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Pornography, Society, and the Law In Imperial Germany

GARY D. STARK

IN recent years, the popular literature of the masses (so-called *Trivialliteratur*) has received increasing attention from literary and cultural historians, as has the response of the social elite to this form of popular culture.¹ Yet few scholars have seriously investigated the history of what must surely be one of the most pervasive genres of mass literature: pornography. This is unfortunate since (as Steven Marcus has shown in his pioneering study of sexuality in Victorian England) the view of human sexuality that surfaces in a society's pornographic subculture is often a reflection, however distorted or reversed, of officially

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1. See especially Richard Altick, *The English Common Reader: A Social History of the Mass Reading Public* (Chicago, 1957); Leo Lowenthal, *Literature, Popular Culture, and Society* (Englewood Cliffs, N.J., 1961); *Studien zur Trivialliteratur*, ed. H. Burger (Frankfurt, 1968); Rudolf Schenda, *Volk ohne Buch: Studien zur Sozialgeschichte der populären Lesestoffe 1770-1910* (Frankfurt, 1970) and *Die Lesestoffe der kleinen Leute: Studien zur populären Literatur im 19. und 20. Jahrhundert* (Munich, 1976); Peter Nusser, *Romane für die Unterschicht: Groschenhefte und ihre Leser* (Stuttgart, 1973); *Popularität und Trivialität*, ed. Reinhold Grimm and Jost Hermand (Frankfurt, 1974); *Trivialliteratur*, ed. H. D. Zimmermann (Munich, 1976); Ronald A. Fullerton, "Toward a Commercial Popular Culture in Germany: The Development of Pamphlet Fiction, 1871-1914," *Journal of Social History* 12 (1979): 489-511. On official or elite responses to popular literature, see Paul S. Boyer, *Purity in Print: The Vice-Society Movement and Book Censorship in America* (New York, 1968) and *Urban Masses and Moral Order in America 1820-1920* (Cambridge, Mass., 1978); Robin J. V. Lenman, "Censorship and Society in Munich, 1890-1914, With Special Reference to *Simplicissimus* and the Plays of Frank Wedekind," (Ph.D. diss., Oxford, 1975); Robert J. Bezucha, "The Moralization of Society: The Enemies of Popular Culture in the Nineteenth Century," in *The Wolf and the Lamb: Popular Culture in France from the Old Regime to the Twentieth Century*, ed. J. Beauroy, M. Bertrand, and E. Gargan, Stanford French and Italian Studies, vol. 3 (Saratoga, Calif., 1977), pp. 175-88; and Priscilla Clark, "The Beginnings of Mass Culture in France: Action and Reaction," *Social Research* 45 (1978): 277-91.

sanctioned attitudes toward sex. Likewise, the extent to which a society seeks to control a popular phenomenon like pornography is an indication of the fears, both conscious and unconscious, harbored toward that object; stigmatization and repression of pornographic literature helps define and uphold the authority of socially sanctioned sexual norms, while at the same time revealing something about how stable or vulnerable that society imagines its established values to be.²

This study will not analyze the content, either literary or psychological, of German pornographic literature, although such an analysis is sorely needed.³ Rather, I will seek to cast some light on the underground pornography trade in imperial Germany, examine contemporary attitudes toward it and official attempts to control it, and explore some of the social ramifications of those efforts.

THE PORNOGRAPHY TRADE

Although it is impossible to measure such phenomena precisely, evidence indicates that beginning around the 1860s or 1870s, the production and consumption of pornography flourished in England, France, Germany and the United States as never before.⁴ The rising tide of sexually explicit material, which seems to have crested in the years be-

2. Steven Marcus, *The Other Victorians: A Study of Sexuality and Pornography in Mid-Nineteenth-Century England*, 2nd ed. (New York, 1974), pp. 283, 285. See also Ulla Otto, "Zensur—Schutz der Unmündigen oder Instrument der Herrschaft?" *Publizistik* 13 (1968): 5–15; J. van Ussel, *Sexualunterdrückung: Geschichte der Sexualfeindschaft* (Reinbeck, 1970); D. F. Barber, *Pornography and Society* (London, 1972); and Eli Obler, *The Fear of the Word: Censorship and Sex* (Metuchen, N.J., 1974).

3. The few existent studies of German erotic literature tend to be bibliographic, anthological, or descriptive rather than analytical. See Hugo Hayn and Alfred Gotendorf, *Bibliotheca Germanorum Erotica et Curiosa*, 9 vols. (Munich, 1912ff.); Paul Englisch, *Geschichte der erotischen Literatur* (Stuttgart, 1927); Kurt Riess, *Erotica! Erotica! Das Buch der verbotenen Bücher* (Hamburg, 1967); and *Privatpornographie in Deutschland: Verfemte erotische Trivilliteratur der bürgerlichen Zeitalter, ausgewählt unter dem Aspekt ihrer Aussage zu den sozialen und moralischen Normen ihrer Zeit*, ed. Boris Bergson, 2 vols. (Darmstadt, 1975).

4. Marcus, *The Other Victorians*, p. 283; Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality Since 1800* (London, 1981), p. 20; G. Rattray Taylor, *Sex in History: The Story of Society's Changing Attitudes to Sex Throughout the Ages* (New York, 1973), p. 215; Wendell S. Johnson, *Living in Sin: The Victorian Sexual Revolution* (Chicago, 1979), pp. 4, 7; Barber, *Pornography and Society*, p. 59; David Loth, *The Erotic in Literature: A Historical Survey of Pornography* (London, 1961); pp. 105–35; Theodore Zeldin, *France 1848–1945: Ambition and Love* (New York, 1979), p. 312; *Verwaltungsbericht des königlichen Polizei-Präsidiums zu Berlin für die Jahre 1871–1880* (Berlin, 1882), p. 505; and Felice C. Lewis, *Literature, Obscenity, and Law* (Carbondale, Ill., 1978), p. 13.

fore the First World War, was closely related to broader social forces at work in Western society during the Victorian era. With urbanization and the fragmentation of modern industrial society, sexuality became increasingly confined to a separate, "private" sphere.⁵ Changing attitudes toward women, children, and family life in the nineteenth century produced cults of female gentility and domesticity that resulted in a more explicit distinction between male and female roles and in different moral and sexual standards being applied to the sexes. For as society became more aware of childhood (and later, of adolescence) as distinct and important life-stages, greater emphasis was placed upon the ideal of the home, where innocent children could be protected from undesirable external influences until their characters were sufficiently formed; this, in turn, placed increasing importance upon the wife's role as mother and homemaker, and upon the qualities such as purity, gentility, and sexual innocence she presumably needed if she were to serve as nurturer and moral guardian for her children. Thus, as the home became a refuge from broader society, the role of the wife-mother became progressively idealized and isolated from public life. With the growing distance between male and female gentility, and the frequent denial of female sexuality, Victorian men may well have come to regard their wives, and all "respectable" women, as too pure or too sensually disinterested to be sexually accessible. Certainly many men, both husbands and those young adults who found themselves delaying marriage, looked elsewhere for their private sexual pleasures: to mistresses, to prostitution (which also seems to have enjoyed an unprecedented boom during this period), or to pornography.⁶ And because of rising mass literacy during the latter

5. Marcus, *The Other Victorians*, p. 282; Weeks, *Sex, Politics and Society*, pp. 19, 81–93.

6. On the changing attitudes toward women, children, and the family in the nineteenth century, see: Philippe Ariès, *Centuries of Childhood: A Social History of Family Life*, trans. Robert Baldick (New York, 1962), esp. pp. 284–5, 365–415; John and Virginia Demos, "Adolescence in Historical Perspective," in *The American Family in Social-Historical Perspective*, ed. Michael Gordon (New York, 1973), pp. 209–21; John Gillis, *Youth in History: Tradition and Change in European Age Relations 1770 to the Present* (New York, 1974), pp. 95–131; Priscilla Robertson, "Home as a Nest: Middle-Class Childhood in Nineteenth-Century Europe," in *The History of Childhood*, ed. Lloyd de Mause (New York, 1974), pp. 407–31; Peter Stearns, *European Society in Upheaval: Social History Since 1750*, 2nd ed. (New York, 1975), pp. 139–43, 232–34; Patricia Branca, *Silent Sisterhood* (London, 1975), pp. 108–12, and *Women in Europe Since 1750* (London, 1978), pp. 99–131; Eric Trudgill, *Madonnas and Magdalens: The Origins and Development of Victorian Sexual Attitudes* (London, 1976), pp. 38–100; G. J. Barker-Benfield, *The Horror of the Half-Known Life: Male Attitudes Towards Women and Sexuality in Nineteenth Century America* (New York, 1976),

half of the nineteenth century, advances in new mass printing techniques (high-speed rotary presses and binding machines, the wood cellulose method of papermaking), the development of photography, and rising disposable income for the middle class, inexpensive pornography for the first time could now be supplied to a mass market.⁷

