

PORNOGRAPHY, SEX CRIME, AND PUBLIC POLICY

**Berl Kutchinsky
Professor of Criminology
Institute of Criminology and
Criminal Science
University of Copenhagen
Denmark**

PORNOGRAPHY IS A CURIOUS EXAMPLE OF AN ISSUE WHICH HAS GROWN VERY quickly from a state of insignificance to become a major social issue—at least in some parts of the world. From the very beginning—in the early 1960s—of what has been termed the 'modern pornography wave', there has been controversy over nearly all aspects of the topic: definition, amounts and contents of material, uses and users, economy and, most importantly, effects.

This paper outlines the development of pornography in a historical perspective and from a Danish point of view. It will then deal with the issue of the possible effects of pornography on sexual offences.

Historical Background

Erotic art is probably as old as art itself. Sexual themes appear in the artistic creations of all times and cultures. The first erotic paintings, sculptures and writings were probably produced by the first painters, sculptors and writers in the early youth of humanity, and every milestone in the arts usually saw new developments in the field of erotica.

For example, Johann Gutenberg developed the art of printing around 1448, and one of the very first books to appear in print was *Il Decamerone*, Boccaccio's erotic masterpiece. Suppression of freedom of the press—a phenomenon which is a significant part of the history of eroticism—followed immediately after. In 1497, sections of the *Decameron* were thrown into Savonarola's 'bonfire of the vanities' in Florence.

The next giant step towards mass media production, the invention of the photographic process in 1832, had very similar consequences. Forty years later, in 1874, 130,000 'obscene' photographs and 5,000 slides were seized by police in a raid on two houses in London owned by photographer Henry Hayler. By this time, pornography was beginning to broaden its appeal beyond the narrow literate class that had been its primary audience.

When Edison invented the moving pictures, the pornographic potential of this new media was, of course, too obvious to be overlooked, and very soon a prosperous, underground production of 'blue movies' began, particularly in South America. In fact, Edison himself produced an erotic motion picture as early as in 1886; called *The Kiss*. It created a public scandal, and was a tremendous success. The film was not pornographic, of course, but heralded a new era in the erotic industry—which has now, in very recent years, reached another stage with the video tape, cable and satellite television productions of pornography.

So, erotic art has a long history, and even if we restrict ourselves to speaking about commercial pornography—that is, a commodity depicting explicit nudity and sexual behaviour, produced and sold with the sole purpose of creating sexual arousal—even this product has an age of more than 300 years. The starting point seems to be the appearance in about 1650 of *La Puttana Errante—The Wandering Whore*. Although this was not the first book to describe the life of a prostitute in intimate detail—hence the word *pornographos* (there is a classic Greek and renaissance Italian tradition of 'writing about prostitutes'). This book was the first which skipped the social, philosophical, satirical, and artistic aspects in order to concentrate on the only thing that mattered: the titillation of the reader.

In the eighteenth and nineteenth centuries, Europe experienced a 'porno wave' which as far as the number of different publications were concerned, can match the present times. Alfred Rose (alias Rolf S. Reade) listed more than 5,000 English, French, German, Italian and Spanish titles in his *Register Librorum Eroticorum* in London in 1936.

Nevertheless, there are certain unique features about the pornography situation which has developed during the last twenty-five years and is now prevailing in most countries of the Western world, Japan and some other developed countries in Asia, and is now quickly developing in the former communist countries of Central and Eastern Europe. One important feature is that pornography has become easily available to people in general, while earlier it was mostly restricted to the economic and intellectual upper class. Another feature is that, to a large extent, pornography at least in some forms, has become morally and socially acceptable and in a few countries even legal, which has not been the case for about 200 years.

An important factor in this development is that new technologies have made possible the mass production of colour magazines, films and videos of high technical quality at a very low cost. Another, and perhaps the most important factor, has been the emergence of a more liberalised view of sexual behaviour, which has exonerated the naked body and the sexual act from earlier indictments of sinfulness. This new sexual liberalism, the so-called 'sexual revolution', has been influential in several different ways. It has awakened and strengthened a latent need for erotica among many people. It has also made possible the economic exploitation of this new attitude. And it has paved the way for a more lenient enforcement and eventual abolition of existing bans.

In most countries, the emergence of pornography as an everyday commodity has stirred relatively little controversy—although at times great public interest. This is true of Denmark, which was the first country to legalise pornography, and most other continental European countries. In other countries, such as Norway, Great Britain, the United States, Canada and Australia, pornography has continued to be an issue of sometimes considerable controversy, giving rise to heated debate, mass demonstrations, violent actions, citizens' associations and rallies, criminal prosecutions as well as civil law suits, legislative initiatives, and numerous conferences and commission reports.

The Danish Situation

Before the mid-1960s, there was nothing particular about Denmark in relation to pornography. Denmark had absolutely no history as a pornography producing or consuming nation. Danish laws against pornography were very similar to those of other European countries. Both in the late nineteenth and early twentieth centuries books and pieces of art were prosecuted and convicted in Denmark as in other countries, which by later standards would seem perfectly innocent. In as late as 1959 an imported English version of the famous pornographic classic, Cleland's *Memoirs of a Woman of Pleasure*, was convicted.

