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"...slandered as sexual deviate and pederast..." -The 1905 Proceedings Against the Naturalist Theodor Beer (1866-1919)

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Abstract: The case against the naturalist and physiologist Theodor Beer (1866-1919), traced historically by the author, constitutes a striking yet also representative example of the ruination of a scientific career by means of a campaign of character assassination. Beer had been charged, based on scant evidence, with sexually violating two boys. Nevertheless he was convicted and banished from scientific discourse. Those responsible for the verdict and ensuing social exclusion were the very same late Habsburg-era elites whom Beer had publicly attacked. None of his academic colleagues found the courage to intercede on his behalf. The mere accusation of pedophilia was enough to isolate Theodor Beer.

Keywords: Homosexual Prosecution; Physiology; Sexual Denunciation; Theodor Beer

Scarcely any legal proceedings scandalized and shook middleclass Viennese society in the years before 1914 as much as the long drawn-out legal -- and likewise public -- controversy surrounding the sexual preferences of the physiology professor Theodor Beer. This was clearly a direct result of the affair never having been definitively resolved, either in terms of its legal status or even the true facts of the case. The actual circumstances that led to the conviction remain obscure. In the course of the proceedings details ranging from the tragic to the comic were revealed. Within this framework, an attempt will be made to shed light on the background and context within which the proceedings were initiated and carried out, as well as to point out their broader consequences.

[333]The debate's protagonist, Theodor Beer, was born in Vienna on March 26, 1866. His father, a busy, prosperous businessman, was a Jew; Theodor Beer himself converted from the Jewish to the Christian faith. After attending a well-respected secondary school in Vienna, from 1883-1889 Beer studied medicine in Vienna, Strasbourg, Heidelberg, and then once again in Vienna; in 1889 he received his medical degree. At this point he initially did unpaid work, later became an assistant at the Second Eye Clinic of the General Hospital (AKH) in Vienna, and was then employed at the University of Bonn Physiology Institute (1893/94). In the winter months of 1894/95 he conducted research at the German Zoological Station in Naples, for which he had obtained several grants. In the fall of 1895, at his own expense, he set off for England to continue his studies, auditing courses at various physiological institutes (UA Vienna, Med. Dept. 32). Beer succeeded early on in calling his colleagues' attention to his abilities. He was published in respected journals on current topics, while at the same time penning a series of pamphlets which, as of 1900, already filled an entire volume. [E11] In his scientific essays he concentrated on the investigation of the functional mechanisms of the eye, reporting on rare diseases [E3-ES], novel coloring methods [E6] and accommodation in the animal eye. [E7]

On the strength of his research, though only thirty years old at the time, he was hired as a lecturer in physiology at the University of Vienna. As an indication of his strong position in scientific circles the following situation is notable: In 1895 -- still prior to the beginning of his career as a pamphleteer -- he was asked to write a hagiographic obituary for Karl Ludwig (1816-1895). [E8] In his first draft, Beer went into the potential for physiology to explain the mechanisms of the nervous system in terms of the operation of the senses. [E9] In connection with this he stressed the necessity of extensive research, leaning upon the preliminary work of a colleague with whom he was to form a close collaboration in the years following: Jakob von Uexküll (1864-1944). ([E9] pg. 870) The two had gotten to know one another at the German Zoological Station in Naples, where Uexküll had just been conducting research into the station's work methods. ([E16] pg. 821) Beer also met the Strasbourg physiologist Albrecht Bethe here. All three believed in the objective investigation of the lives of animals by means of more mechanistic thought processes, so as to make possible the realization of more wide-ranging conclusions, including with regard to more advanced life-forms. [F1] The cohesion among Beer, Bethe, and Uexküll was considerable. When Bethe started a quarrel over the classification of ants and bees as "reflex-machines," thereby drawing his two colleagues into it, the Jesuit priest Erich [334] Wasmann and the Swiss psychiatrist August Forel entered the fray, committing themselves, in addition to Uexküll and Beer, to Bethe's cause. In connection with this it must be mentioned that at this same time Bethe was sketching out a brand new, modern theory of neurophysiology which he realized, after years of research, threatened to crowd out Porel's own views on the matter. ([E17] pp. 96-103)

Though Beer was far from being an uncritical devotee of Bethe's views ([E11] pp. 205-208), he did discuss his colleague's work in a positive light, while rejecting the theories of August Forel. [E10] Uexküll focused on refuting Wasmann, whose studies he discounted as "old hat." ([E57] pg. 502) At the high point of the discussion Beer, Bethe, and Uexküll together sketched out a new, "more objectively-oriented nomenclature," with which they on the one hand banished anthropomorphic assessments from animal psychology and physiology, and on the other hand sought to: redefine the entire discourse through the adoption of novel, standardized concepts. [E60-E62] If Beer, Bethe, and Uexküll were thereby able to successfully cast themselves in the annals of science as the protagonists of a modern physiology and biology, biology and physiology would be rid of all forms of anti-mechanistic ideas. Along with a string of university-established researchers, however, even dyed-in-the-wool naturalists would reject such an operational foundation because otherwise, any potentially existing extra-mechanistic "life-force" would have the rug pulled out from under it from the very beginning. And so a new nomenclature for standardizing the discourse was established, the necessity of which was recognized even by the opponents of Beer, Bethe, and Uexküll, in spite of the former's united front of rejection. [E42, E64] This did not prevent Theodor Beer from defending the methodology which he had developed. ([E12] pg. 256) Acclaim for his avant-garde research into the physiology of sight wasn't lacking either: In 1900, Beer was awarded the prestigious Ignaz-Lieben Prize. Beer showed himself to be a committed opponent of prevailing opinion even beyond the scientific sphere. So he publicly positioned himself as a follower of the Freikorperkultur [Freikorperkultur (FKK), literally 'free/open body culture,' is an organization -- even a social movement -- which promotes naturism/nudism.] and extensive athletic activity, and turned away from "old-fashioned, simple ideologies and pedantic, bleak ways of conducting one's life which sometimes lead to such feeble-minded vows of poverty, love of filth and contempt for bathing, pointless, monk-like turning away from the outside world and culture-hostile ascetic

whims that the flesh itself becomes dead." ([E11] pg. 382f)