Several scholars have concluded that the growing profusion of pornography and prostitution during the Victorian era was intimately linked to that period's notorious sexual prudishness. The rampant illicit sexual activity on the one hand, and the almost obsessive demureness concerning sexual matters on the other, were both indications of a fundamental new preoccupation with sexuality—of a “widening discourse” on sex, to use Michel Foucault's term.⁸ What might account for this unprecedented obsession with and fear of sex during the latter half of the nineteenth century? As urbanization spawned new urban populations and promoted the spread of new sets of values, traditional social groups may have feared that sexual passion threatened to replace Chris-

pp. 138–40, 215–17, 224–25, 282–85; Edward Shorter, *The Making of the Modern Family* (New York, 1977), esp. pp. 191–99, 227–34; Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (New York, 1977), pp. 5–8; Lawrence Stone, “Family History in the 1980s. Past Achievements and Future Trends,” *Journal of Interdisciplinary History* 12 (Summer 1981): 73–75; and Weeks, *Sex, Politics and Society*, pp. 24–44, 48–52, 72–81, 126–28. Also *Victorian Women: A Documentary Account of Women's Lives in Nineteenth Century England, France, and the United States*, ed. Erna O. Hellerstein, et al. (Stanford, 1981). For the effects of these changes upon male and female sexual behavior and upon the institution of prostitution, see: Norman St. John-Stevás, *Obscenity and the Law* (London, 1956), pp. 60–61, 114, 118; Michael Pearson, *The Age of Consent: Victorian Prostitution and Its Enemies* (Newton Abbot, 1972), pp. 23–27, 77; Ronald Pearsall, *Public Purity, Private Shame: Victorian Sexual Hypocrisy Exposed* (London, 1976), pp. 72–94; Trudgill, *Madonnas and Magdalens*, pp. 101–51; Richard J. Evans, “Prostitution, State, and Society in Imperial Germany,” *Past & Present* 70 (February 1976): 106–29; Vern and Bonnie Bullough, *Sin, Sickness and Sanity: A History of Sexual Attitudes* (New York, 1977), p. 166; Alain Corbin, *Les filles de noce* (Paris, 1978); Zeldin, *France*, p. 291; and Weeks, *Sex, Politics and Society*, p. 30. Also Judith Walkowitz, *Prostitution and Victorian Society: Women, Class, and State* (Cambridge, 1980).

7. Marcus, *The Other Victorians*, p. 282; Zeldin, *France*, p. 312.

8. Johnson, *Living in Sin*, pp. 4–10; Taylor, *Sex in History*, pp. 215–16; Lewis, *Literature, Obscenity, and Law*, p. 1; Michel Foucault, *The History of Sexuality*, vol. 1: *An Introduction*, trans. Robert Hurley (New York, 1978). See also Boyer, *Purity in Print*, p. 44; Ronald Pearsall, *The Worm in the Bud: The World of Victorian Sexuality* (New York, 1969); and Weeks, *Sex, Politics and Society*, pp. 11–16, 19–23. “What seems to be happening in the nineteenth century, in response to major social changes (rapid industrialization and urbanisation, the disruption of old class patterns and the rise of capitalist social relations, the development of new and sharp class conflicts with their related social and intellectual manifestations) is a continuous battle over the definition of acceptable sexual behavior within the context of changing class and power relations” (*ibid.*, p. 23).

tianity as the emotional center of human life. Perhaps they believed sexuality had to be controlled to protect the already diminishing power of religion over human behavior.⁹ More likely, however, it was nationalism that significantly broadened the modern discourse on sex. The rise of the nation-state brought with it a new interest in the size and health of a nation's population, which was regarded as the basis of national prosperity and (military) power. Since the manner in which individuals made use of their sexuality affected marriage patterns, family life, birth rates, and even the health of young military recruits, sex became a public issue and a focus of social concern, and the state began taking an interest in the sexual conduct of its citizens. To guard the national future and fortune, the nineteenth century state or its semiofficial agents intervened to restrict and organize individual behavior and enforce conformity of manners and morals; in the sexual realm, this meant controlling sexual excesses and repressing abnormalities.¹⁰ Thus toward the end of the century, one finds a growing number of crusading individuals like Anthony Comstock in the United States or voluntary anti-vice societies in England, France, and Germany, all seeking (usually with official approval and support) to purify and "moralize" the masses by suppressing sexual and other popular vices.¹¹

Ironically, it may have been precisely this prudish Victorian movement to repress sexual nonconformity that produced the unprecedented flood of pornography at the end of the nineteenth century. For as many scholars have pointed out, the banning of sexual material or activities simply drives it underground; the same conduct tends to emerge clandestinely, but in a cruder, more distorted form. When free and open discussion of sexual themes is permitted, there is no need for clandestine

9. Johnson, *Living in Sin*, p. 10; Bullough, *Sin, Sickness and Society*, p. 2; and Boyer, *Urban Masses and Moral Order*, p. 3.

10. Foucault, *History of Sexuality*, pp. 25–26, 36–37; George L. Mosse, *Masses and Man: Nationalist and Fascist Perceptions of Reality* (New York, 1980), pp. 12–13; Weeks, *Sex, Politics and Society*, pp. 82–84, 122–38, 141–45.

11. The "social purity" movement was perhaps most prominent in the United States. See: Boyer, *Purity in Print*, pp. 3–16, and *Urban Masses and Moral Order*; Lewis, *Literature, Obscenity and Law*, pp. 8ff.; Heywood Broun and Margaret Leech, *Anthony Comstock: Roundsmen of the Lord* (New York, 1927); R. W. Haney, *Comstockery in America* (Boston, 1960); David Pivar, *Purity Crusade: Sexual Morality and Social Control, 1868–1900* (Westport, Conn., 1973), esp. p. 235; and Frederick F. Schauer, *The Law of Obscenity* (Washington, D.C., 1976), pp. 12ff. For similar movements in Europe, see: Weeks, *Sex, Politics and Society*, esp. pp. 81–93; Edward J. Bristow, *Vice and Vigilance: Purity Movements in Britain Since 1700* (Dublin, 1977); Lenman, "Censorship and Society," esp. pp. 166–209; and Zeldin, *France*, p. 312.

treatments. But the less tolerant a society is about sexuality and the greater its efforts to enforce purity, respectability, or only marital sexuality, the more it tends to encourage rebellion and the growth of a flourishing, illicit pornographic literature that counterbalances, contradicts, or (some would argue) even helps uphold the officially sanctioned view of sexuality.¹² And because this clandestine black market for sexual material is so lucrative, more people are encouraged to produce and market the contraband material. Thus, pornography becomes more the product of than the cause for prudery and repression. Indeed, Foucault has spoken of a “pleasure–power spiral” in which sexual repression and clandestine evasion become mutually reinforcing. The exercise of power, he argues, involves a certain pleasure. The censor, for example, finds it personally satisfying, perhaps even sexually exciting, to investigate, monitor, spy on, ferret out, control, and punish illicit materials and unorthodox sexual activities. But there is also a certain pleasure involved in outwitting, deceiving, and mocking the censor, violating his taboos, and evading or resisting his power. One discovers a dialectic between “the power that lets itself be invaded by the pleasure it is pursuing; and opposite it, power asserting itself in the pleasure of showing off, scandalizing, or resisting.”¹³ A kind of game of circular incitements may exist between the censor and the pornographer, a perpetual spiral of power and pleasure where each, through his actions, gratifies and encourages the other. “Pleasure and power do not cancel or turn back against one another,” Foucault argues; “they seek out, overlap, and reinforce one another. They are linked together by complex mechanisms

12. Loth, *Erotic in Literature*, pp. 75, 105, 110, 123, 132, 163–64, 186; Johnson, *Living in Sin*, pp. 4–8; Marcus, *The Other Victorians*, pp. 283–85; Taylor, *Sex in History*, pp. 215–16; Barber, *Pornography and Society*, pp. 59, 60, 85; Boyer, *Purity in Print*, p. 44; Weeks, *Sex, Politics and Society*, pp. 19, 30. Also Paul Goodman, “Pornography, Art, and Censorship,” in *Perspectives in Pornography*, ed. D. A. Hughes (New York, 1970), p. 48. Some sociologists regard pornography, like prostitution, as a necessary outlet for those sexual inclinations that society labels antisocial (i.e., impersonal, transitory, nonmarital) but that cannot be fully suppressed. By providing a safety valve for the discharge of antisocial sex, prostitution and pornography ameliorate the conflict between sexual inclinations and social requirements and thus help maintain society’s officially sanctioned norms: “both prostitutes and pornographers are stigmatized because they provide for the socially illegitimate expression of sex, yet their very existence helps to make tolerable the institutionalization of legitimate sex in the family.” (Ned Polsky, “On the Sociology of Pornography,” in *Hustlers, Beats, and Others* [Chicago, 1967], pp. 187–88). According to this view, Victorian pornography and Victorian puritanism are complementary phenomena, each requisite to the other.

13. Foucault, *History of Sexuality*, p. 45.

and devices of excitation and excitement.”¹⁴ So too, the growth of the pornography trade in the later half of the nineteenth century may have been linked to Victorian prudery and to official efforts to suppress obscene material.

