per cent of all criminal trials heard in the District Court (Royal Commission, 1997: 1101), although, perhaps surprisingly, approximately 50-70 per cent of such cases involve adult complainants (Royal Commission, 1997: 1101); that is, cases in which complaints of child sexual abuse have not been made until the complainant reached adulthood. This data, together with the data on the proportion of reported child sexual assault cases that are prosecuted (as discussed in Chapter Five), indicates that a very small proportion of child sexual assault cases involving children under the age of 16 years40 are actually prosecuted in New South Wales.

The trial process generally involves a hearing which is conducted before a judge of the District Court and a jury (s 31, *Criminal Procedure Act* 1986 (NSW)), although under s 32 of the *Criminal Procedure Act*, an accused may elect for a trial by judge alone with the consent of the prosecution. The child or adult complainant, who is the chief witness in the proceedings, presents their ‘evidence-in-chief’ under the direction of the Crown prosecutor, before being cross-examined by the legal representative of the accused, after which, in certain circumstances, the complainant may be re-examined by the Crown prosecutor.41

---

40 The age of consent varies from one Australian jurisdiction to another. In NSW a child is defined as a person under the age of 16 if female and a person under the age of 18 if male. Although the Royal Commission into the Police Service (1997) recommended that the age of consent for adolescent males be set at the same age for adolescent females, it is doubtful whether this recommendation will be implemented given the controversy it generated. As the MCCOC (1996) has observed, “[i]t is apparent that the age of consent for homosexual activity is usually older than for heterosexual activity. This age differential stems, undoubtedly, from the legal discrimination historically shown against consensual homosexual conduct. For example, that young males needed to be protected from older ‘predatory’ males or deterred from adopting homosexuality as their sexual preference” (1996: 101).
41 As Aronson and Hunter (1998) observe, “[r]e-examination is permitted ... to clarify ambiguities which may have arisen as a result of cross-examination; to enable a witness to explain or qualify any issue relating to the party's case which emerged in cross-examination; and, to re-establish a witness’s credibility which has been damaged in cross-examination” (1998: 937-938). Under s 30 of the *Evidence Act* 1995 (NSW), a witness cannot be examined on matters that did not arise out of evidence.
There have been a number of important changes in the last thirteen years which have affected the prosecution of child sexual assault matters in courts in NSW, such as:

easing the requirements children have to meet to satisfy the court that they are competent to testify, removing the statutory requirement for a warning about corroboration, removing the prohibition against conviction on the uncorroborated unsworn evidence of a child and changing the penalty structure. Further changes to the penalty structure, the competence requirements for child witnesses in the Oaths Act 1900 and “special arrangements” for child witnesses, such as screens and closed-circuit television, followed in the late 1980s and early 1990s. [In addition,] other measures included an extension of mandatory notification of child sexual assault to various professional groups, pre-trial diversion of offenders, and procedures designed to protect children by putting further controls on bail conditions and apprehended violence orders (Cashmore, 1995: 32).42

Nonetheless, as discussed in Chapter Five, in a study of child sexual assault trials conducted in the NSW District Court between April 1991 to April 1992, Cashmore showed that these changes to the conduct of the child sexual assault trial did not result in an increase in conviction rates for child sex offences. Rather, Cashmore reported a lower conviction rate, both at trial and overall, despite these changes (1995: 50). Even though “[b]efore these amendments, it was rare for children under 10 to give evidence”, with an increase in the number of children under 10 years giving evidence and the decrease in the average age of witnesses, Cashmore reported a decrease in guilty pleas, an increase in the number of cases going to trial and a decrease in the conviction rate at trial (from 58.8 per cent in 1982 to 38 per cent in 1991/92) (1995: 49), indicating that there are still significant barriers to the successful prosecution of child sexual assault cases that the above changes have not affected. As Cashmore (1995) observes:

---

42 Substantive changes were made to the offences concerning sexual behaviour with children as a result of the introduction of the Crimes (Child Assault) Amendment Act 1985 (NSW) which repealed offences of carnally knowing a girl (ss 67, 68, 71 and 72, Crimes Act 1900 (NSW)) and replaced them with a range of child sexual assault offences that apply irrespective of the sex of the child (ss 66A - 66D, Crimes Act 1900 (NSW)) (Gallagher and Hickey, 1997: 54). In addition, sexual intercourse involving oral and digital penetration was adopted under s 61A. The Crimes (Child Assault) Amendment Act also extended protections that had been given to adult complainants of sexual assault in 1981 (Crimes (Sexual Assault) Amendment Act 1981 (NSW)) to child complainants of sexual assault. These protections (which are discussed in detail below) concerned issues to do with corroboration and the recent complaint rules.
[these reforms] have not ... necessarily had any effect on the probability of a conviction. ... There is therefore some concern that increased numbers of children are now subject to the stresses of testifying, with the delays and the problems inherent in an adversarial process heavily dependent on oral evidence ... . Furthermore, there is now a decreased chance of a conviction at the end of the process (1995: 50).

More recent reforms in New South Wales mean that all children under 16 years at the date of the hearing have the option of giving their evidence-in-chief in a room separate from the courtroom by way of closed circuit television (CCTV) (s 405D(1), Crimes Amendment (Children's Evidence) Act 1996) in order to counteract any stress the child may experience by being in the same room as the accused. The child may elect not to give his or her evidence in this way (s 405D(3)) and give their evidence in the usual manner (with alternative seating arrangements or the use of screens in order to restrict the contact between the accused and the complainant if the child so wishes: s 405F).

(iii) The Operation of a Gender Regime within the Child Sexual Assault Trial

This discussion will proceed by way of an examination of specific rules of evidence that govern the conduct of child sexual assault trials. In order to keep the discussion as straightforward as possible, the rules of evidence that will be discussed are those that apply in NSW courts with references to other state law where necessary. This analysis

---


44 At the time of writing, some minor changes to these provisions were envisaged under the Evidence (Children) Bill 1997 (NSW). Various improvements have either been introduced or recommended to improve the court experience of the child witness in Australian jurisdictions in general, such as: witness support and preparation (ALRC and the HREOC, 1997: 337); establishing a relationship between prosecutor and child (ALRC and the HREOC, 1997: 336); court companions (ALRC and the HREOC, 1997: 339); CCTV or screens and special seating arrangements; use of videotaped interviews as child’s evidence-in-chief (Royal Commission, 1997: 1096); pre-trial hearings in which both examination and cross-examination of the child complainant is videotaped (Royal Commission, 1997: 1102-1107); improvements to court facilities and physical design of courtroom(ALRC and the HREOC, 1997: 347); measures to accommodate the needs of children from different cultural backgrounds and children with disabilities (ALRC and the HREOC, 1997: 349-351); legal representation for the child witness (ALRC and the HREOC, 1997: 352); and methods to reduce delays in disposing of child sexual assault cases once charges have been laid (Royal Commission, 1997: 1102).

45 In Australia, each State and Territory has its own legislative rules of evidence that govern the conduct of criminal trials. In NSW, these rules are found in the Evidence Act 1995, although the Act is not "technically a code", since the common law still applies in certain areas not covered by the Act (Odgers, 1997: xxi). However, as Odgers observes, "much existing statute law dealing with the rules of evidence has been abrogated and, to a significant extent, the Act 'covers the field' in a number of
also takes into account three main bodies of work that have documented the filtering processes associated with the successful prosecution of child sex offences, that is, the inquiry by the Australian Law Reform Commission (ALRC) and the Human Rights and Equal Opportunity Commission (HREOC) into matters relating to children, young people and the legal process (ALRC and HREOC, 1997), the inquiry by the Royal Commission into the New South Wales Police Service (hereinafter referred to as the Royal Commission) into “whether the criminal trial process is sufficient to adequately deal with allegations of paedophilia and pederasty” (Royal Commission, 1997; 1089) and the inquiry by the Parliament of Victoria, Crime Prevention Committee (1995) into sexual offences against children.

At the outset, the accepted wisdom about the rules of evidence that apply in the criminal trial is that they “ensure that the trial process is fair for [both] parties” to the proceedings (ALRC and HREOC, 1997: 322). Generally speaking, however, these rules have the potential to prevent a child complainant from fully explaining their evidence and to prevent their evidence from being assessed in the actual context in which the assault is alleged to have happened due to a general reluctance to admit ‘similar fact’ evidence and the general trend in Australia to hold separate trials where the accused has allegedly sexually assaulted more than one child. In other words, as the ALRC and the HREOC observe, children can be effectively silenced as witnesses due to the existence of “[c]ompetency rules, judicial warnings regarding children’s evidence, rules against hearsay and prohibitions on expert testimony and on tendency and coincidence evidence” (1997: 322). In fact, the Royal Commission (1997) has observed that:

[Until reforms were achieved in recent years, the criminal trial process in child sexual assault cases seemed peculiarly weighted against the child witness:

- the evidence of young children in some cases was not received at all, and in other instances where a child was thought to be too young to give evidence on oath his/her unsworn evidence was not capable of providing a foundation for a conviction without corroboration;
- judges were required to warn juries of the dangers associated with convicting on the uncorroborated account of children who gave sworn evidence; and

areas” (1997: xxii); it is expected that the Act will “constitute a code for the rules relating to the admissibility of evidence” (Odgers, 1997: xxii). Nonetheless, as discussed below, some common law rules still operate in conjunction with the rules of evidence embodied in the NSW Evidence Act.

381
the child witness was required to give evidence from the witness box in the same way as adult witnesses even though the presence of the accused, often a near relative, was likely to be particularly intimidating (1997: 1090; footnotes omitted).

All in all, it can be said that:

the criminal justice system places many constraints upon the trial process [within the child sexual assault trial] which, although consistent with the rules designed to protect the rights of the accused generally under the criminal law, are inappropriate or artificial in the context of child sexual abuse which is generally of an ongoing kind, rather than a one-off event, and often involves more than one child. Within that context, the need for the identification of particular incidents and the severance of trials involving multiple victims can occasion very real practical problems, or leave the jury with an artificial and incomplete picture (Royal Commission, 1997: 613).

This discussion analyses the adversarial system to determine whether a different system for the prosecution of child sex offenders is warranted as a result of the many inadequacies and short-comings of the adversarial system that are identified in each of the above inquiries and that I further elaborate upon, in terms of my analysis of the operation of a gender regime within the child sexual assault trial. Whilst each of the above inquiries has made several recommendations for improving the conduct of proceedings within the child assault trial, I argue that the adversarial system is a system founded on specific gendered relations of power which undermine such improvements. The following discussion analyses why more radical changes to the criminal justice system will be required to increase the conviction rate for child sex offences in NSW.

The following rules of evidence are examined to determine whether they are applied along gender lines, such that it can be said they are involved in the cyclical reproduction of gender practices within the criminal justice system and thus create a gendered division of rights and restraints within the child sexual assault trial:

(i) the corroboration rule;
(ii) the recent complaint rule; and
(iii) the rules governing cross-examination.

These rules have, historically, been applicable in all sexual assault trials, irrespective of whether the complainant is a child or adult, as discussed below. Whilst many other rules of evidence, which apply in criminal trials generally speaking, are also applicable in the
child sexual assault trial, the above rules are examined because of their unique application within the sexual assault trial and are analysed in terms of their unique role within the child sexual assault trial.46

**The Operation of the Corroboration Rule within the Child Sexual Assault Trial**

At common law, a long-standing rule required a trial judge in a sexual assault trial to warn the jury of the dangers of convicting the accused on the uncorroborated evidence of the female child or adult complainant.47 The rule gave judges an unfettered discretion to comment on the veracity and credibility of the complainant and to make any other remarks that could affect the jury’s assessment of her evidence, even in cases “where there was evidence that was clearly corroborative of the complainant’s story ... [since] corroborative evidence was often defined in an absurdly narrow way” (NSW Department for Women: 1996: 183; footnotes omitted).48

46 The operation of a gender regime within the criminal justice system may also be evident in the way that other evidentiary issues are dealt with in the child sexual assault trial, such as the argument that the NSW rape shield provision (s 409B, Crimes Act 1900) prevents the admissibility of evidence of previous false allegations made by the child complainant and should be reformed in the interests of justice as they pertain to the accused (New South Wales Law Reform Commission, 1997: 26). Such arguments have been made by the defence in, for example, *R v M* (1993) 67 A Crim R 549; *R v Bernthaler* (NSW Court of Criminal Appeal, 17 December 1993); *R v PJE* (NSW Court of Criminal Appeal, 9 October 1995).

47 McDonald (1994) considers that this rule can be traced back to the late seventeenth century when Hale wrote that rape “is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho’ never so innocent” (Hale, 1680; quoted in McDonald, 1994: 176), a view which became “the basis of the ... corroboration requirement” still applied in many jurisdictions today (McDonald, 1994: 176).

48 Leaps of logic are necessary in order to understand what is or is not corroborative evidence in the child sexual assault context. For example, in *R v E* (1996) 39 NSWLR 450, the Court of Criminal Appeal agreed with the applicant’s submission that evidence of the 9 year old complainant’s complaint of sexual abuse to her mother did not constitute corroborating evidence on the grounds that “[c]orroboration is evidence from a source other than the alleged victim implicating the accused in the commission of the offence .... Evidence of complaint is not corroboration of the account given by the complainant in the complainant’s sworn evidence .... the element of independent source is lacking” (*R v E* (1996) 39 NSWLR 450 at 457-458, per Sperling J). Whilst this construction of what is and is not corroborating evidence might be technically correct and internally logical, it makes no sense when viewed against the nature of the crime of child sexual assault. More often than not, evidence corroborating a complainant’s allegations is not available from an independent source, since acts of sex, particularly those with a child, are generally secretive and well hidden and physical evidence may be lacking or have disappeared by the time a complaint is made or reported. Whilst to the evidence lawyer, “[t]o think that evidence of complaint may have the same standing as direct evidence of the fact, originating from a source other than the complainant, bespeaks a large measure of confusion” (*R v E* (1996) 39 NSWLR 450 at 460, per Sperling J), it is clear that large measures of confusion will be
The corroboration warning “had the effect of labelling children as an unreliable class of witnesses. Juries were likely to take the warning as a hint from the judge to acquit where, as often happens when a child is the victim of abuse, the child was the only witness to the incident” (ALRC and HREOC, 1997: 305; footnotes omitted).\textsuperscript{49} In relation to the child sexual assault trial, the issue of corroboration was even more complicated by the issue of competency, since, at common law, children under a certain age were not considered competent to give sworn evidence.\textsuperscript{50} This meant that:

where the child was incapable of giving sworn evidence, any unsworn evidence of the child had to be corroborated before a criminal conviction could be sustained. A child’s unsworn testimony was capable of corroborating another child’s sworn testimony but the unsworn testimony of one child could not corroborate the unsworn testimony of another child. This rule meant that several young children abused by one person could not give unsworn evidence to corroborate each other (ALRC and HREOC, 1997: 304-305; footnotes omitted).\textsuperscript{51}

\textsuperscript{49} For example, Cashmore (1995) documents a case concerning an 8-year-old child who testified against her father in which a judge had “stressed the ‘danger’ of convicting on uncorroborated evidence, especially that of a child and “further added that ‘it has been the experience of the courts recently that there had been a couple of cases of men wrongly convicted’ in similar situations” (1995: 44). A not guilty verdict was returned by the jury.

\textsuperscript{50} The ALRC and the HREOC observe that “[t]raditionally, rules of competence required that a child possess sufficient understanding of the nature and consequences of an oath before being able to give sworn evidence. The common law approach demanded that the child demonstrate a belief in God and divine vengeance, a formulation arising from eighteenth century cases” (ALRC and HREOC, 1997: 304; footnotes omitted). Today, in most Australian jurisdictions, with the exception of New South Wales and the Commonwealth, “the law considers certain children not competent to give sworn evidence. Most State and Territory legislatures have fixed a specific age below which children are presumed incompetent to give sworn evidence unless there is a judicial determination of a particular child’s competency” (ALRC and HREOC, 1997: 322; emphasis added). In South Australia and Western Australia this age is fixed at 12 years; in Victoria and Tasmania, the age is 14 years and in Queensland, the age is 18. In New South Wales, s 12 of the \textit{Evidence Act 1995} (NSW) states that “[c]except as otherwise provided by this Act ... every person is competent to give evidence”, indicating that children as well as adults are presumed to be competent to give evidence, unless, as per s 13, it can be shown that a person “is incapable of understanding that, in giving evidence, he or she is under an obligation to give truthful evidence”.

\textsuperscript{51} The ALRC’s and HREOC’s (1997) analysis of children’s ability to give evidence shows that “[r]ecent research into children’s memory and the sociology and psychology of disclosing remembered events has established that children’s cognitive and recall skills have been undervalued” and that the “presumed gulf between the reliability of evidence from children and that from adults appears to have been exaggerated” (ALRC and HREOC, 1997: 305; footnotes omitted). In fact, “[c]hildren, including very young children, are able to remember and retrieve from memory large amounts of information, especially when the events are personally experienced and highly meaningful” (ALRC and HREOC, 1997: 305; footnotes omitted), as an experience of child sexual abuse can be expected to be. Furthermore, the ALRC and the HREOC cite a number of recent studies which show that children have the ability to distinguish fact from fantasy and that “children are often as accurate as adults at
As a result of changes to the corroboration rule, in most Australian jurisdictions today "a child's sworn or unsworn evidence need not be corroborated before a person can be convicted of an offence", although in South Australia corroboration is still required for the unsworn evidence of a child (ALRC and HREOC, 1997: 325). Where the corroboration rule has been abolished, "a judge is not obligated to warn the jury that it is dangerous to convict a person based on the uncorroborated evidence of a child" (ALRC and HREOC, 1997: 325; emphasis added). However, despite this apparent removal of one of the "formal barriers to children’s testimony" (Cashmore and Bussey, 1995: 1), this has not prevented the criminal justice system's differential treatment of children's evidence on the grounds of corroboration, since some jurisdictions still permit warnings to be given about the unreliability of children’s evidence in the so-called interests of justice. In fact, the ALRC and the HREOC (1997) are of the view that despite the changes to the corroboration rule in Australian jurisdictions, "[j]udicial warnings concerning the evidence of children continue to be standard practice in many jurisdictions", even in jurisdictions which specifically prohibit judges from suggesting that the evidence of children is unreliable or that it requires corroboration (1997: 326).

For example, although the corroboration warning was repealed in NSW in 1985, the warning about the danger of convicting on the uncorroborated evidence of a child witness was still "generally given if requested by counsel" (Cashmore, 1995: 43), following the case of R v Murray (1987) 11 NSWLR 12 at 19 in which Lee J stated that:

in all cases of serious crime it is customary for judges to stress that where there is only one witness asserting the commission of the crime, the evidence of that witness must be scrutinised with great care before a conclusion is arrived at that a verdict of guilty should be brought in; but a direction of that kind does not of itself imply that the witness’ evidence is unreliable.

discriminating the origins of their memories", with there being "no psychological evidence [to show] that children are in the habit of fantasising about the kinds of incidents that might result in court proceedings or that children are more likely to lie than adults" (ALRC and HREOC, 1997: 306-307; footnotes omitted).
As the NSW Department for Women (1996) observe, "[t]he phrase that 'the evidence of the witness must be scrutinised with great care' has become a common form of the corroboration warning given by judicial officers in NSW" (1996: 188). The common use of the discretion encapsulated in the Murray warning is exemplified by a study of sexual assault trials (involving adult female complainants) that were heard in the NSW District Court between 1 May 1994 to 30 April 1995, since the NSW Department for Women (1996) report that corroboration warnings were given in 80% of trials (1996: 188). In 40% of these trials, "the old-style corroboration warning (that it is unsafe or dangerous to convict on the uncorroborated evidence of the witness)" was given (Department for Women, 1996: 189), whereas the Murray or Longman\(^{53}\) warnings were given in 59% of cases.

Whilst there is the view that the Murray formulation of the corroboration warning will "reduce the effect of an individual judge's bias against, or general assumptions about, the abilities of children as witnesses" (ALRC and HREOC, 1997: 327), the NSW Department for Women's study of adult sexual assault trials showed that (i) judges used the Murray formulation more frequently than any other formulation of the corroboration warning, (ii) it was still given in cases where injuries sustained by the complainant had been admitted into evidence and (iii) in some cases both the Murray formulation and the old-style corroboration warning were given together (NSW Department for Women, 1996: 191-198). Such findings suggest that the same approach to corroboration will be taken by judges in child sexual assault matters, given the long-standing beliefs about the unreliability of children's evidence. It appears, therefore, that mere abolition of the corroboration rule as a rule of evidence with specific application to sexual assault trials

---

\(^{52}\) The Crimes (Child Assault) Amendment Act 1985 repealed s 405(3)(c) of the Crimes Act 1900 (NSW) which required a judge to warn the jury that it was unsafe to convict a person on the uncorroborated sworn evidence of a child.

\(^{53}\) Longman \(v\) R (1989) 168 CLR 79. The Longman warning is justified on the grounds that similar amendments to the corroboration rule in Western Australia merely abolished "[t]he requirement to give a warning, not a judges' discretion to comment on the circumstances of the case. ... [T]he judge may invite the jury in sexual cases (as is done in other criminal cases) to make their own evaluation of the alleged victim's evidence in the light of common human experience. ... The victims of sexual assault no longer form a class of suspect witnesses, but neither do they form a class of especially trustworthy witnesses" (Longman \(v\) R (1989) 168 CLR 79 at 87, per Brennan, Dawson and Toohey JJ).
has not been sufficient to put it to rest, given the general judicial discretion that still allows for a corroboration warning to be made.