Instead he paid homage to the "immortal, merry Gods of Greece," renouncing the privileges conferred by the powerful official Catholic Church in Austria. Beer, who saw himself as the protagonist of a modern, muscular (Protestant) elite felt that the "misery-laden, beaten-by-the-cross fanatics for homogenization" [335] together with "their sad, long-since spiritually bankrupt emphasis on martyr-allegiance" [F2] were primeval. ([E11] pg. 383)

Whereas he had clearly broken many women's hearts during the festivities organized by his parents, now that he was free from parental controls, Beer could lead life unhampered. ([E22] pg. 79) In the end he chose the young Laura Eissler (1884-1906), the daughter of a successful businessman but a woman beyond his parents' immediate sphere of influence. The crowning achievement of his professional and personal career was his appointment as an Associate Professor in March of 1903 (University of Vienna, Med. Dept. 32), with his work receiving international recognition. ([E20]; [E43] pg. 14) In late 1903, together with the avant-garde architect Adolf Loos, he planned out the realization of his architectonic dreams in the form of a great house of his own (Villa Karma) in Vevey by Montreux where; in December of 1903, he was reported to the police.

The Affair Takes Its Course

In the midst of these preparations, on January 16, 1904, from out of the blue there came a letter from the government minister Heinrich Steger, a member of the elder Beer family's inner circle, in which the writer, without stating the reason for it, asked for a meeting with Theodor Beer. (AVA, 1642/1904, BI. 22) When the addressee failed to respond, Steger turned to his associate, the attorney Arthur Freund, to compose a detailed letter to Theodor's father Wilhelm, which Steger cosigned. (AVA, 1642/1904, BI. 23) In it they accused the younger Beer of having attempted to commit "unnatural lewdness" with their minor sons. They offered to waive the making of an official report, provided that Beer gave up his academic career and left the country immediately. ([E18] pg. 53)

Theodor Beer received Freund and Steiger's letter shortly before his planned departure for Montreaux; and although to him it appeared to be a form of blackmail, he nevertheless took the advice of Dr. Moritz Zweigenthal -- an attorney relative of his -- that, due to the accusations, the first thing he should do would be to leave Switzerland. At the end of January and the beginning of February Beer wrote Steger two letters, in which he denied any wrongdoing and accused Arthur Freund of character assassination and extortion. At the same time, he challenged all of Gustav Steger's assertions:

"It is completely untrue that I intended to morally contaminate your 15-year-old son. It is completely untrue that I have ever showed him obscene pictures. It is completely untrue that I have taken flight; on the contrary, I returned to my permanent residence, where I may be found by the authorities at any time." (AVA, 685/1905, N.S.)

The only reason why he had previously had contact with Gustav Steger would have related to his sister Hedda, whose marital plans he (Beer) was overseeing, an issue [336] concerning which

their father had not taken a position. Beer had helped to scuttle Heinrich Steger's vain attempt to marry her. In conclusion he let it be known why for him, as an athletically oriented man, any sexual contact with Gustav Steger was fundamentally out of the question:

"Near-sighted people are really quite distasteful to me." (AVA 685/1905 N.S.)

Beer declared that Arthur Freund's son was simply crazy.

"He confused the products of his fantasy with reality -- a year-and-a-half later!" (AVA, 685/1905, N.S~)

In his second letter, Beer explained that he found Arthur Freund to not be of equal rank to himself, and, on the other hand, an extortionist. When Freund actually felt that his marriage was under threat, then this "fairly shysterish fifth-tier lawyer" of course took the route of a criminal report. (WSt~A, A11-180 309-4/19, R.S.) At the same time Beer stated how, from his point of view, one might account for the allegations.

"Like most boys of pubertal age, Oscar masturbates. Mom walks in on it, and sees it as a terrible calamity. An investigation is launched, the child gets stirred up, and his interest is peaked. A lot of boys have homosexual tendencies during puberty, masturbatory fantasies about being used by adults etc.; the visit to our library becomes part of these fantasies -- interweaved, and finally - a year-and-a-half later! -- turns into hysteria. Forced into a tight spot the boy -- perhaps having actually been seduced by someone else -- denounces somebody who is as far removed from Vienna as possible -in this case, me. The parents have too high an opinion of their offspring, believing that the entire world revolves around the question of whether Oscar does or does not masturbate, make an 'affair' out of it -- especially the 'mom' who has been hostile towards me for a long time now -- build up what was originally a 'discovery' into an 'event.' Finally, there is yet one more thing that one can get out of it. And so one does not file a criminal report, but instead pesters my father!" (WstLA, A11-180 309-4/19, N.S.)

