

Chapter 2

Sexual Predator Laws: A Gothic Narrative

Legal interpretive acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life.

Robert M. Cover, Violence and the Word, 95 YALE L.J. 1601, 1601 (1986).

On February 7, 1989, Earl Kenneth Shriner was convicted of kidnapping, raping, mutilating, and attempting to murder a 7-year-old boy in Tacoma, Washington. Shriner had a 24-year history of sexual violence, and had recently been released from prison after expiration of a prison term for kidnapping and assault of two teenage girls. Shriner has been described as a “slightly retarded man with a bizarre physical appearance” (Petrunk 1994, 57). His physical appearance seemed to suggest an inner strangeness, a psychological otherness that seemed to explain his appalling conduct (Petrunk 1994). It somehow *made sense* that a man who looked like Shriner would commit sexually violent acts. Mental retardation and physical ugliness have often suggested sexual deviance in literature, as in William Faulkner’s mentally retarded character Benji in the *Sound and the Fury*, who was castrated after being accused of raping a young girl. Benji is emblematic of our anxieties about sexual innocence and mental disabilities (Tilley 1955).

The Shriner case created a nationwide public expression of outrage. During Shriner’s trial, the Washington state legislature unanimously enacted the first “sexual predator” law that permitted civil commitment of a person convicted of a sex offense

who was found by a psychiatrist to “suffer from” a “mental abnormality” or personality disorder that makes it “highly likely” that the person will reoffend if released.¹

On July 29, 1994, Jesse Timmendequas raped and murdered 7-year-old Megan Kanka in a small town in New Jersey. Timmendequas had two prior convictions for sexual offenses against children, but was released into the community shortly before he abducted Megan. Megan’s parents, Richard and Maureen Kanka, began a campaign to pressure the New Jersey legislature to adopt a sex offender community notification law in Megan’s memory. “This was God’s way of using Megan as a tool to make sure this never happens again,” Maureen Kanka proclaimed (Dill 1994). While the idea that Megan’s death was a message from God might be theologically dubious, Maureen Kanka’s statement reflects the view that such conduct can be couched in terms of good and evil, a binary moral framework conducive to excluding the sex offender from the community.

Furthermore, Kanka argued, our revulsion at sex offenders must be accompanied by action: we need laws that protect the community. The New Jersey State Legislature responded with a statute signed into law by Governor Christine Todd Whitman on October 31, 1994 (Sullivan 1994). Megan’s Law requires convicted sex offenders to register as sex offenders and notify their communities where they are living. By 1997, all states adopted registration and community notification laws with overwhelming public and political support. In many states, including New Jersey, repetitive offenders are listed and pictured on the internet. As with the SVPA, such statutes express our anxieties about sex and danger, in this case by submitting offenders to the social gaze permanently.

In 2006, Congress passed the Adam Walsh Child Protection and Safety Act, which George W. Bush signed into law on July 27, 2006. Like most state Megan’s Laws, the Adam Walsh Act, also named after a child victim of a sex offender, establishes a three-tier structure for tracking released sex offenders. Tier 3 offenders (the most serious tier) update their whereabouts every 3 months with lifetime registration requirements; Tier 2 offenders must update their whereabouts every 6 months with 25 years of registration; and Tier 1 offenders (which includes minors as young as 14 years of age) must update their whereabouts every year with

¹ Chapter 71.09 RCW. In 1994, Kansas enacted a version of the law that was challenged by Leroy Hendricks. The Kansas Supreme Court held that the statute violated substantive due process protections because it relied on the finding that Hendricks suffered from a “mental abnormality,” a phrase that was unconstitutionally vague and broad. In *Kansas v. Hendricks*, 521 U.S. 346 (1997), the United States Supreme Court, in an opinion by Justice Clarence Thomas, held that the Statute was constitutionally valid because the Act met substantive due process standards by requiring considerable evidence of past violent sexual behavior and a present mental inclination to repeat such offenses. Furthermore, the Court held that since it required the release of confined persons who became mentally stable and no longer dangerous, did not speak of scienter, and lacked other procedural safeguards characteristic of criminal trials, the Act did not violate double jeopardy guarantees since it merely authorized “civil” rather than “criminal” commitments. *Hendricks* presented the standard legal argument supporting the constitutionality of similar Acts throughout the United States.

15 years of registration. Failure to register and update information is a felony under the law. This statute has been called the “scarlet letter of the twenty-first century” (Farley 2008).

Clearly, Earl Shriver and Jesse Timmendequas committed sexually violent acts over long periods of time. Less obvious is that sexual predator laws, like laws generally, themselves commit violent acts, in the sense articulated by Yale law professor Robert Cover in the above-quoted passage.² The law’s violence is wrapped in a rhetoric of measured retributivism and harm prevention – a moral rhetoric. Whether we believe particular laws are justified or not, it behooves us to recognize that law begins and ends in violence, in a broad sense of the word “violence,” because it represents the power of the state to control conduct. Criminal laws most directly impose violence because they are designed to control anti-social behavior. However, as we shall see, some civil laws also directly impose violence. In this chapter, we examine the details of two kinds of laws that are not presented as retributive measures for violent criminal offenses. This chapter and this book are not about criminal punishment designed to incarcerate people, but examine measures designed to protect the public from harm by implementing two kinds of quasi-civil restraints: Megan’s laws and sexually violent predator statutes.

Megan’s laws and sexually violent predator statutes are designed to constrain the liberties of sex offenders who are released into the community after they have served their prison terms. The rationale used to justify such constraints is provided by the regulatory function of law: in addition to punishment, laws regulate conduct to protect the community. The presupposition of regulations, however, is that they are necessary to protect the public from danger. The danger to the community posed by released sex offenders, especially if they are undergoing psychological treatment, has been overdrawn, as the data we discuss below indicate. The most significant contributing factor to the view of sex offenders as particularly dangerous is the belief implicit in the law and explicit in public media that sex offenders are monsters. The emotional content of sex offender statutes in the United States, despite the dry legalese in which they are written, must be addressed directly in any assessment of the propriety of those statutes.

2.1 Law, Morality, and Emotion in American Law

It is important to recognize the symmetry between the law’s violence and the violence of people whose liberties are infringed by laws. “Violence” will here be understood as any infringement of a person’s rights, whether physical, psychological, or emotional.

² When Cover uses the term “violence” to refer to the imposition of values via law, that is, as an interpretive act, he does not mean that violence is always bad. He, and we, use the word “violence” in a broad sense more or less co-extensive with “coercion” in some contexts and “destruction” in other contexts, not to do “violence” to ordinary usage, but to point to the entire family of meanings of that word. We wish to avoid the easy narrow identification of violence with harm caused by physical brutality.