Of course, it is also necessary to consider the continued currency of the corroboration warning in light of the introduction of the NSW Evidence Act in 1995. On the one hand, s 164(1) of the NSW Evidence Act states that it “is not necessary that evidence on which a party relied be corroborated” and “if there is a jury, it is not necessary that a Judge ... warn the jury that it is dangerous to act on uncorroborated evidence or give a warning to the same or similar effect; or ... give a direction relating to the absence of corroboration” (s 164(3)). On the other hand, in Lane v R (1996) 66 FCR 144 at 147, per Gallop, Davies and Kiefel JJ, the Federal Court stated that, although the analogous provision under the Commonwealth Evidence Act 1995, s 164(3), “removes any obligation upon a judge to give a warning or direction regarding any uncorroborated evidence”, “the words ‘is not necessary’ leave it open to a judge to do so in a particular case”, indicating that the NSW Evidence Act does not affect the applicability of the general judicial discretion enunciated in Murray and Longman.

Furthermore, s 164(3) of the NSW Evidence Act is subject to other provisions of the Act; for example, under s 165, a judge can give a warning to a jury in relation to “evidence of a kind that may be unreliable”, which includes “evidence the reliability of which may be affected by age, ill health (whether physical or mental), injury or the like” (s 165(1)(c)). In fact, under s 165(2), a judge is required to give a warning if the defence so requests and the judge must “warn the jury that the evidence may be unreliable, “inform the jury of matters that may cause it to be unreliable” and “warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it”. Furthermore, in giving a warning under s 165, a judge “will not be prevented from directing a jury, in an appropriate case, that it is dangerous to convict an accused on the

54 However, under s 165(3), the judge need not comply with this requirement to give a warning “if there are good reasons for not doing so”. Much more stringent rules apply in relation to corroboration warnings in other Australian jurisdictions, for example, in Western Australia, Tasmania and the Northern Territory “judges are prohibited from warning the jury that it is unsafe to convict on the
basis of a particular witness’ evidence” (Odgers, 1997: 280; reference omitted) so that “a trial judge’s general obligations under the common law to give appropriate warnings and directions remain” (Odgers, 1997: 280). In fact:

[i]t is clear from the decision in Longman that in any case where there are potential dangers in acting on evidence, which may not be appreciated by a jury, the trial judge is under a duty to give an appropriate warning. No doubt in some cases involving child witnesses, trial judges will consider it necessary to give a warning. The vice is with any practice that makes the giving of the warning routine having regard to the age of the witness (Royal Commission, 1997: 1120; emphasis added).

Because of the precedent set by Murray and Longman, the operation of s 165 “may see a return to the practice of warnings being given as a matter of course in cases where the complainant is a young child” (Royal Commission, 1997: 1120), particularly since the failure of a judge to give such a warning under s 165(2) means that this is a possible ground for appeal by the defence and a basis on which an appeal court can quash a conviction and order a re-trial.

The historical application of the corroboration rule in child sexual assault trials and its continued use, despite attempts to make it a rule which is non-specific to particular types of criminal trials, suggests that it has been one of the filtering processes to the successful prosecution of child sex offences, as suggested by some evidence presented by Cashmore (1995) in her study of the prosecution of child sex offences in NSW between April 1991 to April 1992 (as discussed in Chapter Five). In particular, a jury’s decision to convict may be affected by the “strength of the warning given”, the age of the child (Cashmore, 1995: 43) and the combination of the warning with other factors, such as how a child bears up under cross-examination, the nature of the abuse, the relationship between the accused and the child and the amount of ‘bad character’ evidence used by the defence during cross-examination. For example, Cashmore reports that, for children under 10 years of age, the conviction rate was lower when a warning was given compared to cases in which it was not given (25% compared with 40%) (Cashmore, 1995: 44) and where a particularly strong corroboration warning had been given in three cases involving young uncorroborated evidence of a child by implying that children are an unreliable class of witness” (ALRC and HREOC, 1997: 325).
Some support for the effect of the corroboration rule on conviction rates in conjunction with other factors is found in Cashmore and Bussey's (1995) study of fifty judicial officers' attitudes about child witnesses, in which judicial views “about the need for warnings about the uncorroborated evidence of children” produced a wide variety of responses: 12 per cent said a warning was always necessary, whilst the remainder believed that the need for a warning depended on factors, such as age of the child (24 per cent), the perceived reliability of the evidence (36 per cent), the potential of adult influence (12 per cent), the likely motivation of the child (10 per cent) and whether the case was a child sexual assault matter (6 per cent). It appears from these findings that judicial officers believe that the uncorroborated evidence of children is dangerous to rely upon. In particular, a prominent belief is that children are willing to disrupt their lives and the lives of their families by undergoing the rigours of a criminal trial because child sexual abuse allegations are “very easy to make up but very hard to disprove” (Cashmore and Bussey, 1995: 21; quoting an unnamed judge), a belief that is contradicted by the relatively low conviction rates for child sex offences compared to most other offences.

Because of the ease with which relationships of power can be constructed within the criminal trial, it can be argued that, at best, the adversarial system is only suited to prosecuting those cases of child sexual assault which can be corroborated by physical or eyewitness evidence. The features of the crime of child sexual assault mean that such corroborative evidence will often be absent. Apart from the presence of semen, some evidence of penetration is considered to be equivocal and is open to being disputed at trial and there will be no physical evidence of child sexual assault that takes the form of penetration by fingers or objects (unless repeated and/or such as to cause physical

---

55 For example, in *M v R* (1994) 181 CLR 487 at 527, per McHugh J., medical evidence was given to show that a finger or a penis can pass through the hymen of a female child “without there being any residual physical evidence” of penetration, leaving the hymen intact.
deformation), touching of the breasts or genitals, oral sexual acts with the child, exhibitionism, voyeurism, or simulated intercourse with no penetration.

Clearly then, child sex offences involve far greater evidentiary problems "than in any other single category of prosecution", particularly since "medical examination is often inconclusive and of limited evidentiary value even if signs consistent with the complaint are found" (Royal Commission, 1997: 612). Thus, the crime of child sexual assault is typified by the lack of forensic and other corroborating evidence. For these reasons together with the young age of victims and the often long periods of time over which sexual abuse can occur\(^56\), it can be expected that lack of corroboration will be a central feature of the majority of child sexual assault trials. In fact, it could be argued that it is merely the lack of eyewitness and physical evidence in child sexual assault trials which results in a much lower conviction rate for child sex offences compared to most other criminal offences. However, it is argued here that it is the specific operation of the corroboration rule that affects the relatively low conviction rate, rather than the lack of corroborative evidence of itself, since without an understanding of the operation of a gender regime within the child sexual assault trial, the connection that is made between lack of corroborative evidence and fabrication makes no sense.

When the corroboration rule is examined in the context of the prevalence of child sexual abuse in the Australian community (see Chapter Four), as well as the historical difficulties associated with prosecuting child sexual assault, the falsity of the premises on which the rule is based (that child sexual abuse is rare and that a complaint of sexual abuse is easy to make and difficult to refute) are obvious. Therefore, it is important to analyse the rule, not in terms of its ostensible purpose (to prevent false accusations of sexual assault from being made, since it is likely that barriers to prosecuting sexual assault cases have, historically, operated as a successful filter against false accusations\(^57\))

\(^{56}\) For example, in a study of child sexual assault trials in New South Wales during 1994, Gallagher and Hickey (1997) found that "three-quarters of the victims were abused for up to a year and 10% for over two years" (1997: xi).

\(^{57}\) As the NSW Department for Women (1996) observes in relation to complaints of sexual assault made by women, "[t]here is no evidence to suggest that sexual assault allegations are usually false. In fact,
but in terms of the role the rule plays within the child sexual assault trial. Arguably, the effect of the rule upon conviction rates for child sex offences can be understood by considering its role in the reproduction of cyclical patterns of gender within the criminal justice system and in the gendered construction of the female child complainant and the male accused. For example, the rule may be involved in the construction of a particular gendered context in which the child sexual assault trial is conducted, in that such cyclical patterns of gender (as exemplified by the corroboration rule) can be expected to create a particular context in which the continued reproduction of that pattern is more likely to occur.

The corroboration warning is an old common law rule which has its origins in the desire to protect men from the ‘immorality’ of women and girls who, as described in Chapter One, have long been believed to “sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all” (R v Manning; R v Henry (1968) 53 Cr App R 150 at 153, per Salmond LJ). The corroboration rule, which only applied in sexual assault cases, was developed in a social and historical context in which a woman’s or girl’s ‘virtue’ was an economic ‘bargaining tool’ and where lack of virtue was believed to consign a woman or girl to a life of vice and immorality and turn her into a ‘temptress’ of innocent men. In fact, “[w]hen sexual offences against children became the specific concern of the criminal law in the 19th century they were hedged about with express caveats about the unreliability of children’s evidence and the possible malice of female complainants” (Rayner, 1991: 42). The specific requirement of corroboration of the evidence of a girl under age of consent legislation, for example, stemmed from a belief that men were vulnerable to unscrupulous complaints, although this view contradicted the social evidence that the sexual

the rigours of the criminal process more often work to deter victims of sexual assault from making complaints. It is a brave woman indeed who, despite knowing about the abuse experienced by women complainants in the criminal justice process, comes forward to make a complaint against her abuser. These ‘filtering processes’, already heavily weighted against the complainant in a sexual assault matter, render it less likely rather than more likely that the woman’s evidence at the trial will be unreliable. ... The trial process, cross-examination and onus and standard of proof are sufficient as checks and balances set in place to detect false accusations” (1996: 184-185).
exploitation of girls was widespread and that many types of sexual behaviour with girls were not prohibited by law. In fact, the requirement of corroboration ensured that some men had sexual access to young girls, particularly girls involved in prostitution, as was the accepted social practice of the time. As Rayner (1991) has observed:

[t]he requirement that evidence of certain sexual offences must be corroborated focused on the role of the child complainant as an unreliable witness: seducer, liar and malicious persecutor. British society in the 19th century was deeply interested, in a fastidious way, in the sexual behaviour of young female children. This interest led to specific, ‘protective’, criminal legislation regulating it. But the status of women in society affected the form the legislation took (1991: 32).

Arguably, the corroboration rule has specifically operated to protect men from allegations of sexual assault from so-called immoral and dishonest women and girls, it being a rule which was “developed explicitly to protect those accused of sexual offences from being unjustly convicted” (Boniface, 1994: 64). As a result of the operation of the rule, women and girls were given a unique status within the criminal justice system, a status not accorded to any other victims of crime, since no similar warning was required in the case of the evidence of other victims of (non-sexual) crimes. Female sexual assault complainants were placed in their own special category of unreliable witness. Whilst the accused’s word of denial was accorded legal recognition without any qualification to its veracity based on his sex, the word of the woman or female child complainant was accorded a status less than that of the male accused, unless her word was supported by acceptable corroborating evidence.

The content of the corroboration rule suggests that its application within the child sexual assault trial can be said to be evidence of the construction of a gendered division of rights and restraints which applied according to the sex of the complainant and the sex of the accused, in that the rule has been applied in accordance with “the reproductive division of people into male and female” (Connell, 1987: 140). As a result of the operation of the rule (in the form of a warning to a jury that it was dangerous to convict on the uncorroborated evidence of a female complainant of rape or child sexual assault), female complainants were constructed as less credible than the accused on the basis of their sex and, implicitly, their ‘tempting’ biological characteristics, as discussed in Chapter One.
Its role as a segregation rule and in the construction of a particular gendered context within the child sexual assault trial is considered in more detail below after a discussion of the role of the delay in complaint doctrine within the child sexual assault trial.

The Doctrine of Delay in Complaint

Under the common law recent complaint rule, “evidence of the fact that a complainant made a complaint as speedily as could reasonably be expected, as well as the contents of that complaint, are admissible” (MCCOC, 1996: 185), if the complaint of sexual assault was made freely and voluntarily and at the first reasonable opportunity (Aronson and Hunter, 1998: 871; R v Osbourne [1905] 1 KB 551 at 561, per Ridley J).

However, “[t]he law relating to the admissibility of a sexual assault victim’s recent complaint is generally considered anachronistic” (Aronson and Hunter, 1995: 757), since the rule developed as an exception to the general principle that “a witness may not be asked whether he or she made a prior consistent statement” (MCCOC, 1996: 185). As the NSW Department for Women (1996) observes:

[i]n no other type of assault matter does the law look to evidence of recent complaint or continue to insist that absence or delay in complaint is something the jury can take into account when deciding whether to believe the complainant or not. Just as there is no evidence that can be pointed to that indicates that sexual assault complainants are prone to lie, there is no empirical evidence that suggests that a delay in complaint is indicative of fabrication (1996: 212; footnotes omitted).

The rule appears to be derived from a 13th century prescription that a woman’s failure to immediately raise the ‘hue and cry’ after being raped was a defence to an allegation of rape (NSW Department for Women, 1996: 201; citing McDonald, 1994). According to Gobbo (1970: 245), by the beginning of the eighteenth century, case law indicated that the failure to raise a ‘hue and cry’ had evolved into a presumption of fabrication on the part of the rape complainant. As such, evidence of a so-called speedy complaint became admissible to boost the complainant’s credit, that is, “to demonstrate consistency between

---

58 Although I have previously cited the 1998 edition of Aronson and Hunter, the content of the 1995 and 1998 editions is different in parts, so that I have drawn on both editions in my discussion.
her ... conduct and evidence at trial” (MCCOC, 1996: 185). Since the rule was informed by the belief that a rape complainant could only be believed if she could demonstrate she had publicly denounced the perpetrator, rape complainants became a special category of witness whose credibility could be boosted by evidence of recent complaint.59

Not surprisingly, given the historical legacy of the recent complaint rule and the sexual assault trial’s preoccupation with the moral worthiness of the complainant, recent complaint evidence cannot be used as proof of the assault alleged but merely as a factor to assess the honesty of the complainant. This role of recent complaint evidence was affirmed by the Australian High Court in Kilby v R (1973) 129 CLR 460 which held that a prompt complaint of sexual assault or a failure to make a prompt complaint goes only to the complainant’s credibility and not to a fact in issue, such as consent.60 In Kilby (1973) 129 CLR 460 at 472, Barwick CJ stated:

[t]he admission of a recent complaint in cases of sexual offences is exceptional in the law of evidence. Whatever the historical reason for an exception, the admissibility of that evidence in modern times can only be placed, in my opinion, upon the consistency of statement or conduct which it tends to show, the evidence having itself no probative value as to any fact in contest but, merely and exceptionally constituting a buttress to the credit of the woman who has given evidence of having been subject to the sexual offence.61

In this context, Barwick CJ ((1973) 129 CLR 460 at 465) considered that:

[i]t would no doubt be proper for a trial judge to instruct a jury that in evaluating the evidence of a woman who claims to have been the victim of a rape and in determining whether to

---

59 As noted in Crofts v R (1996) 186 CLR 427 at 447-448, per Toohey, Gaudron, Gummow and Kirby JJ, this rule had existed in England for at least two centuries for the following reasons: “the credibility of [the complainant’s] testimony, and how far forth she is to be believed, must be left to the jury upon the circumstances of fact that concur in that testimony. For instance: if the witness be of good fame; if she presently discovered the offence, and made search for the offender ... these and the like are concurring circumstances, which give greater probability to her evidence. But, on the other side, if she be of evil fame, and stand unsupported by others; if she concealed the injury for any considerable time after she had opportunity to complain; if the place, where the fact was alleged to be committed, was where it was possible she might have been heard, and she made no outcry, these and the like circumstances carry a strong, but not conclusive, presumption that her testimony is false or feigned” (R v Lillyman [1896] 2 QB 167 at 171, per Hawkins J., citing Blackstone, 1770: 211; quoted in Crofts v R (1996) 186 CLR 427 at 447-448, per Toohey, Gaudron, Gummow and Kirby JJ).

60 This aspect of the decision in Kilby is authority for rejecting the idea that failure to complain was evidence of consent as had been held in R v Hinton (1961) Qd R 17 at 24, per Mansfield J (Kilby (1973) 129 CLR 460 at 466 and 472, per Barwick CJ).

61 This rule has recently been restated by the High Court in Jones v R (1997) 143 ALR 52 at 53, per Brennan CJ, Toohey, Gaudron, McHugh and Kirby JJ. Note that there is no CLR report of this case.
believe her, they could take into account that she had made no complaint at the earliest reasonable opportunity. Indeed, in my opinion, such a direction would not only be proper but, depending of course on the particular circumstances of the case, ought as a general rule be given.

Since Kilby, “it has been widely accepted in Australia that evidence of early complaint or lack of complaint is relevant only to the credibility of the victim and not to prove the charge against the accused” (NSW Department for Women, 1996: 202; footnotes omitted).62

The corollary of the recent complaint rule is that it “permits the defence to invite the drawing of the inference that where an alleged victim has failed to complain, the credibility of her testimony is reduced” (Aronson and Hunter, 1995: 757); that is, that the delay is evidence of the complainant’s fabrication of her allegation of sexual assault. In cases where a complainant was deemed to have failed to complain at the earliest reasonable opportunity:

it was the practice of trial judges to give a Kilby direction to the jury. This was to the effect that, in determining whether to believe the complainant, the jury might take into account his or her failure to complain at the earliest reasonable opportunity. The direction assumed that a prompt complaint was consistent with an assault having taken place, while delay or absence of a complaint was contrary to normal expectation and hence a matter properly taken into

---

62 In New South Wales, since 1995, under ss 62 and 66 of the Evidence Act 1995, “evidence of complaint can be used as proof of the sexual assault” (MCCOC, 1996: 185), indicating that s 66 has altered the common law rule relating to recent complaint in NSW to some extent. The provision governs first-hand hearsay evidence where the maker of the representation (such as the complainant in a sexual assault trial) is available to testify. Under s 66(2), the hearsay rule does not apply “if, when the representation was made, the occurrence of the asserted fact was fresh in the memory of the person who made the representation”. This means that, in NSW, first-hand hearsay evidence could be introduced as evidence to support an allegation that a sexual assault occurred, contrary to the position at common law (Odgors, 1997: 110), if such evidence satisfies the test of relevance under s 55 of the Evidence Act 1995 (NSW Department for Women, 1996: 215). However, the sting in the tail of s 66 is that the emphasis on freshness of memory is based on the belief that delay in complaint increases the risk of fabrication (Odgors, 1997: 110). Aronson and Hunter (1998) also consider that the admissibility of recent complaint evidence would be governed by s 102 of the Evidence Act 1995 (which excludes evidence that is relevant only to a witness’s credibility) and s 135 of the Evidence Act 1995 (which excludes relevant evidence if “its probative value is substantially outweighed by the danger that the evidence might”, amongst other things, be prejudicial to a party). Aronson and Hunter (1998) are of the view that the Evidence Act’s “silence on how to characterise the relevance (if any) of a complaint, or of lack of complaint, clearly requires ... an approach [based on fundamental relevancy inquiries] and the common law assumptions deserve to be treated as relics of a bygone era. Instead the Act requires the circumstances of each and every case to be examined to ascertain the relevance of complaint evidence, unencumbered by past assumptions” (1998: 872).
account in determining the witnesses’ credibility (Royal Commission, 1997: 1121-1122; footnotes omitted).

The common law rule governing recent complaint has now been ameliorated to some extent “by statute in most jurisdictions. Almost all now require that the judge warn the jury in sexual offence proceedings in terms broadly similar to the NSW provision” (Bargen and Fishwick, 1995: 69), that is, s 405B of the Crimes Act 1900 (NSW). Under that provision, if a question is asked which tends to suggest an absence of, or delay in making a complaint, the trial judge is required to:

- “give a warning to the jury to the effect that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false” (s 405B(2)(a)); and
- “inform the jury that there may be good reasons why a victim of a sexual assault may hesitate in making, or may refrain from making, a complaint about the assault” (s 405B(2)(b)).

Whilst the architects of the legislation appear to have envisaged that s 405B would provide sufficient protection for complainants from discriminatory treatment in a sexual assault trial, as Bargen and Fishwick (1995) observe:

because [a] judge is not precluded by these rules from making any comment on the delay in making a complaint (except in the ACT), being required only to warn the jury negatively, some judges continue to direct the jury that evidence about lack of swift complaint can and

63 The NSW Department for Women (1996) notes that “[f]ollowing lobbying and advice by policy makers, feminists and service providers”, s 405B was introduced in 1981 under the Crimes (Sexual Assault) Amendment Act 1981 (NSW) (1996: 202). The provision was extended to evidence of delay in complaint in child sexual assault trials by the Crimes (Child Assault) Amendment Act 1985 (NSW). Nonetheless, the introduction of the legislation was still accompanied by the belief that “there is a small minority of cases where failure to complaint [sic] really may indicate fabrication and false witness” (Walker, 1981: 4772). This reason was the basis for the Government’s decision not to abolish the recent complaint rule altogether. Analogous provisions to s 405B may be found in s 61(1)(b), Crimes Act 1958 (Vic); s 371A, Criminal Code 1924 (Tas); s 76C, Evidence Act 1971 (ACT); s 36BD, Evidence Act 1906 (WA); s 4, Sexual Offences (Evidence and Procedure) Act 1994 (NT). South Australia still relies on the common law (Bargen and Fishwick, 1995: 69).