Since Arthur Freund had practically forced his son into having nude photographs taken, the son himself would have decided that he was the guilty party. In a telegram to his attorney, Zweigenthal, dated February 25, 1904, Beer stressed that he would return to Vienna at the end of February and "take the bull by the horns." (WStLA, A11-180 309-4/19, N.S.) This did not occur, however, because his lawyer advised him against it, obviously believing that he would be able to resolve the situation on his own and out of the limelight. But this didn't work either because, at the end of February, Arthur Freund and Heinrich Steger together reported Theodor Beer to the district attorney's office in Vienna. (WStLA, A11-180 309-4/19, N.S.) The prosecution machinery of the Austro-Hungarian police and justice ministry were thereby set in motion. Moreover a series of questionable actions were immediately undertaken. Thus on March 7, 1904, the Foreign Ministry sought to extradite Beer from Switzerland, although the basis for it -- the search warrant -- was only announced a day later. (WStLA, A11-180 309-4?19, Bl. 160) Beer was wanted, under File No.VrXLIV/1121/4, for the "crime of rape and the attempt to commit the [337] crime of unnatural lewdness," not for the mere suspicion of it. (WStLA, A11-180 309-4/19, N.S.) He appeared to be guilty from the very beginning. A few days later, the investigative authorities believed that they were on the trail of a more extensive case of

seduction. Thus Beer had been in contact with Mathilde Edle von Helmenburg and "often takes walks alone with her approx. 4-5-year-old son." (WStLA, A11-180 309-4/19, Bl. 154) On the other hand, no evidence whatsoever was found regarding any attempts by Arthur Freund or Heinrich Steger to coerce the defendant through the use of threats into making a confession (letter to Beer's father), something which, according to Austrian law, represented a serious criminal offense. ([E30] pg. 4)

Moritz Zweigenthal, who was taken by complete surprise by these events, surveyed the ruins of his planned defense strategy. His advice to Beer, that he not return to Vienna, must have now looked like a confession of guilt from a fleeing perpetrator, although Beer had merely returned to his own place of residence. So now Zweigenthal tried to cast doubt on the prosecution witness Oscar Freund, and portray the accuser's motive as a clever attempt at extortion. There had in the past been a series of disagreements between Theodor Beer and Arthur Freund over the issue of sex education, which the latter was now seeking to use against Beer. (WStLA, A11-180 309-4/19, Bl. 53-60) Freund does this publicly, while also having to fend off the stinging criticism of Karl Krauss, who comments on this strategy scornfully:

"The 'father of the second boy' initially claimed that, in an exchange he'd had with Professor Beer, the accused had made a remark which was 'filled with displeasure'; that 'children's greatest foes are parents.' With what magnanimity he quotes these words of his opponent. But if he were able to resolve something with his child's seducer, he would then come to the realization that in this case -- unlike any other - the professor had been right all along." ([E31] pg. 3f)

Zweigenthal pursued the narrower argument that sexual slip-ups during puberty were common and inconsequential, and moreover that the performances of youthful witnesses were not always worthy of belief. To drive home his argument, Zweigenthal mentioned, among others, the writings of Richard von Krafft-Ebing and Albert Moll. (WStLA, A11-180 309-4/19, Bl. 62-64)

"Pedophilia erotica" was first described by Richard von KrafftEbing in the first edition of his "Psychopathia Sexualis," and was a phenomenon that he would continue to expound upon up until the time of his death. ([E53] pg. 12) And though he came to view pedophilia as being equally distributed among men and women, he thought it was especially common among homosexuals, and was, moreover, associated with neurasthenia and genetic loading. ([E29] pp. 377-380) And whereas Krafft-Ebing spoke out against punishing homosexuality, he regarded pedophilia as a serious offense. ([E29] pg. 394) He was thereby in agreement with the writings of the French neurologist Ambroise Tardieu. ([E55] pg. 41) More in-depth studies were published by the Viennese physician Sigmund Freud and his Berlin [338] colleague Albert Moll. ([E47] pg. 314) The latter had also entertained the possibility -- which he would still classify as abnormal - of children having a sexual interest in adult persons. ([E39] pp. 436-441) Moll supposed, moreover, that adult men's sexual interest in boys constituted a sort of ersatz-act, since young women and older boys show many similarities. ([E39] pg. 479) However the mentioning by defense counsel of Moll's name was not without some risk, insofar as it highlighted the sexualization of older boys. ([E49] pg. 126)

Even more prominent in this field was the Viennese founder of psychoanalysis -- whom Beer knew personally -- Sigmund Freud. He not only discussed sexual violence within families, but

also highlighted the importance of pre-pubertal sexual development. To him, this appeared always to be laden with neuroses. ([E1] pg. 88) Furthermore, at precisely the time when the case against Theodor Beer began, Freud did an about-face in his explanatory models, resulting in a reduction in the importance of the seduction complex. ([E38] pg. 143) Possibly in an effort to avoid jeopardizing this new formulization of psychoanalytic principles and due to a pre-judgment of Beer's guilt, Freud declined to intervene on the defendant's behalf. He limited himself to one interview in which, in close agreement with Krafft-Ebing's precepts, he stressed the need to punish pedophilia; he left open, however, the question of Beer's guilt. ([E21] pg. 4)

It is striking that the defense never brought up the work of the German sex researcher and pioneer of the homosexual emancipation movement Magnus Hirschfeld. Obviously, any association of the defendant Beer with the whiff of a homosexual motive was to be avoided.