During the 1960s, however, public attitudes began to change, and in 1964 an unexpurgated Danish translation of the *Memoirs*, under the title of *Fanny Hill*, was published for the first time, prosecuted—and acquitted first by the High Court and, in 1965, by the Supreme Court. Since *Fanny Hill* is, if anything, pornographic in the true sense of this word, that is, extremely explicit and graphic in its erotic descriptions, this meant that the penal law banning pornographic literature had become obsolete. The Minister of Justice asked the Permanent Criminal Law Committee to investigate the issue, and this Committee, after consulting criminologists, psychologists, educators and psychiatrists presented a report in 1966 which recommended decriminalisation of pornographic writings.

The point made by the Criminal Law Committee was that public attitudes towards moral legislation had changed so that it was no longer reasonable for the state to interfere with what people should be allowed to publish or read, as long as no clear harm was done. As far as harm is concerned, it was generally agreed by the experts that all available evidence pointed in the direction of pornography not being directly harmful to individuals. Particularly influential was the statement of the Medico-Legal Council, a distinguished body of leading physicians, which concluded:

On the basis of general psychiatric and child psychiatric experience it cannot be assumed that the sexual orientation, the psychological development or attitudes toward sexual life and sexual-ethical norms in adults or in children can be influenced in a harmful direction through . . . pornographic literature, pictures or films. Whether these media may have a beneficial influence on a group of inhibited and sexually shy neurotic personalities is doubtful, but can hardly be totally excluded. What has been said here, holds true no matter whether the pornographic publications, pictures, etc. describe normal or perverse sexual relations (Penal Law Committee 1966, p. 80).

The Penal Law Committee's proposal was adopted by the Danish Parliament in 1967 by 159 votes to thirteen. During the debate in Parliament on this amendment, there was a widespread inclination to extend the repeal to also include obscene pictures, objects, and performances, 'if experiences with the present amendment turned out to be as favourable as expected'. The expected result was mainly a waning of interest in such material when such an interest was no longer spurred by the illegality. By 1969, politicians had become convinced that a favourable effect had in fact occurred, and without once again asking the Penal Law Committee's advice, the decriminalisation of pictorial pornography was adopted in Parliament by 125 votes to twenty-five.

Section 234 of the *Danish Criminal Code* (1969), reads whoever 'sells indecent pictures or objects to a person under 16 years of age' is to be punished by a fine. Section 235 (1980) has a special provision concerning the reproduction and sale of child pornography, that is, sexually explicit photographs of persons who appear to be under 15 years (the taking of such pictures was always a criminal offence).

This means that, in Denmark, any kind of pornography, except child pornography, can be produced and sold, or shown in cinemas, to persons who are 16 years or older. It does not mean that there can be pornography everywhere; thus, police regulations forbid the

public display of pornography, for instance in porn shop windows, or to send or hand out pornography to someone who has not asked for it.

As to legalisation of pornography, Sweden followed suit in 1970, and the Federal Republic of Germany (West Germany) in 1973. West Germany, however, kept certain provisions regarding violent pornography and recently Sweden also introduced such restrictions. Today, Denmark seems to be the only country which does not have any legal restraints on sadomasochistic pornography. This does not mean that it is not available elsewhere. The situation today seems to be that wherever hard-core pornography is easily available, sadomasochistic material is available also.

The Effects of Pornography on Sex Crimes

The issue of pornography is extremely complex, and so is the question of public policy regarding pornography. Numerous commissions and committees have produced several thousands of pages contemplating the issue and scrutinising several hundreds of research reports. More than a handful of scholarly books in English appear every year, usually not producing new information, but trying to organise and analyse research data already available.

In this complexity, one issue stands out as particularly important: the claim that pornography, or certain forms of pornography, can lead to serious sex crimes, in particular forcible rape. If this can be proved, then there is consensus that pornography, or these particular forms of pornography, should be forbidden. If it cannot be proved that pornography leads to rape, then there is no such consensus. All other forms of alleged harm or offence, such as pornography degrading women, either as models or bystanders, leading to sexual callousness to women, causing moral outrage, encouraging sexual perversion, or causing marital distress, are usually considered too intangible, or unsupported, or problems that call for a variety of restrictions rather than the total prohibition of (the critical forms of) pornography. The rest of this paper, therefore, concentrates on the relationship between pornography and rape.

One of the first authoritative bodies to spell out an unequivocal verdict of not guilty for pornography was the Danish Medico-Legal Council whose 1965 report to the Danish Penal Law Committee concluded that, to the Council's knowledge, based on criminological and clinical evidence 'there exists no scientific investigations to form a basis for the supposition that pornography . . . can contribute to normal adult's or young persons' committing sexual offences' (Penal Law Committee 1966, p. 80). This distinguished body of forensic physicians and psychiatrists explicitly mentioned that the statement referred to pornographic writings, pictures and films describing normal as well as perverted sexual phenomena.

Five years later the United States Commission on Obscenity and Pornography (1970, p. 53) (or rather twelve of the seventeen participating members) arrived at a similar conclusion, stating that 'empirical research designed to clarify the question has found no evidence to date that exposure to explicit sexual materials plays a significant role in the causation of delinquent or criminal behaviour among youth or adults'. Another verdict of not-guilty—but this time based on overwhelming amounts of research: careful reviews of earlier research and thirty-nine additional effect studies sponsored by the Commission.