64 For example, in the Second Reading Speech of the Crimes (Sexual Assault) Amendment Bill, the then Attorney-General stated in relation to the formulation in s 405B: “It is felt that this formula will protect both the complainant witness and the accused. The prosecution may still give evidence of recent complaint, if one has been made. The accused may still cross-examine as to its delay or absence, but, in the latter case, the jury will be told clearly not to dismiss a prosecution automatically because of late complaint. In my view, that is a very fair result” (Walker, 1981: 4773).
possibly should be used to undermine the complainant's credibility (1995: 69; references omitted).

In other words, s 405B did not displace the common law warning concerning delay in complaint. In fact, following the introduction of s 405B in NSW, "it was held that, apart from the warnings set out in that section, in cases where there had been no complaint, or a delay in making complaint it still remained appropriate to direct the jury in terms of Kilby" (Royal Commission, 1997: 1122; citing R v Davies (1985) 3 NSWLR 276), a development that now applies to all provisions in other jurisdictions that are analogous to s 405B as a result of the High Court decision in Crofts v R (1996) 186 CLR 427 (discussed below).

The fact that s 405B and analogous provisions did not abolish the common law warning about delay in complaint means that a judge is now required to direct a jury that "delay in making a complaint may [still] be taken into account in evaluating the evidence of the complainant and in deciding whether to believe her" (NSW Department for Women, 1996: 203; footnotes omitted). As the NSW Department for Women observes:

[the result is that Judges are able to give the new direction about the good reasons for delaying in making a complaint (in section 405B) and the former common law ruling that the absence or delay in complaining should be taken into account in evaluating the evidence of the complainant. It has been argued that if the jury gets both these directions they effectively cancel each other out (1996: 203; emphasis in original; footnotes omitted).]

65 In R v Davies, the appellant had argued that s 405B did not "touch the principles laid down in Kilby's case" ((1985) 3 NSWLR 276 at 278, per Hunt J). Hunt J agreed with this interpretation of the effect of s 405B when he stated: "All that s 405B does is to make obligatory the directions on what I have described as the other side of the coin. The section does not purport to codify the law relating to evidence of complaint; if it was intended by the legislature to preclude the usual direction referred to in Kilby's case, the section should have contained an express exclusion. A simpler course may have been to exclude altogether the anomalous admissibility of evidence of complaint. But neither course was followed" ((1985) 3 NSWLR 276 at 278, per Hunt J).

66 In fact, a trial judge's failure to warn the jury about the significance of a delay in complaint is grounds for appeal, even though a direction under s 405B or its equivalent is also required to be given, as was the case in Crofts v R (1996) 186 CLR 427. In that case, the complainant alleged she had been sexually abused on eight separate occasions between the ages of ten and sixteen by Crofts, a close friend of her family. At trial, the judge did not inform the jury they were entitled to take the delay in complaint into account when assessing the complainant's credibility. The accused was convicted of four counts of sexual penetration of a child between 10 and 16 years of age. A majority of the High Court held that the "substantial" delay of six years before a complaint was made about the first assault when the complainant was ten, entitled the jury "to accurate assistance by the trial judge concerning the legal significance of the absence of complaint soon after the alleged incidents" (Crofts v R (1996)
Recently, as Aronson and Hunter note (1998: 869), the High Court in *Crofts v R* (1996) 186 CLR 427 at 451, per Toohey, Gaudron, Gummow and Kirby JJ stated that the purpose of a provision like s 405B was:

to reform the balance of jury instruction not to remove the balance. The purpose was not to convert complainants in sexual misconduct cases into an especially trustworthy class of witnesses. ... It was simply to correct what had previously been standard practice by which, based on supposed “human experience” and the “experience of courts”, judges were required to instruct juries that complainants of sexual misconduct were specially suspect, those complained against specially vulnerable and delay in complaining invariably critical. In restoring the balance, the intention of the legislature was not to “sterilise” complainants from critical comment where the particular facts of the case, and the justice of the circumstances, suggested that the judge should put such comments before the jury for their consideration (footnotes omitted).

In fact, Toohey, Gaudron, Gummow and Kirby JJ considered that, in some circumstances, “the delay may be so long, so inexplicable, or so unexplained, that the jury could properly take it into account in concluding that, in the particular case, the allegation was false” (*Crofts v R* (1996) 186 CLR 427 at 448).

Essentially, cases that have interpreted the effect of s 405B (and analogous provisions) on the common law rule have argued that the delay in complaint doctrine should be retained in order to restore the balance of the interests of justice. In other words, s 405B has been interpreted by the courts as “tilting the balance in favour of the complainant” (*R v Davies* (1985) 3 NSWLR 276 at 278, per Hunt J) with the delay in complaint rule being seen as a way of restoring that balance. Such a view has particular implications for the child sexual assault trial, in the common situation in which the complainant has delayed reporting childhood sexual abuse for a period of years.

The dubious medieval belief that women and girls who have been raped will immediately take to the streets raising a ‘hue and cry’ has seen the development of a legal doctrine which allows the defence, in both adult and child sexual assault trials, “to argue that a failure to make timely complaint increases the probability that the complainant is
fabricating her in-court allegations. It also means that in appropriate cases a judge is obligated to direct the jury of this” (Aronson and Hunter, 1998: 869; emphasis in original).67 The fact that complainants are considered to be a class of witness whose credibility requires boosting by evidence of recent complaint suggests that the rule is a product of the cyclical reproduction of gender patterns within the child sexual assault trial which has the effect of creating universal gender categories: the Woman or Unreliable Child of legal discourse, the construction of which it is argued creates particular cyclical relations of power between the accused and the child complainant in the child sexual assault trial. As argued below, the Unreliable Child construct of legal discourse is analogous to the category of Woman of legal discourse discussed by Smart (1992), in terms of its role in creating relations of power between the female child complainant and male accused. I use the term ‘Unreliable Child’ to denote the nature of the construct and compare it to the ‘Truthful Child’ construct which is analogous to the Man of legal discourse construct, discussed by Smart (1992).

The Operation of the Delay in Complaint Doctrine and the Corroboration Rule as Segregation Rules within the Child Sexual Assault Trial

Arguably, the power of the criminal justice system’s gender practices is evidenced by its ability to create universal categories of gender: the Woman, the Unreliable Child, and the Man of legal discourse which are essentialist in their operation, relying as they do on one or more cultural or biological essences which then describe all women, all children, all men. The universal nature of the categories of Woman and Unreliable Child is evident in the fact that whether a woman’s or child’s complaint was made at the first reasonable

---

67 Aronson and Hunter (1998) note that certain sexual offences in NSW are not subject to a s 405B direction; that is, in proceedings under “s 73 (carnal knowledge by teacher, father or step-father); s 74 (attempt to commit offence under s 73); s 78A (incest with female over the age of 16); s 78B (attempt to commit crime under s 78A); ss 78N and 78O (homosexual intercourse where accused is a teacher, father or step-father); s 78Q (homosexual gross indecency)”, the common law warning regarding delay in complaint applies (Aronson and Hunter, 1998: 873-874). The rationale for the lack of applicability of the safeguards under s 405B are explained by Smart J in R v VCH (NSW Court of Criminal Appeal, 11 September 1992) on the grounds that the persons specified under these provisions “will inevitably have a lot of contact with the child involved and are specially vulnerable to allegations of offences. Hence there is no abrogation of the requirement for a warning. This makes good commonsense.”
opportunity is a question of law which is applied as an objective standard and which is characteristically applied irrespective of the complainant’s individual experience and without reference to the social and psychological effects of child sexual abuse upon a child. The NSW Department for Women (1996) has shown that even a few hours can be construed as a delay that is sufficient to raise the spectre of fabrication. For example, in the Department’s study of all adult sexual assault trials (where the complainant was female and the accused male) conducted between 1 May 1994 and 30 April 1995 in the District Court of NSW, the defence “raised the issue of delay in complaint in half of trials in which the offence was reported to someone within five hours” (1996: 219), a finding which illustrates how, irrespective of the time period, the rule can be used to construct the universal category of the Woman or the Unreliable Child of legal discourse.

It can be argued that both the delay in complaint and corroboration rules are evidence of the cyclical reproduction of gender practices within the criminal justice system, in that the rules were historically only applicable to sexual assault trials involving a male accused and female complainant and were thus applied to the evidence of the complainant as a function of her sex, creating a gendered division of rights between the accused and complainant. In particular, the application of the rules as segregation rules both justifies their imposition and the differential treatment of the female complainant who is considered to have delayed unreasonably or has no corroborative evidence of her complaint, since the construction of the Unreliable Child of legal discourse through the operation of the two rules becomes the standard by which the falsity of the female complainant’s allegations are ‘proved’.69

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>68</td>
<td>The jury then determines the weight to be given to the complaint or delay in complaint (Aronson and Hunter, 1998: 871).</td>
</tr>
<tr>
<td>69</td>
<td>This is not to say that the male child complainant’s evidence is not similarly subject to the delay in complaint and corroboration rules, merely to emphasise the criminal justice system’s historical preoccupation with sexual assault as a gender specific crime. In fact, it can be argued that the criminal justice system’s historical non-recognition of male complainants of rape and child sexual abuse gave men and male children no protection against sexual abuse, thus creating specific but different gendered relations of power between, in particular, male offenders and male victims. An application of the delay in complaint and corroboration rules to the male complainant places him in a similar (although not necessarily identical) gendered category of Unreliable Child.</td>
</tr>
</tbody>
</table>
Like the segregation rule discussed above in relation to the labour market, a finding that a complainant has unreasonably delayed making a complaint and/or that her evidence is uncorroborated is used to justify the criminal justice system's characterisation of her evidence as unreliable and its differential treatment of her. Arguably, the criminal justice system’s historical preoccupation with the moral worthiness of the child complainant (in order to protect men from false accusations) has given rise to two segregation rules whose imposition is then used to justify her differential treatment and makes rational such treatment. Arguably, the construct of the Unreliable Child thus prevents any interpretation of delay in complaint or lack of corroboration other than fabrication.

The recent complaint and corroboration rules create a distinction between the Truthful Child and the Unreliable Child in a way that is analogous to the distinction that is made between the categories of Woman and Man in the sexual assault trial. The idea of the Unreliable Child is unrelated to real children and their individual reactions and survival strategies to sexual abuse, thus creating a category of false universalism. However, it is necessary to distinguish between the concept of Unreliable Child as a specific gender category within the criminal justice system (as constructed by particular rules of evidence) and the different gender practices of the child complainant, one of which may have been to experience such a degree of powerlessness as a result of being sexually abused, as to act out that powerlessness by remaining silent. In particular, if, as argued in Chapter Three, offenders' sexual behaviour with children is a specific masculine sexual practice that creates gendered relations of power between offender and child, the child who has been sexually abused can be expected to actively practise the gendered position of powerlessness that sexual abuse can impose upon her. Curiously, the gender practices of the criminal justice system construct the victim of sexual abuse as having a degree of power that does not accord with this position of powerlessness, and construct the man accused of child sex offences as particularly vulnerable to the false allegations of revengeful or fantasy prone female children.
Like the criminal justice system's gender practices within the sexual assault trial, the
delay in complaint and corroboration rules construct the female child complainant as a
type of child, the Unreliable Child who is differentiated from the Truthful Child who, like
the category of Man of legal discourse, makes a complaint of sexual abuse within a
reasonable (but undefined) period of time and is able to produce corroborative evidence.
Thus, the Unreliable Child represents a dualism: the revengeful, dishonest or fantasy
prone, dangerous child who is what all children who report child sexual abuse could
potentially be, and who is to be distinguished both from the Truthful Child and from the
Man of legal discourse. She is, on the one hand, distinguished from the Truthful Child,
whilst, at the same time, She epitomizes Female Child “in contradistinction to Man”
(Smart, 1992: 36) because she is what any female child could be. Thus, as a gender
construct, the Unreliable Child of legal discourse is inherently contradictory: she
represents that which is not Man (the unitary category into which the accused is
presumptively placed), as well as being distinguishable from the Truthful Child and yet is
what every child could potentially be. Arguably, the Unreliable Child construct can be
expected to be sufficiently prejudicial in the minds of jurors as to have an important
influence on the decision as to the guilt of the accused, to the extent that the construct
accords with popular and historical notions about fantasy-prone and/or dishonest female
children, as exemplified in Chapter One.

The ongoing currency of the common law rules concerning delay in complaint and
corroboration indicates the primacy of those rules for the cyclical reproduction of gender
practices within the child sexual assault trial, that is, as devices for assigning relative
positions of power to the accused and child complainant through specific gendered
constructions. Reforms to the delay in complaint rule (in the form of s 405B, Crimes Act)
are thus easily subverted by either the discretionary power of a judge to give the common
law warning about delay in complaint, in addition to s 405B directions (as a result of the
decisions in Davies and Crafts), or by virtue of the fact that some judges may ignore the s
405B direction altogether. The same argument applies to reforms to the corroboration rule (in the form of s 164, *Evidence Act*) and the continuing applicability of the common law corroboration rule in child sexual assault trials. Such reforms exemplify how attempts to reform the rules of evidence governing sexual assault trials merely appear to tinker at the edges of the institutional nature of the criminal justice system, since the fundamental gender practices of the criminal justice system remain unchallenged and unchanged. In other words, reforms to the corroboration and delay in complaint rules do not appear to have prevented the cyclical reproduction of particular gender practices within the child sexual assault trial and the creation of specific relations of power between the complainant and accused.

However if we step outside the universal category of Unreliable Child, the assumption of delay in complaint and lack of corroborative evidence being equivalent to fabrication does not sit well with the observation that:

> [i]ronically, research indicates that the major problem with children’s evidence is not the risk of a child making false allegations, although this is still a possibility. *Rather the major problem is their significant level of false denials and retractions.* While children can be encouraged to say that an event occurred knowing full well that it did not, this is difficult to do. When children do make false statements at the encouragement of others, the statements are often not very credible and these children rarely persist with their made up story. On the other hand, to avoid punishment, to keep promises not to tell or to avoid revealing embarrassing information, most children will deny knowing information about an event that they know occurred (ALRC and the HREOC, 1997: 307; footnotes omitted; emphasis added).

---

70 The NSW Department for Women (1996) notes that some judges failed to give the direction as required under s 405B in adult sexual assault trials conducted in NSW between April 1991 to April 1992.

71 In relation to the delay in complaint rule, the Royal Commission (1997) recommended that a more appropriate direction by a trial judge in a child sexual assault trial would be “to direct the jury in terms such as:

- the experience of the courts is that children who are sexually abused frequently do not complain;
- there are many reasons why children may hesitate before making a complaint; ...
- you have been invited to regard the delay in complaint in this case as affecting the complainant’s credibility; and
- it is open for you to do so if you wish, but you should also bear in mind the matters I have just mentioned” (1997: 1122-1123).

However, in retaining the principle that a delay in complaint can still be construed by the jury as ‘evidence’ of fabrication, the gendered category of Unreliable Child remains unchallenged, as does the power differential between child complainant and the accused within the child sexual assault trial.
The operation of the delay in complaint rule as a segregation rule is exemplified by how the rule was applied in *Crofts* (the facts of this case are set out in footnote 65 above). At the outset, the High Court accepted that delay in making a complaint was relevant to an assessment of the complainant's credibility. This means that the Court applied the standard represented by the universal category of Unreliable Child in considering the significance of the delay by the complainant in *Crofts*. In other words, because of the complainant's six year delay between her first alleged experience of sexual abuse and her complaint, the High Court considered that, at trial, "[t]he jury were entitled to accurate assistance by the trial judge concerning the legal significance of the absence of complaint soon after the alleged incidents" ((1996) 186 CLR 427 at 442, per Toohey, Gaudron, Gummow and Kirby JJ).

On the one hand, it could be argued that the directions under s 61(1) of the *Crimes Act* 1958 (Vic) (the Victorian equivalent of s 405B of the *Crimes Act* (NSW) 1900 discussed above), with which the trial judge complied, contained the "accurate assistance" concerning the legal significance of the absence of complaint, that is, that the "delay in complaining does not necessarily indicate that the allegation is false" (s 61(1)(b)(i)) and "that there may be good reasons why a victim of sexual assault may hesitate in complaining about it" (s61(1)(b)(ii)). In fact, at trial, the judge stated to the jury:

[The law requires me to give you this advice, but ... it is a matter that accords with commonsense and human experience. Delay in complaining in sexual abuse cases does not necessarily mean the allegations are false; there may be good reasons why victims of sexual assaults hesitate in making complaints about them. The experience of the law confirms that complaints are often not made immediately after sexual assaults. [The prosecutor], in his address to you, suggested that she was young, confused, [had] feelings of guilt, fear of disbelief, fear of family upheaval, fear of accusation against a family friend. [These] were all suggestions that were put forward that may explain such a delay, and there may well be others. Experience has shown that it is not uncommon for such a delay and the law requires me to say that it does not necessarily mean the allegations are false (Judge Williams; quoted in *Crofts* (1996) 186 CLR 427 at 444, per Toohey, Gaudron, Gummow and Kirby JJ).

On appeal to the High Court, the defence argued first, that the trial judge, when giving his first direction to the jury about the significance of the six year delay in complaint, had erroneously informed them that delay in complaint could not be used to draw the inference that the offences did not happen (thus inferring that delay in complaint evidence...
could be used to prove a fact in issue). Secondly, the defence argued that the trial judge, in a second direction to the jury, had not corrected this error and that "[t]he jury were not given instruction that the absence of early complaint could be used by them in their assessment of the credibility of the complainant. The result was that the direction properly given under s 61(1)(b) ... was unbalanced and unduly weighted in favour of the prosecution" (Crofts (1996) 186 CLR 427 at 445, per Toohey, Gaudron, Gummow and Kirby JJ). Furthermore, the defence argued that the trial judge was required, under s 61(2), to comment on the considerable delay in complaint "in the interests of justice".72 In other words, the defence argued that s 61 required the trial judge to give, not only the directions specified under the provision, but also an instruction that "the lack of a recent complaint is something that the jury can use to found an inference, that inference being that the allegations are false" (Crofts (1996) 186 CLR 427 at 445, per Toohey, Gaudron, Gummow and Kirby JJ), thus effectively cancelling out the benefits of a s 61 direction. However, at trial, "Judge Williams declined to do this, considering that any such instruction would run counter to the requirements of s 61(1)(a) of the Act. He regarded the request as one which asked him to do 'exactly what I am not supposed to do'. The appellant submitted that this represented a misconstruction of the section, read as a whole" (Crofts (1996) 186 CLR 427 at 445, per Toohey, Gaudron, Gummow and Kirby JJ).

Whilst the Criminal Court of Appeal of Victoria also rejected the defence's submission, arguing that the trial judge was under no compulsion to give any direction other than that specified in s 61, the High Court disagreed, on the grounds that:

> [t]he enactment of specific provisions altering the general rules of practice as to the directions given to a jury concerning the reliability of the evidence of alleged victims of sexual offences did not affect the requirement to give specific and particular warnings where they were necessary to avoid a perceptible risk of a miscarriage of justice arising from the circumstances of the case (Crofts (1996) 186 CLR 427 at 446, per Toohey, Gaudron, Gummow and Kirby JJ).73

---

72 Section 61(2) states "[n]othing in sub-section (1) prevents a judge from making any comment on evidence given in the proceeding that it is appropriate to make in the interests of justice". There is no provision equivalent to s 61(2) in the Crimes Act 1900 (NSW).

73 The decision in Crofts is a culmination of a number of cases (R v Davies (1985) 3 NSWLR 276; R v Omarjee (1995) 79 A Crim R 355; R v Miletic (Criminal Court of Appeal of Victoria, 9 August 1996))
This finding was based on an interpretation of the word "necessarily" in s 61(1)(b)(i) ("that delay in complaining does not necessarily indicate that the allegation is false") which was considered to be critical to the operation of the provision in that the word opened the door to other (traditional) interpretations of delay in complaint:

[Delay in complaining may not necessarily indicate that an allegation is false. But in the particular circumstances of a case, the delay may be so long, so inexplicable, or so unexplained, that the jury could properly take it into account in concluding that, in the particular case, the allegation was false (Crofts v R (1996) 186 CLR 427 at 448, per Toohey, Gaudron, Gummow and Kirby JJ; emphasis added).]

Nonetheless, the delay by the complainant in Crofts was neither inexplicable nor unexplained, since the delay was explained at trial and, as discussed below, it is the very type of behaviour that is characteristic of child sexual abuse victims. However, it can be argued that such considerations were obscured by the gendered construction of the complainant in Crofts as the Unreliable Child of legal discourse, by virtue of the essentialist assumptions embodied in that construction about female children who delay their complaints, with such assumptions giving rise to the belief that a miscarriage of justice had occurred.

But what is the source of the miscarriage of justice envisaged by the High Court by the trial judge's failure to give the common law ruling about delay in complaint? What informs the concept "in the interests of justice" on which this decision was based? A common enough phrase, "ordinary human experience" (Crofts (1996) 186 CLR 427 at 451, per Toohey, Gaudron, Gummow and Kirby JJ), was the term used to explain the meaning of the delay in complaint and to justify the High Court's decision that the jury ought to have been warned, in order to ensure that the accused obtained a fair trial. In fact, this term, 'ordinary human experience', can be equated with the category of Man of legal discourse, since no reference was made by the High Court to the actual experiences and responses of sexually abused children. Even though the Court conceded that "the
warning should not be expressed in such terms as to undermine the purpose of the amending Act by suggesting a stereotyped view that complainants in sexual assault cases are unreliable or that delay in making a complaint about an alleged sexual offence is invariably a sign that the complainant’s evidence is false” (Crofts (1996) 186 CLR 427 at 451, per Toohey, Gaudron, Gummow and Kirby JJ), the Court’s resort to notions of ‘ordinary human experience’ for assessing the ‘meaning’ of a six year delay had the effect of introducing the very stereotype (or gender construct) it warned against.