In Germany, the upsurge of pornographic materials after midcentury may have been related as well (at least initially) to one additional Central European factor: the widespread mood of political resignation and psychological withdrawal that followed the failed revolutions of 1848. Consider, for example, the introduction to the 1851 pornographic novel *Galante Abenteuer des herrlichen Kriegsherres* [Amorous Adventures of the Great Generalissimo], where the author tells his readers that “besides cholera, another plague grips Germany—the plague of political reaction. It creeps into society and into family life and, everywhere crushing the spirit, it infests its victims with grief, misery, and stupefaction. What highspirited German wouldn’t like to escape this plague? And where can one find a more receptive asylum from its persecutions than in the free realm of love, over which the disagreeable politics of our times has no power? So whoever would like to flee with us into this asylum, we offer you merry entertainment in the form of this, our *Amorous Adventures*.”¹⁵

Whatever its cause, there was in imperial Germany a thriving industry devoted to erotic entertainment. While information on this illegal, underground trade in pornographic materials is sparse, it is clear that the industry catered to a wide variety of public tastes. For a slight fee, for example, the rural folk of Baden could visit touring “ethnographical and anatomical exhibits” in the 1870s; until police suppressed them, these pseudomedical exhibits displayed large plaster models graphically depicting the difference between healthy and syphilitic genitals.¹⁶ German consumers could purchase cigar and cigarette holders in the shape of nudes, trinket boxes decorated with sexual scenes, or large rubber genitals (either male or female), complete with belts and straps for attachment to the body.¹⁷ One Christmas season, imaginative bakers in Berlin offered marzipan shaped like phalli, or for more traditional tastes,

14. *Ibid.*, p. 48.

15. As quoted in Englisch, *Geschichte der erotischen Literatur*, p. 237.

16. Memo of interior minister, Jan. 3, 1879, in Generallandesarchiv (hereafter cited as: GLA) Karlsruhe, Abt. 357/1973/51, Nr. 2001.

17. Report of Berlin police, Dec. 18, 1913, in Zentrales Staatsarchiv (hereafter cited as: ZStA) Merseburg, Rep. 77, Tit. 380, Nr. 7, Adh. 1, Bd. 2.

the standard German gingerbread hearts but with risqué verses in white icing.¹⁸ Imperial Berlin even had numerous “massage” and “manicure parlors” which, the police were shocked to discover in 1911, “in truth did not practice massage or nail care at all, but rather exist solely to satisfy the sexual lasciviousness of men. . . . Specifically, these establishments are frequented by perversely inclined men, namely sadists and masochists, who seek sexual satisfaction from the young girls employed there for that purpose. Searches of the premises revealed obscene pictures of a sadomasochistic nature, large collections of rods, switches, and whips, and torture racks.”¹⁹

But the most widespread and available form of erotic merchandise in imperial Germany was pornographic books, pamphlets, journals, postcards, and photographs. Scores of firms in the new Reich were devoted almost exclusively to the production and distribution of such materials. The most prolific and notorious of these, such as August Prinz’s Verlagsbureau (Altona), the large Adolf Estinger concern (Munich), Curt Ronniger’s house (Leipzig), or the Dresdener Romanverlag (Dresden), were located in Germany’s largest cities, although other important producers of pornography could be found in small towns like Oranienburg or Heilbronn. Native German firms, however, supplied only a part of the pornographic output, probably not more than half. A great number of suppliers of pornography for German audiences found it wiser to locate just beyond the reach of the German police. Operating from Vienna or Budapest, Amsterdam, Paris, or Brussels, these enterprises printed huge quantities of cheap erotic literature in German and smuggled it into the Reich, where it was usually sold surreptitiously in cigar and tobacco shops. Or these foreign firms would place discreet advertisements for their wares in German newspapers and periodicals and then supply their customers individually through the mails.²⁰ Because

18. Report of 1. Staatsanwalt Berlin, Jan. 7, 1913, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Bd. 10.

19. Report of 1. Staatsanwalt Berlin, Dec. 30, 1911, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Bd. 9.

20. The primary foreign suppliers of pornography for Germany were: Gustav Grimm (Budapest); Sachs & Pollack (Budapest); Alois Hynneck (Prague); Fritz Freund’s Wiener Verlag (Vienna); C. W. Stern (Vienna); C. Gustav Bellack (Amsterdam); Henninger & Keidels (Amsterdam); Chas. Offenstedt (Paris); Albert Mericant (Paris); Albin Michel (Paris); Librairie Parisienne (Paris); Adolf Ebert (Barcelona); Engels & Co. (Barcelona); and A. Rozan (Barcelona). The Grimm, Sachs & Pollack, Wiener, and Stern houses were probably the largest producers of pornography in Europe, perhaps in the world. See ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Bd. 5; also Nr. 7, Adh. 1, Bd. 2, and Adh. zu

competition within the pornography industry was intense and most producers had their eyes on a mass market, prices for the majority of pornographic publications and illustrations were generally only a mark or two.

While the overall size of the German pornography trade is unknown, fragmentary evidence suggests it must have been both extensive and lucrative. For example, in the city of Bremen alone (population 165,000) no less than six different dealers were active in distributing the obscene publications of the Estinger concern.²¹ One Berlin bookdealer lost fifty thousand marks worth of pornographic material during a single police raid in 1878; two large furniture vans were needed to cart away the contraband when the relatively small Gerlach publishing house was raided in 1913; and several wagons were necessary when the large C. W. Stern Verlag of Vienna was closed down by authorities in 1910.²² During one year (mid-1904 to mid-1905), police in Munich confiscated 18,000 erotic photographs and 613 varieties of postcards, many of which depicted genitals and pubic hair, while in late 1910 and early 1911, German police confiscated some half million obscene postcards. In 1913, police responded to 440 newspaper and journal advertisements for obscene material, and received replies to about half their inquiries.²³ And when Berlin authorities tried to suppress newspaper advertisements for the city's illicit "massage and manicure parlors" shortly before the First World War, the Berlin press complained that it would lose some forty thousand marks a year in advertising revenues.²⁴

Pornography was not, as many imperial authorities wished to believe, a vice of the lower classes only. To be sure, police found a great deal of pornographic literature in the working-class districts of North and East

Bd. 11; Staatsarchiv (hereafter cited as: StA) Bremen, 4,89/1, Nr. 314; StA Hamburg, Politische Polizei, Nr. 4140; GLA Karlsruhe, 233/3242; and Englisch, *Geschichte der erotischen Literatur*, pp. 253ff.

21. Berlin police to Bremen police, Feb. 5, 1912, StA Bremen, 4,89/1, Nr. 314.

22. *Verwaltungsbericht des Polizei-Präsidiums Berlin*, p. 505; Berlin police to Prussian interior ministry, Oct. 7, 1878, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Bd. 2; report of Berlin police to Prussian interior ministry, Dec. 18, 1913, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Adh. 1, Bd. 2; Englisch, *Geschichte der erotischen Literatur*, pp. 284-85.

23. Lenman, "Censorship and Society," pp. 168-69; report of 1. Staatsanwalt Berlin, Dec. 30, 1911, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Bd. 9; report of Berlin police to Prussian interior ministry, Dec. 18, 1913, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Adh. 1, Bd. 2.

24. Report of 1. Staatsanwalt Berlin, Dec. 30, 1911, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Bd. 9.

Berlin, and they noted with bewilderment and disdain that a certain Saarland miner would spend thirty marks of his hard-earned wages for a lavishly illustrated book on the love life of the Japanese.²⁵ But authorities were also shocked to find that sadomasochistic material was readily available also in the “better,” upper-class districts of the capital; that an aristocratic Württemberg cavalry captain served as local agent for a noted Parisian smut dealer; that one Berlin cinema held regular closed screenings of obscene films for “gentlemen of the better circles”; and, worst of all, that the manufacturer of the rubber genitals mentioned above sometimes sold these objects to princes and counts.²⁶ Indeed, alongside the mass market of hardcore pornography there appears to have existed a distinct, sophisticated, elite market. For respectable literary publishing houses such as Schuster & Löffler, Piper, the Georg Müller Verlag, and the Insel Verlag frequently issued special, limited, “private” editions of the great Roman, French, Italian, or old German erotic classics. Printed on the finest paper in the original languages, bound in expensive leather, and priced as high as 150 marks for some multivolume sets such as the memoirs of Casanova, these works were obviously intended solely for the educated and propertied collectors of erotica.²⁷ (As will be explained below, these works were largely immune from legal prosecution precisely because they were intended for and affordable by only a small, educated elite rather than a mass public.)

ATTITUDES TOWARD PORNOGRAPHY

Contemporary observers in imperial Germany were painfully aware of the fin-de-siècle pornography boom and blamed it on a variety of causes. Some saw the spread of cheap pornography—as well as the general flood of lowgrade dime novels and other mass reading material (*Schundliteratur*)—as a consequence of Germany’s turn toward liberal capitalism after 1867. In their eyes, freedom of the press and of occupa-

25. Ibid. This work was probably an album of Japanese woodcuts produced by the prestigious Piper Verlag; Munich police prosecuted the publishing house in 1907 for printing the volume (Lenman, “Censorship and Society,” p. 169).

26. Report of Berlin police, July 16, 1912, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Adh. 1, Bd. 2; report of police president of Berlin-Charlottenburg, Aug. 13, 1898, StA Potsdam, Rep. 30 Berlin C, Tit. 74, Th. 96; report of 1. Staatsanwalt Köln, Jan. 30, 1900, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Bd. 5. The investigation into the activities of the Württemberg Rittmeister had to be dropped because of “intense pressure from military circles.”