According to these studies, sex offenders generally reported sexually repressive family backgrounds, immature and inadequate sexual histories and rigid, conservative attitudes towards sexuality. During adolescence they had less experience with erotica than other groups. As adults, sex offenders seemed to catch up with other categories, but did not use pornography more frequently than others; and sex offenders did not differ significantly from other adults in their reported arousal or reported likelihood of engaging in sexual behaviour during or following exposure to pornography.

The problems with these studies was, of course, that they had to rely on the subjects' own reports about their reactions to pornography and did not study experience with and reactions to aggressive pornography. Both of these shortcomings were overcome by a number of researchers in the late 1970s who, applying modern sexological laboratory techniques, were able to measure erectile responses in convicted rapists and normals who were watching, listening to, or reading depictions of sexual activities including consenting and coercive sex. The first results (several studies by Abel, Barbaree, Marshall, Quinsey and others) seemed very promising: while normals showed greater arousal to scenes of mutually consenting sex than they did to similar scenes involving coerced sex, rapists appeared to be equally aroused by the consensual and the coerced scenes.

However, subsequent large-scale replications of these studies, as well as a more recent intensive study have shown that among a group of rapists, arousal to forced sex was significantly lower than it was to consenting sex; moreover, the rapists did not differ in this regard from groups of ordinary men (Kutchinsky 1991; forthcoming).

Meanwhile, despite the negative findings of the United States Obscenity Commission, which were later reiterated by the British Williams Committee in 1979, the idea that pornography may be the direct cause of rape had continued to gain support among anti-pornography groups; and since the mid-1970s the Christian/Conservative moralists viewpoints (which had been voiced, among others, by the minority of the U.S. Obscenity Commission) were joined by feminist oriented groups and authors in the USA. Leading figures included Brownmiller, Lederer, Russel, Dworkin and Morgan, who publicised the slogan: 'Pornography is the theory, and rape is the practice'.

Feminists' claimed that the growing availability of increasingly more violent and misogynous pornography was the direct cause of increasing numbers of increasingly violent rapes. And this, in turn, was a major inspiration to a new wave of research, mainly in the USA, seeking to demonstrate such a connection. The authors of this research—Malamuth, Donnerstein, Zillmann, Check and many others—criticised the Obscenity Commission for not taking into consideration the long-term effects of aggressive pornography. This criticism is not altogether justified, since the Commission had in fact solicited relatively long-term studies of pornography which included sadomasochistic varieties.

Methodologically, the inspiration for the new wave of experimental pornography research came from a long tradition of experiments on the effects of non-sexual violent media. Unfortunately, the pornography/aggression research had inherited the fundamental weakness of the original aggression studies, namely that both the stimulation was administered and the reactions measured under extreme laboratory conditions which are far removed from real life situations. These studies have, therefore, been severely criticised through the years in several reports, including several articles on the effects of pornography in a special issue of the *International Journal of Law and Psychiatry*, vol. 14. Thus, William Fisher and Azy Barak (1991, p. 79) in their article conclude that:

problems with theoretical naivete, inconsistent evidence, failures to replicate, and limited ecological validity leave us with far more questions than answers with respect to the . . . effects of pornography and erotica.

Reported Rape in Four Countries

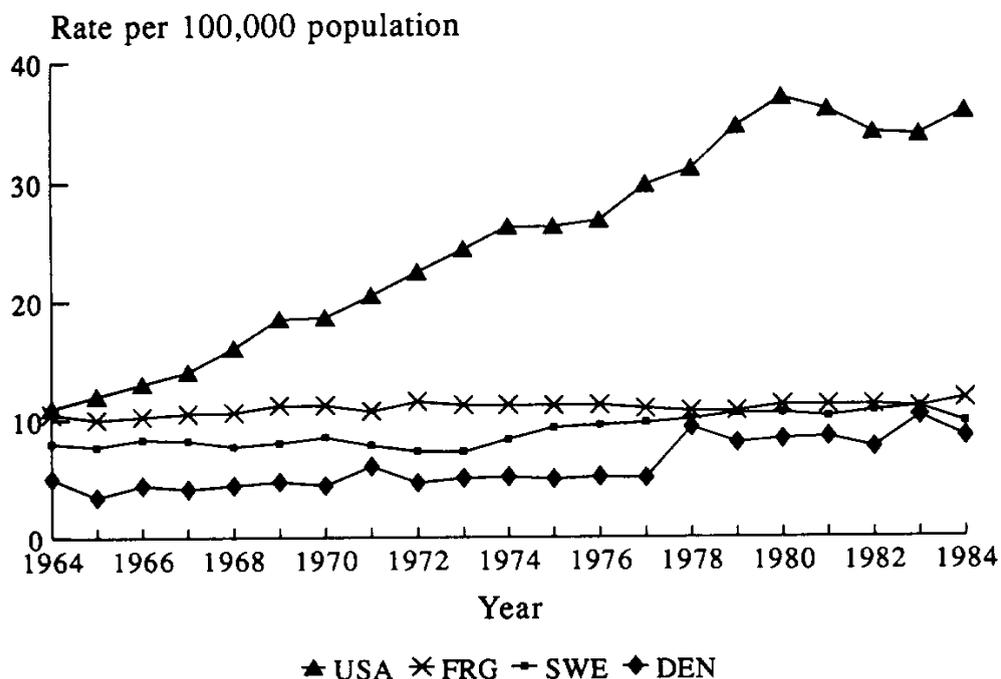
Is it possible to find a valid answer to the question of causality between pornography and rape? It is—at least to the extent that causality is meant to be a substantial empirical fact and not just an expression of emotional and ideological dissociation from two equally detestable phenomena. It is possible to test the necessary consequence of a substantial causal relation