In particular, ‘ordinary human experience’, a category of false universalism, was the measure and means by which the complainant in Crofts was constructed as the Unreliable Child of legal discourse: on the one hand, she is distinguished from the Truthful Child (whose ‘ordinary human experience’ is to report sexual abuse at the first reasonable but undefined opportunity); on the other hand, she epitomizes Unreliable Child in “contradistinction to Man” (Smart, 1992: 36) because she is (as the delay in complaint rule prophesises) what any female child could be. Thus, the rule justified her differential treatment as a particular type of child: according to the High Court, the complainant had the opportunity to complain earlier but failed to do so (Crofts (1996) 186 CLR 427 at 444, per Toohey, Gaudron, Gummow and Kirby JJ), a ‘fact’ which justified her placement into the gender category of Unreliable Child, whilst Crofts, who denied all allegations of abuse, is presumptively placed in the category of Man of legal discourse and thereby distinguished from the complainant.

The resort to ‘ordinary human experience’ thus dispenses with the actual lived experience of the complainant and creates a category of false universalism; it is ‘ordinary human experience’ that a delay of six years is suggestive, not of a sexually abused and traumatised child, but a child prone to fabrication. By being placed in this specific gender category, the complainant in Crofts is distinguished from the Truthful Child and the Man of legal discourse, and becomes a product of the cyclical practices of gender within the

grounds that “common fairness and common experience” dictated that delay in complaint “should be taken into account in favour of the accused” (R v Davies (1985) 3 NSWLR 276 at 278, per Hunt J).
criminal justice system, thus justifying the differential treatment of her through the operation of the delay in complaint rule.

In particular, this analysis conceives of the concept of 'ordinary human experience' as a specific gender practice that reinforces the relationship of power between the complainant and the accused; that is, through the universal (hegemonic) concept of 'ordinary human experience', the complainant becomes 'unbelievable' and is constructed as the Unreliable Child of legal discourse, whilst the accused becomes 'believable', and is constructed as the Man of legal discourse. In addition, the concept of 'ordinary human experience', arguably, becomes the means by which the holders of power reinforce that power through giving their own subjective version of commonsense the status of universal knowledge and truth.74 Arguably, this status is a function of the public power that judges exercise, in the context of an institution which is a site for the reproduction of hegemonic masculinity.75 In particular, the analysis of the judicial decision-making in Crofts shows how judges reproduce that power through the application of gender specific rules and concepts within the trial process.

**Challenging the Rationale behind the Delay in Complaint Doctrine**

Studies on the prevalence of child sexual abuse within the general community contain important information for understanding the dynamics of child sexual assault and the response of victims, contrary to the assumptions embodied in the delay in complaint doctrine.

The studies discussed below are those victim report studies listed in Table 4.2 of Chapter Four which reported data on (i) the proportion of respondents who disclosed the abuse

---

74 See, for example, Smart (1990) who has analysed the disjuncture between law's construction of the truth and women's experiences of sexual assault.

75 The concept of 'ordinary human experience' can be said to equate with the concept of 'commonsense' which, as Graycar (1995), discusses is a frequent source for judicial fact finding (1995: 274). Although the concept of commonsense has been analysed by feminist writers, such as Graycar (1995), MacCrimmon (1991) and Schepple (1991), I have sought to analyse these concepts as specific cyclical gender practices within the criminal justice system which, as argued in this chapter, is a specific social institution or structure that reproduces hegemonic masculinity.
prior to the survey in question; (ii) the age of onset of the abuse; and (iii) the extent of repeated abuse. Interestingly, the following discussion shows that none of the studies support the rationale behind the delay in complaint doctrine as it applies to the child complainant in a sexual assault trial.

In relation to disclosure of abuse, Russell (1983) reported that of the women in her American community sample who reported at least one experience of sexual abuse before the age of 18, only 2 per cent of intra-familial sexual abuse cases and 6 per cent of extra-familial sexual abuse cases were ever reported to the police (1983: 142). Similarly, Baker and Duncan (1985) found that, out of the men and women in their British study who reported being sexually abused before the age of 16, only 12 per cent of female respondents and 8 per cent of male respondents disclosed the abuse (1985: 459). The first national prevalence study of child sexual abuse in the USA conducted by Finkelhor et al (1990) showed that the majority of respondents (56% of men and 57% of women) did not report the abuse within a year of its occurrence and a significant proportion of respondents never reported the abuse to anyone (42% of men and 33% of women).

In a study of a community sample of New Zealand women, Anderson et al (1993) reported that only 37 per cent of victims disclosed within one year of the abuse, 10 per cent disclosed between one to 10 years after the abuse, 24 per cent disclosed 10 years or more after the abuse and 28 per cent had not disclosed before the survey, whilst only 7.5 per cent of victims “had the abuse reported to either social work or police investigators” (1993: 915). In addition, Anderson et al found that “[t]here were differences in reporting patterns for relationship with the abuser, with those abused by a close family member being significantly less likely to report the abuse within a year, compared with other victims” (1993: 915). When respondents to the survey were asked what prevented them disclosing the abuse, 29 per cent said they expected to be blamed, 25 per cent said embarrassment, 24 per cent said not wanting to upset anyone, 23 per cent expected they would be disbelieved, 18 per cent said they were not bothered by the abuse, 14 per cent

---

76 Only some of the studies listed in Table 4.2 are discussed, since not every study reported such data.
said they wished to protect the abuser, 11 per cent said fear of the abuser and 3 per cent said obedience to adults (1993: 915).

Anderson et al concluded that because “[t]he majority of abuse episodes were serious assaults (involving genital contact, intercourse, attempted intercourse), carried out by family members or known acquaintances, on prepubertal girls, which were rarely reported” (1993: 918) and because stranger abuse accounted for only 15 per cent of all abuse experiences, there is “a substantial number of children in the community who know and could identify their abuser but are unable to unwilling to do so” (1993: 917). In fact:

[t]he findings of this study indicate that if abuse is not disclosed within a year of the episode, it is likely the victim will not disclose for some time, up to 10 years or more later. This has implications for providers of therapeutic services for victims, who may see victims as young adults disclosing for the first time, and also for legal services dealing with late disclosures as a complaint against the perpetrator. It is important those professionals understand the frequency and the reasons for late disclosure (Anderson et al, 1993: 917; emphasis added).

In a study of a community sample of Australian women, Fleming (1997) reported that only 10 per cent of abuse victims reported the abuse to the police, a doctor or other agency, such as a sexual assault service. Eighty of the 144 women who reported sexual abuse (55.6 per cent) had disclosed or tried to disclose the abuse as children, although the pattern of disclosure varied. Of these 80 women, five attempted to disclose the abuse but their attempts to do so were unsuccessful, 23 disclosed or tried to disclose at the time of the abuse, 7 within the first year, 14 disclosed or tried to disclose between one and 10 years after the abuse, whilst 36 (45 per cent) “did not disclose until at least 10 years after the first abuse episode” (1997: 67). In fact, Fleming reports that “there were significant differences in the timing of disclosure ... by age at time of abuse. Girls under 12 years at the time of the abuse were less likely to tell someone within a year of the abuse than were girls aged over 12 years” (1997: 67). In 49 per cent of cases, mothers were the person most frequently told of the abuse, followed by friends (32 per cent) and siblings (29 per cent) (1997: 67-68). Fleming also reports that “[w]hen the women were asked what prevented disclosure, by far the most common reason given was embarrassment or shame (47/80 [46%]), followed by the belief that the other person would not be able to help them (23/80 [23%]), or would somehow blame or punish them for the abuse (19/80
Another feature of the patterns of disclosure reported by Fleming was that rates of disclosure “showed a significant decrease with age”, with 83 per cent of women aged 17-24 years having disclosed the abuse, compared with 59 per cent of women aged 25-35 years, 51 per cent aged 35-44 years and 38 per cent aged 45 years or over (1997: 68).

Some of these studies also provide information about the severity of abuse experienced, the likely impact on the victims’ lives and their ability to disclose. For example, Baker and Duncan (1985) reported that 23 per cent of respondents in their study were repeatedly abused by the same person and 14 per cent were subject to multiple abuse by different offenders (1985: 459). Baker and Duncan also found that respondents were more likely to have reported that the abuse had a damaging effect on their lives if they were female and were “repeatedly abused within the family from before the age of 10 years” (1985: 462). Such information tells us that:

[...]

Siegel et al (1987) reported that of those who were sexually abused before the age of 16, 46 per cent had been assaulted more than once during childhood, with 13 respondents reporting that the number of times they were abused was too many to count (1987: 1148). When these 13 respondents were excluded, Siegel et al found the average number of assaults to be 3.9. Twenty-three per cent of respondents (out of a total of 149) reported that they had experienced continual assault during childhood, the mean age of onset of the abuse for these respondents was 8.5 and “the mean number of years the situation persisted was 4.7” (Siegel et al, 1987: 1149). The perpetrators of the respondents who experienced continual abuse were “equally divided among relatives ... and acquaintances”, whilst five
respondents reported continual assault by both (Siegel *et al*, 1987: 1149). Continual assault by a relative was significantly higher amongst female children than males (59 per cent compared with 8 per cent).  

In relation to severity of abuse, Anderson *et al* (1993) reported that 42 per cent of women in their study experienced more than one episode of abuse, with 28 per cent experiencing abuse 2 to 10 times and 14 per cent more than 10 times. Twenty per cent of abuse episodes lasted for more than one year, with 10 per cent of episodes lasting more than three years (1993: 914). Sexual abuse was rarely reported before four years of age, although Anderson *et al* consider that this “may be an underrepresentation of the true prevalence of sexual abuse in very young girls” (1993: 914). Their study shows that “[t]he ages of greatest reported risk were 8 to 12 years, with the 11th year having the maximum abuse rate” (1993: 914).

Fleming (1997) reported that the mean age at first abuse experience was 10 years which is consistent with the other studies discussed above; that is, that “most of the reported abuse occurs in prepubescent girls”. However, Fleming notes that since few women reported abuse under the age of five, and, since “the [incidence] rate of sexual abuse per 1000 children is similar in the two- to five- and six- to 10-years age groups (2.7 and 2.6 per 1000 children) ... [t]his suggests that abuse in this survey may have been under-reported because abuse that occurred before the age of five was not remembered” (1997: 68; footnotes omitted). In relation to frequency of abuse, of the 55 women who were abused only once in Fleming’s study, 70 per cent were abused by someone outside the family. However, “[w]hen the abuser was a relative, the abuse was significantly more likely to have occurred regularly”. In addition, “[t]hose abused by a relative were

77 No data was reported on how many respondents reported the assaults to police or others.
78 It is becoming more widely accepted that sexual abuse of children can begin at very young ages. For example, Khan and Sexton (1983) report that half of the sexually abused children they studied were under 5 years of age and Jaudes and Morris (1990) report that the average age of the abused children in their study were 6.2 years with 43% under the age of 5. As Jaudes and Morris observe, “[t]he age of a child is strongly associated with several characteristics of abuse. Younger children are more likely to have sexually transmitted disease as a sign of abuse, less likely to identify the perpetrator, and less likely to give an outcry of sexual abuse” (1990: 67; emphasis added).
significantly more likely to have been abused more often ... than those abused by non-relatives" (1997: 67).\textsuperscript{79} For the women in Fleming’s study who had been abused more than once, “[t]he period of abuse was less than one year for 57% of episodes, less than two years for 14% of episodes, and more than two years for 29% of episodes” (1997: 66). Furthermore, the majority of the women who were abused (72 per cent) reported that some form of coercion was used and “most commonly, they were frightened into compliance”, that is, 64 per cent reported verbal threats and threats of violence and 7 per cent reported actual violence (Fleming, 1997: 67).

All in all, the above studies provide evidence of six main consistent features of children’s reactions to sexual abuse:

(i) a majority of sexually abused children do not report the abuse at the time it occurs;

(ii) a majority of children either only disclose the abuse some years after it occurred or never disclose at all;

(iii) the younger the child, the less likely she or he will report the abuse;

(iv) embarrassment, shame, fear of punishment and feeling responsible for the abuse are key factors that prevent children from reporting;

(v) a significant minority of children will experience repeated abuse over an extended period of time;

(vi) repeated abuse appears to be more likely to occur if the abuser is a relative and the intrafamilial relationship means a child is less likely to disclose.\textsuperscript{80}

\textsuperscript{79} This concurs with the findings of Mullen et al (1988) who reported that repeated assaults were more common amongst those reporting abuse when the perpetrator was a relative (1988: 842).

\textsuperscript{80} This finding is supported by a study of 125 sexually abused children under the age of six years carried out by Mian, Wehrspann, Klajner-Diamond, LeBaron and Winder (1986) who found that disclosures were significantly less frequent when the abuse was intra-familial. Interestingly, the complainant in Crofts (discussed above) demonstrated this pattern of disclosure in that she was pre-pubertal at the time the abuse commenced, she experienced repeated abuse over an extended period of time (6 years), she experienced confusion, guilt, fear of being disbelieved and fear of family upheaval if she complained, and Crofts was akin to a family member in that the complainant’s father lived with Crofts and his family in Melbourne due to work commitments, whilst the complainant and her mother lived in Swan Hill and a number of visits and overnight stays took place between the two families.
Failure to disclose, thus, appears to be compounded by factors such as the closeness of the relationship between offender and victim, the victim’s age at time of abuse (with most reported abuse occurring to pre-pubescent children) and repeated abuse. Like the crime of adult sexual assault (NSW Sexual Assault Committee, 1994; Australian Bureau of Statistics, 1994; Parliament of Victoria, Crime Prevention Committee, 1995: 75), under-reporting of child sexual assault is a typical, rather than an aberrant, feature of the crime.

Interestingly, these findings concerning children’s responses to sexual abuse have been mirrored by parental responses to their children’s’ abuse. For example, Finkelhor’s (1984) study of the responses of parents whose children had been sexually abused shows that none of the parents reported the abuse to the police when the offender was a relative, compared to 23 per cent of cases of abuse by acquaintances and 73 per cent of cases of abuse by strangers (Finkelhor, 1984: 76). The common perception of victims that they will not be believed or supported if they report sexual abuse by a relative or acquaintance is supported by these findings, since the study shows that parents are likely to fail to support a child in such circumstances. The reasons given by parents for not reporting were: incident not serious (45 per cent), no one else’s business (75 per cent), didn’t want neighbours or friends to find out (45 per cent), police or social workers might frighten child (15 per cent), retaliation by abuser (15 per cent), child may have been at fault (15 per cent), police or social workers might frighten child (15 per cent), retaliation by abuser (15 per cent),...

---

81 In 1993, an Australia-wide crime and safety survey was conducted by the Australian Bureau of Statistics. In relation to women over the age of 18 who reported being sexually assaulted, the survey found that only 25 per cent reported the incidents to police. The two most common reasons for not reporting were that the victim believed the offence was a private matter and fear of reprisals.

82 Only 39 per cent of adult sexual assaults and 24 per cent of child sexual assaults recorded in a confidential phone-in conducted in November 1992 were reported to police (NSW Sexual Assault Committee, 1994: 35). Of the sexual assaults that were reported to police, those perpetrated by strangers and those which involved a weapon or physical force were far more likely to be reported (NSW Sexual Assault Committee, 1994: 27). Sixty per cent of respondents who reported child sexual assaults in the phone-in did not report to police because they felt guilty about the assault, 46 per cent said they were afraid of retaliation by the offender, 28 per cent said they did not want the offender to get into trouble with the police, 30 per cent said they were worried about going to court, 40 per cent said they thought the police would not believe them, 41 per cent believed it was useless to report the assault, 35 per cent were too emotionally upset to report, 46 per cent did not want family or friends to know, 40 per cent said they were either discouraged from or advised not to report, 45 per cent said they were unsure that they had been sexually assaulted and 48 per cent said it did not occur to them to report (NSW Sexual Assault Committee, 1994: 28).
per cent), wished to forget incident (50 per cent), wanted to handle situation by self (90 per cent), felt sorry for abuser (50 per cent), did not wish to get abuser into trouble (50 per cent) or belief that agencies rarely do anything (11 per cent) (Finkelhor, 1984: 85), indicating that most parents were either concerned to protect the abuser, or considered the abuse was a matter for the family to deal with.

Factors Associated with Delay in Complaint

Studies on how offenders target and silence children are an important source for understanding the patterns of disclosure of sexually abused children, contrary to the assumptions embodied in the delay in complaint doctrine. A number of studies show that child sex offenders engage in a complex process of grooming their victims in order to initiate and maintain sexual contact. In recognising that sexual abuse usually occurs “in the context of a relationship” (Berliner and Conte, 1990: 37) whether or not the child is actually related to the offender, Berliner and Conte describe a three-stage process by which sex offenders “groom” their victims: “sexualization of the relationship [by the offender], justification of the sexual contact, and maintenance of the child’s cooperation” (1990: 37). The features of this process are as follows:

- **sexualisation** is designed “to engage the child in the sexual activity and permit the abuse to go on over time”. It generally “appears to take place gradually” commencing with “normal affectional contact or in the context of ordinary physical activities” and “[i]n few ... cases [do] the children perceive the relationship to have abruptly changed from normal to sexual” (Berliner and Conte, 1990: 37; emphasis added). At the initiation stage, “[o]ffenders say that they test the children’s response to contact with body parts close to the genitals or make genital contact appear accidental as they gradually approximate sexual touch. Social learning principles of desensitization and progressive approximation, support the power of this technique to condition behavior” (Berliner and Conte, 1990: 39). It also appears that the sexualisation process is accompanied by distorted interpretations and beliefs about the child’s involvement or desire for the abuse; for example, Phelan (1995) reports that more than half of the incestuous fathers in her study reported the belief that their daughters
enjoyed the abuse, that they willingly acquiesced or willingly initiated sexual activity, whilst none of the daughters reported enjoyment, willing acquiescence or initiation of the abuse (Phelan, 1995: 16);

- *justification* and rationalisation are used by sex offenders to ensure continued access to the child. Berliner and Conte (1990) report that the two most common justifications that were used by offenders to their victims were “to assert that it was not really sexual or to acknowledge that it was sexual but was presented as acceptable” (1990: 37). Such justifications are likely to allow the offender to deny the nature of their behaviour, as well as having the effect of silencing their victims (Phelan, 1995: 15-16);

- *co-operation* is the third aspect of the victimisation or grooming process and describes “the way offenders find to engage the children in sexual relationships, keep them involved, and prevent them from telling” (Berliner and Conte, 1990: 37). It may involve threats, intimidation, exploiting a child’s vulnerability (rather than overt forms of coercion) such as “the exploitation of a child’s normal need to feel loved, valued, and cared for by parents” or exploiting a “child’s urge to protect parents whom they love” (Berliner and Conte, 1990: 38). Despite the apparent fact that some people find it difficult to believe that offenders engage in intentional and premeditated sexual exploitation, as Berliner and Conte observe, this belief “contrasts with what the offenders themselves say about their own conduct ... and the overwhelming evidence that they are fully aware of the process they employ” (Berliner and Conte, 1990: 38). Similarly, Conte, Wolf and Smith (1989), Phelan (1995) and Elliott *et al* (1995) all report that offenders target children for sexual exploitation, condition the children over a period of time to accept sexual contact and increasingly serious types of sexual contact, and manipulate them verbally or non-verbally to maintain sexual access.\(^8^3\)

---

\(^8^3\) Delays in reporting will also be an inevitable result of some cases of child sexual abuse where the child is of pre-verbal age and where the child suffers from traumatic amnesia (Cossins, 1997); for example, in Australia for the period 1995-96, Broadbent and Bentley (1997: 41) report that there were 435 cases of substantiated child sexual abuse involving children under the age of 3 years.
Berliner and Conte report that in their study of twenty-three victims of child sexual abuse, “almost all the children reported some type of coercion either to gain [their] cooperation or to prevent reporting” and a majority reported threats, such as threats of physical harm (death or mutilation), threats of abandonment, or rejection, threats of the family being destroyed, or the offender being punished or emotional coercion such as bribery or what people would think about the victim (Berliner and Conte, 1990: 34-35). In addition, a majority of children reported that they did not know they were being sexually abused and that “in most cases offenders made statements about the sexual activity to justify it”, such as “I need to do this to reduce my tension”, “I’m teaching you about sex”, “You won’t remember”, “You’re my daughter so its OK”, “This is the way people show their love”, “You want me to do this” (Berliner and Conte, 1990: 34-35). More than half of the victims interviewed reported they were told that:

they would like it or wanted it or that they looked older or were mature for their age. In many cases offenders talked about how they needed the contact because they were lonely or their wives didn’t love them or it made them feel better. The children were [also] made to feel complicit by such statements as ‘You didn’t tell me to stop’ (Berliner and Conte, 1990: 34).