The word itself is derived from the Latin root *vio*, denoting force, but “violence” need not refer only to physical force. The law may be viewed as a state strategy of public violence designed to constrain private violence. There are generally good reasons for vesting in the state the sole legitimate power to exercise violence. One virtue of law over “self-help” is that law at least appears to be impartial, and in a liberal constitutional democracy, the appearance of impartiality is important to our having a robust sense that the state is just (Sarat 2001).

In the United States, law is presumed to be morally impartial and devoid of the emotions that color the citizenry’s view of social order. The law is generally recognized as embodying the minimalist ethic of a morally and culturally diverse culture, and should not reflect the morality of legislatures or judges. Social solidarity and stability require both common law and statutory law to appear morally impartial, expressing what philosopher John Rawls calls the focus of an overlapping consensus: the moral principles to which, in a complex society, all would assent because they protect the reasonable interests of everyone (Rawls 1987).

Not all conceptions of the good are reasonable and permissible, so a body of law – criminal law –constrains unreasonably harmful conduct. We may, of course, obey the law because it is the right thing to do; it is normative for us. The law’s normative authority, however, is also backed by the overwhelming power of the state. If, as Oliver Wendell Holmes, Jr., famously said, “law is for the bad man,” because bad people are unpredictable, even the good at times require a reminder by the state that we must obey (Holmes 1997, 459). But for the most part, obeying the law is a routine part of our everyday lives and laws often trigger little emotional or moral concern.

However, recent scholarship suggests that both statutory and common (judge-made) laws express greater moral and emotional content than is acknowledged by the official story. To avoid appearing to be incorporating subjective moral preferences into legal decisions, for example, courts may have to use a significant amount of indirection (Calabresi & Bobbitt 1978). As legal anthropologist Lawrence Rosen points out, “In American law if one is to slip moral propositions into legal proceedings, it must be done notwithstanding the absence of any direct authority for doing so” (Rosen 2006, 28). But as Rosen also argues, legal culture is deeply woven into the warp and woof of the rest of American culture, and vice versa. Nowhere is this more apparent, as we shall note throughout the book, than in laws designed to regulate and monitor sex offenders.

Seemingly impartial laws express emotions either directly or indirectly. Criminal laws express fear of the harm to which we are vulnerable. It is part of the social compact that the State, in a democracy, has a monopoly over weapons, in exchange for which we expect the criminal justice system to protect us from harm. There is nothing unjust in this arrangement. However, laws may also express emotions that arguably result in injustice within a liberal constitutional democracy, injustices that are not part of the social bargain. One such emotion is disgust. It is beyond the scope of this book to examine the growing literature on the role disgust plays in morality and law, but sex offenders commit acts that many people regard as disgusting, which is linked to the metaphor of the monster. Hence, we need initially to stake out our

position on the role of disgust in enabling the monster metaphor to frame the legal and psychiatric response to sex offending. Monsters are not only frightening. They are also often disgusting. We react to monsters with fear *and* loathing. There are two opposed views of disgust that dominate the philosophical literature on the subject: the disgust skeptics and the disgust moralists. We are disgust skeptics in the context of civil sexually violent predator statutes and Megan's Law.

Disgust in its primary sense is the visceral revulsion we experience when we encounter kinds of rot, especially rotten food. The response, it has been argued, played an adaptive role in the evolution of the human species as a mechanism to enable us to avoid poisons and parasites. In its most literal meaning, the experience of disgust elicits an aversion to certain potentially dangerous elements of the environment, most paradigmatically rotten food, which we now understand is caused by parasites. Earlier in our evolutionary history, before the process that causes food to decompose was well understood, a mechanism had to evolve that prevented animals from eating and drinking substances that would kill them. Humans apparently relied on the physiological response of disgust to avoid danger (Kelly 2011).

Recent empirical work on the disgust response suggests that the original function of the emotion was co-opted to perform several functions seemingly distant from the visceral response to poisons and parasites. The response came to figure in regulating the increasingly complex system of human social interaction (Kelly 2011). Among those interactions are the responses to outsiders: people who are not part of one's community, and therefore might be dangerous. Disgust not only signals to others that we have encountered an outsider in our midst – a barbarian at least, monster at worst – but also serves to tie us together as members of a community. From a functional point of view, disgust facilitates shared experiences of membership and antipathy. The functional utility of disgust as a form of social cement is the basis of disgust moralism, in which disgust is an adaptive response to danger that also signals the moral bonds of membership in a community.

But, paradoxically, disgust can also be expressed in the apparently impartial laws that are part of public reason. At various times, conduct that has been prohibited by law has been treated as disgusting. Disgust skeptics like Martha Nussbaum (2004) argue laws may express disgust because of widespread misinformation about the dangers of a kind of conduct. For example, until recently, anti-sodomy laws in the United States seemed to have had no basis apart from the social revulsion toward gay sex, as United States courts have only recently taken into account. The link between the literal notion of disgust as a visceral response to rot and disgust at certain kinds of sexual conduct is not obvious, however. Nussbaum argues that disgust serves as a "terror management" mechanism: it enables us to control fear by rendering bodies, including our own body, into something from which we must hide (Nussbaum 2004). Perhaps the most important fact about disgust is that the experience of revulsion can be co-opted to fix a response to experiences that terrify us. When laws prohibit certain kinds of sexual conduct, they limit how people can experience their bodies, according to Nussbaum.

In connection with anti-sodomy laws, Nussbaum's position is attractive: disgust must be separated from morality, especially in the law. Anti-sodomy laws must be examined

rationally to determine whether they are truly protections against dangerous conduct. Of course, sodomy, and the form of sexuality for which the concept of sodomy is a stand-in, is no more dangerous than any other kind of sexuality. But what of conduct that is clearly dangerous, and that triggers disgust? That is the case with sex offenses, and especially child sexual abuse. The disposition to engage in sexual practices that endanger other people may be a proper target of disgust, and therefore of laws that express the emotion of disgust. Even Nussbaum's disgust skepticism may permit a role for disgust in laws prohibiting sex offenses, especially when the victims are children. Is not such conduct a proper target of loathing, as expressed in civil commitment and sex offender registration statutes? These questions are rhetorical. We will argue that disgust skepticism must extend to these offenders as well.