Throughout the course of the month of March, there were a series of missteps on the part of the Austrian authorities who were trying to track Theodor Beer down. Thus the Viennese police credited a false rumor which claimed that Beer had been held up in London, demanding his extradition by British authorities who knew absolutely nothing about the matter. (WStLA, A11-180 309-4/19, BI. 187) Then at the end of March, when Beer was actually spotted in Corfu, the Austro-Hungarian Consul was forced to concede that the Viennese district attorney's office did not appear to have probable cause for the Greek authorities to arrest him. (WStLA, A11-180 309-4/19, BI. 252) But this did not prevent the president of the University of Vienna from suspending Beer and instituting disciplinary proceedings against him, without giving the accused any opportunity to refute the charges. (UA Vienna, Med. Dept. 32, B. 35; AVA, 1642/1904, BI. 12) It was also in March that the media took up the Beer Affair, after Laura Beer ambushed the plaintiff Heinrich Steger on a public street and walloped him with a "dog whip." (AVA, 1642/1904, BI. 25) Steger fled the attack and went [339] to his residence -- from which he alerted the police -- while Laura Beer was openly giving interviews to the press right in the middle of the street. ([E54] pg. 8) When Steger pressed charges against his attacker, however, she was only given a fine, due to the fact that she had acted while in a state of heightened agitation. ([E19] pg. 7) Nevertheless, journalists insinuated that it could scarcely be doubted that Theodor Beer was the one who was truly to blame. ([E35] pg. 4) This was happening at the same time that, side-by-side in the very same newspapers, scorn and mockery were being heaped on the French justice system, press, and public for its belated recognition of the innocence of Captain Dreyfus, only after he had spent several years in jail. But all of these campaigns and actions were not able to resolve the fundamental problem of the entire proceedings; namely, that the accused was free to do as he pleased so long as he remained beyond the Danube monarchy's jurisdiction. During his involuntary trip around the world, Beer kept in contact with several researchers. Thus on April 10, 1904, he wrote to the director of the Zoological Station in Italy, Anton Dohrn:

"Perhaps rumors of my having been slandered as a sexual deviate and pederast in Vienna have made their way to Naples, to your wonderful station which I now look upon as a lost paradise. I need not belabor explaining to you, an experienced man-of-the-world and scholar, that to not believe is the beginning of wisdom: Not one word of these accusations -- which have been laid by a Viennese lawyer of the lower Jewish class who is intensely hostile towards me -- is true." (ASZN, A 1904 B, Beer-Dohrn 4/10/1904)

Beer stressed that the real reason for all of this was his refusal to marry the accuser's (Steger's) daughter. Certainly he admitted to having taken some "harmless nude photographs" of the son, which were now being used as the foundation for the seduction story. Beer asked Anton Dohrn for written confirmation that he had never known him to have "even the slightest homosexual tendencies." Although the draft of such a letter was indeed found in the archives at Naples, there is no indication that Dohrn actually mailed the "character reference." (ASZN, A 1904 B, Dohrn-Beer 5/9/1904) This may have had something to do with the fact that only a few years earlier, the station's primary sponsor, Friedrich Alfred Krupp had, following similar rumors, committed suicide.

Pre-Trial Proceedings

In the summer of 1904 Beer found himself in Berkeley, whereupon he considered returning to Vienna since, though the case had by no means been withdrawn, it nevertheless had been put on hold. (ASZN A 1904 B, Beer-Dohrn 7/12//8/6/04) The Viennese press had taken a keen interest in his travels, and in the inability of the criminal justice authorities to produce him. Karl Kraus also noted the behavior of Beer, his former colleague, in connection with this:

[340] "The anti-semitic counter-attack had diminished the value of his scientific achievements because it appeared to substantiate that he indeed had abused boys under fourteen years of age." ([E31] pg. 23)

And so, in the summer of 1904, the university authorities commenced their already previously announced disciplinary proceedings against Beer. (UA Vienna, Med. Dept. 32) But Beer was not even apprised that the proceedings had in fact begun; and were it not for the intervention of a more attentive colleague (Josef Schaffer), Beer would -- in the summer of 1904 -- have already been irrevocably stripped of his university post. (AVA, 1642/1904, Bl. 16) Schaffer first informed Beer's new defense counsel Rudolf Bachrach -- who succeeded the hapless Zweigenthal in May 1904 -- of the events. Both pursued a defense strategy that called for establishing that the members of the disciplinary committee had not only failed to take note of the court's written indictment or specific details regarding the case, but had also refused to accept Bachrach as Beer's defense counsel. (AVA, 1632/1904, Bl. 17)

"In the half-hour during which the committee met on a sultry summer evening, the greater part of which consisted of me speaking off-the-record, Prof. Schaffer's motion was scarcely entertained, and it took almost as long for him to put it forward as it did for them to reject it." (AVA, 1642/1904, Bl. 17)

The actions taken by the university president and medical school dean are surprising, given that the Ministry of Culture and Education's disciplinary commission, which had jurisdiction over such matters, was of the belief that disciplinary proceedings really should only be initiated following the issuance of a final legal verdict. (AVA, 1642/1904, Bl. 1) Moreover, it must not be overlooked that, according to the law at that time, stripping someone of a professorial position and the duties associated with it could only be done by the crown, not by subordinate administrative agencies from the educational sector.

The in absentia-conducted investigation by the police and district attorney's office had little to show for it. And so, though the police were able to establish that Beer occasionally visited the "Central Baths" so as to be able to shave an intimate region of his body, the interrogation of the masseur on duty yielded no evidence of homosexual activity on the part of the accused. (WStLA, A11-180 309-4/19, Bl. 249) Moreover the district-attorney's office could not have been interested in going out of its way to decry these public bath stopovers as homosexual assignations, given that the Kaiser's brother Archduke Ludwig Viktor, among others, had pursued his own private pleasures there. ([E18] pg. 249) The attempt to unmask Theodor Beer as a pimp for his friend Mathilde von Helmenburg, while at the same time alleging that his association with her son was indecent, likewise had to be abandoned. (WStLA, A11-180 309-4/19, Bl. 22)