between rape and pornography, namely that the appearance and growing availability of increasingly hard-core pornography, including aggressive pornography, coincided with or was followed by a growth in the number of rapes—not that the finding of such a temporal correlation in itself would be sufficient proof of a causal relation (many social problems have grown in these years without being directly causally related, for instance theft and pollution). But a temporal correlation is a necessary condition for accepting the assumption of a causal connection; without it we shall have to discard this assumption.

To test the hypothesis of a substantial causal connection between pornography and rape, the incidence of rape was looked at in four different societies where pornography, including the aggressive variety, has become widely available. Denmark, Sweden and West Germany are the only countries to have legalised pornography (in 1969, 1970 and 1973, respectively). In the United States pornography has not been legalised, but is easily available at least in all major cities and through mail order. In these four countries as a whole, the period of rapid growth in quantity and variety of hard-core pictorial pornography was from the late 1960s to the mid-1970s, although since the late 1970s the video has increasingly become a favourite medium. A twenty-year period would therefore be sufficient to trace any influence of the 'porno wave' on the rape statistics.

Figure 1

Cases of Rape Known to the Police in the USA, Denmark, Sweden and the Federal Republic of Germany, 1964-84*

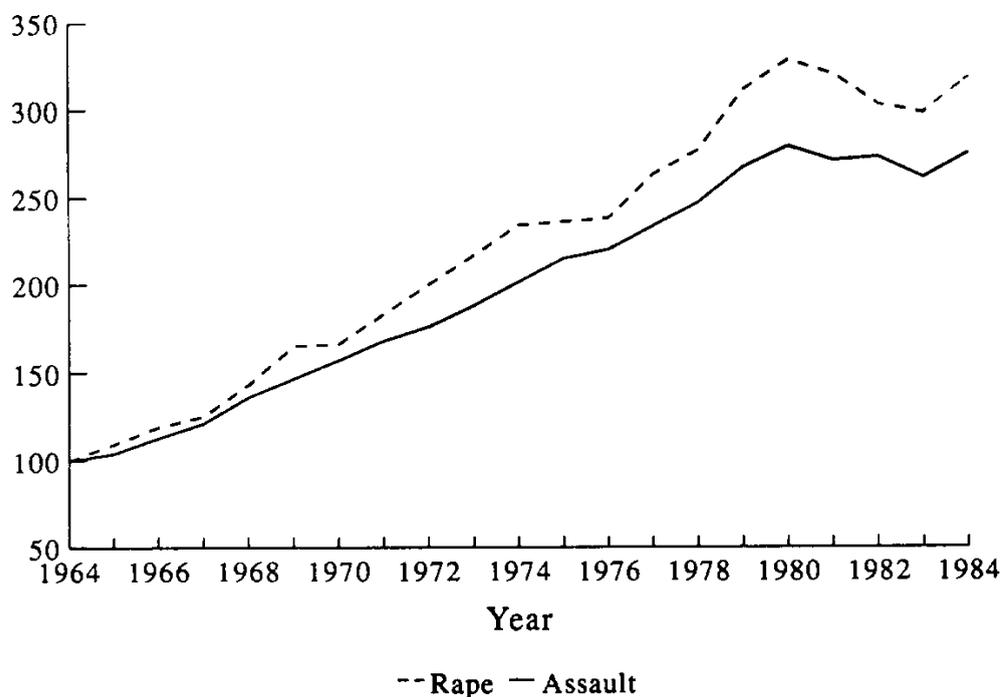


*Number of offences per 100,000 population.
Sources: Official national reports on crime statistics.

Figure 1 presents the development from 1964 to 1984 of reported rape in the four countries. Although one should always be cautious when comparing crime statistics from different countries, it can safely be said that the only country in which there has been a marked increase of officially recorded incidents of rape during this period is the USA (where, on the other hand, neither of the plateaus in the mid-seventies and since 1979 is easily explained with reference to pornography). In West Germany, the level has remained remarkably steady throughout the period. In Denmark and Sweden there are moderate increases from or after the mid-seventies. In both cases it is likely that at least some of the increase is due to increased reporting and registration of rape, as a result of growing awareness of the rape problem among women as well as the police. There are strong indications that even in the USA, the increase of rape since the mid-1970s may be due to increased reporting/registration (Kutchinsky 1991).