27. Englisch, *Geschichte der erotischen Literatur*, p. 283; Ludwig Marcuse, *Obszön: Geschichte einer Entrüstung* (Munich, 1962), p. 35; Lenman, “Censorship and Society,” p. 169.

tion, the ruthless competitive spirit and dominant profit motives of the marketplace, the need to pander to the tastes of the consuming masses and to find ever new ways to entice customers—all these features of modern capitalism simply invited unscrupulous and greedy entrepreneurs to make their fortunes by corrupting public morals. Others were convinced that the nineteenth-century pornography industry was a by-product of Germany's burgeoning academic proletariat, that pool of educated but frustrated intellectuals and would-be authors who, because of declining employment prospects or economic desperation, were willing to prostitute their literary skills in this lucrative area of mass literature.²⁸ Still other critics, reflecting the rising tide of anti-Semitism in imperial Germany, blamed pornography on the Jews. Playing upon popular stereotypes about Jewish "lust" and "sensuality," for example, Max Liebermann von Sonnenberg, head of the anti-Semitic *Deutschsoziale Reformpartei* (German-Social Reform Party), declared in the *Reichstag* that it was Jews who were the primary manufacturers of pornography and the chief patrons of degenerate art. His party newspaper went even further and charged that the pornography being imported into Germany was a conspiracy by Jewish businessmen in Hungary and elsewhere to destroy the German *Volk* by poisoning German youth.²⁹

Whatever its presumed cause, there was widespread agreement in imperial Germany that pornography had to be suppressed. Although a few isolated voices such as the sexologist Dr. Magnus Hirschfeld, the journal *Sexualprobleme: Zeitschrift für Sexualwissenschaft und Sexualpolitik* [Sexual Problems: Journal for Sexology and Sexual Policy], and the *Bund für Mutterschutz und Sexualreform* (League for the Protection of Motherhood and Sexual Reform) advocated more sex education as the way to combat pornography and other sex-related problems,³⁰ most observers were convinced that all material, like pornography, that aimed at sexual arousal represented a danger both to the individual and to the

28. Rudolf Schauer, *Zum Begriff der unzüchtigen Schrift: Ein Beitrag zur Erläuterung des §184 R.St.G.B.* (Leipzig, 1893), pp. 59ff.; also Ronald A. Fullerton, "Creating a Mass Book Market in Germany: The Story of the 'Colporteur Novel' 1870-1890," *Journal of Social History* 10 (1977): 265-83, and his "Toward a Commercial Popular Culture."

29. Robin J. V. Lenman, "Art, Society, and the Law in Wilhelmine Germany: The Lex Heinze," *Oxford German Studies*, No. 8 (Oxford, 1973), p. 91; articles in *Deutsches Blatt* (Hamburg), Aug. 31, 1894 and Oct. 18, 1894. On sexual stereotypes concerning Jews, see George L. Mosse, *The Crisis of German Ideology: Intellectual Origins of the Third Reich* (New York, 1964), p. 141.

30. Weeks, *Sex, Politics and Society*, pp. 141-56; Richard J. Evans, *The Feminist Movement in Germany, 1894-1933* (London and Beverly Hills, 1976), p. 123.

social order. Leading psychologists, physiologists, and criminologists—including the pioneering sex researcher Iwan Bloch—believed that the reading or viewing of erotic material could overexcite the nervous system and create a dangerous buildup of internal psychic tension, which in turn could lead to emotional disorders or even suicide. It was also believed that sexually explicit material exercised a strong suggestive power that might induce the consumer—especially the young, the uneducated, or the emotionally unstable—to imitate what he saw or read. Thus, pornography was believed capable of causing sexual perversions, and was blamed not only for most sex crimes, for prostitution, and for venereal disease, but for criminality in general, the rate of which increased steadily after the 1880s, especially among the young.³¹

Some critics, moreover, regarded pornography as a threat to the state. Legal scholars such as Nicolaus Hatzipetros and Rudolf Schauer argued that an orderly society and secure state were founded on an orderly family life, which in turn was grounded in a sense of public morality. Anything that undermined morality therefore also undermined the family, and ultimately endangered the social and political order. The state thus had not only the right but the duty to protect and preserve the public's sense of morality by suppressing pornography.³² Similar anxieties were voiced by the Austrian sexual researcher Richard von Krafft-Ebing, who warned that “the material and moral ruin of the commu-

31. Schauer, *Begriff der unzüchtigen Schrift*, p. 3; Hermann Roeren, *Die öffentliche Unsittlichkeit und ihre Bekämpfung: Flugschrift des Kölner Männervereins zur Bekämpfung der öffentlichen Unsittlichkeit* (Cologne, 1904), pp. 11, 15; Iwan Bloch, *Das Sexualleben unserer Zeit in seinen Beziehungen zur modernen Kultur*, 2nd ed. (Berlin, 1907), p. 801; Erich Wulffen, *Der Sexualverbrecher: Ein Handbuch für Juristen, Verwaltungsbeamte und Ärzte*, vol. 8 of *Enzyklopädie der modernen Kriminalistik* (Berlin, 1910), p. 134. See also Lenman, “Censorship and Society,” p. 167, and Adolf Hennig, *Die öffentliche Sittenlosigkeit und die Arbeit der Sittlichkeitsvereine: Eine Denkschrift* (Berlin, n.d.). On the rising level of juvenile delinquency in imperial Germany, see Eric A. Johnson and Vincent E. McHale, “Socioeconomic Aspects of the Delinquency Rate in Imperial Germany, 1882–1914,” *Journal of Social History* 13 (Spring 1980): 387–89.

32. Nicolaus Hatzipetros, *Begriff der unzüchtigen Schrift und ihrer Verbreitung* (St.G.B. §184) (Inaugural diss., U. of Göttingen; Guben, 1896), p. 5; Schauer, *Begriff der unzüchtigen Schrift*, p. 1. A modern analyst, Abraham Kaplan, has explained why obscenity is so often seen as a threat to established order: “To attack established morality in any respect is to undermine the authority of every established pattern. . . . It is a commonplace that mores tend everywhere to be moralized, so that unconventionality of any kind is condemned as immoral and, if sexual, as obscene. . . . If they begin by attacking accepted standards of sexual behavior, so the theory runs, they will end by rejecting all social constraints in an orgy of anarchic egoism.” (“Obscenity as an Esthetic Category,” in *The Pornography Controversy*, ed. Roy C. Rist [New Brunswick, 1975], pp. 26, 27.)

nity is steadily brought about by debauchery, adultery and luxury.”³³ Conservative Bavarian educators like Dr. George Kerschensteiner and Ludwig Kemmer, on the other hand, feared that pornography threatened the nation’s military strength by undermining the health of German youth. “If we do not find a means of barring all doors against such works,” Kerschensteiner warned on the eve of the First World War, “we Germans will in a very short time go the way that all nations with a lascivious art have gone: the way of destruction.”³⁴ And there were those who saw the flood of pornography and illicit sex as part of a political movement to subvert the Reich. One Protestant clergyman, for example, declared in 1908 that “history teaches how at all times the parties of revolution have used prostitution and related phenomena in preparation for the execution of their plans.”³⁵

Clearly, such attitudes toward pornography reveal a strong element of social or class fear. For it was widely assumed in imperial Germany that, on the one hand, cheap mass-produced pornography was most extensively disseminated among the lower, uneducated social classes, and, on the other hand, that members of these classes, because of the material and moral conditions of their upbringing, were more susceptible to the sexual excitation and urge to imitation that pornography exercised, and were more likely to commit sexual crimes than were

33. Krafft-Ebing, *Psychopathia Sexualis*, p. 6, as quoted in Weeks, *Sex, Politics and Society*, p. 81. The anti-modernist Cassandra Max Nordau was even more vehement in his warnings; of the “filth-loving herd of swine, the professional pornographers,” he said: “The systematic incitation to lasciviousness causes the gravest injury to the bodily and mental health of individuals, and a society composed of individuals sexually over-stimulated, knowing no longer any self-control, any discipline, any shame, marches to its certain ruin, because it is too worn out and flaccid to perform great tasks. The pornographer poisons the springs whence flows the life of future generations. No task of civilization has been so painfully laborious as the subjugation of lasciviousness. The pornographer would take from us the fruit of this, the hardest struggle of humanity. To him we must show no mercy.” (Nordau, *Degeneration*, trans. from the Second Edition of the German Work [1895; reprint ed., New York, 1968], p. 557.) Such concerns were not unique to Germany. In England, St. Loe Strachey, editor of *The Spectator*, declared in 1895 that “unless the citizens of a State put before themselves the principles of duty, self-sacrifice, self-control, and continence, . . . the life of the State must be short and precarious.” (Quoted in Weeks, *Sex, Politics and Society*, p. 92.)

34. Quoted in Lenman, “Censorship and Society,” pp. 167–68.

35. Abraham Böhmländer, as quoted in *ibid.*, p. 197. See also the comments of Adolf Hennig, secretary of the General Conference of German Morality Leagues (*Allgemeine Konferenz der deutschen Sittlichkeitsvereine*), in *ibid.*, p. 52.

members of the upper classes.³⁶ Such fears about the sensuality of the masses became linked to the even more prevalent fears about political subversion and the revolutionary threat posed by the masses, especially after the expiration of the Anti-Socialist law in 1890.