Other studies support the grooming process described by Berliner and Conte. For example, Phelan (1995) reported the methods used by offenders to silence their victims after conducting interviews with forty step-fathers and fathers involved in a treatment program for child sex offenders, together with interviews of their daughters. Five men reported threatening their daughters (for example, “I told her not to tell anybody. I told her I’d go to jail and, your mother and I will get a divorce”), some men bribed their children, whilst others used other forms of verbal manipulation, such as, “I’d tell her that if she said anything ... I’d tell her mother about all her little sexual acts and that she was quite active”, or “I told her it was natural to have intercourse, that it would probably hurt a little bit but it would give her pleasure too” (Phelan, 1995: 10). Fourteen fathers said that silence surrounded the abuse and that they used non-verbal means to initiate sexual activity and to maintain it. These non-verbal means, together with their daughters’ own accounts of the abuse, suggest that these girls were silenced by confusion, lack of understanding, and lack of knowledge that the abuse was wrong (Phelan, 1995: 11-12), particularly since in the majority of cases, the abuse “began as part of already existing
and, generally speaking, culturally normative family interactions”, such as putting a child to bed, watching TV, reading bed-time stories, play, and caring for a sick child (Phelan, 1995: 10-11). In addition, Phelan reports that the daughters of these offenders commonly dealt with the abuse by saying to themselves, “this is not happening to me” and that by the time they realised that their fathers’ behaviour was wrong, they felt responsible for failing to take action the first time the sexual abuse occurred, thus blaming themselves rather than their fathers. This combination of blame and denial is likely to be a very powerful self-silencing mechanism used by sexually abused children. For example, some daughters reported (Phelan, 1995: 18-19):

The whole time I'm thinking, "I'm imagining this, hold on, this can't be happening, no way". My dad wouldn't be doing that, what am I thinking?

I'm making it up or something - so I would push it out of my mind so I wouldn’t have to remember it.

I knew there was something wrong. I just didn’t know what it was.

I was ignorant. I didn’t know what he was doing. I didn’t know what it was called so I wasn’t brave enough to tell what he was doing or tell anybody what it was.

I didn’t know what to do about it. I was scared and I don’t know what he was doing.

I really didn’t know what to do. I didn’t know how to react. I was confused and didn’t want to get hurt.

Phelan (1995) reports that most of the 44 daughters in her study did not report the abuse the first time it occurred and in most cases the abuse was repeated on several occasions over periods of 0.125 to eight years (Phelan, 1995: 19-20). Berliner and Conte (1990) also report that a majority of children in their study did not report the abuse the first time it happened and “in many instances the child did not initiate the report” (1990: 38). They consider that a child’s particular emotional vulnerability can make them an easier target for sexual abuse and that this emotional vulnerability itself can prevent a child from reporting the abuse. For example:

Kathy's father was an alcoholic and violent man prone to holding guns to family members' heads. ... Kathy does not ever remember being touched, held, or told she was loved. She was an easy mark for the neighbor man who encouraged her to confide in him about her troubled family life. ... Kathy’s guilt over having betrayed her family, and her secret desire
to have physical contact with someone was enough to ensure her silence (Berliner and Conte, 1990: 35).

In fact, emotional vulnerability appears to be a primary risk factor for victimisation, as evidenced by Elliott et al's (1995) study of the selection patterns of 91 child sex offenders (discussed in detail in Chapter Four) and as evidenced by the re-analysis of offender interviews in Chapter Four in which some offenders described how they targeted children; arguably such offenders were also aware of the economic and cultural marginality and vulnerability of some of their victims. Elliott et al found that children were selected by offenders on the basis of their vulnerability: “the child who was most vulnerable, had family problems, was alone, was nonconfident, curious, pretty, ‘provocatively’ dressed, trusting, and young or small” (Elliott et al, 1995: 580) was the child most likely to be selected for abuse. Finkelhor et al (1990) reported in relation to the first national prevalence study of child sexual abuse in America that “[g]rowing up in an unhappy family appeared to the most powerful risk factor for abuse ... [since] both men and women who described their families this way were more than twice as likely to be abused” (1990: 24). Similarly, Finkelhor et al (1990) also showed that this was a significant risk factor both for children who were abused by a family member and for children who were abused by someone outside the family; it can be expected that children who grow up in unhappy families are less likely to experience sufficient emotional support within the family to enable them to report the abuse.

In another study of the methods used by child sex offenders, Kaufman, Hilliker, Lathrop and Daleiden (1993) analysed the targeting practices of 32 offenders who were undergoing treatment in a treatment program. The offenders were asked to complete questionnaires about how they sought out victims and how they maintained their silence, whilst their therapists were asked what they knew about such behaviours of their clients. By comparing the responses of offenders and therapists, Kaufman et al found that offenders under-reported their use of threats and coercion compared to the history provided by their therapists, leading Kaufman et al to conclude that these “[r]esults
suggest that, even under the best of circumstances, offenders’ self-report ... may reflect only a portion of their actual activities” (1993: 224). In fact:

[t]he frequent and well documented presence of a “grooming” process as a precursor to the abusive behavior ... and the presence of ongoing attempts to secure victims’ silence following the abuse ... highlight the need for a broader based investigation of the victim-offender “relationship”. Findings from this study suggest that the process of coercion may begin long before the actual occurrence of the sexual act, and continue long after sexual contact has ceased. For example, offenders may initially provide victims with added attention and special privileges, or even facilitate their participation in inappropriate behavior (e.g., use of drugs and alcohol) simply to create a context where a victim feels dependent upon the discretion of the offender. Threats to revoke benefits or reveal improprieties can then be used to gain and maintain sexual involvement with the victim, and ensure the victim’s silence regarding the abusive acts (1993: 226; references omitted; emphases added).

The grooming process described above supports a theory proposed by Summit (1983) that sexually abused children suffer from “child abuse accommodation syndrome” which as a coping behaviour, contradicts the beliefs about how children should and do deal with being abused. The features of this syndrome can account for the high degree of non-disclosure that has been reported in various studies, with these features being (1) secrecy, (2) helplessness, (3) entrapment and accommodation, (4) delayed, conflicted and unconvincing disclosure, and (5) retraction (Summit, 1983: 181). In a more recent study, Sorensen and Snow (1991) proposed a similar pattern of disclosure for children who had been sexually abused; that is, denial, tentative disclosure, active disclosure, recant and reaffirm. Although Bradley and Wood (1996) consider there is little empirical support for the phenomenon of retraction by sexually abused children, what Summit and Sorensen and Snow describe correlates with offenders’ accounts of how they maintain their victims’ silence and indicates that, rather than disclosure being a spontaneous event, it is a slow, difficult process for the sexually abused child. For example, the process of accommodation to incest involves the belief by the child that she has a “responsibility to keep the family together by submitting to the sexual abuse and keeping it a secret – in other words, living a lie” as well as withdrawal from friends and society: “[k]eeping the incestuous secret demands guardedness and restraint – don’t have too many friends, don’t talk about oneself, don’t be noticed. Long term accommodation to the abuse makes withdrawal almost a necessity” (German, Habenict and Futcher, 1990: 434). Greenwald and Leitenberg (1990) confirm that several studies have shown that the impact of child
sexual abuse is greater the longer the duration of the abuse, if force or threat of force is used, if penetration occurred and if the abuser was a parent. Cameron (1994) describes some survivors of child sexual abuse as "veterans of a secret war" because they have "endured conditions of helpless terror and threats to body and life" (1994: 117) in ways that she found to be analogous to the experiences of veterans of the Vietnam war. Prompt complaint as required by the criminal justice system, therefore, becomes an impossibility for those children who must adapt for survival reasons to the position of powerlessness that sexual abuse imposes upon them.

Phelan (1995) considers that the failure of children to report can be understood in light of the social context in which children are raised, that is, the context in which "[families and schools ... have historically socialized children to acquiesce to authority, to be compliant to adults, and to unquestionably follow the rules" (Phelan, 1995: 21). More particularly, as I argued in Chapter Four, the grooming process by child sex offenders supports the theory that child sex offending establishes specific gendered relations of power between the offender and child. Offenders’ accounts of how they target their victims (discussed above and in Chapter Four) indicates that the grooming of children is really a process by which the offender establishes a relationship of power with the child, through gaining a child’s trust, promising them special favours, appearing to be more interested in a child than their parents, targeting children who are neglected and unloved and who crave love and attention, using secrecy, blame and/or threats to silence a child or playing on a child’s or parents’ sympathy for the abuser. Where such a relationship of power is established, this suggests that a child’s response to sexual abuse will be one of silence and denial, rather than a quick, prompt declaration of abuse. In other words, the sexually abused child can be expected to engage in activities that reflect their position of powerlessness (silence and denial) rather than activities that reflect a position of empowerment (disclosure, complaint and reporting to police).

Finally, delays in complaint may well continue long after childhood has passed due to the long-term effects of child sexual abuse. A plethora of studies show that victims of child

It is likely that the more severe the long-term effects, the less likely it will be that a traumatised adult will turn to the criminal justice system as a way of dealing with their emotional and psychological problems. In addition, other factors in a victim’s life can contribute to the severity of the long-term effects of child sexual abuse, as Steele and Alexander (1981) explain:

[The later effects of sexual abuse cannot be simplistically related to the sexual nature of the abuse. The impact of such events upon the child will be markedly different according to the child’s age, state of psychosexual development, the nature of the abusive act, the frequency of repetition, the amount of aggression involved, and the relationship of the abused to the abuser. There are also the profound effects of the kind of relationships existing with non-abusing caretakers and with other significant figures in the child’s life, both before, during, and after the sexually abusive episodes. In addition to these factors, the response of the environment when abuse has been revealed has a significant impact on the ways in which the child understands his/her experience (1981: 223-224).

Such information challenges the criminal justice system’s perception of child sexual abuse victims as having the ‘free will’ to extricate themselves from the relationship of abuse imposed upon them and to promptly report, irrespective of whether the abuse involves overt or subtle forms of coercion. It also poses a challenge to the prevalent belief that children will make up allegations of child sexual abuse as an act of revenge against authority figures. As Summit observed in 1983:

[The victim of child sexual abuse is in a position somewhat analogous to that of the adult rape victim prior to 1974. Without a consistent clinical understanding of the psychological climate and adjustment patterns of rape, women were assumed to be provocative and substantially responsible for inviting or exposing themselves to the risk of attack. The fact that most women chose not to report their own victimization only confirmed the unchallenged suspicion that they had something to hide. Those who reported often regretted their decision as they...
found themselves subjected to repeated attacks on their character and credibility. The turnaround for adult victims came with the publication of a landmark paper in the clinical literature during a time of aroused protest led by the women's movement. ... A similar reception is long overdue for juvenile victims (1983: 189).

Cross-Examination of the Female Complainant of Child Sexual Assault

In light of the above analysis of how the delay in complaint and corroboration rules operate as segregation rules within the child sexual assault trial, it is necessary to consider the extent to which methods of cross-examination are likely to contribute to low conviction rates for child sex offences. In particular, it is necessary to consider whether cross-examination is a specific site for the cyclical reproduction of a gender regime within the child sexual assault trial through an application of the above segregation rules and the construction of the Unreliable Child of legal discourse.

The starting point for this discussion is an analysis of the findings of the inquiries conducted by the Parliament of Victoria, Crime Prevention Committee (1995), the ALRC and the HREOC (1997), and the Royal Commission (1997) in relation to the practice of cross-examination in child sexual assault trials, as well as a study conducted by Cashmore and Bussey (1995). Whilst cross-examination is a feature of all criminal trials, and is likely to be a site for the reproduction of various cyclical patterns of gender and relations of power, this discussion focuses on cross-examination as a site for the reproduction of specific gender patterns through the application of specific segregation rules and the Unreliable Child construct.

In their inquiry into children's participation in the criminal justice system, the ALRC and the HREOC (1997) found that:

whatever the jurisdiction, the structures, procedures and attitudes to child witnesses within all these legal processes frequently discount, inhibit and silence children as witnesses. In cases where the child is very young or has or had a close relationship with one of the parties or where the subject of the evidence is particularly sensitive, children often become so intimidated or distressed by the process that they are unable to give evidence satisfactorily or at all (ALRC and HREOC, 1997: 297; footnotes omitted).
In light of their findings, the ALRC and the HREOC made a number of recommendations which were designed to ensure that “child witnesses are able to give reliable evidence”, to “enhance the status of children as witnesses so that their evidence is given appropriate weight” and to “minimise the stresses placed on child witnesses” (ALRC and HREOC, 1997: 298). In making their recommendations, the ALRC and the HREOC relied on provisions of the Convention on the Rights of the Child (CROC) which Australia ratified on 17 December 1991 (ALRC and HREOC, 1997: 75), in particular, articles 12, 19 and 39, which state, respectively, that State parties are to:

(1) assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
(2) For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, whether directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of the national law (Article 12).

Take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child (Article 19).

Take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts. Such recovery and integration shall take place in an environment which fosters the health, self-respect and dignity of the child (Article 39).

It is also worth noting Article 34 of the CROC which states that State parties are to:

protect the child from all forms of sexual exploitation and sexual abuse. For these purposes State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
(a) the inducement or coercion of a child to engage in any unlawful sexual activity;
(b) the exploitative use of children in prostitution or other unlawful sexual practices;
(c) the exploitative use of children in pornographic performances and materials.

The ALRC and the HREOC consider that “these articles require the evidence of child witnesses to be taken in a way that promotes the physical and psychological recovery, health, self-respect and dignity” of children involved in the criminal justice system (1997: 298). However, the above analysis of the construction of the Unreliable Child within the child sexual assault trial indicates that the adversarial system is not a forum in which
adherence to the above articles is likely to take place. Whilst, ostensibly the purpose of cross-examination within the adversarial system is “properly an attempt to create reasonable doubt by revealing inconsistencies in testimony, ferreting out untruthful testimony and even discrediting the witness” (ALRC and the HREOC, 1997: 343), the technique of cross-examination within the child sexual assault trial, whilst ostensibly designed to test the complainant on the veracity of his/her evidence, is, arguably, an important site for the reproduction of the criminal justice system’s cyclical patterns of gender, in particular the construction of the universal category of Unreliable Child. Arguably, the more such a construction is reproduced within the trial, the more likely that construct will influence the jury’s decision as to the guilt or innocence of the accused. For example, some studies have shown that the type of questions asked of child witnesses by defence barristers are designed, not to elicit an accurate answer but, as a result of sentence length and verbal construction, to confuse the child (Parliament of Victoria, Crime Prevention Committee, 1995: 207), and, it can be expected, to reinforce the unreliability of the child’s evidence and, hence, the construct of the fantasy-prone and/or dishonest child.

In the context of the child sexual assault trial, a number of inquiries in Australia have concluded that cross-examination is often used to intimidate and degrade the child complainant, exploit a child’s young age and vulnerability, impede children’s psychological recovery, undermine a child’s self-respect and dignity, and abuse the child mentally. As a result of their inquiry into children and the criminal justice system, the ALRC and the HREOC (1997) observed, “[w]e encountered a tremendous outpouring of concern about the treatment” of child complainants in criminal proceedings relating to sexual or physical abuse (1997: 298) and “heard significant and distressing evidence that child witnesses are often berated and harassed during cross-examination to the point of breakdown” (ALRC and HREOC, 1997: 343; footnotes omitted). For example, the ALRC and the HREOC (1997) heard evidence of disturbing forms of cross-examination at committal hearings, as one mother of a victim of child sexual abuse explained:

[the defence] accused her of doing this for gain of money. He told her that he thought she reacted like she did because she was sleeping around. Mind you, at the time of the assault,
she was 9 years old... he told her he believed something happened, she then accused her father and said her father had really done it but she was blaming this man instead... in two sentences he ruined my daughter... She came out of court, she was sick, she could not stop vomiting (ALRC and HREOC, 1997: 318).

In a survey of the experiences of children and their parents who had been through the court process in relation to child sexual assault matters, Cashmore and Bussey (1995) report that:

- Problems associated with cross examination were commonly reported by both children and their parents. Next to seeing the defendant, this was the aspect most commonly mentioned by children as being stressful and needing to be changed. For about 30% of the children, cross examination was the worst part of testifying. The main problems were being accused of lying, the harshness of the questioning techniques, and the length of cross examination (1995: 32).

- In their study, Cashmore and Bussey found that parents were:

  - highly critical of lengthy cross examination (up to ten hours) both because of the stress it induced and because children had difficulty maintaining concentration with few breaks.
  - Children specifically commented on the repetitiveness of questions. It is worth noting that repetitive questions with children can be very confusing and may induce inconsistent answers as children try to understand what is required. As several studies have shown, children may change their answer when the question is repeated believing that the first answer was wrong or somehow unsatisfactory (1995: 33; footnotes omitted).

- In addition, “[a]part from direct accusations of lying, children ... reported difficulty with the implications of questions. The implication in questions that start with ‘Why didn’t you ...’ is that they are somehow guilty and responsible” (Cashmore and Bussey, 1995: 33). Children in the survey also commented on “long and complicating questions they could not understand and ... trick questions that involved ‘changing the words around’. Parents referred to ‘language that was too complex’, ‘developmentally inappropriate’, and that required specific time related information that children could not be expected to remember” (Cashmore and Bussey, 1995: 34).

Cashmore and Bussey report that the problems identified by the children and parents in their survey “were exacerbated for children by two factors. The first was strong judicial warnings to the jury about the dangers associated with children’s evidence. Warnings were seen as unfair especially when the defendant did not give evidence. The ability of
the defendant to give a statement from the dock and face no questioning was the second exacerbating factor" (1995:34).84 One parent commented on the court experiences of their child:

I would never put my child through such a trauma and stress again. If anything like this ever happens to my family, friends, I would advise them to never put their children through this. I cannot understand a system in which specialist evidence is disregarded and a judge tells a jury that the child was probably lying and not to believe her (Cashmore and Bussey, 1995: 41).

In its inquiry into combating child sexual assault, the Parliament of Victoria, Crime Prevention Committee (1995) repeatedly heard evidence from witnesses expressing concern about “aggressive defence counsel who badger, berate and intimidate witnesses” (1995: 191), cases of children crying in the witness box and a case in which a child had to be carried away as the result of sustained ‘mental abuse’ by the defence counsel (Parliament of Victoria, Crime Prevention Committee, 1995: 192).

In a similar vein, the Royal Commission (1997) in its inquiry into how the criminal justice system deals with child sexual assault, received many submissions which complained of “harassing and belittling cross-examination, the use of age inappropriate questions, and of questions which were expressed in terms which were long-winded or imprecise” (Royal Commission, 1997: 1109). As a result of such information, the Royal Commission concluded that “evidence extracted from children which may be affected by a lack of understanding of the question, or is a matter of concession derived not out of truth but as a result of bullying or coercion, is of little value to the trier of fact” (1997: 1110).

Cross-examination can also exploit the difficulties that children have in relation to identifying specific times and dates. As the ALRC and the HREOC (1997) observe, these difficulties are “particularly problematic for younger children who have not yet learned to tell time on a clock, who may confuse calendar dates or who have trouble reporting

84 As Cashmore and Bussey (1995) observe, at the time they conducted their survey “New South Wales and Tasmania were the only Australian states where defendants could make a statement from the dock. This right was removed in NSW from 10 June 1994 by the Crimes Legislation (Unsworn Evidence) Amendment Act No 26” (1995: 34).
events in exact chronological order" (ALRC and the HREOC, 1997: 307). However, if children report events out of sequence or if they are unable to give a particular date or time in relation to the alleged abuse, this can be exploited by the defence as bearing on the accuracy of the child’s complaint, even though, cognitively speaking, the child is incapable of giving such precise detail and the inability to give such details has been shown not to have any bearing on the accuracy of the allegation (Saywitz, 1995; Spencer and Flin, 1990). Compounding the belief in the unreliability of a child’s evidence are the significant delays within the criminal justice system for the hearing of child sexual assault trials. For example, the Royal Commission (1997) reported that “[i]n the financial year ended June 1995, at the Sydney District Court, only three child sexual assault trials appear to have been finalised within six months of the date of committal for trial”, with the average time from committal to trial being 329 days (Royal Commission, 1997: 1098). However, this period had increased for the financial year ended June 1996 to 436 days at the Sydney District Court (Royal Commission, 1997: 1099), leading the Royal Commission to conclude that “there is a real risk that justice will not be done to the child, where there is a substantial delay between complaint and trial, because ... of the risk of distortion or loss of memory over the intervening period, which may lead to an apparent inconsistency between the earlier disclosures and the evidence” (Royal Commission, 1997: 1100). In addition, a delay of 18 months to 2 years from the time charges are laid until the time of trial means that the jury cannot assess the child’s evidence relative to the age of the child at the time of the alleged offence.

The evidence reported in the above inquiries suggests that techniques of cross-examination used in the child sexual assault trial are highly successful in affecting the child’s ability to cope with cross-examination. Like the delay in complaint and corroboration rules, such techniques can be said to constitute specific gender practices which reproduce the Unreliable Child construct and may have the effect of according the evidence of the child less status than the denial of the accused in a context where the accused’s denial is not required to be subject to cross-examination. If it is accepted that such techniques reproduce specific gender practices within the child sexual assault trial,
they can be said to construct the female child complainant as a type of child, the Unreliable Child who is differentiated from the Truthful Child who, like the category of Man of legal discourse can remember all relevant times and dates, places, clothing, sexual positions, what program they watched on television on each occasion of the alleged offences and so on, and who displays no inconsistencies or inaccuracies in their evidence. Thus, the Unreliable Child represents a dualism: She is the revengeful or fantasy prone, dangerous child who is what all children who report child sexual abuse could potentially be, and is to be distinguished both from the Truthful Child and from the Man of legal discourse. Arguably, the more cross-examination techniques have the effect of confusing and/or intimidating a child complainant, the more validity the construct of the Unreliable Child will have in the mind of jurors. Whilst such a construct cannot be said to inevitably lead jurors to make a decision that an accused is innocent, it is hypothesised that the extent to which the construct is reproduced through an application of the corroboration and delay in complaint rules and particular cross-examination techniques, the more likely that an accused will be found not guilty.