Rape, however, cannot be considered as an isolated social phenomenon. For a criminological appreciation of the development of reported rape over time, it is necessary to look at trends in incidence of other crimes during the same period. Since forcible rape is, by legal definition, both a violent crime and a sex crime, a comparison with non-sexual crimes of violence and with non-violent sex crimes would seem reasonable. Such a comparison has been made for each of the four countries—to the extent accessible data permit (see Figures 2, 3, 4, 5 and 6). To enable comparisons of crime rates of very different sizes, indexes have been computed, in all cases departing from index 100 in 1964.

Figure 2
**Cases of Rape and Aggravated Assault
Known to the Police in the USA, 1964-84***

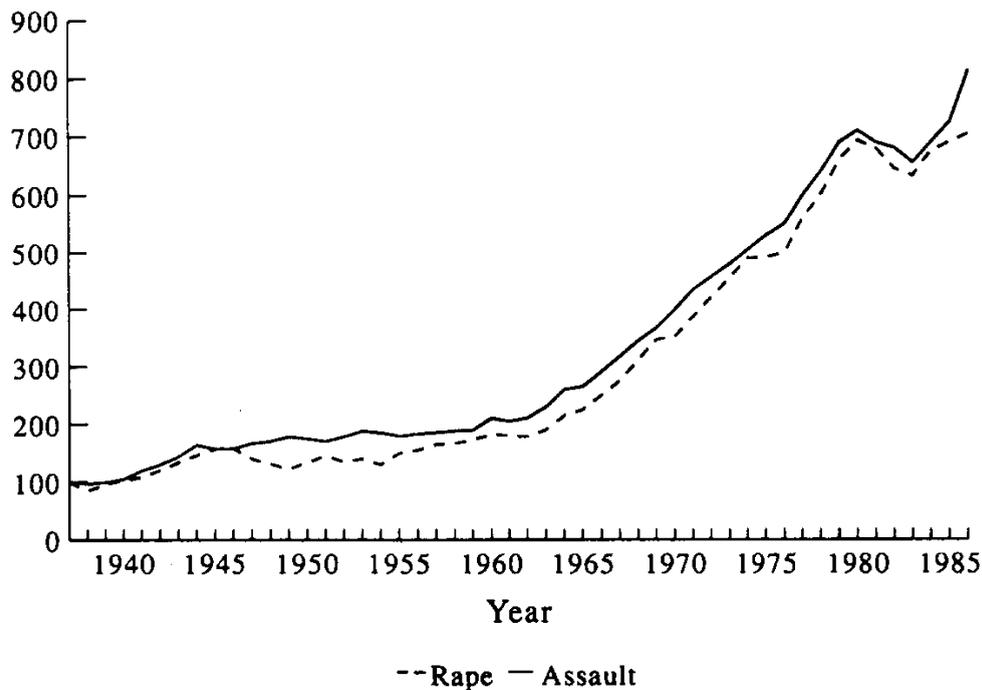


*Indexes of offences per 100,000 population. Index 100: Rape=11.2; aggravated assault=106.2.
Source: Uniform Crime Reports, various years.

Figure 2 compares the development of forcible rape with that of aggravated assault in the USA. Although rape increased slightly more than assault during some of the period, the similarity between the two curves is striking. This suggests that the two developments are related and should be explained in the same terms, a suggestion which is compatible with the dominant viewpoint in most of the recent US research and theory about rape (for example, the works by Groth and Alder), that rape is an act of aggression rather than a sexual act. That pornography should be the common explanatory factor in the development of both sexual and non-sexual violence (the latter being more than nine times as frequent and directed primarily against men) makes little sense. Moreover, as can be seen in Figure 3, the almost perfect correlation between the two developments is not a recent phenomenon.

Figure 3

**Cases of Rape and Aggravated Assault
Known to the Police in the USA, 1937-1986***



*Indexes of offences per 100,000 population. Index 100: Rape=5.3; aggravated assault=42.3.
Sources: Unified Crime Reports, various years.

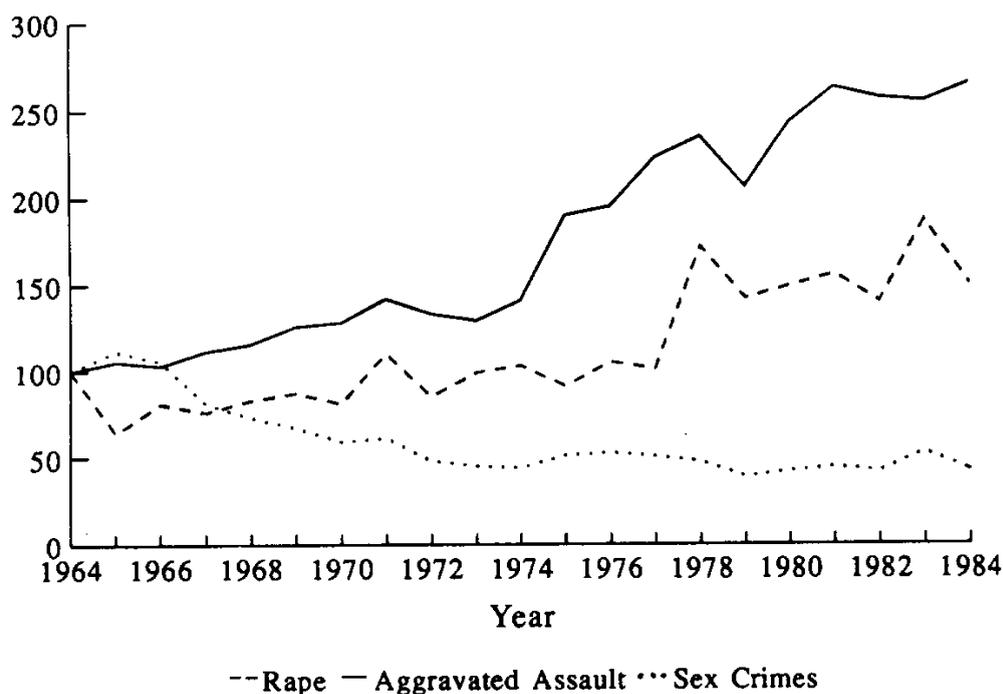
Unfortunately it has not been possible to compare assault and rape in the USA with non-violent sex crimes since the Uniform Crime Reports do not include these types of offences. Such a comparison has been possible for the three other countries.