PORNOGRAPHY AND THE LAW

Public concern over pornography was reflected in the new Reich Criminal Code of January 1872, which superseded the various state (*Länder*) laws under which pornography had previously been prosecuted. Paragraph 184 of the imperial code stated that “Whoever sells, distributes, or otherwise disseminates obscene [*unzüchtige*] publications, illustrations, or representations, or who exhibits or displays these in public places, shall be fined up to 300 marks or imprisoned up to six months.” The courts defined as obscene “anything that offends the public’s sense of modesty and morality [*Schamgefühl*] in a sexual sense.”³⁷ Material declared to be obscene by local authorities (who were responsible for enforcing the law and deciding when it should be invoked) was to be confiscated and destroyed, as were the plates or negatives used in its manufacture.

Although Paragraph 184 was later to be interpreted more and more broadly, the statute initially applied only to a relatively narrow range of offenses. For example, only those who publicly sold or distributed obscene material were punishable, not those who created or purchased it. (This provision, as shall be seen below in the discussion of “relative obscenity,” was inserted to protect an artist or scholar whose works might be distributed or sold to a mass audience without his consent or knowledge.) And to be convicted under the law, courts required that the offender had to have been aware of the obscene nature of the material he was distributing.³⁸ While such knowledge, as we shall see, was

36. Schauer, *Begriff der unzüchtigen Schrift*, pp. 1–2; Erich Wulffen, *Psychologie des Verbrechens: Ein Handbuch für Juristen, Ärzte, Pädagogen, und Gebildeten aller Stände*, vols. 1 and 2 of *Enzyklopädie der modernen Kriminalistik* (Berlin, 1908), 2: 35off. Wulffen, imperial Germany’s leading criminologist, maintained that upper-class children were given separate sleeping quarters at a much earlier age than working-class children. Because boys and girls of the lower classes slept together in the same room longer, their *Schamgefühl* was lower than that of upper-class children, and in later life they were more susceptible to sexual suggestion and arousal.

37. This definition was established by the Reichsgericht in its decisions of Dec. 15, 1879, Feb. 16, 1881, and Feb. 19, 1883.

38. Reichsgericht decisions of Dec. 15, 1879, Feb. 14, 1893, and Mar. 22, 1895.

usually easier to prove than one might think, this stipulation nevertheless constituted a significant loophole, through which many a clever lawyer was able to wiggle.

During the 1880s, police in Berlin registered an average of nearly 25 cases per year in which they confiscated obscene publications, illustrations, or paraphernalia (see Table 1). In the 1890s, the first decade for

TABLE 1

CASES IN BERLIN INVOLVING CONFISCATION OF
OBSCENE MATERIALS UNDER PARAGRAPH 184, 1881-1890

1881- 41	1886- 7
1882- 47	1887- 15
1883- 29	1888- 36
1884- 24	1889- 22
1885- 13	1890- 22

SOURCE: *Zweiter Verwaltungsbericht des königlichen Polizei-Präsidiums von Berlin für die Jahre 1881-1890* (Berlin, 1892), p. 357.

which complete figures are available, an average of 299 Germans were prosecuted each year in the Reich for distributing obscene material, over 70 percent of whom were eventually convicted (see Table 2). By contrast, French authorities during this period prosecuted an average of only 85 persons each year under French obscenity laws, 42 percent of whom were ultimately acquitted.³⁹ Almost 16 percent of the German prosecutions occurred in Berlin, even though that city comprised less than 4 percent of the Reich's population. The last two years of the decade saw a rather dramatic increase in the number of pornography offenses in Germany—roughly two and a half times the level of the early 1890s. Because statistics on criminality usually reflect enforcement rather than the actual incidence of crime (not all crimes are reported to the police, and many that are never result in an arrest or prosecution), this upsurge in convictions near the turn of the century may represent simply a stiffer application of the law rather than an actual expansion of the pornography trade. In either case, however, the late 1890s marked a new, deeper concern over the problem of pornography. Because the number of those convicted of trading in pornography was growing

39. Zeldin, *France*, p. 312. During the 1890s, France had a total population of approximately thirty-eight million, compared to Germany's fifty-five million.

TABLE 2
 PROSECUTIONS AND CONVICTIONS FOR THE DISTRIBUTION OF
 OBSCENE MATERIALS (PARAGRAPH 184), 1890-1899

	<i>Berlin</i>			<i>Reich</i>		
	<i>Prosecutions</i>	<i>Convictions</i>	<i>Conviction Rate</i>	<i>Prosecutions</i>	<i>Convictions</i>	<i>Conviction Rate</i>
1890	41	24	58.5%	199	146	73.4%
1891	36	29	80.5%	283	227	80.2%
1892	50	33	66%	231	167	72.3%
1893	52	24	46.2%	227	146	64.3%
1894	47	23	48.9%	211	148	70.1%
1895	48	27	56.2%	210	138	65.7%
1896	39	20	51.3%	232	166	71.5%
1897	36	22	61.1%	301	187	62.1%
1898	30	21	70.0%	526	357	67.9%
1899	<u>94</u>	<u>67</u>	<u>71.3%</u>	<u>574</u>	<u>418</u>	<u>72.8%</u>
Totals	473	290	61.3%	2994	2100	70.1%

SOURCE: *Statistik des deutschen Reiches*, n.s., vols. 58, 64, 71, 77, 83, 89, 95, 120, 126, 132 (*Kriminalstatistik für das Jahr 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899*).

much faster than the total population and seemed to many observers also to be directly linked to an alarming rise in the number of sex crimes,⁴⁰ conservative forces such as the Kaiser, the Catholic Center Party, and various morality leagues such as the Munich-based *Verein zur Hebung der öffentlichen Sittlichkeit* (Association for the Improvement of Public Morality) demanded a drastic tightening of the law regarding pornography.

The first reaction came when the courts declared that an author who handed over an obscene manuscript to a printer or publisher for mass distribution was also liable to punishment.⁴¹ Then, in 1900, after a bitter three-year struggle, Paragraph 184 was fundamentally rewritten. Shocked by revelations about urban vice and moral corruption that had surfaced during the notorious murder trial of a Berlin pimp named Heinze, the Center Party had introduced a bill in the Reichstag in 1897 to broaden significantly the definition of obscenity and to impose stiff punishments for a wide range of morally offensive activities (advertising or displaying contraceptive devices; staging theatrical performances that offended the public's sense of morality or modesty), none of which had previously been illegal. Supported by the other conservative parties, the National Liberals, anti-Semites, and several public morality leagues and antivice societies, but opposed by a loose alliance of liberals and Socialists on the grounds that the new, broader definition of obscenity would endanger intellectual and artistic freedom, the proposed bill (which came to be known as the "Lex Heinze") generated a protracted parliamentary debate. Through a series of obstructionist tactics and clever procedural maneuvers, opponents of the bill succeeded in getting its most arbitrary and repressive clauses (e.g., those pertaining to stage indecency) toned down.⁴² The final compromise version, passed in June 1900, now made it illegal not only to distribute or display, but also to compose, manufacture, store, advertise, or publicly extol any obscene works or to give these to any person under sixteen years of age. And the

40. The number of convictions for sexual offenses (rape, incest, etc.) roughly doubled between the mid-1880s and the mid-1890s. (*Statistik des deutschen Reiches*, n.s., vol. 146 [*Kriminalstatistik für das Jahr 1901*], pp. ii, 26.) In Britain, too, there was a considerable increase in sexual offenses after 1885. (Weeks, *Sex, Politics and Society*, p. 90.)

41. Reichsgericht decision of Jan. 13, 1893; also decision of Dec. 7/8, 1899.

42. For a detailed account of the origins of and controversy over the Lex Heinze, see Lenman, "Art, Society, and the Law," pp. 86-113.

punishment for doing so was made more severe: a fine of up to 1000 marks or one year imprisonment.⁴³

Law enforcement authorities hailed the new law, believing it gave them powerful new means to suppress pornography. In explaining the ramifications of the new statute to the Berlin police, the Prussian interior ministry instructed police that they no longer had to wait until obscene material was actually distributed to the public before taking action; they could now intervene if such material were merely publicly announced or advertised, for example if the mere title of an obscene book appeared in a newspaper advertisement or publisher's catalog. More importantly, the ministry took pains to point out that a recent court decision had greatly expanded the definition of obscenity. Whereas previously a work was obscene only if it could be shown to be offensive or morally dangerous to the average adult, now police could consider its effect on the "public at large"—which included individuals such as children or the emotionally unstable.⁴⁴ Using such criteria, it became far easier to declare a work obscene. Another court decision in 1902 made it easier still to prosecute pictorial works under Paragraph 184. For the federal high court ruled that the content of a picture or film consisted not only of what was directly visible to the eye, but also of what was expressed—the meaning or implication of what was actually shown in the work. Thus, a series of drawings that began with a man and woman meeting

43. It now also became illegal to publicly advertise articles such as condoms or contraceptive devices, or to place advertisements seeking a partner for an extramarital liaison. The complete amended law, which became effective on June 25, 1900, read:

“Mit Gefängnis bis zu einem Jahr und mit Geldstrafe bis zu eintausend Mark oder mit einer dieser Strafen wird bestraft, wer

1. unzüchtige Schriften, Abbildungen oder Darstellungen feilhält, verkauft, vertheilt, an Orten, welche dem Publikum zugänglich sind, ausstellt oder anschlägt oder sonst verbreitet, sie zum Zweck der Verbreitung herstellt oder zu demselben Zweck vorrätig hält, ankündigt oder anpreist;

2. unzüchtige Schriften, Abbildungen, oder Darstellungen einer Person unter sechzehn Jahren gegen Entgelt überlässt oder anbietet;

3. Gegenstände, die zu unzüchtigen Gebrauche bestimmt sind, an Orten, welche dem Publikum zugänglich sind, ausstellt oder solche Gegenstände dem Publikum ankündigt oder anpreist;

4. öffentliche Ankündigungen erlässt, welche dazu bestimmt sind, unzüchtigen Verkehr herbeizuführen.