For example, the ALRC and the HREOC (1997) cites a guide for young lawyers on how to conduct the cross-examination of witnesses and recommends questioning techniques which produce confusion in the child witness in the hope that the child’s confusion will trigger "assumptions that children are unreliable, untruthful, inaccurate witnesses" (ALRC and HREOC, 1997: 343; citing Levy, 1991: 235). Indeed, faced with sarcasm, yelling and other forms of intimidation "[n]o child can be expected to give effective evidence under these circumstances" (1997: 343). What child has the ability to match the armoury of the defence lawyer who has the linguistic skills and the legal knowledge to confuse, intimidate and harass the child witness, as a result of the unique position of power the accused occupies in the child sexual assault trial?

Cashmore and Bussey (1995) have analysed how the cross-examination of child witnesses consistently involves the use of language that is well beyond the experiences of most children. Furthermore, the ALRC and the HREOC (1997) observes that:
Lawyers also frequently interrupt witnesses to restrict their accounts and to retain tight control over their testimony. These techniques can have the effect not only of preventing a child witness from describing events in the order in which the child remembers them but also of maximising the possibility of confusing the child and of contaminating the child’s memory. Indeed, these questioning techniques are used for this very purpose (1997: 343; footnotes omitted).

In relation to their survey of the experiences of child witnesses, Cashmore and Bussey (1995) observe:

"There are several reasons for concern about the difficulty children experience with inappropriate language in court. The first and most obvious is that a trial can be considered fair only if witnesses are able to understand the questions they are required to answer. Secondly, children's behaviour in court and their perceptions of the court process have been shown to be substantially affected by the difficulty of the language. ... The appropriateness of the language also affected children's perceptions of their court experience. The more lawyers adapted their language to that of the children, the fairer children rated the court process and their treatment there. The harder children found it to understand the questions, the less they thought they had had a chance to say what they wanted in court, and the harder they said it was to answer the questions (1995: 35-36)."

Whilst the ALRC and the HREOC have recommended that “[g]uidelines and training programs should be developed to assist judges and magistrates in dealing with child witnesses” and that “[t]he advocacy and professional conduct rules incorporated in barristers’ and solicitors’ rules should specifically proscribe intimidating and harassing questioning of child witnesses”, it is unlikely that such changes will have an effect on the way that cyclical patterns of gender that are reproduced during the process of cross-examination within the child sexual assault trial. Already, most Australian jurisdictions contain rules of evidence which prevent undue badgering or harassment of witnesses, such as ss 26 and 41 of the NSW Evidence Act; barristers’ professional associations contain similar rules. The Royal Commission (1997), for example, believes that because:

(i) s 41 of the Evidence Act 1995 (NSW) empowers a judicial officer to intervene to disallow cross-examination which is misleading, unduly annoying, harassing, intimidating, offensive or repetitive and allows the judicial officer to have regard to the age of the witness in exercising the discretionary powers under s 41; and

(ii) a judge has the power under s 42 of the Evidence Act to “disallow leading questions put in cross-examination in cases where he or she is satisfied that the
facts concerned would be better ascertained if leading questions were not used” (Royal Commission, 1997: 1110); and

(iii) a court has a general discretion under s 135 of the Evidence Act to disallow evidence if its probative value is substantially outweighed by the danger that it might be misleading or confusing or might cause or result in undue waste of time, “adequate mechanisms exist under the Evidence Act to enable the trial judge to ensure cross-examination of child witnesses is conducted responsibly” (Royal Commission, 1997: 1110).

However, the ALRC and the HREOC (1997) received evidence that “counsel, magistrates and judges rarely intervene to enforce these rules”, leading them to conclude that the adversarial system condones and perpetuates the mental abuse of children (ALRC and the HREOC, 1997: 346; footnotes omitted). Cashmore and Bussey (1995) reported that out of a survey of fifty judicial officers in NSW on various aspects concerning child witnesses, half of the respondents indicated they would be somewhat reluctant to intervene in circumstances where a child witness was “being harassed by repetitive, intimidating or incomprehensible questioning” (1995: 19). For example, two judicial officers made the following comments:

Judge: It’s a difficult balancing act but I think it’s very important when cross examination is proceeding ... to permit the evidence to be properly tested and if that means, as it inevitably does, that the child has to be distressed, I’m afraid it’s part of the system. I just don’t see any option ... the only way of avoiding distress carries with it the inevitable consequence that the defendant doesn’t get the opportunity of adequately testing the evidence.

Magistrate: ... My role is to see that the questions are admissible and relevant and to make sure people are doing their job properly, but you are not supposed to intrude into the arena. ... [B]ut I’ve certainly seen defence counsel go on for a long time. In one case the child ran from the courtroom; he was in the witness box for 3 or 4 days but the barrister spoke gently and quietly but he just didn’t stop ... on he went. And I felt ... I didn’t ... have any power to stop him because he didn’t transgress the prohibitions—he had a right (Cashmore and Bussey, 1995: 20; emphasis added).

Another judge has identified that attempts to intervene in the process of cross-examination has ramifications for the validity of an ultimate finding of guilt by a jury:

‘the trial judge’s real dilemma is that to halt cross-examination, which is directed towards an issue, a relevant matter in the trial, is a hazardous exercise because the appeal court is very
likely to say, 'Well, the accused was not given an adequate and fair trial because this was a relevant line of questioning and counsel for the accused was not given adequate opportunity to pursue it' (Judge Waldron, Chief Judge, County Court, Victoria; quoted in Parliament of Victoria, Crime Prevention Committee, 1995: 188).

Similar observations have been made by the Royal Commission (1997):

[O]ur adversary system has not encouraged judges to intervene in the conduct of the examination of witnesses unless objection is taken, or the advocate has plainly exceeded the bounds of proper questioning. Some judges fear that undue intervention, even if justified, will excite concern as to prejudice, or cause the jury to be sympathetic to the accused. There is a class of counsel that in fact seeks to incite judicial intervention and rejection of questions, for this purpose, as a standard forensic technique. Judges need to be aware of techniques of this kind, and of the risk that witnesses, particularly children, may be persuaded or misled into giving evidence that does not reflect their true understanding of the facts (1997: 1110).

These concerns appear to specifically raise the shortcomings associated with using the adversarial system as a site for eliciting the truth of a particular allegation of child sexual abuse, in a context where the cross-examination of a child may mean that “the interests of the child are in conflict with the demands of a system of criminal justice which is designed to ensure fairness to the accused” (Royal Commission, 1997: 1109).

Arguably, the particular techniques of cross-examination that have been discussed in this chapter are directed towards reproducing specific cyclical patterns of gender and creating a context in which the continued reproduction of those patterns is more likely to occur. Perhaps, at this point it could be said that each child sexual assault trial will comprise a pattern of gender relations that are both unique (because of the particular facts of the case and the nature of the evidence, age of child, relationship of child to accused, racial and socioeconomic backgrounds of accused and complainant and so on) and constituted by specific (hegemonic), cyclical patterns of gender that characterise the criminal justice system. This suggests that if the reproduction of those specific gender patterns is sufficiently cyclical within any given trial (through, for example, the application of segregation rules and the cross-examination process), and if their reproduction is directed towards the construction of the Unreliable Child of legal discourse, then their reproduction is more likely to result in a finding of not guilty by the jury.
In particular, it can be argued that a jury’s decision-making takes place within a universal framework of gender relations that is constructed by specific cyclical gender practices within the trial; that is, a framework constituted by the corroboration and delay in complaint rules, the Unreliable Child of legal discourse and the legitimisation of various cross-examination techniques. Specific features of the particular case may either reinforce or undermine such a framework. Where the cyclical pattern of gender practices within the trial has the effect of reinforcing the Unreliable Child construct, this is likely to have the effect of reinforcing popular and cultural notions about the reliability of female children and may mean a jury is more likely to find the accused not guilty.

Whilst this analysis does not represent a complete picture of the way that cyclical patterns of gender may be reproduced within the child sexual assault trial, it arguably represents an important theoretical starting point for future analysis of the child sexual assault trial. This issue is discussed further in the final concluding chapter.

A more comprehensive summary of the discussion in this chapter is set out in the final, concluding chapter, Chapter Seven.
## TABLE 6.1

**CHILD SEX OFFENCES IN NEW SOUTH WALES**

<table>
<thead>
<tr>
<th>OFFENCE</th>
<th>PROVISION OF CRIMES ACT 1900</th>
<th>MAXIMUM PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGGRAVATED SEXUAL ASSAULT</td>
<td>61J(2)</td>
<td>14 years</td>
</tr>
<tr>
<td>* if victim is under 16 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* if victim is under the authority of offender</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASSAULT WITH INTENT TO HAVE SEXUAL INTERCOURSE</td>
<td>61K</td>
<td>20 years</td>
</tr>
<tr>
<td>INDECENT ASSAULT</td>
<td>61L</td>
<td>5 years</td>
</tr>
<tr>
<td>AGGRAVATED INDECENT ASSAULT</td>
<td>61M(2)</td>
<td>10 years</td>
</tr>
<tr>
<td>* if victim is under 10 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* if victim is under 16 years</td>
<td>61M(1), (3)</td>
<td>7 years</td>
</tr>
<tr>
<td>* if victim is under the authority of the offender</td>
<td>61M(1), (3)</td>
<td>7 years</td>
</tr>
<tr>
<td>ACT OF INDECENCY OR INCITEMENT TO COMMIT ACT OF INDECENCY</td>
<td>61N(1)</td>
<td>2 years</td>
</tr>
<tr>
<td>* if victim is under 16 years</td>
<td>61O(1)</td>
<td>5 years</td>
</tr>
<tr>
<td>* if victim is under 16 years and under the authority of the offender</td>
<td>61O(2)</td>
<td>7 years</td>
</tr>
<tr>
<td>* if victim is under 10 years</td>
<td>61O(1A)</td>
<td>3 years</td>
</tr>
<tr>
<td>SEXUAL INTERCOURSE WITH A PERSON UNDER 10 YEARS</td>
<td>66A</td>
<td>20 years</td>
</tr>
<tr>
<td>* attempt or assault with intent to commit sexual intercourse</td>
<td>66B</td>
<td>20 years</td>
</tr>
<tr>
<td>SEXUAL INTERCOURSE WITH A PERSON BETWEEN THE AGES OF 10 YEARS AND LESS THAN 16 YEARS</td>
<td>66C(1)</td>
<td>8 years</td>
</tr>
<tr>
<td>* if victim is under the authority of the offender</td>
<td>66C(2)</td>
<td>10 years</td>
</tr>
<tr>
<td>* attempt or assault with intent to commit sexual intercourse</td>
<td>66D</td>
<td>8 years</td>
</tr>
<tr>
<td>CARNAL KNOWLEDGE BY A SCHOOLMASTER, OTHER TEACHER, FATHER OR STEPFATHER</td>
<td>73</td>
<td>8 years</td>
</tr>
<tr>
<td>of a girl aged 16 years but less than 17 years being his pupil, daughter or step-daughter</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* attempt or assault with intent to commit carnal knowledge</td>
<td>74</td>
<td>8 years</td>
</tr>
<tr>
<td>INCEST</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* carnal knowledge by a male of a female aged 16 years or above who is his mother, sister, daughter or granddaughter, or female who permits same</td>
<td>78A</td>
<td>7 years</td>
</tr>
<tr>
<td>* attempted carnal knowledge</td>
<td>78B</td>
<td>2 years</td>
</tr>
<tr>
<td>Crime Description</td>
<td>Section</td>
<td>Maximum Penalty</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
<td>---------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Homosexual intercourse by a male person</td>
<td>78H</td>
<td>25 years</td>
</tr>
<tr>
<td>* if victim is under 10 years</td>
<td>78I</td>
<td>14 years</td>
</tr>
<tr>
<td>* attempt or assault with intent to have intercourse with a male under 10 years</td>
<td>78K</td>
<td>10 years</td>
</tr>
<tr>
<td>* if victim of or above the age of 10 years but under 18 years</td>
<td>78L</td>
<td>5 years</td>
</tr>
<tr>
<td>Homosexual intercourse by a schoolmaster, other teacher, father or stepfather</td>
<td>78N</td>
<td>14 years</td>
</tr>
<tr>
<td>with a male person of or above 10 years and under 18 years, being his pupil, son</td>
<td>78O</td>
<td>7 years</td>
</tr>
<tr>
<td>or stepson, attempt to have homosexual intercourse</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Act of gross indecency by a male with or towards a male under 18 years or who is</td>
<td>78Q(1)</td>
<td>2 years</td>
</tr>
<tr>
<td>a party to the commission of same</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Soliciting, procuring, inciting or advising any male person under 18 years to</td>
<td>78Q(2)</td>
<td>2 years</td>
</tr>
<tr>
<td>commit or be a party to an act of homosexual intercourse or gross indecency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>with or towards a male person</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promoting or engaging in acts of child prostitution</td>
<td>91D(1)</td>
<td>10 years</td>
</tr>
<tr>
<td>* if child is under the age of 14 years</td>
<td>91D(1)</td>
<td>14 years</td>
</tr>
<tr>
<td>Obtaining a benefit from child prostitution</td>
<td>91E</td>
<td>10 years</td>
</tr>
<tr>
<td>Using premises for child prostitution</td>
<td>91F</td>
<td>7 years</td>
</tr>
<tr>
<td>Employing or causing or consenting to a child being employed for pornographic</td>
<td>91G</td>
<td>5 years</td>
</tr>
<tr>
<td>purposes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* if child is under the age of 14 years</td>
<td>91G</td>
<td>7 years</td>
</tr>
<tr>
<td>Possession of child pornography</td>
<td>578B(2)</td>
<td>$10,000 fine or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12 months or</td>
</tr>
<tr>
<td>Source: Crimes Act 1900 (NSW); Royal Commission, 1997: 1065-1067.</td>
<td></td>
<td>both</td>
</tr>
</tbody>
</table>

Notes to Table:

1. For the purposes of ss 61H-66F, sexual intercourse is defined under s 61H, Crimes Act 1900 to mean:
   (a) sexual connection occasioned by the penetration to any extent of the genitalia (including a surgically constructed vagina) of a female person or the anus of any person by:
   (i) any part of the body of another person; or
   (ii) any object manipulated by another person;
   except where the penetration is carried out for proper medical purposes; or
   (b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person; or
   (c) cunnilingus; or
   (d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).
For the purposes of ss 78H-78G, homosexual intercourse is defined under s 78G, *Crimes Act* 1900 to mean:

(a) sexual connection occasioned by the penetration of the anus of any male person by the penis of any person;
(b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another male person; or
(c) the continuation of homosexual intercourse as defined in paragraph (a) or (b).
CHAPTER SEVEN

CONCLUSION

A. WHAT THIS THESIS HAS ACHIEVED

This thesis began by posing three main research issues that arguably need to be addressed in order to understand the social problem of child sexual abuse; that is, explanations as to why:

(i) there is a vast disparity in the numbers of male and female child sex offenders;
(ii) the vast majority of victims of child sexual abuse are female; and
(iii) the vast majority of abusers of male children are also male.

Such questions squarely raised the main research issue that has been the focus of this thesis: why is child sexual abuse, as a sexual act, committed primarily by men and male adolescents against both male and female children, unlike other types of child abuse? In addressing this question, this thesis has sought to develop a theoretical framework in which to understand the motivations of the sexual behaviour of male child sex offenders.

At the outset, Chapter One established an historical framework within which the main research issue was considered. Through an historical analysis of age of consent legislation and the criminalisation of incest, Chapter One argued that sexual practices with female children were socially tolerated and facilitated by the reluctance of parliamentarians to legislate against incest and to raise the age of consent. It was argued that for those men who engaged in sexual practices with children, there was social, legal and political tolerance of their behaviour and that such tolerance was consistent with the widespread involvement of working-class girls in prostitution and the economic necessity of their involvement in prostitution, as well as the sexual slave trade in all classes of girls.

This analysis suggested that sexual practices with children have, historically, been a socially acceptable masculine practice, compared to the ‘deviant’ and ‘abnormal’ labels
that have been attached to the behaviour of child sex offenders in the latter part of the twentieth century. On the contrary, such labelling was applied to the victims of child sexual assault, with the construction of a class of ‘immoral’ girls which, in legal cases and parliamentary debates, justified men’s sexual exploitation of them. Chapter One concluded that legislative responses to the issue of child sexual abuse in the nineteenth century were piecemeal, were unlikely to have been motivated by the need to protect children, and indirectly facilitated the sexual exploitation of children, particularly those most vulnerable to the social and economic conditions of the time. In particular, Chapter One argued that, because the structure of legislation which criminalised incest and raised the age of consent included protections for men against the ‘vicious’ claims of immoral girls and was passed as a result of broader attempts “to regulate sexual morality amongst the working class” (Finch, 1991: 28), this reflected the social toleration of sexual behaviour with children and its acceptance as a particular masculine sexual practice engaged in by some men.

Chapter One then argued that the social toleration of sexual practices with children last century and the prevalence of child sexual abuse in the general community this century suggests that there is a gap in our understanding about sexual behaviour that is now considered socially unacceptable but which has historically been, and is arguably still, relatively frequent in occurrence. In other words, Chapter One argued that, in an attempt to understand the motivations of child sex offenders, it is problematic to assume that because child sex offending is socially unacceptable behaviour, it, therefore, occurs infrequently and is, therefore, committed by sexually deviant men. Because of the relative frequency of child sexual abuse and its history as a socially tolerated masculine sexual practice, Chapter One argued that any theoretical explanation of child sex offending should address the relationship between different masculinities (as particular gender practices) and child sex offending, by analysing what it is about gender relations between men that might pre-dispose some men to engage in sexual behaviour with children.
Although it was recognised that the link between gender, masculinity and child sexual abuse has been made by a number of (mainly feminist) researchers in the social sciences, in a review of previous theoretical work, Chapter Two argued that neither feminist nor non-feminist researchers had developed a coherent understanding of what motivates male child sex offenders. The chapter reviewed a range of theories that have attempted to explain the phenomenon of men’s sexual behaviour with children. These included:

(i) child sexual abuse as a function of family pathology;
(ii) child sexual abuse as a function of biological propensity;
(iii) the relationship between power and child sexual abuse;
(iv) child sexual abuse as a sociological phenomenon;
(v) psychological theories of child sexual abuse;
(vi) the explanatory power of the documented characteristics of child sex offenders;

and

(vii) the multifactorial approach to understanding child sex offenders.

Chapter Two concluded that, because there were a number of contradictions in, and limitations to, such theoretical work, a new theoretical approach to understanding the motivations of male child sex offenders was warranted. In particular, Chapter Two argued that, because of the sex and gender specificity of most child sex offending behaviour and, in light of the inability of the above analyses to explain this sex and gender specificity, child sex offenders needed to be understood within a framework that analyses gender relations and the social construction of masculinities.

Chapter Three posed the hypothesis that child sex offending, rather than being a deviant masculine sexual practice, is related to normative masculine practices, that is, practices that are structured on relations of power. In other words, it was hypothesised that child sex offending is specifically a sociological phenomenon which cannot be explained by pointing to innate biological or psychological tendencies of offenders. As such, it was argued that male offenders’ sexual behaviour needed to be examined by reference to their particular social context, that is, a social context structured gendered relations of power.
Therefore, it was necessary to determine whether the social construction of gender was central to the sexual behaviour of child sex offenders and whether and to what extent child sex offending (as one type of masculine sexual behaviour) played a part in child sex offenders' development as men.

In order to examine the validity of the hypothesis posed in Chapter Three, this thesis examined the concept of gender and discussed how gender is produced in individual interactions through active social practices (people 'do' gender) and symbolises social relations of power, being one of the key organisational principles of social life. In other words, it was argued that gender can be understood as constituting cyclical patterns which are both subject to change and reinforced through social practices. Further, it was argued that when individuals practise gender, they are engaging with social structures of power, although their gender practices may be constrained and limited by those structures. In fact, it was argued that specific gender patterns are more likely to be reproduced in societies that institutionalise the practices of gender; that is, are structured in a way that differentiate between the sexes on the basis of power. Thus, it was argued that 'doing' gender produces relations of power which, if sufficiently cyclical, produce social structures of power that, whilst dynamic and changing, impose particular social constraints on particular individuals who may either conform to, or actively resist specific gender practices that serve to deprive them of social power. As a result of this analysis, Chapter Three examined how the emergence of structures of power were central to the accomplishment of different masculinities and examined the relationship of sexuality to those structures of power for the purposes of determining whether there was a relationship between gender, power, sexuality and child sex offending.

Chapter Three argued that the social construction of masculinities involves dynamic and changing practices of power which are, at the same time, sufficiently cyclical to create hierarchies of power between men. Because of these hierarchies of power (through the creation of hegemonic, marginalised and subordinated masculinities), it was argued that men's lives are characterised by a combination of experiences of powerlessness and power, such that it could be said that experiences of powerlessness are as central to
experiences of masculinity as are experiences of power. Further, it was argued that hegemonic masculine practices are typified by the subordination of non-hegemonic masculinities through the construction of a Masculine Ideal which bears little relationship to the reality of who men are but sustains relations of power between men. It was then argued that, for some men, the antidote to experiences of powerlessness will be to engage in social practices in relation to other men or women to establish a measure of power relative to the perceived power and masculinity of other men.

In relation to the question of whether child sex offending is a particular masculine gender practice, it was necessary to determine whether sexuality was an important practice for the accomplishment of masculinities and experiences of power. In other words, since a man must ‘do’ gender in order to derive power, that is, actively engage in masculine social practices, it was necessary to determine whether sexuality was central to the accomplishment of masculinities. If so, it was then hypothesised that child sex offenders are ‘doing’ masculinity through their particular sexual practices, contrary to psychological analyses which define child sex offenders’ behaviour as a ‘deviation’ from the social practices of normative masculine sexuality, which would mean that emotional attachment to sexual objects is gendered in nature, whether we are talking about homosexual or heterosexual desire, or, indeed, desire for an adult or child.