Some scholars argue, however, that disgust is an important and proper emotion for laws to express. William Ian Miller (1998), for example, argues that disgust contributes to social solidarity. If we can agree that certain kinds of conduct are so abhorrent they must be stigmatized and those who engage in such conduct must be excluded from civil society, we should enact laws that express such common values, according to Miller. Disgust establishes that there are "moral matters for which we can have no compromise" (Miller 1998, 194). In a similar vein, Dan M. Kahan (2000) argues that while disgust is regarded as an "illiberal sentiment" and thus beneath the dignity of the law, it plays "a central role in criminal law." Kahan points out that our view of law generally disguises the significant role disgust plays in our legal practices, but that does not make the emotion any less powerful. Kahan proposes that this powerful emotion be conscripted into service of liberal causes, such as gun control and environmental protection. Indeed, the emotion may be more powerful if it cannot directly be addressed. To do so might reveal that we often make tragic choices when we impose laws that are appealing because of their emotional heft (Calabresi & Bobbitt 1978). It is not illiberal to attempt to protect society from dangerous conduct. If, in addition to criminal laws, we deploy laws that clearly express our social revulsion at certain kinds of dangerous conduct, we may benefit the offenders themselves.

Sex offender laws may be construed as expressing disgust in this morally relevant sense. Throughout this book we will see the emotional content of sex offender laws playing out in courtrooms and in the press. It is precisely because of that emotional content, disguised by rhetoric of impartiality and objectivity, that sex offender statutes designed to regulate the conduct of offenders when they are released from prison express our moral condemnation of such conduct. Sex offenders commit violent acts, often against children; sex offender statutes meet that violence with state-sanctioned violence. Even Nussbaum might find that disgust plays a legitimate role in such statutes' expressions of our moral condemnation of sexual violence.

We shall argue, however, that even in the case of sex offenders, laws that express our disgust at their conduct contaminate the laws themselves. The laws are mechanisms for deflecting our complicity in creating a society in which sexual conduct is judged by its place on a grid that measures degrees of normalcy. The more deviant and harmful the sexual conduct, the more it disgusts us. When laws express

that disgust, they cannot play the function assigned to them by disgust moralists. They do not simply prohibit bad behavior; they also prevent us from recognizing that the conduct is human, even if dangerous.

2.2 The Monster Among Us: The Social Context of Revulsion

The transfer of feelings of disgust from a literal, adaptive response to parasites and poisons to feelings of disgust at certain kinds of human conduct is not accomplished in isolation from a society's culture as a whole. In particular, in the United States, the disgust elicited by sex offenders is linked to the metaphors of the monster and the predator. In popular media, sex offenders are often labeled as monsters or predators, and their conduct is regarded as monstrous, with little critical reflection on the power of that metaphor to capture the experience of disgust. Although recent work by scholars has critically assessed the labeling of sex offenders as monsters or predators, that work is hardly representative of the general public's attitude toward sex offending that focuses on pedophiles preying on very young children. Thus, Marshall (1996) argues that we should not regard sex offenders as (bad) monsters or (sick) victims, but as human beings with problems that can be treated with strategies used to treat patients with other behavioral disorders. One of the authors of this book (Schultz 2005) argued more recently that sex offenders, some of whom she interviewed while they were serving their prison terms, should not be regarded as monsters because to do so is to remove them from treatment and control. The label itself suggests that the problem cannot be solved because a monster cannot be treated. As we argue in Chap. 9, only if we refuse to frame the sex offender as a monster can we address sexual violence with effective public health strategies.

The widespread use of the monster metaphor (and its related metaphor "predator") is easily documented. Consider the following randomly selected results of a Google search that produced over 1,000,000 pages.

A September 14, 2010, article in the *New York Daily News* features the headline "Marcos Cuevas, the monster accused of another vicious rape, should be locked up forever":

Marcos Cuevas committed two particularly violent rapes. That was in 1996, one on April 23, the other on Aug. 4, both in Manhattan, at least one at knifepoint.... He was charged with using the same modus operandi when raping a 75-year-old woman who lives with her 95-year-old mother a dozen blocks from his Bronx address listed in the registry.

That was on Sunday, and the whole city should be outraged.

Like the rape in 1996, this rape could only have been committed by a monster within.

For such a monster, 14 years must seem to mean nothing. http://www.nydailynews.com/news/ny_crime/2010/09/14/2010-09-14_gotta_lock_this_monster_up_throw_away_key.html#ixzz1DrNElrF8

On November 11, 2009, a writer for the *Cypress (Texas) Times* wrote, under the headline "The monster next door: The plague of American sex offenders":

"There's no such thing as monsters." We tell our kids that. The truth is that monsters are real. A real live monster might live next door to you, or across the street from your child's school, even around the corner from your church. These monsters are called "Sex Offenders", a label that is far too innocuous to convey the evil of those who have earned it.

That was the first paragraph of an article designed to persuade us that:

These harbingers of horror lurk from border to border, from city to town, all across our country. They haunt the highways, and two-lanes, the cul-de-sacs and prominent upscale communities where we, as citizens and parents ignorantly cling onto a false sense of security.

Monsters are real.

Monsters could be next door, or across the street from your child's school or church. Now you know. You are ignorant no more. What next?

The article concludes: "The Cypress Times welcomes your thoughts, and commentary, on this vital subject and we ask that you share any advice or research of which you may have information that would assist parents and their children in dealing with the issue of monsters in our neighborhoods." The conclusion invites readers to join the newspaper in engaging in the conversation about "the issue of monsters in our neighborhoods." http://www.thecypresstimes.com/article/News/Your_News/THE_MONSTER_NEXT_DOOR_THE_PLAGUE_OF_AMERICAN_SEX_OFFENDERS/25925

On January 19, 2005, ABC-TV Primetime News (online) reported that

There is a man who many people in San Diego have called a monster. Dan Coffey, a local resident, said, "He's an untrustworthy, monstrous human being."