Neben der Gefängnisstrafe kann auf Verlust der bürgerlichen Ehrenrechte sowie auf Zulässigkeit von Polizei-Aufsicht erkannt werden.”

44. Prussian interior ministry to Berlin police, Oct. 11, 1901, ZStA Merseburg, Rep. 77, Tit. 2772, Nr. 15.

in the park and ended with a room in which male and female clothing was scattered about was ruled obscene, even though the drawing did not actually show the two people engaged in any immoral act; the meaning of that final scene was clear to the court, and this sufficed to make the series of drawings illegal.⁴⁵ When the broad provisions of the new obscenity statute could not be stretched widely enough, police made use of other legal weapons. For example, in borderline cases where material was morally offensive yet didn't meet the legal definition of obscenity, police in Berlin were instructed to charge individuals with at least the lesser offense of "gross mischief" and creating a public disturbance (*grober Unfug*).⁴⁶ With all these new legal weapons at their disposal, some police still complained about how difficult it was to obtain evidence against pornography producers and dealers unless police were allowed to overstep the confines of correct and decent behavior.⁴⁷

Administrative efforts against pornography were also beefed up after the turn of the century. A 1910 international agreement, signed by Germany and fourteen other nations as part of an international antivice crusade, pledged all the signatories to exchange information about the international trade in pornography and to cooperate in identifying and prosecuting international dealers.⁴⁸ By 1914, German police claimed this treaty had enabled them to ferret out and dry up nearly all the sources of pornography being imported into Germany, with the important exceptions of those in France, Italy, and Spain where, they complained, the authorities seemed indifferent to the problem of pornography and were unwilling or unable to prosecute the pornography dealers who operated from their soil.⁴⁹ As a direct result of this 1910 treaty, the Reich in 1911 centralized all police efforts against pornography by creating a *Zentralstelle für Bekämpfung unzüchtiger Bilder und*

45. Reichsgericht decision of Feb. 21, 1902.

46. Prussian interior ministry to Berlin police, Dec. 28, 1901, ZStA Merseburg, Rep. 77, Tit. 2772, Nr. 15. Likewise, in December, 1907, the Bavarian Oberste Landesgericht ruled that since the display of indecent material could be considered an attack upon public order, offenders could automatically be charged with *grober Unfug*. (Lenman, "Censorship and Society," p. 170.)

47. Lenman, "Censorship and Society," p. 170.

48. The complete text of the treaty was published in the *Reichsgesetzblatt*, 1911, pp. 209ff. On the effect of this treaty on day-to-day pornography control in Germany, see memo of Hessian interior minister, Jan. 14, 1913, StA Darmstadt, G15 Heppenheim, Abt. 2, vol. 776.

49. Report of Berlin police, Dec. 18, 1913, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Adh. 1, Bd. 2.

Schriften (Central Police Office for the Suppression of Obscene Materials). This office—actually a division within the Berlin police force and under the authority of the Prussian interior ministry—was given broad new authority to coordinate the national war against obscenity. It took over various duties, for example, that had previously been handled by the press police, the criminal police, the German customs service, the postal service, and the state prosecutor's office. This new agency combed through hundreds of German newspapers, periodicals, and catalogs each day searching for advertisements of pornographic material, especially advertisements placed by foreign dealers; it collected information both on the domestic and international pornography trade and shared this data with local authorities and foreign governments; it compiled a catalog of all publications and phonograph records that had been declared obscene by various local German courts; and it imposed and oversaw postal embargoes against suspected pornography dealers. The office was even given an annual allowance of 3000 marks with which to reply to pornography advertisements or to purchase obscene materials for use as evidence.⁵⁰ How much Foucaultian pleasure was derived from these pursuits is not known.

With new legal and institutional means at their disposal, German police after 1900 attacked the pornography industry with renewed vigor, and prosecutions under Paragraph 184 increased dramatically (see Table 3). Whereas during the 1890s an average of 299 people had been prosecuted annually, during the decade and a half before the First World War that number rose to over 434. Nearly one third of these offenders had previous criminal records, as compared with only one-fifth of the offenders in the 1890s. The courts, too, seemed more inclined after 1902 to convict those charged: the conviction rate rose from 70.1 percent to 75.3 percent. The pornography problem seemed to be increasingly centered in the nation's capital. Although Berlin contained barely one-twentieth of the Reich's population on the eve of the war, about one-third of all pornography convictions occurred there. (After passage of the Lex Heinze, the average number of prosecutions annually under Paragraph 184 more than tripled in Berlin, swelling from 47.3 in the 1890s to 151 during the period 1902–1914, while the conviction rate in the capital increased from 61.3 percent to 73.4 percent. The average number of convictions each year was rising over twice as rapidly as the city's population.)

50. See ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Adh. 1, Bd. 1, 2.

TABLE 3
 PROSECUTIONS AND CONVICTIONS FOR THE MANUFACTURE,
 DISTRIBUTION, OR DISPLAY OF OBSCENE MATERIALS
 (PARAGRAPH 184—NO. 1), 1902-1914

	<i>Berlin</i>			<i>Reich</i>		
	<i>Prosecutions</i>	<i>Convictions</i>	<i>Conviction Rate</i>	<i>Prosecutions</i>	<i>Convictions</i>	<i>Conviction Rate</i>
1902	229	184	80.3%	599	473	79%
1903	143	116	81.1%	448	349	77.9%
1904	141	105	74.5%	436	328	75.2%
1905	134	84	62.7%	407	258	63.4%
1906	176	120	68.2%	455	327	71.9%
1907	127	83	65.4%	348	268	77%
1908	116	76	65.5%	435	326	75%
1909	123	89	72.4%	346	245	70.8%
1910	67	50	74.6%	321	253	78.8%
1911	277	211	76.2%	536	412	76.9%
1912	211	147	69.7%	521	385	73.9%
1913	104	89	85.6%	444	364	82%
1914	<u>115</u>	<u>86</u>	<u>74.8%</u>	<u>356</u>	<u>267</u>	<u>75%</u>
Totals	1963	1440	73.4%	5652	4255	75.3%

SOURCE: *Statistik des deutschen Reiches*, n.s., vols. 155, 162, 169, 176, 185, 193, 228, 237, 247, 257, 267, 272, 284 (*Kriminalstatistik für das Jahr 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914*).

With the outbreak of the First World War, the German pornography trade withered. On the one hand, the patriotic hysteria and general preoccupation with the war, the conscription of much of the young male population, and their removal to the front lines all drastically reduced the demand for pornography, at least in the early years of the war. On the other hand, the closing of the French, Belgian, and Dutch frontiers and the economic blockade of Germany dried up one of the primary sources of obscene material for German audiences. As a result, the annual number of prosecutions under Paragraph 184 fell drastically during the war years to less than one third of the prewar level (see Table 4).

TABLE 4

PROSECUTIONS AND CONVICTIONS IN THE GERMAN REICH
FOR THE MANUFACTURE, DISTRIBUTION, OR DISPLAY
OF OBSCENE MATERIALS (PARAGRAPH 184—NO. 1)
DURING THE FIRST WORLD WAR

	<i>Prosecutions</i>	<i>Convictions</i>	<i>Conviction Rate</i>
1915	not available	not available	—
1916	117	94	80.3%
1917	95	73	76.8%
1918	<u>93</u>	<u>74</u>	<u>79.6%</u>
Totals	305	241	79%

SOURCE: *Statistik des deutschen Reiches*, n.s., vols. 302, 304, 342 (*Kriminalstatistik für das Jahr 1916, 1917, 1918*).

With so many men involved in the military, women now seemed to play a more prominent role in the German pornography trade, and they accounted for nearly one quarter of all those prosecuted.⁵¹ Toward the end of the war, however, police noted that after a three-year hiatus the circulation of pornography in Germany seemed to be reviving. German soldiers returning home on leave from occupied France, Belgium, and Poland were also bringing back with them large quantities of obscene material.⁵²

51. *Statistik des deutschen Reiches*, n.s., vols. 302, 304, 342 (*Kriminalstatistik für das Jahr 1916, 1917, 1918*). No figures are available on the number of women prosecuted under Paragraph 184 before 1914, although police commented that women seemed more active in the pornography trade during the war. (Report of Berlin police, Apr. 5, 1919, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Adh. 1, Bd. 2.)