[341] Moreover, investigative authorities now faced Beer's new lawyer Rudolf Bachrach, a seasoned defense attorney who did his level best to convince the investigative authorities that it would be in their own best interest to halt the legal proceedings. Consequently, on March 18, 1905, he made a motion to stop the proceedings under §§ 90 and 109 of the Rules of Criminal Procedure. (AVA, 685/1905, Bl. 2) Bachrach based this on the dubious quality of the statements of the two youthful (and only) prosecution witnesses. Thus Gustav Steger had initially stated that Beer had performed indecent acts on him while he was alone in the house; a little later, however, he was forced to admit that a large group of celebrants was there at the time. (AVA, 685/1902, Bl. 3) On the other hand, whereas Oscar Freund at first asserted that the defendant had abused him right away, later on it apparently emerged that Beer had initially shown him indecent and questionable photographs. (AVA, 685/1902, Bl. 5-6) Finally, Freund averred that he would become confused by the shocking photographs that hung in the Beer family's greenhouse. But a check of this had shown that these were merely reproductions of shepherd scenes and depictions of young women. Both Oscar Freund and Gustav Steger had in fact described an absolutely identical course of lewd acts which, due to friendly ties between the boys, pointed to collusion. (AVA, 685/1902, Bl. 2) But it would be more than a year before the meaning of the situation would become clear to the two youths:

"What is, above all, striking is the disproportion between the events as reported by Gustav Steger and the almost limitless indignation and anger with which the administrative official Dr. Steger responded to its 'discovery'." (AVA, 685/1902, Bl. 2)

Finally, in order to dispel any suspicions regarding his client's possible homosexual disposition, Bachrach emphasized the fact that the tenant who sublet Beer's studio, who also accompanied him on his trips to Naples, had never detected an interest on Beer's part in "this city of boy-love." (AVA, 685/1902, Bl. 4) In order to prevent a miscarriage of justice, it would be necessary to terminate the proceedings. A little later on the accused's parents, Wilhelm and Louise Beer, petitioned for a halt to the proceedings. (AVA, 685/1902, N.S.) But of course the prosecution witnesses' families didn't sit idly by either. And so Gustav Steger wrote that, although he had been holding off, he now wished to make some new suggestions to the district attorney's office. (WStLA, A11-180 309-4/19, Bl. 321-327) Because he had obviously conducted follow-up inquiries of his own, he was able to tick off a series of potential additional prosecution witnesses who had, until now, eluded the police investigators. Thus not only should the girl who was expelled from school for telling her schoolmates about the procreative act during the time her

parents were involved socially with Theodor Beer be questioned, but "Lady" Helmenburg should be subpoenaed as well. Although the authorities had [342] already abandoned these particular avenues, the district attorney did take Steger's remaining suggestions into account, leading to a series of -- admittedly entirely fruitless -- interrogations.

Both the district attorney's office as well as the district court rejected any suspension of the court proceedings in the criminal case. However since it did not appear to be possible to continue the proceedings in the accused's absence, and conversely because to the extent that he wished to salvage his academic title, Beer would have to present evidence of his innocence, an agreement was reached. The proceedings would continue, but Theodor Beer would be guaranteed safe passage back to Vienna in October of 1905. The court gave no further consideration to Bachrach's proposal that the witnesses be subjected to expert evaluation. In Vienna, Theodor Beer was about to receive some sad news. In September his father Wilhelm, due to feelings stirred up by the case, was felled by a heart attack.

Proceedings and Verdict

Following delays in early summer occasioned by a "nervous condition" on the part of Oscar Freund, the proceedings could now commence; of course, the district attorney's office opposed an expert evaluation. On the other hand Rudolf Bachrach did offer as an expert the Breslau psychology professor William Stern, whose opinion was accepted. (AVA 685/1905) Stern emphasized that the witness Oscar Freund had made extremely unreliable statements concerning the course of the alleged "sexual attempts":

"Thus they [the witness' statements] indicate quite clearly a steady increase in terms of the seriousness of the purported sexual attempts." (AVA 685/1905, Expert Opinion, 7)

Moreover the mother had strongly influenced her son's statements, which could account for the "psychological motive for falsification" in Oscar's statements. (AVA 685/1905, Expert Opinion, 21) The witnesses who were called by the district attorney's office, which wanted to establish that the boys had undergone psychological changes, had noticed -- in the month following the alleged incidents -- something which actually cast doubt on the prosecution's case. Lastly, Stern explained that the 'real issue was not whether Beer was innocent, but rather, how the witnesses' statements had come about. (AVA 685/ 1905, Expert Opinion, 23) These opinions constituted a thinly veiled criticism of the district attorney's office's investigation, and bolstered Rudolf Bachrach's motion to have Oscar Freund declared incompetent to testify:

"Oscar Freund undoubtedly deviates from the norm." (WStLA, A 11-180 309-419, Bl. 678)

In his expert opinion Stern also made reference to his own research work as well as that of his students. He had, thereby, conclusively established the dubious reliability of statements concerning events in the more distant past, [343] in general terms and particularly with regard to adults. Thus Stern described the "will to perceive" and the suggestion of a given situation (experience/questioning) to young persons ([ES1] pg. 52), which Rosa Oppenheim and Otto Kosog have characterized - in attempts to operationalize the concept -- as the "malleability of statements." [E44, E28] Furthermore, Stern emphasized that the methods of interrogation

employed by the police and justice system were manifestly inadequate, and even encouraged children to make false statements.