No one in this community, from parents to politicians, wants him around. "This guy is going to be like a beast hunting these kids down. That's what he's going to do, and we can't trust him," said State Assemblyman Juan Vargas. <http://abcnews.go.com/Primetime/story?id=1522571>

And in Ireland, it was reported in 2003, an America sex offender who moved to Ireland was being sent back. As the article puts it: "The 20-stone monster was released from Curragh jail in Dublin after serving almost 2 years for robbing a bank in 2001." <http://www.thefreelibrary.com/MONSTER+AT+LARGE%3B+Irish+send+evil+sex+offender+Cronin+back+to...-a0102221727>

To defend a convicted sex offender, it would seem, requires the denial that he is a monster, as well as the denial that he engaged in the disapproved conduct. For example, on November 16, 2010, in a report of a press conference with an Orange County California District Attorney, the D.A. said of a recently released sex offender: "Free to roam our streets, this monster is a ticking time bomb." In one typical comment on the article, a reader wrote: "Do you know any little girls 8 or 9 years old? What if he did this to them? How would you feel then? Would you still give him another chance? I would not. If I were King, the jails would be empty. I'd Gas every Friday." <http://www.ocregister.com/news/brown-276246-state-santa.html>. The following day, the paroled offender's sister asserted that her brother was innocent of the charges against him, saying: "Please do not judge him ... He's not a monster. He's not a boogie man like they say. He just wants to go on with his life." <http://www.ocregister.com/news/brown-276454-foxen-brother.html>

The question we address in this book is whether the metaphors used to frame sex offenders and their conduct contaminates professional legal and psychiatric judgments about sex offenders. Because the language of the law appears impartial, and the language of psychiatry objective and scientific, the cultural background of these professional practices must be brought into the foreground before we can engage in a serious effort to reduce the incidence of sex offending in the United States.

2.3 Sexually Violent Predator Acts

This chapter was introduced with a reference to sex offender registration and civil commitment statutes as applied to sex offenders. But the devil, perhaps literally, is in the details. In New Jersey, the Sexually Violent Predator Act (SVPA) was one of ten pieces of legislation passed by the New Jersey Legislature following Megan Kanka's rape and murder. Other laws changed the Criminal Code to increase sentencing, permit greater victim participation in sentencing procedures, introduce changes in awarding "good time" jail credits to reduce sentences, authorize collection of DNA samples from people convicted of certain sex offenses, and include community notification, offender registration, and parole supervision for life laws. The notification, registration and supervision laws are the heart of Megan's Law (Corrigan 2006). We will focus on New Jersey's SVPA and Megan's Law because they are typical of similar statutes in other states and the Federal government.

The New Jersey SVPA authorizes the State to involuntarily commit a person who is found to be a sexually violent "predator." The predicate for civil commitment is that the person has been convicted, adjudicated delinquent, or found not guilty by reason of insanity of a sexually violent offense, and that he "suffers from a mental abnormality or personality disorder that makes the person [highly] likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment." *N.J.S.A. 30:4–27.26, I/M/O/Commitment of W.Z.*, 173 *N.J.* 109, 120 (2002). The offender must be "substantially" unable to control his sexually harmful conduct as a result of his mental abnormality or personality disorder. However, the person need not suffer from a complete loss of control. *Id.* at 128.

High likelihood to reoffend constitutes the "dangerousness" element of the SVPA:

To be within the class of persons who may be committed under the SVPA, one must be "likely to engage in acts of sexual violence." That aspect of the "dangerousness" prong of the Act is explained to mean that "the propensity of a person to commit acts of sexual violence is of such a degree as to pose a threat to the health and safety of others." One's likelihood to commit such acts obviously relates to the control determination that the trial court must make. Although the "likelihood" requirement is not defined further in the Act, we import into that analysis the "serious difficulty" standard. An individual may be considered to pose a threat to the health and safety of others if he or she were found, by clear and convincing evidence, to have serious difficulty in controlling his or her harmful behavior such that it is highly likely that the individual will not control his or her sexually violent behavior and will reoffend. *Id.* at 129–30.

In New Jersey, the standard of proof is not “beyond a reasonable doubt,” but “by clear and convincing evidence.” New Jersey here follows the United States Supreme Court’s standard of proof in sex offender cases:

We have concluded that the reasonable-doubt standard is inappropriate in civil commitment proceedings because given the uncertainties of psychiatric diagnosis, it may impose a burden the state cannot meet and thereby erect an unreasonable barrier to needed medical treatment. . . . To meet due process demands, the standard has to inform the fact-finder that the proof must be greater than the preponderance-of-the-evidence standard applicable to other categories of civil cases. *Addington v. Texas*, 441 U.S. 418, 432–33 (1979) (quoted in *I/M/O Commitment of JHM*, 367 N.J. Super. 599 (App. Div. 2003)).

Note that the uncertainty of psychiatric diagnosis and medical treatment are the primary basis for adopting the lower standard of proof than reasonable doubt. We return to this point below.

In addition to the relaxed standard of proof, sexually violent persons in New Jersey, referred to as “predators” in the SVPA, do not have a right to a jury trial, and civil commitment hearings, while they take place at the end of a conviction for a sex offense, are not violations of the constitutional prohibition of double jeopardy. Finally, the deprivation of liberty imposed by civil commitment is not regarded as an ex post facto punishment even in cases in which the committee’s original offense took place prior to the implementation of the SVPA in 1999. These issues have been resolved in the State’s favor primarily because the SVPA is civil commitment, and in New Jersey civil commitment does not require jury trial and does not count as punishment. In 1995, the New Jersey Supreme Court held that the sex offender registration and community notification provisions of Megan’s Law were regulatory and not punitive because the Legislature intended them as protection from sex offenders who pose a high recidivism risk. *Doe v. Poritz*, 142 N.J. 1, 46 (1995). The Supreme Court applied this standard to the SVPA, holding that even though “confinement is onerous and has some punitive impact, that impact is the inevitable consequence of the regulatory provisions.” *State v. Bellamy*, 178 N.J. 127, 138 (2003). This distinction between penal and collateral consequences of a civil commitment statute has been drawn in all states in which the constitutional protections of criminal defendants are not available under a state’s SVPA, despite the fact that in most states the deprivation of liberty is indefinite.

New Jersey’s SVPA case law was inevitable in light of Justice Thomas’s opinion in *Kansas v. Hendricks*, in addition to a later opinion authored by Justice Stephen Breyer, holding that the standard for the lack-of-control element of the law was that, because of a mental abnormality or personality disorder, short of mental illness, the offender was substantially unable to control his or her sex offending behavior.³ The vagueness of the terms “mental abnormality” and “personality disorder” has been extensively criticized elsewhere, but it is still the language of most of the SVPAs in the states that have such laws, including New Jersey. The only criticism we will briefly review, because it is regarded as a harbinger of the “preventive state”

³ *Kansas v. Crane* 534 U.S. 407 (2002).

in criminal justice, is that of Carol Steiker. Steiker argues that the Court never explored the ways its opinion fit with other laws and policies that articulate a problematic preventive approach to criminal conduct.