52. *Ibid.*

OBSCENITY, CULTURE, AND THE PUBLIC

Although the police and courts of imperial Germany resorted to ever stiffer measures to suppress pornography, they recognized that the exploration of human sexuality was a justifiable, even a necessary pursuit of “serious” artists and scholars, and that this pursuit should not be subject to the narrow prescriptions of Paragraph 184.⁵³ Even the tough new Central Police Office for the Suppression of Obscene Materials acknowledged that its function was “to suppress products that endanger public morality without, however, inhibiting the legitimate, free development of art and scholarship.”⁵⁴ Throughout the imperial period, the courts and legal scholars consistently held that true works of art and scholarship were never obscene *per se*. For the artist or scholar who dealt with sexuality in his work did so not out of some prurient interest, but with a higher, more ethical purpose in mind. Precisely for that reason, works of art and scholarship were not likely to offend either those who produced them or those who read or viewed them for their artistic or scholarly content. Only those works were obscene—and therefore punishable under Paragraph 184—that were created or consumed not with some higher goal in mind, but solely for their sexual content.⁵⁵ Thus, to

53. The leading authority on Paragraph 184 also took pains to point out that “the artist who wants to portray life as it is must above all portray those factors that shape and direct life. Sexual love is one of the most powerful mainsprings of human existence; without love, no family, without the family, no state. . . . Sexual love, which has played so great a role in civilization, has always especially attracted the artist. Sexual love offers so many different forms, such interesting psychological problems, that it inevitably inspires the artist to apply his talents to its portrayal. . . . The artist is therefore permitted to say things that it would not be proper to mention in regular society. . . . We therefore come to the conclusion: sensuality is permitted to the graphic artist; indeed, it is indispensable for him. It should be condemned [in art] only when it passes over into the vulgar and thus turns the artist’s whole effort into an obscene one” (Schauer, *Begriff der unzüchtigen Schrift*, pp. 39–41).

54. Berlin police to Prussian interior ministry, Feb. 7, 1911, ZStA Merseburg, Rep. 77, Tit. 380, Nr. 7, Adh. 1, Bd. 1. The interior minister, in defining the competencies and powers of the new office, made it clear that if the police were to interpret the law too narrowly and confiscate great works of art or prosecute serious scholars under Paragraph 184, they would only make the law against pornography look ridiculous and thus reduce its effectiveness in upholding public morality (memo to Berlin police, Oct. 11, 1911, ZStA Merseburg, Rep. 77, Tit. 2772, Nr. 15).

55. Schauer, *Begriff der unzüchtigen Schrift*, pp. 36–37; Hatzipetros, *Begriff der unzüchtigen Schrift*, p. 26; Bloch, *Sexualleben*, p. 795. A crucial Reichsgericht decision of Mar. 22, 1895 ruled that “it is not sufficient [grounds for declaring a work obscene] that individual passages or sentences of that work, in themselves and taken out of context, offend the

cite but one minor example, when Berlin police confiscated an issue of the theatrical journal *Freie Bühne* in which a review of Goncourt's drama *The Prostitute Elise* had made some rather frank references to intercourse, the courts quickly overturned the action because the general character and tendency of the review served legitimate artistic interests; in the words of the judge, "when one considered the content of the article as a whole, its thoroughly serious tone, and its unquestionable artistic purposes, the passages [in question] are not objectively inclined to grossly offend [the reader's] sense of modesty and morality in a sexual sense."⁵⁶

At first glance, such an interpretation would seem to give artists—as well as most pornography dealers—free reign; one need only claim that one's erotic novel or photograph was in fact intended as an artistic or medical study and one would presumably be immune from Paragraph 184. Alas, there was a legal safeguard, a concept known as "relative obscenity," that was intended to prevent just such abuses. In the 1890s, as authorities were beginning to crack down on pornography, German courts declared that obscenity was not something absolute or necessarily inherent in the content of a work. Rather, external circumstances—such

sense of morality. Rather, it is far more a matter of the character of the work as a whole. Scholarly works, reports, and debates often contain things that, in the context of the larger whole, are permissible, indeed even necessary." See also the Reichsgericht decision of Feb. 19, 1883. According to imperial Germany's leading expert on sexuality, in legitimate works of art and science "higher artistic or scientific goals [will outweigh] the purely sexual elements; the [sexual objects] portrayed are divested of their topicality [*Aktualität*] and, completely ignoring considerations of time and place, are considered from their *general human* aspect. Furthermore, in portraying the purely sexual or physical, the author expresses a kind of transcendent viewpoint, or he makes evident the causal relations of what he portrays" (Bloch, *Sexualleben*, p. 795).

56. "Beschluss in der Strafsache wider den Schriftsteller Otto Brahm und den Redakteur Wilhelm Bölsche wegen Vergehens gegen §184 des Strafgesetzbuches," *Freie Bühne* 2 (1891): 129–30. French law made a similar distinction between erotic art and pornography; the former was tolerated because it was considered "artistic, excluding all idea of lucre and addressing itself to an elite," while the latter was considered obscene because it had merely "low and pecuniary aims." According to a decree of the Tribunal de la Seine, Feb. 11, 1884, "obscenity exists where . . . art does not intervene to raise up the ideal and where the appeal to the instincts and gross appetites is not opposed or defeated by any superior sentiment." (Zeldin, *France*, p. 311.) No such clear distinction existed in English law, however. After the turn of the century there was a growing concern in England that the law against obscenity was too often being applied against genuine art and literature. A Joint Select Committee was established in 1908 to amend the law to insure that "any book of literary merit or reputation or any genuine work of art" would be exempted from legal prosecution. Parliament, however, ignored the recommendations of the committee and the law was never altered (Barber, *Pornography and Society*, p. 34).

as the way a work was presented, the use to which it was put, or the type of audience for which it was intended—often determined whether or not that work was obscene.⁵⁷ In short, relative obscenity meant that any given object might be legally obscene in one setting but not in another. For example, the courts ruled that a sculptured model of the human genitals was not obscene “if it were intended to serve an artistic or scholarly purpose,” as in a medical school or hospital; that same object, however, would be obscene “if the purpose of its creation were to arouse [others to] sexual lechery”—if, say, it were displayed in the back room of a beerhall.⁵⁸

When applied to works of art and literature, this doctrine of “relative obscenity” had ominous implications. For it meant that a work was not obscene as long as it was confined to an audience capable of appreciating it for its higher artistic or scholarly value as distinct from its purely sexual content. But that same work could be ruled obscene under Paragraph 184 if it were intended for or released to a broader, “general” audience, one where people would be less inclined or less able to appreciate the work’s artistic or scholarly value, where many would be interested in the work only for its purely sexual content, or where some would be offended by it because of their more conventional sense of morality and modesty.⁵⁹ Again, one detects here strong class prejudices and social fear. Indeed, one German legal scholar admitted that the danger of an artistic or scholarly work was to be judged in terms of the social standing of those who viewed it; what was permissible before a “serious audience” could well endanger the morality of a “lower audi-

57. A Reichsgericht decision of Dec. 10, 1897 ruled that “works that are absolutely and universally obscene are rare. More often, the determination of whether something is obscene or not depends on the circumstances: the people involved, the conditions, the place, the purpose for which it is intended, and so on.” See also Reichsgericht decision of Nov. 6, 1893. Another key decision (Jan. 15, 1891) ruled that “not merely the form or content [of a work] determines whether or not it is obscene; its perceived intent and the use to which it is put are equally decisive. If a work is intended to serve art or scholarship, then it can’t normally be considered to be a work that aims at sexual arousal [and thus is not obscene]. If, however, an artistic work containing objectively offensive elements is intended or used for sexual arousal, then it can be branded as an obscene work. For the way a work of art is exhibited or distributed can give it an obscene character. And, conversely, works that have an explicit sexual content without having any higher artistic or scholarly intent may not be obscene if, for example, they are sold to someone who wants to place them in an art-historical collection.”

58. Prussian Obertribunal decision of July 19, 1874.

59. Reichsgericht decision of Mar. 22, 1895; Schauer, *Begriff der unzüchtigen Schrift*, pp. 36–37.

ence" (*unterer Leserkreis*) that was inclined to see only its sexual dimension.⁶⁰

This outlook led to some unusual police actions against works of art. Certain classical nude paintings were legal, for example, but reproductions of these were ruled obscene. Thus, when lowpriced postcard-size photographs of Vecchio's *Reclining Venus* and Giorgione's *Sleeping Venus* (both of which were on permanent display at the Dresden Royal Gallery) were hawked in taverns to the general public, these reproductions were confiscated and destroyed by the police. For, to the authorities, it was clear these postcards were being distributed not for their higher artistic value, but merely for the purpose of sexual titillation.⁶¹ The situation was similar for literary works. As soon as it could be shown that a book was no longer intended for a select audience capable of appreciating its higher merits, but was being offered instead to the general public, then that particular edition of the book was no longer immune from Paragraph 184. Thus it was legal to sell Zola's *Nana* in the original French, but the German translation was banned, for it was intended for a general audience. Likewise, a limited, highly priced printing of Mantegazza's works was unobjectionable; but when another publishing house issued a low-priced popular edition of the same work and used drawings on the cover that hinted at the book's erotic content, this version was banned on the grounds that the publisher clearly intended to attract a type of reader who would buy and read the work not for its artistic or scholarly merit, but for its sexual content.⁶² Whether a literary work was in German or a foreign language, its price, the number of copies printed, the type of illustrations or dustjacket it had, the way it was advertised to potential buyers, whether it was sold by reputable bookstores or peddled by colporteurs, even the general reputation of the publishing house, were all scrutinized by the police to determine

60. Hatzipetros, *Begriff der unzüchtigen Schrift*, p. 29.

61. Karlsruhe Landesgericht decision of Feb. 12, 1910, in GLA Karlsruhe, 233/33607. (In addition the postcards, according to the court, had a crasser coloration than the original paintings, which made certain parts of the anatomy stand out more in the reproductions.) On Nov. 6, 1893 and Nov. 22, 1904 the Reichsgericht reached the same conclusion in cases that were almost identical to this. The 1904 decision, for example, stated that "what must be determined is whether these pictures—which in their original form as paintings in a Paris salon may not offend anyone—in their present form, as postcard photos being peddled in the streets to anyone, regardless of age, sex, or educational level, are obscene in regard to the way they are being offered in *this* particular situation."