Chapter Three then argued that heterosexism and homophobia are key social practices for establishing relations of power between men and for the reproduction of masculinities in which heterosexuality and homophobia are normative, and that sexuality is a key social practice for differentiation between masculinities, and between masculinities and femininities. Further, it was argued that men can alleviate experiences of powerlessness and establish relations of power with other men (real or imagined) through sexual practices with less socially powerful objects of desire. Therefore, it was argued that a man’s particular attachment to the link between sexual prowess and experiences of masculinity and power will be the key factor that determines how he does sex and who he chooses as a sexual partner.
Thus, in order to understand child sex offending as a gender practice, Chapter Three argued that the primary source of men's experiences of powerlessness results from their relations with *other men* in cultural contexts where, first, "the most virulent repudiators of femininity" (Kimmel, 1994: 138) will experience 'true manhood' and secondly, where, the dominance of hegemonic masculinity is sustained through the construction of a Masculine Ideal and the differentiation of subordinated and marginalised masculinities. In such contexts, experiences of powerlessness and power do not mean "power for its own sake, but power in relation to another to protect the vulnerable self" (Hollway and Jefferson, 1996: 384); that is, the self that is created as a result of the effects of the masculine social practices of other men.

Furthermore, it was argued that different men will create situationally accomplished, unique masculine sexualities as a result of their distinct positions within the structural divisions of power, labour and sexuality. Because of the dynamic characteristics of different masculinities (whether hegemonic, subordinated or marginalised), different men will create different masculine sexualities as a result of their relationships with both socially dominant men and men of their own social backgrounds which means that sexuality can be a site for the reproduction of power for both socially enfranchised and disenfranchised men.

The arguments made in Chapter Three have been based on, not only a recognition that hierarchical relationships between men are not fixed and that masculinities are reproduced by structured yet dynamic and changing relations of power, but also a recognition that there are similarities between different masculinities, if it is accepted that normative sexual elements are affirmed in the reproduction of different masculinities through exploitative sexual behaviour which constructs a power differential between a man and the object of his desire, and produces an internal experience of power relative to the other men. Thus, child sex offending can be understood as being consonant with normative masculine sexual practices which are structured by reference to the Masculine
Ideal, since it allows some men to express a type of sexuality that is characterised by dominance and control. In other words, Chapter Three argued that the behaviour of child sex offenders is symptomatic of a broader cultural framework in which exploitative masculinity is normative (that is, culturally prescribed) and in which the lives of men are characterised by a combination of experiences of power and powerlessness, even though not all men will choose to express their sexuality through such behaviour. Arguably, however, child sex offending allows a man to accomplish masculinity and overcome experiences of powerlessness when his power is in jeopardy as a result of his relationships with other men, and is likely to be related to his distinct position of power/powerlessness within the “socially structured circumstances” in which he lives (Messerschmidt, 1993: 83).

Finally, because child sexual abuse is not confined to particular races, classes or ethnicities, Chapter Three argued that an analysis of child sex offending which focuses on relationships of power and powerlessness between men can explain the sexual behaviour of different types of offenders, from the socially empowered, white, middle-class father to the comparatively less socially powerful homosexual offender, black offender or working-class offender; that is, from those with considerable public power to those with little public power, since both may experience instances of lack of personal power which, on an experiential level, will not necessarily equate with a man’s access to public power. In particular, such an analysis recognised that child sex offending, as a gender practice, is likely to represent different issues of power for different men practising different masculinities, and experiencing different degrees of power and powerlessness in their lives. For these reasons, the analysis constitutes a significant departure from other analyses of the relationship between gender and crime, since, contrary to predictions by criminologists such as Messerschmidt (1993), it cannot be argued that men who experience significant structural and social disadvantage are more likely to engage in sexual behaviour with children. In other words, it has been necessary to analyse the complex array of relationships of power between men and the centrality of experiences of powerlessness for men who practise both hegemonic and subordinated forms of
masculinity, since child sexual abuse does not appear to have class, racial, age or ethnic boundaries, as discussed in Chapter Four.

Chapter Three also showed that the child sex offender profiles that find the greatest acceptance within the psychological literature are social constructs that bear little relationship to the reality of the men who sexually abuse children and that the distinction between the 'dangerous' paedophile and the non-dangerous family man is consonant with the homophobic practice of hegemonic masculinity. In other words, 'paedophilia' is characteristically equated with homosexual child sex offending, and homophobia is central to the reproduction of hegemonic masculinity. In a way that is similar to the construction of the 'deviant' homosexual, the construction of the 'deviant' paedophile was shown to have more to do with relations of power among men than with accurately describing the reality of men who sexually abuse children.

The overall purpose of such an analysis was to highlight the possibility that many child sex offenders are likely to remain undetected or not prosecuted by the criminal justice system because of a lack of conformity with the 'dangerous' paedophile construct, and the possibility that the proclamation of difference between paedophiles and other offenders may serve to hide the real extent of the problem of child sexual abuse and to 'protect' the vast majority of offenders.

Finally, Chapter Three argued that through an understanding of the social construction of feminine sexualities, it is possible to understand how female children (who constitute the vast majority of victims of child sexual abuse) become socially acceptable objects for masculine desire and the exercise of power. In other words, female children can have projected onto them a sexuality that does not accord with who they are but which makes them sexually available, through the reproduction of the Masculine Ideal by some men. The characteristics of the Feminine Ideal of hegemonic discourse means that it is possible to see how sexual practices with children, rather than being deviant expressions of
masculine sexuality, can be understood as being consonant with normative masculine sexual practices and the reproduction of the Masculine Ideal.

In conclusion, Chapter Three argued that different masculinities contain normative sexual elements that some men reproduce and affirm through child sex offending in cultural environments where the lives of men are characterised by varying degrees of power and powerlessness, as a result of the masculine social practices of other men. The theory that was developed in Chapter Three to explain the sexual behaviour of child sex offenders is called the power/powerlessness theory, in order to emphasise this reality of men’s lives.

Arguably, the analysis undertaken in Chapter Three is important for a number of reasons:

(i) it constitutes a practice-based sociological account of child sex offending which eschews the essentialism that characterised early radical feminist analyses of rape and child sexual abuse;

(ii) it challenges the validity of attributing child sex offending to innate psychological or biological drives;

(iii) it conceives of child sex offending as a gender-based practice;

(iv) it provides an understanding of the complex relationships of power and powerlessness between men, and the social ramifications of such experiences of powerlessness in the form of sexually exploitative behaviour, such as child sexual abuse;

(v) it constitutes an original contribution to sociological understandings of crime committed by men, since rather than analysing the crime of child sexual assault from the perspective of social and structural disadvantage, the analysis engages with gender in a uniquely different way by constructing a theory which explains the structural constraints that affect the lives of both socially enfranchised and disenfranchised men, in order to address the fact that, unlike many other crimes committed by men, child sexual abuse is not confined to particular classes, races, ethnicities or ages;
(vi) it addresses the problems associated with the essentialism and universality of many structural analyses, in that the analysis is dependent on a recognition of the dynamic and changing nature of gender practices, in order to be able to explain the complex array of relationships of power between men and the centrality of experiences of powerlessness for men who practise both hegemonic and subordinated forms of masculinity. In other words, rather than predicting that sexual behaviour with children is a product of rigid structures of power, the analysis envisages structure as a fluid metaphor, which can be considered, at one and the same time, to be sufficiently cyclical to produce particular phenomena at particular historical times and places, whilst also being constituted by social practices that are in constant change and flux.

In addition, an understanding of child sex offending as a gender-based practice which is related to the power and powerlessness that characterise men's lives, leaves open the possibility that child sex offending need not be an inevitable practice (as psychological and biological analyses would predict), that prevention and treatment of child sex offending is possible through an understanding of the powerlessness experienced by some men and that different conceptions of masculinity, ones that do not depend on the sexual exploitation of others, are also possible.

The power/powerlessness theory was subjected to preliminary testing in Chapter Four. Chapter Four began by analysing whether the widely accepted fixated (homosexual stranger)/regressed (heterosexual father) typologies were representative of the majority of child sex offenders. An analysis of victim report studies showed that these typologies did not explain the range of child sex offenders that are reported by victims, since no victim report study found that the majority of offenders of girls were fathers, nor that the majority of offenders of boys were strangers. Instead, such studies found that both female and male children were most at risk from extrafamilial offenders who were known to the child, a category the fixated/regressed profiles are not able to account for. For these reasons, Chapter Four argued that fixated/regressed categories of child sex offenders
could not, therefore, provide a coherent explanation of the motivations of the majority of child sex offenders.

However, because the victim report studies analysed in Chapter Four showed, first, that child sex offending is committed by a wide variety of men and that child sexual abuse is not confined to particular racial or socioeconomic groups and, secondly, that a significant minority of children (and possibly a majority of female children) will be subject to either contact or non-contact child sexual abuse before they reach adulthood, it was considered that there was a need for an explanation which would be able to account for the different types of men who engage in sexual behaviour with children. It was argued that the power/powerlessness theory developed in Chapter Three provided such an explanation and it was subjected to preliminary testing in the remainder of Chapter Four.

Chapter Four analysed the characteristics of child sex offenders documented in the psychological literature to determine the validity of their explanatory power for understanding why men engage in sexual practices with children. By analysing the psychological characteristics of child sex offenders within a sociological context, Chapter Four argued that explanations which focus on individual characteristics do not provide an adequate causal explanation of child sex offending.

It was argued that, rather than being a homogeneous group, child sex offenders show a diverse range of characteristics, which, as explanations for child sex offending, are either contradictory or unable to explain the behaviour of the majority of offenders. In particular, Chapter Four argued that the characteristics of child sex offenders documented in the literature are likely to be typical of those child sex offenders who are convicted and imprisoned or diverted to treatment programs. In other words, if poor social skills, passivity, low self-esteem and other such characteristics are typical of incarcerated populations of offenders, then such characteristics suggest that they may well be causative in the apprehension and conviction of those child sex offenders, rather than necessarily being causative in the actual offences committed by them. Alternatively, it was argued
that these characteristics could represent the impact of the effects of institutionalisation on child sex offenders in a prison culture that is known for its verbal and physical abuse of child sex offenders.

In summary, Chapter Four argued that ascribing child sex offending to characteristics, such as timidity, passivity, alcoholism, low self-esteem, sexual deviance or an incapacity for empathy and intimacy is ultimately problematic, since (i) these characteristics are not uniquely displayed by child sex offenders; (ii) no study has shown that women who display such characteristics become child sex offenders in numbers comparable to the numbers of male child sex offenders; (iii) many of the studies reporting such characteristics are internally contradictory; (iv) incarcerated and clinical offender populations are unrepresentative of the general population of child sex offenders; and (v) the factors that are said to characterise child sex offenders can just as easily be described as those factors that led to their convictions and imprisonment.

In particular, Chapter Four concluded that all that can be said about child sex offenders is that they are a heterogeneous group without any one definitive profile. As such, it was argued that, if characteristics, such as low self-esteem, are considered to be important for understanding child sex offending behaviour, and because it cannot be said that child sex offenders are the only people who exhibit such characteristics, then child sex offending as a sexual practice which establishes a relationship of power between offender and victim needs to be understood by examining the relationship between an offender’s masculine social and sexual practices and the effects of other men’s masculine social practices upon him. In other words, Chapter Four argued that, since the power/powerlessness theory was supported by a number of studies discussed in the chapter and, at the very least, contradicted by none of them, it provides an alternative explanation which allows for an understanding of a variety of different child sex offenders, from the socially disadvantaged, incarcerated offender to the socially advantaged offender in the community whose offences may never be reported, on the grounds that each offender's
sexual behaviour can be said to be related to the dynamic and changing relationships of power and powerlessness that exist between him and other men.

Furthermore, the theory was found to be consistent with masculine social practices in adolescent peer groups and suggests that if child sex offending commonly begins during adolescence, then, as a particular masculine social practice, it either provides an adolescent with prestige among a peer group and/or provides a claim to power where the adolescent has no material resources for power. Alternatively, for those adolescent men who have access to traditional social means for accomplishing masculinity, the power/powerlessness theory allows an examination of the extent to which those material resources for experiencing power are undermined because of the effects of other men’s masculine social practices upon the offender. The theory is also consistent with how child sex offenders select and target children and how they perceive children and justify their behaviour, since it appears that (i) the more vulnerable a child, the more likely he/she will be targeted by an offender; (ii) targeting practices (grooming) involve the establishment of a power relationship between child and offender; (iii) offender justifications typically focus on enticement by, or lack of resistance of, the child and (iv) children are perceived to be more passive and controllable and, hence, less powerful than the offender.

In order to test the proposition that the power/powerlessness theory fills the explanatory vacuum left by psychological analyses which are unable to show a causal nexus between particular individual characteristics and child sex offending, the theory was subjected to preliminary testing in a re-analysis of interviews that had been conducted by Colton and Vanstone (1996).

This re-analysis suggested that all offenders interviewed by Colton and Vanstone, whether homosexual or heterosexual, encountered experiences of powerlessness as a result of gender dynamics between themselves and fathers, brothers, school teachers or school peers as they were growing up, that is, as a result of the masculine social practices
of male peers and male authority figures. It was tentatively concluded that these offenders at times experienced a lack of social power as a result of the social practices of other men and, as a consequence, were considered either by themselves or other men to exhibit a lack of masculinity. At other times, the offenders were able to acquire social power by exerting power over others, suggesting that their lives were a combination of experiences of powerlessness and power. In particular, it was argued that for all offenders, the degree of authority and control they exercised over the children they abused was consonant with the public power they derived from their employment, suggesting that the way they expressed their sexualities was the only way they could experience the same degree of power and control they experienced in their work lives.

Overall, it was concluded that the re-analysis of the Colton and Vanstone interviews provided tentative support for the hypothesis that child sex offenders’ relationships with other men and consequent experiences of powerlessness are central to understanding their motivations for child sex offending. In particular, the re-analysis suggested that, in accordance with the power/powerlessness theory, chronic experiences of powerlessness as a result of an offender’s relations with other men, a need to live up to hegemonic ideals of manhood and the centrality of masculine sexual practices for alleviating experiences of powerlessness are central to understanding why some men sexually abuse children. Whilst these conclusions can only be said to be tentative because of the small and unrepresentative sample studied, they provide the groundwork for further work to test the theory, as discussed in Part B below.

Finally, Chapter Four addressed the issue that feminism’s preoccupation with the sexually abusive behaviour of men has led feminist researchers to ignore or deny the sexually abusive behaviour of women. Chapter Four argued that the feminist preoccupation with male child sex offenders is supported by empirical data which shows that child sexual abuse is predominantly a male sexual activity, and, although both feminist and non-feminist researchers can no longer ignore the existence of female child sex offenders, theories about why men sexually abuse children and theories about why women sexually
abuse children must acknowledge the significant disparity between the numbers of male child sex offenders compared to the numbers of female child sex offenders. In light of this disparity, it was argued that the power/powerlessness theory is a valid theoretical device for explaining the motivations of male offenders and is not invalidated by the fact that a small proportion of child sex offenders is female.

The discussion in Chapters Five and Six attempt to build a bridge between the theoretical issues associated with understanding the role of masculine social practices, the establishment of relations of power and hierarchies of power along gender lines and the manifestation and effects of those relations of power at an institutional level. It was considered that this was a necessary next step to take, as a result of the findings in Chapter Five which suggest that child sex offences are less likely to result in successful prosecutions than most other criminal offences.

In particular, Chapter Five tested the following hypotheses:

(i) that the vast majority of cases of child sexual abuse do not result in charges being laid; and

(ii) that when child sex offence charges are laid, they are less likely to be successfully prosecuted compared to most other criminal offences.

Using the NSW jurisdiction as a case study, an analysis of data reported by the NSWBCSR and the AIHW showed that:

(i) there is a large disparity between the number of substantiated cases of child sexual abuse reported in NSW each year, the number of charges laid for child sex offences and the number of charges that result in convictions. Thus, the first hypothesis was found to be supported.

(ii) in the NSW lower courts, the overall conviction rate for child sex offences compared to the overall conviction rate for all other criminal offences (excluding sex offences against children) was less than half for the five year period January 1992 to December 1996.
in the NSW higher courts, the conviction rate at trial for child sex
offences was 38.4 per cent compared to 45.1 per cent for all other criminal
offences (excluding sex offences against children) for the five year period
January 1992 to December 1996. In addition, the overall conviction rate
for child sex offences in the higher courts was 69.7 per cent compared to
79.1 per cent for all other criminal offences (excluding sex offences
against children) for the same period.

Thus, the second hypothesis was found to be supported. The analysis in Chapter Five,
therefore, provided the empirical basis for the hypotheses set out in Chapter Six which
analysed whether particular practices or filtering processes within the adversarial system
are responsible for the relatively low conviction rates for child sex offences.

The discussion in Chapter Six examined the hypothesis that the criminal justice system
(in particular, the trial and appeal processes), as a particular social site for the
reproduction of hegemonic masculinity, creates a gendered division of rights and
restraints between the (predominantly) male offender and the female or male complainant
of child sexual abuse, which, within the child sexual assault trial, operate to protect the
accused, rather than address the sexual exploitation of children. In order to test this
hypothesis, an examination was made of: the concept of the institution, the
institutionalisation of gender and how a gender regime is constructed within the criminal
justice system.

First, Chapter Six argued that relations of power within the criminal justice system have
been created through the reproduction of the hegemonic power of the state which has
institutionalised the practices of hegemonic masculinity over many hundreds of years. In
particular, it was argued that cyclical practices of hegemonic masculinity within the
criminal justice system reproduce social relations of power based on “the reproductive
division of people into male and female” (Connell, 1987: 140). In other words, it was
argued that the criminal justice system is constituted by a ‘gender order’ which consists of
an historical pattern of power relations between men and women and between men, although it was also recognised that such a gender order, as a social structure, is as much subject to change as the social practices constituting it. In particular, it was argued that the preponderance of men within the institutions of the state has given rise to specific and particular gender practices and contestations of power between dominant masculinities and other masculinities and between masculinities and femininities. At the same time, it was also argued that those specific and particular gender practices embody their own fluidity which may coalesce at particular points in history, thus creating cyclical patterns of restraint, as well as both driving change and being the subject of change. In addition, it was argued that the practices of the criminal justice system are sufficiently cyclical to impose constraints on social practice and that those constraints are imposed according to particular ideologies that inform the construction of the gender order within the criminal justice system. Nonetheless, it was argued that if the practices that reproduce the hegemonic power of the criminal justice system are understood in a dynamic and relational sense, then it is necessary to understand the constraints imposed by the criminal justice system in the same way. Arguably, such a recognition means that the criminal justice system, rather than being understood as a rigid and unitary structure, can be understood as an institution that is characterised by cyclical yet dynamic practices of masculinity.

For these reasons, it was argued that the criminal justice system can be understood as a dynamic social structure that has, historically, constrained or prohibited particular social practices and enforced its prohibitions through particular punitive measures. Arguably, in its contestations of power, the criminal justice system has, historically, been selective about, not only those social practices it constrains, but also those particular social classes, races or sexes it will constrain in relation to particular social practices. This selectivity becomes intelligible by understanding how a dynamic gender regime operates within the criminal justice system. In other words, it was argued that particular hierarchies of power within the criminal justice system are reinforced through its constraints (as much between men as between women and men) and complex structures of power are established as a
result of the dominance of white, heterosexual, masculine practices within the criminal justice system. Thus, in its reproduction of hegemonic masculinity, the criminal justice system, at various historical times, has regulated a variety of social practices which have been specifically directed against different classes, races, sexes and genders, such as Aboriginal men, adolescent men, homosexual men or women engaged in prostitution.

In addition, it was argued that, historically, clear identifiable social practices can be shown to exist which have created a specific ordering of social relations and power between men and women within the criminal justice system. This means that power is institutionalised according to specific social and gendered relations, and the criminal justice system can be said to be one of the structures of power that creates specific gendered relations between men and women.

Using Connell’s (1987) approach to understanding how a gendered division of labour is created within the employment market, Chapter Six argued that a gendered division of rights and restraints is differentially applied to men and women within the sexual assault trial, as a result of the cyclical reproduction of gender specific rules and the construction of the gender categories, Woman and Man of legal discourse. Whilst such a gendered division was recognised as being historically and culturally dynamic, and, therefore, not necessarily determinative of the outcome in any one particular sexual assault trial, such cyclical patterns create a context in which the continued reproduction of that pattern is more likely to occur through the application of gender-specific segregation rules and constructs. In particular, this argument was made, not for the purposes of predicting that the trial process is unified in seeking to produce outcomes that accord with its gender regime but for the purposes of identifying the possibility, as predicted by Connell (1987), that sufficiently cyclical reproductions of gender will produce particular cultural phenomena at particular historical times and places, such as segregation rules and gender constructs within the sexual assault trial. This analysis suggested, therefore, that a similar examination of the child sexual assault trial would enable an understanding of the gender
dynamics therein, in order to explain the relative difficulty of obtaining convictions for child sex offences.