"The remark often heard by judges, that anyone who had taken part would have to have 'seen' or 'heard' such-and-such is, consequently, psychologically incorrect." ([ESO] pg. 489)

Accompanying Stern's views of the proceedings formulated in more scientific terms were further critical remarks offered-in somewhat clearer language -- by Karl Krauss:

"What they [the teenage prosecution witnesses] have said in court is certainly that truth which over time they have been trained to believe, and is inspired by at least as much candor as the stories of hysterical women who attest to rape attempts which they haven't actually experienced." ((E31] pg. 9)

Coming to conclusions very similar to those of Stern some years later, Albert Moll cautioned against discussing the sexuality of children and teenagers publicly and under the circumstances of a criminal proceeding:

"I would not, of course, want to completely rule it out. But when it comes to dealing with such cases in court, I do believe that getting to the bottom of the indecent assault sometimes poses a greater danger to the child's morality than does the crime itself." ([E40] pg. 210)

This problem would be a component of sexual-science discourse for several decades to come. As late as 1968, Reinhart Lempp expressed this in much the same way that Albert Moll had back in 1909. ([E37] pg. 2268) It was only in the 1970's that the direct confrontation of young witnesses with the accused became common practice. In that decade, moreover, the justice system showed a receptivity to sex researchers' models indicating that suggestive questioning influenced the content of statements. ([E36] pg. 872)

But such advances were far removed from the considerations of Viennese district court judges presiding over criminal cases back in 1905. After several days of deliberation they found, in October of 1905, that Theodor Beer was, in part, guilty of engaging in, and in part, attempting to engage in, Crimes Against Nature, as proscribed by §129b, and sentenced him to three months in jail. (WStLA, A11-180 309-4/19, BI. 483-487) Only now did the Ministry of Education and cultural Affairs initiate its own disciplinary proceedings against Beer. (AVA 1854/1905, al. 1)

Although Beer filed an immediate appeal, he was obliged to post bond in the amount of 200,000 crowns. The district attorney's office argued that he would "again" flee to Switzerland. At the same time, it attempted to prove [344] Beer's homosexuality using additional information relating to this intimate area:

"In connection with this, the justice court was also able to take into account the curious fact that Dr. Beer always -- thus not only when he was taking a self-portrait -- shaved his entire body (including the groin area, where of course there was no observable musculature), while his wife, after the wedding, likewise allowed her hair to be cut short, the probable reason for which could of course only be that, whereas the accused's body took on aspects of the female," he wanted,

insofar as was possible, to turn his wife into a boy." (WStLA, A11-180 309-4/19, Bl. 559)

Without informing the defense, the police authorities pursued further inquiries. It was only through "extrajudicial" channels (via the press) that Rudolf Bachrach learned Oscar Freund's former teacher Wilhelm Dubinsky had -- along with several of Oscar's school chums -- been subjected to an interview. Dubinsky himself had approached the court personally, stressing that there were grave doubts as to Oscar Freund's reliability and truthfulness because he had repeatedly made false accusations against schoolmates which, by the way, had been condoned by his mother Clara Freund. (WStL~, A11-180 309-4/19, Bl. 574-583) At the same time Dubinsky let it be known that he did not, by any means, share the ideological outlooks expressed in Theodor Beer's pamphlets, and had therefore asked himself whether he should really intervene on his behalf. ([E32] pg. 17) Perhaps the prosecuting authorities saw their theory of the case as being seriously threatened because, after saying no for several weeks, at the end of 1905 they were -- all of the sudden -- prepared to allow Theodor Beer to travel to see his sick mother. (WStLA, A11-180 309~4/19, Bl. 613-617) In the now ensuing interviews, two of Oscar Freund's former classmates accused him of repeatedly making false statements at school in connection with the assertions he had made regarding the alleged sexual offenses. (WStL~ A11-180 309-4/19, Bl. 669-672) Evidently only now did the district attorney's office feel compelled to set up a proper interrogation protocol for Oscar Freund; but of course, in the interview conducted on March 2, 1906, all of his earlier assertions were simply repeated. (WStLA, A11-180 309-4/19, Bl. 653-660).

Now, following discussions with his client, Rudolf Bachrach informed the district attorney's office of a further discrepancy on the part of the prosecution witnesses. Both Gustav Steger and Oscar Freund had declared. that they had seen Beer's penis, and had not noticed anything remarkable about it. (WStLA, A11 180 309-4/19, Bl. 681-682) During this time, however, there would have been a large mole on the head of the accused's penis; this was later surgically removed, leaving a large scar in its place. (WStLA, A11-~80 309-4/19, Bl. 682) However just as it was becoming apparent that these most recent efforts on the part of the defense would not bear fruit, the Beer family experienced a private catastrophe: Following several unsuccessful attempts the pregnant Laura Beer, at the end of [345] March 1906 and at the age of 22, committed suicide at the Villa Karma. (WStL~, ~11-180 309-4/19, Bl. 721c-721d) Though it is true that Beer was permitted to travel to Switzerland, he was obliged to return just a short time later where he learned, on April 5th, 1906, that the Superior Court had declined to re-open the case, because there was no new evidence of any kind. The prosecution witnesses, particularly Oscar Freund, could not be shown to have made any false statements. (WStL~, ~11-180 309-4/19, Bl. 722-723) A week later Theodor Beer had to begin serving his sentence; a clemency petition by his mother to Kaiser Franz Joseph was, following a long deliberation, turned down in January of 1907. Those commenting on the decision pointed out that the royal court had reviewed this case in a way that was completely different from common practice. Moritz Sternberg contrasted the case of a Catholic priest with that of Theodor Beer. [E52] Although the statements of teenage prosecution witnesses had been decisive in both cases, in the priest's case the royal court judge had decided that merely touching the penis did not constitute an onanistic act. Therefore the man would be acquitted.