In Figures 4, 5 and 6 it can be seen that the similarity of development patterns for rape and assault found in the USA is not repeated in Denmark, Sweden or West Germany. In all three countries, assault has been rather strongly increasing during 1964 to 1984 (in fact at rather similar rates, all being between 225 and 300 per cent), whereas rape has increased more modestly or, with regards to West Germany, not at all.

Analyses of crime statistics not presented here suggest that the developments of non-sexual violent crimes in these countries are roughly similar to those of the overall crime patterns, which are of course strongly dominated by property crimes. Apparently, in these European countries, rape is not clearly part of either the general crime pattern or the pattern of violent crimes in particular. Rather, as can also be seen in Figures 4, 5 and 6, the developments of the violent sex crime of rape lie in between the developments of non-sexual violent crimes (assault) and those of non-violent sexual crimes.

Figure 4

**Cases of Rape, Non-Sexual Violent Crimes and Non-Violent Sex Crimes
Known to the Police in Denmark, 1964-84***



*Indexes of offences per 100,000 population. Index 100: Rape=5.5; aggravated assault=58.8; sex crimes=78.6.

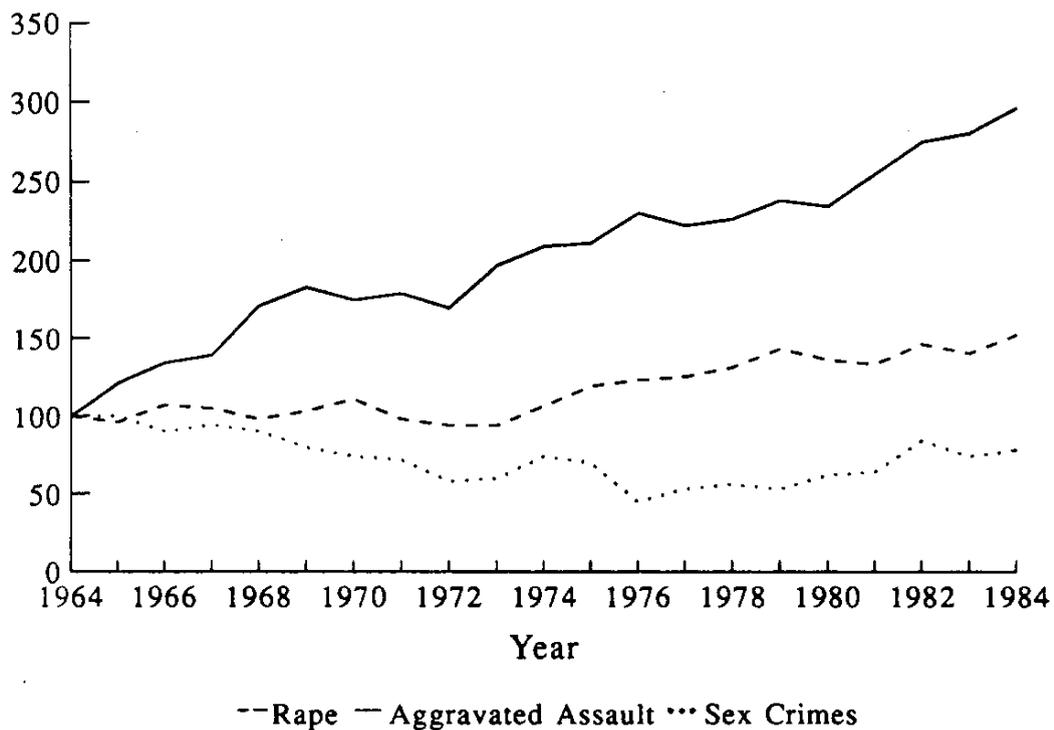
Source: Criminal Justice Statistics for Denmark, various years.

In all three countries, non-violent sex crimes have decreased, although mainly during the first-half of the period. In Sweden a distinct decrease from 1964 to 1976 was followed by

an increase during the rest of the period. This development coincides with a period of liberalisation followed by a period in the opposite direction in which punishments of sexual offences were sharpened. This is but one among several facts which suggest that at least some of the developments of registered sex crimes in Sweden, as indeed in all three countries, reflect changes in the definition, reporting and registration of such crimes rather than actual numbers of crimes committed. This does not mean that the figures do not indicate anything at all about the actual number of crimes committed. As shown elsewhere, some of the decrease of sex crimes in Denmark appears to be real, most importantly serious sex offences against small children; the same appears to be true of West Germany (Kutchinsky 1985). For this and other reasons it is most unlikely that a real increase of important sex offences could hide behind the decrease of reported cases.