General civil commitment statutes utilize the concept of mental illness, which, while not entirely clear, is regarded by psychiatrists as a predicate for finding dangerous persons virtually incapable of controlling their conduct. But “mental abnormality” and “personality disorder” are applicable to virtually all who commit serious crimes. The degree of volitional and cognitive impairment required to find somebody civilly committable under the SVPA is simply unavailable. The SVPA net is narrowed only by the predicate sex offenses, which are punished by criminal statutes. It is perfectly possible that all sex offenders can be found subject to the SVPA because they have committed the crimes for which they were punished already. But in that case, civilly committing them is simply an extension of the punitive statutes under which sex offenders were incarcerated. However, as vague as are “mental abnormality” and “personality disorder,” the SVPA is intended to *prevent* future crimes. The problem, which we will examine in the last chapter of this book, is that because of the vagueness of the mental disorders, the same disorders may well become the basis of a wider notion of *prevention* than heretofore utilized in response to particularly frightening crimes. We seem poised to transform the criminal justice system, Steiker argues, into the centerpiece of the preventive state rather than the punitive state. Because many of the protections afforded to criminal defendants – including rights to a jury trial, legal representation, proportionate punishment, freedom from double jeopardy and ex post facto laws, and exclusion of improperly obtained evidence – are not afforded to civil committees,

[t]he central question that the [Supreme Court] must soon engage in a concerted fashion is whether and to what extent the state’s attempt to prevent or prophylactically deter (as opposed to investigate) crime and to incapacitate or treat (as opposed to investigate) wrongdoers insulates the state’s actions from the limits the law would otherwise place on the investigative/punitive state (Steiker 1998, 806; Janus 2006).

Steiker wrote her paper in 1998, and, as Janus argues, the Court has not yet confronted this question (Janus 2006).

Significantly, New Jersey and several other states provide a definition of “sexually violent offense” that permits an indefinite expansion of preventive detention. Taking New Jersey’s SVPA once again as emblematic of the preventive approach to crime prevention, the Statute defines “sexually violent offense” in two steps. A “sexually violent offense” is any explicitly enumerated sex contact offense, including “aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to subparagraph (b) of paragraph (2) of subsection c. of *N.J.S.A.* 2C:13–1; criminal sexual contact; felony murder pursuant to paragraph (3) of *N.J.S.A.* 2C:11–3 if the underlying crime is sexual assault; an attempt to commit any of these enumerated offenses; or a criminal offense with substantially the same elements as any offense enumerated above, entered or imposed under the laws of the United States, this State or another.” *N.J.S.A.* 30:4–27.26(a) (hereinafter Subsection (a)). However, the SVPA also defines a “sexually violent offense” as “any offense for which the court makes a specific finding on the record that, based

on the circumstances of the case, the person's offense should be considered a sexually violent offense." *N.J.S.A.* 30:4–27.26(b) (hereinafter Subsection (b)). The Legislature left Subsection (b) vague in at least two ways: it did not specify which court could make the finding that the person's offense should be considered a sexually violent offense; and it did not specify what should count as evidence of the "circumstances of the case."

Twenty states⁴ have now enacted laws that permit the post-conviction detention of sex offenders for treatment. While New Jersey is not unique in permitting the specter of commitment to extend beyond enumerated sex offenses, the inclusion of a "catch-all provision" such as Subsection (b) is by no means the prevalent form of the statute.⁵ Moreover, the language of New Jersey's act is by far the broadest of all the states that permit commitment for a non-enumerated sexual offense.⁶ Most of the "catch-all" statutes limit the expansion in scope of sex offender commitment to certain additional enumerated felonies where a sexual motivation has been established.⁷ Not only do these states limit the felonies to which commitment can apply, they contain a definition of "sexual motivation" in the Act itself. New Jersey's SVPA, on the other hand, has no limitation on the nature of the offense that can form the basis for commitment, nor does the statute define what circumstances should make a crime "sexually violent."

It is significant that New Jersey does not limit potential commitment to those convicted of crimes – the statute uses the term "offense" which, by definition, includes disorderly and petty disorderly offenses. By allowing any offense to form a predicate for civil commitment, the SVPA provides no notice to an individual that his conduct exposes him to civil commitment in addition to whatever statutory penalties he faces. In New Jersey, because of the wide scope of Subsection (b), there is no limitation in the SVPA itself on the offenses that can be the predicate for civil commitment. At the time of writing, Subsection (b) is the target of a case in the New Jersey Supreme Court, but there is no reason to believe that the Court will strike that

⁴The other states with various forms of SVP statutes are Arizona, *Ariz. Rev. Stat. Ann.* §§ 36-3701–36-3717 (2008); California, *Calif. Welf. & Inst. Code*, § 1800 (2007); Florida, *Fla. Stat. Ann.* §§ 394.910–394.932. (2008); Iowa, *Iowa Code* § 229A (2008); Illinois, 725 *Ill. Comp. Stat.* 207/1 (2008); Kansas, *Kan. Stat. Ann.* § 59-29a05 (2006); Massachusetts, *Mass. Ann. Laws* ch. 123A, §§ 1–16 (2008); Missouri, *Mo. Rev. Stat.* §§ 632.480–632.513 (2008); Nebraska, *Neb. Rev. Stat.* § 83–174 (2008); New York, *N.Y. Men Hyg Law* § 10 (2008); North Dakota, *N.D. Cent. Code* § 25–03.3-01 (2008); Pennsylvania, 42 *Pa. Cons. Stat.* §§ 6401–6404 (2008); South Carolina, *S.C. Code Ann.* §§ 44-48-10–44-48-170 (2007); Texas, *Tex. Health & Safety Code Ann.* § 841 (2007); Virginia, *Va. Code Ann.* §§ 37.2-900–37.2-920 (2008); Washington, *Wash. Rev. Code* § 71.09 (2008); Wisconsin, *Wis. Stat.* § 980 (2007).

⁵Catch-all provisions are included in the statutes of Arizona, California, Florida, Illinois, Kansas, Minnesota, New York, South Carolina, Washington and Wisconsin.

⁶South Carolina's catch-all section is the same as New Jersey's. *S.C. Code Ann* § 44-48-30(2) (Supp 2006).

⁷The enumerated non-sexual offense with sexual motivation model is found in the Arizona, Illinois, Minnesota, New York, Washington, and Wisconsin Acts. In addition, California limits its catch-all provision to enumerated felonies where the state proves "use of force and violence against a stranger in a predatory manner." *Calif. Welfare and Inst. Code*, Sec. 1800 et seq.

portion of the SVPA. Subsection (b) is the harbinger, we suggest, of an approach to crime in general that deploys preventive detention, but because of the fear and loathing of sex offenders the strategy's more general applications have not been the focus of much attention.