In other words, it was hypothesised that the conduct of the child sexual assault trial will be managed along specific gender lines in ways that are similar to the conduct of the rape trial, since as discussed in Chapter One, child sexual assault has historically been perceived by legislators and the criminal justice system as a crime committed by men against female children. Like the crime of rape, it was argued that this historical "sex and gender specificity" (Edwards, 1996: 178) has affected the way the child sexual assault trial is conducted and rates of conviction for child sex offences. Thus, it was hypothesised that, because of the cyclical reproduction of gender patterns within the criminal justice system, a gendered division of rights and restraints operates within the child sexual assault trial which prevents the vast majority of child sex offences from being prosecuted. This hypothesis was tested by an analysis of the specific rules of evidence which govern the child sexual assault trial.

As a result of this analysis, Chapter Six argued that both the delay in complaint and corroboration rules constitute evidence of the cyclical reproduction of gender practices within the child sexual assault trial, in that the rules were, historically, only applicable to sexual assault trials involving a male accused and female complainant and were thus applied to the evidence of the complainant as a function of her sex. Further, it was argued that it was the criminal justice system's historical preoccupation with the moral worthiness of the female child complainant (in order to protect men from false accusations) that gave rise to these two rules and that their imposition as segregation rules then justified her differential treatment and made rational such treatment, since the construction of the Unreliable Child of legal discourse through the operation of the two rules became the standard by which the falsity of the female complainant's allegations were 'proved', in circumstances where the complainant was considered to have delayed unreasonably or to have no corroborative evidence of her complaint.
In particular, Chapter Six argued that the rules operate to create universal gendered categories. In other words, using the recent complaint and corroboration rules, it was argued that the criminal justice system distinguishes between the Truthful Child and the Unreliable Child in a way that is analogous to the distinction that is made between the categories of Woman and Man in the rape trial. It was argued that the construct of the Unreliable Child is unrelated to real children and their individual reactions and survival strategies to sexual abuse, thus creating a category of false universalism. Like the criminal justice system’s gender practices within the rape trial, it was argued that the delay in complaint and corroboration rules construct the female child complainant as a type of child, the Unreliable Child, who is differentiated from the Truthful Child who, like the category of Man of legal discourse, makes a complaint of sexual abuse within a reasonable (but undefined) period of time and is able to produce corroborative evidence. Thus, as a gender construct, the Unreliable Child of legal discourse is inherently contradictory: she represents that which is not Man (the unitary category into which the accused is presumptively placed), is distinguishable from the Truthful Child, and yet is what every child could potentially be. In other words, She epitomizes Female Child “in contradistinction to Man” (Smart, 1992: 36) because she is what any female child could be.

In addition, Chapter Six analysed whether cross-examination is a specific site within the child sexual assault trial for the application of these two segregation rules, and a site, therefore, for the construction of the Unreliable Child of legal discourse and for the reproduction of gendered relations of power between the accused and complainant. Chapter Six argued that various techniques of cross-examination used in the child sexual assault trial constitute specific gender practices which reproduce the Unreliable Child construct and may have the effect of according the evidence of the child less status than the denial of the accused in a context where the accused’s denial is not required to be subject to cross-examination. Arguably, the more cross-examination techniques have the effect of confusing and/or intimidating a child complainant, the more validity the construct of the Unreliable Child will have in the mind of jurors. Whilst such a construct
cannot be said to inevitably lead jurors to a decision that an accused is innocent, it was argued that the extent to which the construct is reproduced through an application of the corroboration and delay in complaint rules and particular cross-examination techniques, the more likely it will be that an accused will be found not guilty.

Finally, Chapter Six discussed how each child sexual assault trial will comprise a pattern of gender relations that are both unique (because of the particular facts of the case and the nature of the evidence, age of child, relationship of child to accused, racial and socioeconomic backgrounds of accused and complainant and so on) and constituted by specific (hegemonic), cyclical patterns of gender that characterise the criminal justice system. This suggests that if the reproduction of those specific gender patterns is sufficiently cyclical within any given trial (through, for example, the application of segregation rules and the cross-examination process), and if their reproduction is directed towards the construction of the Unreliable Child of legal discourse, then their reproduction is more likely to result in a finding of not guilty by the jury.

The discussion in Chapter Six suggests that any effective reform of the operation of the adversarial system within the child sexual assault trial to improve conviction rates for child sex offences must address the relations of power between the accused and the complainant and the ways in which a gendered division of rights between the accused and complainant is established through the application of particular rules of evidence and the process of cross-examination. In particular, Chapter Six highlighted the limitations of law reform attempts to curtail the applicability of these segregation rules, since, arguably, such reforms do not address the structure of the criminal justice system as an institutional site for the reproduction of hegemonic masculine practices. This thesis, therefore, proposes that the best way to limit the effects of the legal system's institutional gender practices is by removing the prosecution of child sex offences trial from the adversarial system. How this might be done is discussed further below under Part B.
Arguably, the validity of the structural analysis undertaken in Chapter Six is supported by the evidence that conviction rates for child sex offences have been consistently low over the five year period analysed in Chapter Five, a phenomenon that has resonances with the low rates of conviction that have been found in the historical studies by Allen (1990) and Bavin-Mizzi (1995). In particular, this analysis has addressed the problems associated with the essentialism and universality of many structural analyses, in that the analysis is dependent on a recognition of the dynamic and changing nature of gender practices. In other words, rather than predicting that the criminal justice system operates as unitary structure, this analysis has envisaged structure as a fluid metaphor, which can be considered, at one and the same time, to be sufficiently cyclical to produce particular phenomena at particular historical times and places, such as relatively constant conviction rates for child sex offences, whilst also being constituted by social practices that are in constant change and flux.

In summary, then this thesis has:

(i) identified and analysed the major research questions that remain unresolved in relation to understanding child sex offending by men;
(ii) analysed child sexual abuse as an historical practice;
(iii) demonstrated the inconsistencies in, and the limitations to, current theories about male child sex offending behaviour;
(iv) analysed child sexual abuse from the perspective of men in order to understand it as a particular masculine social practice and in terms of offenders’ relationships with other men;
(v) analysed child sexual abuse as a particular sexual practice of some men, not as a deviation from the assumed norm of sex with adults;
(vi) proposed a new sociological theory of child sex offending, the power/powerlessness theory, and showed, through preliminary testing, that the theory can be used to explain the sexual behaviour of both homosexual and heterosexual offenders;
(vii) challenged the validity of the widely accepted child sex offender typologies;
applied theories of gender to the criminal justice system, showing how it operates as an institutional site for the practices of hegemonic masculinity;

established a theoretical framework for understanding the basis on which specific rules of evidence are applied in the child sexual assault trial;
created a structural analysis that recognises both the dynamic and cyclical patterns of the reproduction of gender; and
in light of the discussion below concerning future work, highlighted the major research issues concerning child sexual abuse in Australia that require further attention.

Finally, the research in this thesis has both practical and theoretical implications for understanding the role that child sex offending plays in offenders’ lives and the treatment of offenders, as well as the policing and prosecution of child sex offences. In particular, this thesis has recognised that child sex offending, rather than being left in the hands of psychologists and psychiatrists to treat as a deviant sexual act, needs to be addressed at a cultural level; that is, child sex offending needs to be tackled as a social problem, rather than as an aberrant psychological or biological type of sexual behaviour.

B. WHERE TO FROM HERE: FUTURE WORK

A number of possible future projects stem from the research undertaken in this thesis. First, in order to further test the power/powerlessness theory developed in Chapter Three, it would be necessary to test the theory by interviewing a more representative group of child sex offenders. Ideally, this would involve undertaking a general population survey in order to obtain a representative, non-incarcerated child sex offender population, although there are major problems associated with carrying out such research. Such a project has inherent difficulties in terms of designing a study to ensure that a representative child sex offender population is selected, not to mention the ethical, legal and confidentiality issues associated with designing a study to maximise the willingness of non-incarcerated offenders to self-report their child sex offending activities and to discuss their masculine social practices. Whether such a research project can be
undertaken will depend on obtaining research funding and appropriately experienced collaborative researchers.

Secondly, another research project that arises from the theoretical work undertaken in Chapter Three is a study that analyses the motivations behind the sexual behaviour of female child sex offenders, who, as discussed in Chapter Four, arguably warrant a separate theoretical analysis because of their small numbers compared to male child sex offenders and the high proportion of female child sex offenders who appear to commit their offences as either accomplices or co-offenders with male child sex offenders. Arguably, a study of female child sex offenders would need to focus on the relationship between child sexual abuse and feminine sexuality and would need to determine:

(i) the proportion of female offenders who are co-offenders with men and the extent of their involvement in sexual behaviour with children;

(ii) whether and to what extent female co-offenders’ sexual behaviour with children is related to coercion and/or threats by their male co-offenders;

(iii) to what extent so-called female offenders are, in fact, accomplices not offenders, in that they do not actually engage in sexual behaviour with children but are aware of the abuse and take no steps to report or prevent it, or in some way make their children available for abuse by another person;

(iii) what proportion of female child sex offenders were themselves sexually abused as children and to what extent women who have been sexually abused confirm their experiences of sexual objectification and, hence, experiences of powerlessness through their own sexual abuse of children;

(iv) in relation to mother-son sexual abuse, to what extent the relationship between mother and son involves the mother’s emotional dependence on, and her treatment of, her son as an adult sexual partner; and

(v) how child sexual abuse by a female offender is defined compared with the type of behaviour that is considered to constitute sexual abuse when performed by a man.
In addition, a gendered perspective would need to be able to analyse the specific effects of child sexual abuse in the background of female offenders, in terms of their adult feminine sexual practices, given that the vast majority of female victims of child sexual abuse do not appear to become offenders themselves.

Thirdly, the analysis of victim report studies in Chapter Four showed there is insufficient data on the prevalence of child sexual abuse within the Australian community and the nature and type of such abuse. In particular, no general population survey has estimated the prevalence of child sexual abuse experienced by male children in the Australian community. Furthermore, future work is required to design and carry out a study which minimises the design flaws (discussed in Part B of Chapter Four) that are associated with a number of prevalence studies. For example, there is no study of the prevalence of child sexual abuse within the Australian community which utilises methods designed to elicit the maximum number of responses. These methods include:

(i) a definition of child sexual abuse that is sufficiently open-ended to encourage maximum disclosure and will not cause respondents to dismiss their experiences of child sexual abuse as not fitting within the definition;

(ii) a definition that is sufficiently wide enough to include all forms of child sexual abuse, including non-contact and contact sexual abuse and intrafamilial and extrafamilial sexual abuse;

(iii) a definition that maintains a distinction between consensual sexual relations with peers and abusive sexual experiences with peers, so as not to exclude non-consensual sexual abuse committed by age peers1;

(iv) a definition that includes an upper age limit that is consistent with age of consent laws in Australia;

---

1 The inclusion of abuse by age peers is considered important, given that "studies of rape victims indicate that adolescents are particularly at risk to be raped" and that "male rapists, like their victims, are found disproportionately in the adolescent and young-adult age groups" (Salter, 1988: 20). Thus, Salter considers that studies that exclude "unwanted sexual activity between peers and only rely on an age differential as the sole criterion for sexual abuse will underestimate the extent of the problem by excluding significant numbers of victims who have been forcibly raped by peers" (1988: 20-21).
(v) utilisation of face-to-face interviews and a multiplicity of questions to ensure maximum disclosure of child sexual abuse experiences by respondents;

(vi) a description of the study to respondents which does not discourage them from participating, since response and prevalence rates appear to depend on how broadly the study is described;

(vii) training of interviewers and matching the age, sex and ethnicity of interviewers with interviewees in order to minimise under-reporting.

The American studies of Russell (1983) and Wyatt (1985) could be used as models for the design of an Australian study, although the possibility of carrying out such a comprehensive study would be dependent on finding appropriately experienced collaborative researchers and research funding. To gain a more comprehensive picture of the nature and type of child sexual abuse within the Australian community, the study could also be designed to gather information on offender types within the general community by gathering information on the relationship between offender and child, the socioeconomic background of offender and victim, the extent to which threats, coercion or physical force accompanied the abuse, frequency of abuse by offenders, the extent of abuse by more than one offender, what effects (if any) the abuse had on the victims’ psychological and physical health, and whether the abuse was reported by the victims; if so, to whom and the outcome of the report, or, if not, the reasons for non-disclosure.

Furthermore, a comprehensive study of the prevalence of child sexual abuse in Australia would allow for a legitimate comparison between prevalence rates in Australia and

---

2 Anderson et al (1993) consider that the use of multiple questions allows “for a comprehensive picture to emerge of” types of abuse, since loss of recall or loss of accuracy over time “can be countered to some extent by asking a sufficient number of event-specific questions to trigger recall of the abuse experience itself and the related details” (Anderson et al, 1993: 916). In addition, Finkelhor (1994) notes that current experience “suggests that the best way to screen for sexual abuse is to ask multiple questions with very specific language about a variety of contexts in which abuse could have occurred, as opposed to a single screening questions that asks about sexual abuse or some other general concept that the respondent is left to define” (1994: 413; references omitted).

3 For example, Wyatt and Peters (1986b) postulate that if a study is described as a study to do with child sexual abuse, “nonabused individuals might perceive their own experiences as being outside the researcher’s sphere of interest and thus be less likely to participate”, resulting in artificially high prevalence rates (1986b: 245).
studies in other countries, such as Britain and America, which have used similar research methodologies (Finkelhor, 1994: 412-413). As Finkelhor (1994) has observed, to enhance the objective of international comparative research on the prevalence of child sexual abuse:

researchers on the international scene need to develop more methodological sophistication. For one thing, they need to select methodologies and instruments with international comparison in mind. This would mean simultaneous studies in different countries or studies that replicate those used in some other country. At the least, they need to select definitions of sexual abuse and questionnaire items that represent an advanced level of knowledge (1994: 413).

Fourthly, future work is also necessary to confirm the hypothesis and findings set out in Chapter Five, that is, that the vast majority of cases of child sexual abuse do not result in successful prosecutions. To this end, it would be necessary to undertake an analysis of all cases of child sexual assault prosecuted over, say a one or two year period within the period January 1992 to December 1996, to determine whether there is any correlation between conviction rates at trial and (i) the sex of accused and the sex of the child (male accused/female child; male accused/male child; female accused/female child; female accused/male child); (ii) the relationship between the accused and child (such as, father/daughter; mother/son; stranger/unknown child; teacher/pupil); (ii) the application of the corroboration and delay in complaint rules; (iii) the nature of the cross-examination process; (iv) the age of the complainant (for example, are trials involving adult complainants who complain of being sexually abused as a child less likely to result in convictions because of the delay in complaint rule?); (v) the seriousness of the offence; and (vi) the socioeconomic status of the offender.

In particular, such an analysis could be undertaken from the point of view of whether the gendered construction of the child complainant through the application of specific rules of evidence and the cross-examination process influences the conviction rate at trial and whether the sexuality of the offender affects the likelihood of conviction.4 In other

---

4 For example, an American study by Walsh (1994) found that homosexual child sex offenders were 6.79 times more likely to be imprisoned than heterosexual offenders, "after adjusting for the combined effects of crime seriousness, prior record, and acceptance/denial of full responsibility for their actions" (Walsh, 1994: 339). Such results suggest that the sexuality of the offender may also influence
words, a sufficient number of cases involving a male accused and a male child complainant would need be analysed to determine whether the conviction rate at trial of child sex offences committed by homosexual offenders is significantly different from the conviction rate at trial of child sex offences committed by heterosexual offenders. Such a project would require the co-operation of the NSW District Court and the Office of the Director of Public Prosecutions, as well as research funds and collaborative researchers.

Fifthly, another project that arises out of the analysis in Chapter Five is one that examines the fate of the approximately 3,000 substantiated cases of child sexual abuse reported by the NSWDOCS each year, in order to determine:

(i) what proportion are reported to police;
(ii) of those that are not reported, the reasons why;
(iii) of those that are reported, how many result in charges being laid and a successful prosecution;
(iv) of the cases where charges are not laid, the reasons why;
(v) of the cases which do not result in a conviction, the reasons why.

Such a project would require the co-operation of the NSWDOCS, the Police Service and the Office of the Director of Public Prosecutions, as well research funding and collaborative researchers. One model for such a study is provided by Jackson (1993) who documents a Canadian study which followed the fate of all child sexual abuse cases that were reported to a government committee over a two year period.

---

conviction rates, given that it appears that homosexuality in any context is strongly disapproved of in Western societies (Walsh, 1994: 341). In posing the research question, "is homosexual child molesting punished more severely than heterosexual child molesting?", Walsh found that the harsher legal sanctions against homosexual child sex offenders appeared "to be almost totally a function of the general opprobrium attached to homosexuality. That is, none of the other proposed predictor variables (victim cooperation, offender/victim relationship, prior sexual contact, and prior sex offense separated from the composite measure of prior record) had any independent impact on the probability of imprisonment. ... The findings that homosexuals scored significantly higher on almost all variables thought to mitigate punitive sanctions further support this contention. They were of higher social class standing, had higher IQ's, were more likely to have had cooperating victims, were more likely to accept unqualified responsibility for their actions, were less likely to use force or coercion, and were less likely to have engaged in protracted sexual activity with their victims" (Walsh, 1994: 350).
Lastly, the analysis in Chapter Six, together with the problems identified by the ALRC and HREOC (1997) and the Royal Commission (1997) concerning the conduct of the child sexual assault trial, provides the necessary groundwork for a study to consider how an alternative system for the prosecution of child sex offences could be established, such as a court that specialises in the non-adversarial prosecution of child sexual assault cases.

Arguably, an entirely different system for the prosecution of child sex offences is required, in order to counteract the effects of the gender regime within the sexual assault trial, given that the adversarial system, based as it is on a variety of power relations, is unlikely to be a site for the disestablishment of the power relations between the accused and the child complainant. For example, various attempts to change the procedures and rules within the child sexual assault trial have not been able to address the underlying gender practices of the criminal justice system that can operate to counteract the effects of such reforms, as demonstrated in Chapter Six. Arguably, such reforms to the operation of the adversarial system accept “the significance of law in regulating the social order. ... In consequence while some law reforms may indeed benefit some women, it is certain that all law reforms empower law” (Smart, 1989: 161) and, therefore, empower law as a site for the reproduction of power structured on gender lines.

Future research would be necessary to investigate the different models upon which a specialised child sexual assault court could be based, such as the Family Violence Courts of Manitoba, Canada which use an investigative model for dealing with domestic violence cases (Ursel, 1996). The features of the Manitoba Family Violence Courts that may be relevant to the prosecution of child sexual assault include:

(i) dedicated courtrooms throughout Manitoba which are separate from courtrooms dealing with other criminal matters;
(ii) specialised prosecutors and prosecuting units;
(iii) a women’s advocacy program consisting of counsellors who work with the partners of the men charged;
(iv) judges specially selected by the Chief Justice on the basis of interest and assessment of their judgments in the area;
(v) consultation by the prosecutor with the complainant as to their desired outcome.5

A specialised court system for the prosecution of child sexual assault would challenge the notion that the complainant and accused occupy equal positions within the child sexual assault trial and would enable a recognition of the power differential between victims and offenders and the effect of that power differential on the likelihood of a successful prosecution. In other words, a specialised court system for child sexual assault cases may be able to address the widely accepted view that the present adversarial system for the prosecution of child sexual assault is “loaded against the victim” (Cowdery, 1996).

5 Ursel (1996) reported that the Family Violence Courts in Manitoba have resulted in a significant increase in arrest and conviction rates for domestic violence, more consistent sentencing patterns by judges, an increase in the severity of sentences, the adoption by police of a zero tolerance policy which means they have no discretion not to lay charges upon complaint, a decrease in the re-victimisation rates of victims and changes to the culture of prosecution of domestic violence.


Bavin, J (1991) “Writing about Incest in Victoria 1880-1890” in P Hetherington (ed) Incest and the Community: Australian Perspectives, Centre for Western Australian History, University of Western Australia: Perth, pp 49-78.


Butler, J (1885) *Pall Mall Gazette*, 17 July 1885.


DeFrancis, V (1969) Protecting the Child Victim of Sex Crimes Committed by Adults, American Humane Association: Denver, CO


Australian Perspectives, Centre for Western Australian History, University of Western Australia: Perth, pp 16-30.


Irigaray, L (1985) This Sex Which is Not One, Cornell University Press: Ithaca, NY


Mayer, A (1992) *Women Sex Offenders: Treatment and Dynamics*, Learning Publications: Holmes Beach, FL


Ursel, E (1996) "International Perspectives on Violence against Women: Evaluating New Perspectives", paper presented at a public seminar organised by the Institute of Criminology, Faculty of Law, University of Sydney, 29 August 1996.


LIST OF CASES

Crofts v R (1996) 186 CLR 427
DPP v Morgan [1976] AC 182
Jones v R (1997) 143 ALR 52
Kilby v R (1973) 129 CLR 460
Lane v R (1996) 66 FCR 144
Longman v R (1989) 168 CLR 79
M v R (1994) 181 CLR 487
R v Bernthal (Court of Criminal Appeal of New South Wales, 17 December 1993)
R v Davies (1985) 3 NSWLR 276
R v E (1996) 39 NSWLR 450
R v Hinton (1961) Qd R 17
R v Lillyman [1896] 2 QB 167 at 171
R v M (1993) 67 A Crim R 549
R v Manning; R v Henry (1968) 53 Cr App R 150
R v Miletic (Court of Criminal Appeal of Victoria, 9 August 1996)
R v Murray (1987) 11 NSWLR 12
R v Osbourne [1905] 1 KB 551
R v PJE (Court of Criminal Appeal of New South Wales, 9 October 1995)
R v VCH (Court of Criminal Appeal of New South Wales, 11 September 1992)