"It is certainly striking that the same court, four years later, suddenly regarded white as black,

there holding a several-month jail sentence to be just, whereas just a short time before it had issued an acquittal." ([E52] pg. 295)

The commentator emphasized, moreover, that modern sexual science literature warranted one to conclude that a police-issued warning is a quite sufficient deterrent to genital exhibition.

"A. simple police reprimand consists -- in Austria in the year 1906 -- of several months in jail with loss of civil rights." ([E52] pg. 296)

Causal Analysis

The question arises as to the motives, predispositions, and objectives of the district attorney's office and the courts. One of William Stern's colleagues wrote that the Austrian criminal lawyer and criminologist Hans Gross, who had published the definitive works on the administration of justice in his country, considered children to be good witnesses in legal proceedings. ([E21] pg. 561) And yet, even as those close to William Stern -- the Prussian civil servant of Jewish descent were -- in support of the verdict -- citing their Catholic fellow-countryman Gross, they must have known that he had long since abandoned the stance with regard to children which they had ascribed to him. ([E25] pg. 493) Children would not be able to distinguish between right and wrong in the way that adults do and would, above all, not be in a position to evaluate the clear facts of the case like grown-ups. ([E25] pgs. 495, 501) So this can very easily lead to the wrong conclusion. Elsewhere, admittedly, Gross had stressed the positive role of older boys, whose horizons are [346] considered to be ever-expanding, and who therefore would notice any "strange goings-on" in their environments.

"I repeat, the bright, good-natured boy is, as a rule, the best witness there is." ([E24] pg. 85)

Did the court have any doubts as to Oscar Freund's "good-naturedness"? Contrary to the pronouncements of Hans Gross, upon closer psychological examination, even looking just at Freund's work, again and again one finds star witnesses for the prosecution contradicting themselves. Along these lines, the examining judge (EJ) encouraged what was regarded by Gross as a disastrous development:

"What easily excitable, often especially gifted persons can be induced to do through fantasy approaches the incredible. Now one must not forget that in such cases, each of the two Participants cling onto the authority of the other: the EJ to that of the crime witness, who after all must be familiar with the matter, and the witness to that of the EJ, who of course must know the law. Thus each finds, in the authority of the other, a most welcome means for giving free rein to one's own fantasies." ([E24] pg. 82fi see also [E26])

But of course the district attorney's office never considered such caveats. Instead, it not only uncritically accepted the crucial statements provided by the teenage witnesses, but also ignored evidence provided by others that cast doubt on the reliability of one of these witnesses. The question remains as to precisely which deep-seated motives on the part of the various authorities actually brought about Beer's conviction. Further questions include why his university colleagues so conspicuously shied away, and why no institutions attempted to help him. Instead the

university's Board of Trustees participated quite eagerly in damaging Theodor Beer's reputation. A whole series of long-simmering resentments and prejudices probably played a role here. His pamphlets had turned a wide swath of the Catholic elite against the (converted) Jew Beer. To the prosecuting authorities, his unabashed openness with regard to sex, which he by no means disavowed, appeared -- just like his initial "flight" -- to constitute evidence of guilt. In the scientific arena, his "Three-Man Manifesto" ([E16] pg. 821) had turned numerous research colleagues against him. All in all, in interested circles he appeared to be the personification of the over-reaching, old-order-undermining "Jew" who had an innate antipathy towards the traditional system, which even manifested itself in his conversion to Christianity. Hence the announcements by the Steger and Freund families proved to be a stroke of luck. Also, Heinrich Steger had probably already had long-standing reservations about Beer, on the one hand because of his views on sex,' but also due to his emancipation from Judaism, an identity which Steger himself proclaimed proudly. ([E31] pg. 5) Before the court Theodor Beer broke all taboos by disclosing details from the intimate sphere [347] which, due to censorship, had never before been permitted to be explicitly depicted on the front page of a newspaper. His few defenders in the press, above all Karl Krauss, were focused less on Beer's possible guilt than on the injustice done to him by snooping around in his private life as well as the incredible accusations that had been lodged against him. ([E2] pg. 270) Lastly, it may be mentioned that numerous members of the close-minded and reform-resistant traditional elite of the Hapsburg regime active in judicial, administrative, and research circles had their own individual reasons for wanting to make an example of Theodor Beer. To this end the old penal. code of 1852 was utilized, whereby a vaguely-worded provision for the "protection of the community" trumped any individual right to privacy. ([E41] pg. 300) The relatively short prison term followed the complete ruination of the defendant in terms of his social standing. At the same time, Beer had to have found out how quickly seemingly strong bonds of friendship shatter under suspicion of "child seduction," with all of his previously-available avenues now closed during the tormentingly long-drawn-out legal proceedings against him. His "guilt" appeared to have been an established fact from the very beginning. Frustrated by the course of the proceedings and deeply shaken by his wife's suicide, he wrote to Anton Dohrn:

"Such are the fruits of persecuting contrary-sexuality, which even the -- like me -- non-contrary-sexual have to suffer." (ASZN, A 1906 B, 13eer-t:bhrn 4/13/1906)

Along these lines, Beer even addressed one of the verdict's peculiarities. He was convicted not of child-seduction, but rather of homosexual acts. In the view of the court, these consisted of exhibiting shocking images to, and grasping the penis of, a "boy under fourteen years of age" (Oscar Freund). (UA Vienna, Med. Dept. 32, Bl. 44) When, in the summer of 1906, Beer was again permitted to leave prison, the "only" things he had left were his huge private fortune and the "Villa Karma." It was to there that he retreated. In the summer of 1909 he provided evidence, as it were, of his contested heterosexuality by impregnating, and then abandoning, the writer Bertha Helene Diener ("Sir Galahad"). ([E22] pg. 82 f) Soon after that he married the mother of a boy born in 1900 named Randolph William, whom he would later call his "son." (ASZN A 1914 B, Beer-Linden, March, 1914) He even resumed his activities in the field of nature research, which were well-received abroad. [E14] In the German-speaking realm, on the other hand, the biologist Richard Semon was able, in a letter to August Forel, to note with some satisfaction that:

"3) Regarding Uexküll: [...] I think the whole Beer-Bethe-Uexküll magic is going to vanish into thin air." ([E63] pg. 400)

This was also related to the fact that the driving force behind the 1899 publication, Jakob von Uexküll, had since changed direction [348] and positioned himself as the advocate of an anti-mechanistic, newly-revitalized biology. [ES8, ES9] In 1910 Beer returned to the Zoological Station in Naples, subsequently embarking on a research tour of India. (ASZN, A 1910 B, Beer-Linden 1/6/1910) He visited the former once again in early 1914. (ASZN, A 1914 B, Linden-Beer 2/26/1914) When a year later it became apparent that Italy would be joining the war against Germany and Austro-Hungary, Beer wrote the following anxious and at the same time melancholy lines to the lone researcher still remaining at Naples:

"I think often of this area which is so familiar to me, the library, the entrance where the likeable La Bianco was wont to hold court with the fishermen, of the lagoons and the fauna, the marvelous sunny air of springtime." (ASZN, A 1915 B, Beer-Linden 3/3/1915) [F3]

In 1916 Beer was drafted into military service. So that he wouldn't be classified as "unfit for duty," he asked that, in spite of his conviction, he be allowed to wear the stripes of a first-year soldier on his uniform. (WStLA, A11-180 309-4/19, BI. 770) He demonstrated his patriotism not only by taking great personal risk but also by investing his entire fortune in Austrian war bonds. Nevertheless he was far-sighted enough to recognize the danger of Europe destroying itself in a senseless massacre, thus paving the way for American and Japanese hegemony. [E15] Following the defeat, deprived of his last remaining point of reference and confronted with utter bankruptcy, Beer committed suicide at the Lake Luzerne Hotel on September 27, 1919 by ingesting potassium cyanide. (StA Luzern A976/1463, pg. 290, No. 579) The public took virtually no notice of his death. And his former associates had already forgotten about him (only Schnitzer made a vague reference; see [E48] pg. 308) .

From a sexual science perspective, the assessment of pedophilia would change very little in the ensuing century. In the years following Theodor Beer's conviction, despite the obvious similarities between how pedophiles and homosexuals were dealt with in court as well as a general suspicion of "youth-seduction" hanging over both groups of persons, little research was done on the subject of pedophilia. This reluctance to conduct research may have been due to an assumption that too strong of an engagement could strengthen or even produce propagandizing on the part of homosexual emancipation's antagonists. Sexologists were too afraid of the negative effects of getting involved in something that would, from the very beginning, be a lost cause. The child sexuality already hypothesized in 1909 by Albert Moll was not widely disseminated, either in research or public circles. ([E36] pg. 106)

[349] As far as the German-speaking social science establishment dominated by Magnus Hirschfeld was concerned, pedophilia was seen as the pathological behavioral pattern of an "infantile-fixated personality." ([E27] pp. 45-59) Such persons should be given therapy and, if necessary, be castrated. ([E45] pg. 59) Hirschfeld's ersatz colleague, Arthur Kronfeld, took a more nuanced position. [E33] He stressed that it would be impossible to make a blanket forensic assessment; on the contrary, evaluations would have to be made on a case-by-case basis. ([E45] pg. 59f; [E34])

The difference between homosexuality and pedophilia was established scientifically in the 1920's, with sexual science and clinical psychiatry working hand-in-hand. This distinction continued under national socialism. Under this penal code, homosexuals and pedophiles were clearly differentiated. Though the etiology of homosexuality remained unclear and the seduction theory was an integral component of National Socialist propaganda, whereas homosexuals were "permitted" to "voluntarily" elect to be castrated, pedophiles were classified as "habitual criminals" and could be forcibly castrated. But the differential diagnoses of "socially harmful youth-seduction" and "loving men" were applied unevenly in pre-war court proceedings. The Theodor Beer case is, therefore, but one prominent example.

Footnotes

F1. Indeed, during his study at the University of Dorpat Uexküll had already begun to have doubts about the correctness of Darwinian theory ([E56] pg. 36); on the other hand, up until this point he had not yet questioned the mechanistic thought processes associated with Darwinism.

F2. In the full quotations, the original spelling has been retained.

F3. Salvatore Lo Bianco, the Italian zoologist, was employed at the Naples Zoological Station for many years. Herbert Linden was the secretary for the station's director Arthur Dohrn, and handled the correspondence for the researchers working in Naples.

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[ASZN] Archives of the German Zoological Station in Naples, A 1904 B, Beer to Donrn 4/10/1904; Donrn to Beer 5/9/1904 (draft); Beer to Dohrn 7/12/1904; Beer to Donrn 8/16/1904. ASZN, A 1906 B, Beer to Dohrn 4/13/1906.
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 IAVA] Vienna State Archives/Allgemeines Verwaltungsarchiv (AVA) [General Administrative Archive], 1642/1904, 685/1905, 1864/1905.
 [StA Luzern] Luzerne State Archives, Death Register 1919, A976/1463, pg. 290, No. 579. [UA Vienna] Vienna University Archive, MOO. Dept. 32. [WstLA] Wiener stadt- und Landesarchiv [Vienna city and National Mchives], A11-180 309-4/19.

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