2.4 Megan's Law

If involuntary civil commitment reflects the way law can impose restrictions on sex offenders by confining them in institutions, sex offender registration statutes reflect the reach of the state to restrict convicted sex offenders when they are released into the community. Registration statutes, popularly known as Megan's Laws after Megan Kanka, who was raped and murdered in New Jersey, are also moves toward a preventive state because they are triggered when a sex offender is released.

In New Jersey, the statute begins with two legislative findings:

- a. The danger of recidivism posed by sex offenders and offenders who commit other predatory acts against children, and the dangers posed by persons who prey on others as a result of mental illness, require a system of registration that will permit law enforcement officials to identify and alert the public when necessary for the public safety.
- b. A system of registration of sex offenders and offenders who commit other predatory acts against children will provide law enforcement with additional information critical to preventing and promptly resolving incidents involving sexual abuse and missing persons.

The presumption of Megan's Law is that the recidivism rate of sex offenders is high, and that the harm caused by all sex offenses is serious. The New Jersey Legislature, however, utilized questionable prevalence data before (Human Rights Watch 2007, 60), and failed to distinguish degrees of harm caused by different sex offenses. As will become evident, both state and federal legislatures considering Megan's Laws tend to focus on what has been called the "yuck" factor: an emotional response of disgust that tends to eliminate fine-grained differences among types of sex offending conduct.

The Statute requires all sex offenders to register with local police upon release. As with the Adam Walsh Act, the offenders are then sorted into three levels of risk of re-offense, Tiers I to III, based upon actuarial risk assessment instruments, primarily the RRAS. Tiers are linked to the scope of community notification and publicity: the most serious offenders are assigned to Tier III and must submit to community notification and internet publication in addition to registration; Tier II offenders with a lower actuarial risk are required to notify police, schools and community organizations; Tier I offenders, with the lowest recidivism risk, are required only to notify the police.

The details of Megan's Law were set out in the Attorney General's Guidelines after the Legislature passed the general outlines of the Statute. Both New Jersey State courts and District Courts for the District of New Jersey initially held the Law unconstitutional on ex post facto and procedural due process grounds. However, in the 200-page opinion cited above, *Doe v. Poritz*, the New Jersey Supreme Court ruled that Megan's Law was constitutionally valid because it was a remedial and

regulatory, not a punitive, measure. In the taxonomy of the law, Megan's Law, like the SVPA, is civil and not criminal. Both statutes were designed to fill gaps in the general civil commitment law which historically did not provide criminal protections of defendants, such as the bar on ex post facto punishment, double jeopardy, due process rights such as the right to a jury trial, and the right to privacy that is included in liberty. *Doe v. Poritz* accepted the Legislature's findings on the prevalence of sex offenses and the difficulty of treating underlying mental abnormalities that were imputed to sex offenders.

The SVPA controls people convicted of sex offenses by institutionalizing them, thereby directly depriving them of liberty indefinitely. Megan's Law attempts to control people convicted of sex offenses by tracking them and restricting their mobility once they are released into the community, which is also a deprivation of liberty. Significantly, both forms of social control are regarded as part of *civil* and not *criminal* law. As Daniel Filler (2001) points out, Megan's Law is controversial because it targets a small group of criminal offenders and subjects them to public shame and, potentially, vigilante violence by widely publishing their names, addresses, and other information within their communities and on the internet. The practices are an invitation to physical violence in addition to the violence of the prison system itself. The latter is arguably warranted by the conduct of the offenders, but Megan's Law appears to impose regulatory mechanisms that are punitive behind a veil of civil remediation. The SVPA imposes a form of civil incarceration that similarly masks punitive deprivation of liberty with a rhetoric of remediation: treatment of, and protection of the public from, dangerously mentally ill persons, even if sex offenders are not, from a psychiatric point of view, mentally ill but only "abnormal."

Filler (2001) has provided a detailed account of the legislative debates about Megan's Law in both the United States Legislature and in New York State's Legislature, and analyzes the rhetorical characteristics of the debates. Filler distinguishes three kinds of arguments: those that focus on the need for new sex offender statutes; those that focus on the possible benefits of Megan's Law; and those that focus on the possible drawbacks of the statutes. The arguments in support of new sex offender laws are broken down further into horrifying stories of well-known cases of adult men who raped young children; statistics demonstrating the seriousness of the problem; and dehumanizing language describing offenders. Filler's analysis of the arguments favoring new sex offender statutes reveals the extent to which statutes, which are written in dry legal terms, were shaped by the rhetoric of horror, prevalence, and the monstrousness of the offenders. His analysis is of considerable importance for our argument that sex offenders are framed as monsters and their crimes are framed as monstrous in the most blatantly emotional terms possible.

2.4.1 *Stories of Abjection: The "yuck" Factor*

The dominant type of story is exemplified by the following descriptions of specific instances of horrifying sex offenses, recited by Federal legislators:

[O]n July 29, 1994, a beautiful little girl named Megan Kanka was lured into the home of a man who literally lived across the street from her. He said that he had a puppy he wanted to show her. He then proceeded to brutally rape and murder this little girl. (Representative Zimmer) (331)

Megan Kanka, who was raped and strangled and murdered by a twice-convicted pedophile who lived across the street from her. (Representative Jackson-Lee) (331)

As Filler notes, references to Megan Kanka were made repeatedly, but examples of other children whose abuse had been prominently featured in the news were also described, such as Polly Klaas. Senator Feinstein described in heart-wrenching detail her abduction, rape, and murder, and then told the story of another child victim in great detail:

The second little girl I want to tell you about, Amber Hagerman, was visiting her grandparents on January 13 of this year, the day she was kidnapped. An eyewitness later told police that he saw a white or Hispanic man pull the child from her pink tricycle and drag her into a black pickup truck. She was found dead 4 days later – her clothes stolen from her lifeless little body – in a creek behind an apartment complex. (331–332)

As Filler points out, Feinstein provided such graphic descriptions during the debates that they were “palpable, easy to visualize, and difficult to forget” (332).

Texas Senator Phil Gramm told the following story:

Three years ago, a 7-year-old girl named Ashley Estell went to a park in Plano, TX, which is an upscale suburb of Dallas, one of the finest communities in America, and certainly we would assume one of the safest. She went to the park that day to watch her brother play soccer. Ashley's brother played in the second of three games to be played that day and while her parents stayed to watch the final game, Ashley went to play on a swing set. Although there were 2,000 people in the park that day, this little girl was, nevertheless, abducted, raped and brutally murdered.

... The FBI, using the 14 tapes that were turned in [by people who had been videotaping games on the playground], was able to go back and identify a known sexual predator who had been there the day Ashley was abducted ...