62. Schauer, *Begriff der unzüchtigen Schrift*, pp. 47–48; Berlin police report of Sept. 1, 1882 regarding *Nana* ZStA Merseburg, Rep. 77, Tit. 380. Nr. 7, Bd. 3.

whether a particular book was indeed a legitimate artistic or scholarly work intended for serious readers, or merely a thinly disguised attempt to pander to and capitalize on the prurient interests of a broader public. If it were found to be the latter, it could be ruled obscene.⁶³ Whether or not the author intended for his work to be distributed to an audience of nonscholars or nonartists was irrelevant; it was the effect or possible effect of the work on public morals that concerned police, not the author's intent.⁶⁴

The legal immunity from Paragraph 184 granted to German artists and scholars was thus a dubious one. While they were free to explore any and all sexual matters in their works, these works could be legally distributed to or enjoyed by only a relatively small elite, not the general public. To the knotty problem of how to outlaw pornography without inhibiting art and scholarship, then, the Second Reich found the following ingenious solution: the artistic and scholarly community was allowed complete freedom within its realm—but the boundaries of that realm were drawn narrowly indeed, and it was effectively separated from the rest of German society.

CONCLUSION: PORNOGRAPHY AND SOCIETY

Two features appear characteristic of police attempts to control pornography in imperial Germany. First, public concern over pornography in the Second Reich was but one manifestation of a general new Victorian awareness of and obsession with sexuality, which in turn seems to have been closely linked to concern about the future of the nation-state. As Germany's international situation became increasingly precarious, suppression of pornography and of other sexual excesses was seen as one means of safeguarding the nation's military strength. More importantly, fear of pornography was clearly linked to society's fear of the lower classes and of political subversion. Other scholars have argued⁶⁵ (convincingly, I think) that before the nineteenth century, limited literacy and the relatively high cost of pornographic publications combined to confine pornography largely to the upper classes; for that reason, governments did not consider the circulation of pornography a serious danger and laws against it were only laxly enforced. It was only in the

63. Schauer, *Begriff der unzüchtigen Schrift*, pp. 38, 44–49.

64. *Ibid.*, pp. 37–38.

65. Riess, *Erotical! Erotical!*, p. 12; Marcuse, *Obszön*, p. 53. See also Loth, *Erotic in Literature*.

second half of the nineteenth century, when the masses also became literate and when the techniques of mass production and distribution encouraged the spread of inexpensive pornography to the poorer social classes, that authorities became genuinely alarmed and began applying stern measures to stamp it out. Of course, more investigation will be necessary before we can say to what extent official anxiety over the growing pornography problem was the result of deep-seated psychosexual fears and repressions, and to what extent it can be traced to the specific social divisions and political tensions of the Second Reich, especially after 1890. But it seems clear that German attempts to control pornography in the imperial era were entwined with the traditional social elite's attempt to come to grips with the potentially dangerous new nineteenth-century phenomenon of a literate, yet still largely uneducated, uncultured, and insufficiently socialized populace.

Second, legal weapons against pornography such as the doctrine of "relative obscenity" merely exacerbated imperial Germany's social and cultural divisions. By seeking to give artists and scholars free reign to deal with sexual themes in their works, yet at the same time forbidding the dissemination of those works to the general public that was judged incapable of appreciating them, the state only widened the growing gap between the "high culture" of the educated elite and the "low culture" of the semieducated masses. On the one hand, the doctrine of relative obscenity contributed to the increasing isolation and alienation of the intelligentsia from the rest of German society, at least in matters of sexual consciousness.⁶⁶ On the other hand, this tortuous legal maxim formed the basis for a series of police bans, confiscations, and prosecutions of noted literary works after 1890.⁶⁷ The authors and scholars

66. See Roy Pascal, *From Naturalism to Expressionism: German Literature and Society 1880–1918* (London, 1973), pp. 253, 305, 311; H. W. Rosenhaupt, *Der deutsche Dichter um die Jahrhundertwende und seine Abgelöstheit von der Gesellschaft* (Berne, 1939); Richard Hamann and Jost Hermand, *Epochen deutscher Kultur von 1870 bis zur Gegenwart*, vol. 2: *Naturalismus* (Frankfurt, 1977), p. 68.

67. Certain "public" editions of the following literary works were banned at one time or another in imperial Germany: C. Alberti, *Die Alten und die Jungen* (banned 1889); Zola, *Renate* (banned 1890) and *Die schöne Adelheid* (banned 1891); Hermann Bahr, *Russische Reise* and *Fin de Siècle* (banned 1892); A. Strindberg, *Die Beichte eines Toren* (banned 1893); Richard Dehmel, *Aber die Liebe* (banned 1893, but later reversed; banned again 1899, but later reversed); O. Panizza, *Das Liebeskonsul* (banned 1895); R. Dehmel, *Weib und Welt* (banned 1897); Zola, *Der Bauch von Paris* (banned 1899); E. Schur, *Dalldorfer Lyrik* (banned 1899); P. Remer, *Unter fremder Sonne* (banned 1899, later reversed); d'Aubecq-Linder, *Barrisons* (banned 1899, later reversed); T. Kabelitz, *Gründe und Abgründe* (banned 1899); A. Schnitzler, *Reigen* (banned 1904); and Victor Hugo, *Der Roman der*

whose works were affected found these police actions increasingly arbitrary and incomprehensible, and this in turn heightened their own alienation from the state and from the established order.⁶⁸ But rather than rallying authors and uniting them in opposition to official policy, the issue of censorship of sexual material frequently divided the community of writers and even encouraged their mutual hostility. For to preserve the strict separation between “legitimate” art for the elite and works destined for the general public—and thereby protect their own creations from possible prosecution—some avant-garde artists who wrote on sexual themes were tempted to call for harsher treatment of their less exalted colleagues. Thus the expressionist author Hermann Bahr, whose work with sexual themes sometimes got him into trouble with the German police and courts, said of pornographic authors and dealers: “They conduct the most pitiable and infamous of all trades; they must be mercilessly rooted out. Artists should join together in an energetic, ruthless campaign against them, and where ever such outrages are discovered, they must be strung up without mercy on the nearest lightpole.”⁶⁹ Likewise, the left-leaning naturalist author Fritz Mauthner declared that “book and art dealers, scribblers and painters who want to enrich themselves and poison the public with dirt belong before the criminal court.”⁷⁰

Because German authorities so feared the social effects of pornography and saw it as so closely linked to the social and political threat of the lower classes, they felt compelled to suppress it. Yet their efforts to do so without inhibiting “true” art and science were probably doomed to failure, as are any society’s attempts to police what its members see or read. For if the “pleasure-power” spiral that Foucault posits indeed

kleinen Violette (banned 1912). As another example of the application of “relative obscenity,” Dehmel’s poem “Venus Consulatrix,” included in the *Weib und Welt* book, was found to be obscene, and this section of the book was confiscated and destroyed. It was legal for Dehmel to print the poem privately and distribute it to a small circle of authors, however, which he did in 1907 (only 150 copies were printed). See Heinrich H. Houben, *Verbotene Literatur von der klassischen Zeit bis zur Gegenwart: Ein kritisch-historisches Lexikon über verbotene Bücher, Zeitschriften und Theaterstücke, Schriftsteller und Verleger*, 2 vols. (Berlin, 1924), 1: 116–30.

68. See for example Oskar Panizza, *Parisjana: Deutsche Verse aus Paris* (Zurich, 1899), esp. pp. 4–7, 29–30, 81–82, written after Panizza’s release from prison, and Hermann Bahr’s “Galante Bücher,” *Die Gegenwart* 39, no. 2 (Jan. 10, 1891): 25–26, which Bahr wrote immediately after one of his works had been banned.

69. Bahr, “Galante Bücher,” pp. 25–26.

70. Mauthner, “Die freien Bühnen und die Theaterzensur,” *Das Magazin für Literatur* 60, no. 5 (Dec. 19, 1891): 802.

exists, and if it is prudery and sexual repression that encourages the growth of pornography and deviant behavior rather than the other way around, then those in imperial Germany who sought to eradicate pornography faced a truly impossible task. And if, as some sociologists suggest, the existence of phenomena like pornography and prostitution actually help uphold and reinforce society's conservative sexual norms,⁷¹ then their goals may also have been ultimately self-defeating.

71. See the comments of Ned Polsky, cited in note 12, above.