Figure 5

**Cases of Rape, Non-Sexual Violent Crimes and Non-Violent Sex Crimes
Known to the Police in Sweden, 1964-84***



*Indexes of offences per 100,000 population. Index 100: Rape=7.7; aggravated assault=126.4; sex crimes=42.8.
Source: Br Forskning (1985), and population statistics.

This is equally true about the rape figures. While the increases of reported cases of rape in Sweden and Denmark could result from increased reporting and registration tendencies rather than increases in actual offences, it can safely be concluded that considerable real

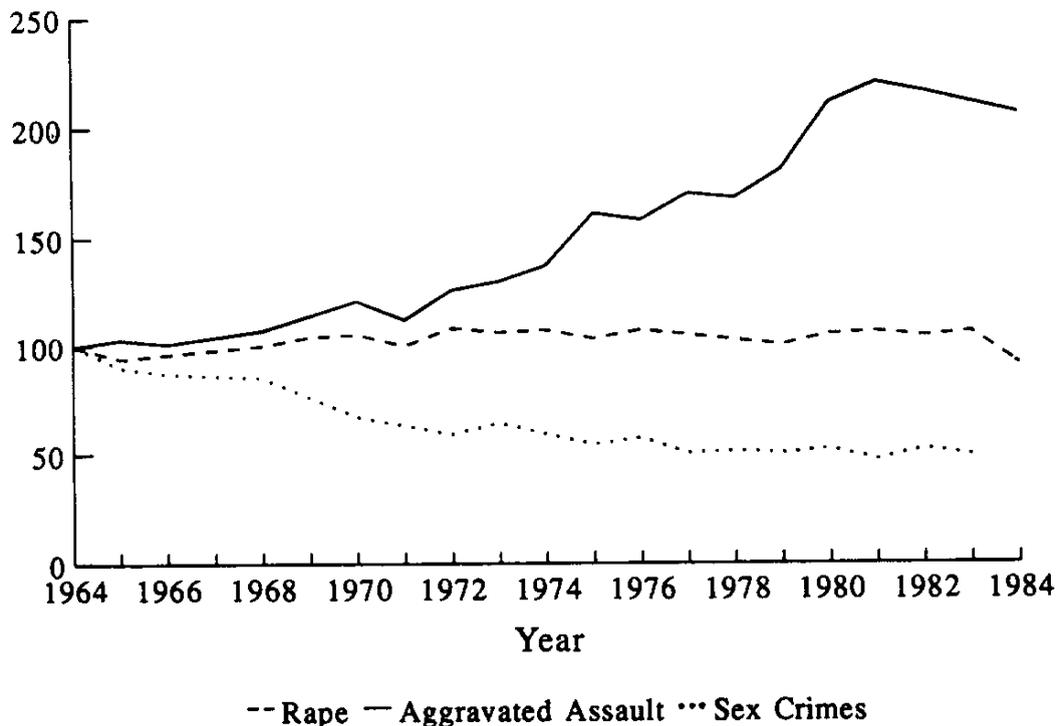
increases could not have been concealed by the moderate increases of reported rape in these two countries.

As far as West Germany is concerned, more detailed statistics, available since 1971, on rape and a related type of crime throw light on the remarkable stability of rape in that country. In 1971 the crime statistics in West Germany were reshaped following Criminal Law Reform. While this did not have serious consequences for rape as such, which both before and after the law reform was defined as sexual intercourse with a woman by force or threat, other forms of coercive (non-coital, but physical) sexual acts, including homosexual acts were singled out in the statistics. Figure 7 presents both the sexual coercion figures and the combined figures for rape and sexual coercion between 1971 to 1987.

Since sexual coercion has increased between 1972 and 1987 (as the only type of sex crime in West Germany to do so), the combined figures also indicate a certain increase during this period. In other words, the German 'rape' figures—computed in this way—behave more or less like the Danish and Swedish rape figures. That the increase is restricted to the type of crime which is likely to include a number of less severe offences supports the suggestion made above in regard to the Danish and Swedish figures, that the increase may be due, at least partially, to increased reporting or registration.

Figure 6

Cases of Rape, Aggravated Assault and Indecent Behaviour Known to the Police in the Federal Republic of Germany, 1964-84*