What shocked Plano, the whole metroplex and, to some degree, the entire country, was not just this tragic crime, but the fact that the FBI ... identified not one but two sexual predators who were in the park on that day. It turned out that the referee of all three soccer games played that day was a convicted sexual predator, who had fled from North Carolina to Texas to avoid being sent to prison for 10 years. (332)

The New York Legislature debated their version of Megan's Law with Maureen Kanka present the entire time, “placing Megan's murder silently, but powerfully, at the center of discussion” (333). Megan Kanka was the reference point for the debate, and her story clearly contributed to the rhetorical context of the debate.

Virtually all of the stories were about stranger abduction, rape, and murder of very young children. Legal scholars point out that the stories of child sexual abuse, and the statutes summarized above, have created an approach to sex offending that deviates significantly from the arguments of second-wave feminists that much of the sexual abuse of women and children occur *within* families. Throughout the 1970s and 1980s, feminists mounted a campaign to direct attention to intrafamilial sex offending, highlighting the data that showed that husbands had been raping their wives and molesting their children far more commonly, and with legal impunity, than a male-dominated culture was willing to acknowledge. As we argue in Chap. 6,

with the shift in the focus on acquaintance or stranger offenders brought about by Megan's Laws and Sexually Violent Predator statutes, the movement initiated by feminists was short-circuited and the older fear and loathing of strangers as potential sex offenders became the central concern (Janus 2006). Relatively rare offenses perpetrated by strangers or non-familial acquaintances now dominate media reports and political rhetoric about the danger of sex offenders. Sex offending by strangers is now the crux of sex offending as a public problem.

2.5 Becoming a Public Problem

Sociologist Joseph Gusfield (1984) provides a powerful account of what he calls the "culture of public problems." In his analysis of drinking and driving as a public problem, he argues that not all social problems become public problems. To be a public problem, a social problem first must be the subject of public controversy or conflict. They are "public" in the sense that they are tied to the values and interests of the "collectivity" or community. A public problem is not simply a social problem, however. Excessive drinking was at one time considered not to be a social problem, but a part of everyday life, at least for men. Excessive drinking became a social problem in the United States when, in the nineteenth century, it seemed to threaten the stability of the family (Okrent 2010). But it was not yet part of a nexus of concerns that called into question such a wide range of social institutions that it was perceived as a serious danger needing to be addressed by public agencies, media and political attention, and laws. Excessive drinking became perceived as a widespread danger when it was linked to the most important technology of the twentieth century: the automobile. It was not until safe driving came to be seen as the responsibility of governments, industries, churches, and other social institutions that drinking and driving could emerge as a public problem.

Moreover, excessive drinking had long been regarded as a problem for individuals with the medical and moral condition of alcoholism. Moral responsibility was viewed as located within the individual, and social institutions could, at most, provide resources for helping individuals cope with their problem of excessive drinking and the social problems their bad habit caused. In order for drinking and driving to become a public problem, the individualist moral culture had to change at least to the extent that moral responsibility could be attributed to social institutions. A public problem implicates a society's moral order generally. That is, it triggers public controversies about the role of institutions in preserving social stability and protecting the public from a recognized public danger.

The protection of the public from a specific danger contributes to the sense of drama that public problems provide. Gusfield (1984) argues that "conceptualizing public actions as drama means that we think about them as if they were performances artistically designed to create and maintain the attention and interest of an audience" (174). Gusfield continues, "Public dramas are acts undertaken in the name of and in the sight of the collectivity, visible and observable" (175). Gusfield's account of how a

private problem becomes a specific kind of social problem – a public problem – provides a powerful framework for understanding the most salient features of the social responses to sex offenses and the actors who perpetrate them. Gusfield's work expresses the notion that rhetoric is intimately connected to the discovery and implementation of social knowledge, an idea famously postulated in Robert L. Scott's 1967 article "On Viewing Rhetoric as Epistemic." Walter Fisher (1987) claims that "rhetorical experience is most fundamentally a symbolic transaction in and about social reality." Knowledge is "ultimately configured narratively, as a component in a larger story" (17). To determine the logic behind a narrative's application, we look to the elements of coherence (how the story hangs together) and fidelity (whether the story seems truthful). This presumption of rationality assumes that people employ the narrative paradigm in a reasoned, methodical way and that narratives are moral constructs, able to be used as key points in public arguments over significant issues. Yet public moral argument "is often undermined by the 'truth' that prevails at the moment" (71). And when that "truth" is the result of a drama that arises from the perception of a public danger like child sexual abuse, the stories that are channeled via mass media become structured as part of this larger narrative.

Social knowledge may be conceived as symbolic relationships among problems, persons, and behavior that imply what sort of public actions are preferable. In our mass-mediated society, social knowledge is often created via dramatic narratives that become a public drama. The sex offender, knowingly or not, has become an actor playing a role in a public drama. As we argue later, sex offenders, and especially child sexual abusers, are targets of a widespread moral panic that has the structure of a drama. One key feature of the dramatic narrative is the transformation of the sex offender into a monster that must be met with legal violence, including statutes that create special institutions to prevent those labeled as sex offenders from enacting their roles in public, as well as statutes that circumscribe their movements if they are released into the community. But even offenders who are kept from public view in institutions play a dramatic role offstage; they are always available to a public that finds the narrative surrounding them endlessly fascinating, even as the public regards them with horror and disgust.

The sixteenth-century Salem witch trials are infamous examples of the injustices that can be the result of public hysteria and the resulting narratives stemming from the perception that there are dangerous monsters in our midst. Nineteen women were found guilty of witchcraft after trials that permitted egregious hearsay and vague standards of proof (Demos 2008). We understand that the Salem women accused of witchcraft were innocent, whereas sex offenders are often guilty of horrendous crimes. Nevertheless, sex offenders may be considered our current witches to the extent that they are excluded from society, not because of the crimes of which they were found guilty, but on the basis of hearsay and rumor; improperly applied psychiatric diagnoses and risk assessment instruments; standards of proof that vary from state to state, and even from courtroom to courtroom; and a pretense of objectivity. Underlying the legal processes involved in deploying civil constraints against sex offenders is the drama of witch-hunting sexual deviance, public humiliation, and disgust.

The reality of sex offending has little to do with the public perception because it often becomes integrated into the daily lives of its victims. That reality is not the obvious monstrousness of the stranger or acquaintance who kidnaps, rapes, and sometimes murders his victims, but of a trusted family member, friend, or neighbor. In many ways, the sex offender is like the rest of us, and that is the secret that must be kept. As Megan's laws show, we want sex offenders to be tracked. However, we also want to distance ourselves from them, and recognizing their humanity may make such distancing impossible.