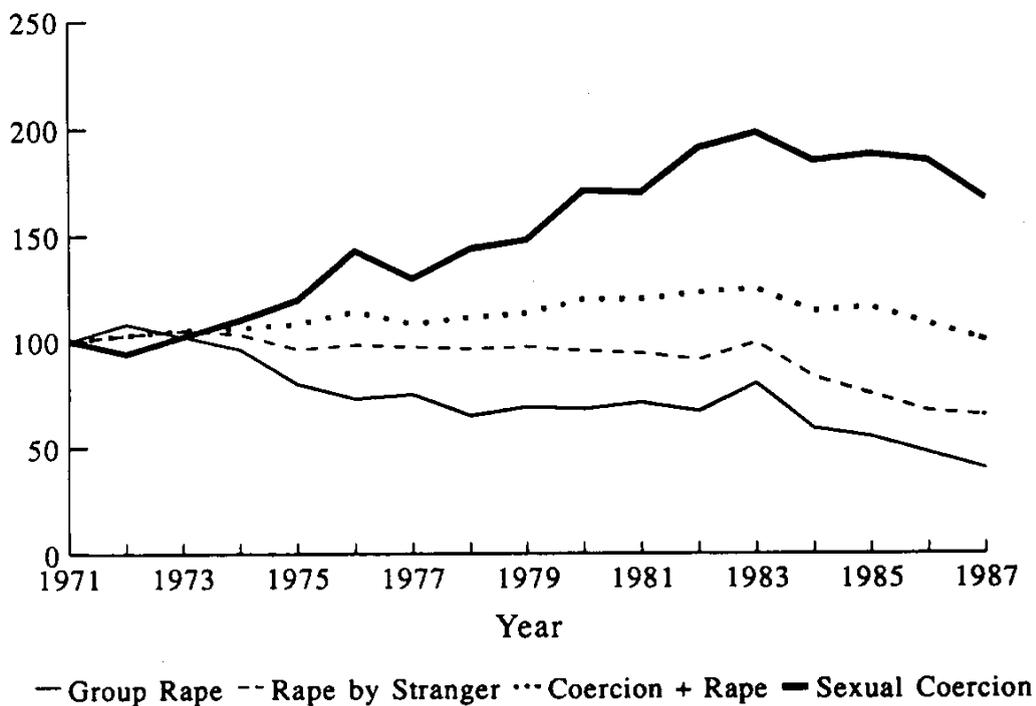


*Indexes of offences per 100,000 population. Index 100: Rape=10.6; aggravated assault=51.2; indecent behaviour=60.2.

Note: Aggravated assault=Gefährliche und schwere Körperverletzung (German Criminal Code, sections 223a, 224, 225, 227, 229). Indecent behaviour refers to the combined figures for Criminal Code sections 175, 176, 180, 180a, 181a, 183 and 183a or equivalent before 1974 (not available for 1984). Statistical breaks in 1971 and 1974.
Source: Polizeiliche Kriminalstatistik, various years.

Another innovation in the compilation of West German crime statistics further elucidates the issue of possible changes in reporting/registration frequencies. Since 1971, it has been possible to separate rape in the form of attacks by strangers and rape committed by groups (two or more persons raping the same victim). Figure 7 also presents the development between 1971 and 1987 of these two categories of rape. When comparing the developments of these two forms of rape to those of sexual coercion and sexual coercion and rape, it is worth noting that, although there are similar features in the four curves after 1978—especially the upward trend until 1983 and the downwards trend afterwards—there is a marked decreasing tendency in the two most serious types of rape. In fact, between 1971 and 1987 group rapes decreased 59 per cent from 577 to 239 cases while rape by strangers decreased 33 per cent from 2453 to 1655 cases (this decrease has continued through 1988 and 1989).

Figure 7
Cases of Sexual Coercion, Rape + Sexual Coercion, Rape by Strangers, and Rape by Groups Known to the Police in the Federal Republic of Germany, 1971-87*



*Indexes of offences per 100,000 population. Index 100: coercion=3.3 (2051 cases); rape+coercion=14.0 (8606 cases); rape by strangers=4.0 (2453 cases); group rapes=0.94 (577 cases).
Source: Polizeiliche Kriminalstatistik, various years.

Since rapes by strangers and group rapes are more likely to be reported to the police than rape in general and less serious forms of sexual coercion, there can be little doubt that the decreasing tendency of these types of crimes reflects a real decrease rather than a change in reporting and/or registration. That the most serious types of offences decreased while the least serious ones increased supports the notion that the latter reflects increased reporting/ registration.

At any rate it would seem fair to conclude that overall there could not have been any increase in the actual number of rapes committed in West Germany during the years when pornography was legalised and became widely available.

Conclusion

The aggregate data on rape and other violent or sexual offences from four countries where pornography, including aggressive varieties, has become widely and easily available during the period we have dealt with would seem to exclude, beyond any reasonable doubt, that this availability has had any detrimental effects in the form of increased sexual violence. The data from West Germany is striking since here, the only increase in sexual violence takes place in the form which includes the least serious forms of sexual coercion and where there may have been increases in reporting frequency. As far as the other forms of sexual violence are concerned, the remarkable fact is that they decreased—the more so, the more serious the offence.

This finding is not so strange. Most other research data we have about pornography and rape suggest that the link between them is more than weak. Our knowledge about the contents, the uses and the users of pornography suggests that pornography does not represent a blueprint for rape, but is essentially an aphrodisiac, that is, food for the sexual fantasy of persons—mostly males—who like to masturbate.

The policy implications of this conclusion are, of course open to debate. But as mentioned earlier, the mainstream attitude would seem to be a combination of two movements:

- to reduce the area of total prohibition and censorship to a minimum; and
- to implement a variety of restrictions, suitable to each form of pornography, in order to obtain maximum protection of children, and of adults who want no confrontation with the material.

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