Consider the experience of one of the authors (Schultz), who was molested as a child by a next-door neighbor in a predominantly white, blue-collar suburb in the 1960s and 1970s. The perpetrator was an older man, a well-loved fixture in the neighborhood. Due to a disability that left him unable to work, he was frequently home during the day, spending his time visiting, helping, and even babysitting for the neighborhood's housewives. The abuse probably began soon after her parents moved into the neighborhood when she was 4 or 5 years old, and went on for years. When it stopped, no doubt due to her reaching an age at which he no longer found her sexually appealing, she buried the knowledge and moved on, not coming to terms with the abuse until after his death when she was in her twenties.

Even after coming to grips with the realization that she was molested by someone she trusted and loved, Pamela has never been able to hate him. In fact, her academic research was borne of her desire to decipher the paradox he represented. On one hand, he was loving, amusing, protective, and caring; on the other, he was exploitive, selfish, and cruel. He was not a drug addict, or a convicted criminal, or insane. He was not a monster. From all accounts, he was a reasonably intelligent, ordinary-seeming, even innocuous individual, albeit perhaps a bit more ingratiating than the average man. Even if the laws we discuss in this book existed at the time, it is doubtful that they would have stopped him from molesting. How about this: He was able to molest children with impunity because there was no collective, publicly disseminated narrative that cautioned parents to be vigilant about the ever-present possibility that their children might be stalked by predators. Child sexual abuse existed, but we were only just beginning to speak of it outside the medical and therapeutic communities. Although the mothers and fathers of Pamela's peers might have grown up in the wake of Kinsey's shocking reports about sex in America, in which a surprising number of females admitted that they were either approached for sex or molested as young girls, they could not have imagined it might happen to their own children, particularly at the hands of a man with whom they shared coffee, chores, and the latest gossip. There was no public context for this sort of behavior, so it had little if any substance for so-called average middle-class America. Given the lack of a collective narrative, which stemmed from the silence that surrounded the behavior at that point in time, it was as difficult for parents to recognize the signs of abuse as it was for victims to comprehend the enormity of the experience. We had no vocabulary to speak of it.

Certainly, the efforts of the women's movement in the 1970s and 1980s to demystify rape and sexual abuse not only publicly identified the problem of family and acquaintance abuse but also gave voice to the victims. At least since the sex fiend

scares of the 1930s, the image of the evil, homicidal, crazy stranger who preyed on children in public places was a familiar bogeyman. This narrative was as predictable as a fairy tale. However, this image of the sex offender meant that our understanding of the crime's myriad permutations was limited. There was no precedent for the kindly next-door neighbor, slightly eccentric uncle, oddly affectionate teacher, or overly solicitous priest. In fact, when it came to incest, one of the failures of family therapy to that point was to view it as a family dynamic. This had perhaps been a more realistic means of addressing the problem of incest, but such emphasis meant that it was much more difficult to identify a single monstrous offender who was responsible, hence could be held accountable, for the crime. In addition, the emphasis on incest as a family dynamic meant that victims could end up feeling complicit in their own abuse, as children were sometimes discussed as seductive.

Yet as more victims were empowered to articulate their experiences, and the alarming statistics focused on the frequency and type of sexual abuse flooded the media, the stereotypical image of the evil sex fiend in the trench coat was actually reignited rather than defused. The stories that focused on intra-familial and acquaintance abuse were initially startling, then horrifying, and finally too close to home. For example, although audiences may shudder at films like "The Stepfather," "The Hand that Rocks the Cradle," and "The Good Son" that feature seemingly normal family members and friends who go berserk, we would much rather be terrified by absurd golems such as Freddy Kreuger, Michael Myers, Hannibal Lecter, and Jigsaw. Religion, politics and popular culture have primed us for readily recognizable monsters into which we can pour our collective angst and uncertainties. So the 1990s brought us well-meaning yet potentially specious efforts such as Megan's Law, which may take into account the idea that neighbors may be molesters but perpetuate the notion that sex offenders are monsters. Indeed, offenders may take elaborate means to *seduce* their victims. These offenders do not want to physically harm their victims, even though they might know the emotional damage they cause. Megan's Law, Jessica's Law, or any of the other attempts to identify and control sex offenders that rose out of the 1990s and early twenty-first century would not have helped Pamela, or any of the other children her abuser undoubtedly victimized, for two main reasons. One, he had never been convicted of a crime. And two, he did not look like a child molester. He was a perfectly ordinary man, completely unremarkable in every way that mattered.

One of the disturbing features of sex offense statutes like Megan's laws and sexually violent predator statutes, as we discuss in more detail in Chap. 6, is that they reinvigorate the old stereotype of the sex-offender-as-monster, and therefore the sex offender as stranger, that had been challenged by feminists. Only a minority of intrafamilial sex offenders are convicted and they are a relatively low risk to reoffend when they have been convicted because they are generally prevented from being near children in their families. Friends or neighbors of a sexually abused child do not fit the stereotype of a monstrous offender, and may not be suspected in a typical case of sex offending. Megan's laws target men who have been released from prison and are trying to find places to live in neighborhoods where they are, in fact, strangers. To the extent that our legal response to sex offending is designed

to target offenders who are strangers to their victims, the laws in the United States are retrogressive. To the extent that the legal response is designed to segregate and permanently institutionalize sex offenders, the laws favor punitive over therapeutic treatment, and to that extent are unable to promote the social changes necessary to prevent child sexual abuse and adult rape.

Rhetorical experience is as much ontological as epistemological. As Fisher (1987) observes,

... one of the decisive dimensions of rhetorical experience when persons interact symbolically is their perceptions of the others' perceptions of them. These perceptions they read from what and how the other persons communicate. Unless a respondent perceives an accurate and appropriate perception of herself or himself in the message, there will be little or no communication. In its extreme, negative form, this condition is alienation ... [social knowledge] is ultimately configured narratively, as a component in a larger story implying the being of a certain kind of person, a person with a particular worldview, with a specific self-concept, and with characteristic ways of relating to others. (17)

When we label sex offenders as monsters, we are implying a specific worldview in which child sexual abuse is utter degradation for its victims and the perpetrators so unnatural as to be beyond any means of treatment or rehabilitation. In effect, the metaphor creates a social reality that hinges on the premise that the offenders cannot be stopped, hence the crime cannot be prevented. The end result is that the ubiquitous use of the monster metaphor may confound our ability to combat the crime.

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