A sexually violent predator

- a *rupture* in U.S criminal punishment; a content analysis of the media response

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Bachelor thesis

Human Rights III, Spring 2014

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Abstract

This thesis investigated a *rupture* in the U. S. legal tradition of punishing sexual crime, initiated by The Community Protection Act of 1990 Act and the Sexually Violent Predator Statute, that defined the criminal subject as a sexually violent predator. Thus, with this definition was initiated a new legislative innovation. Effectuated in the following Sexually Violent Predator laws, it allowed for the civil commitment of sex offenders post completed sentence. A commitment scheme that has been subject to a vast criticism qua its severe deprivation of basic human rights and dismissal of Constitutional provisions. The investigation was composed as a content analysis of the framing of the journalistic production responding to these laws. A selection of 35 news articles was appropriated as source material. The method of content analysis was accompanied by a theoretical framework, scrutinising normative orders and claims of disability and “able-ism”. The analysis of the source material resulted in the identification of eight repetitive thematics. Their framing was presented and analysed in order to critically discuss the composition and execution of the Sexually Violent Predator laws.

Keywords: rupture, Sexually violent predator, civil commitment, human rights, U. S. Constitution, content analysis, news framing, disability, “able-ism”, treatment imperative, anxiety.

Word count: 15763
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List of abbreviations

U. S. United States
SVP Sexually Violent Predator
SVP Laws Sexually Violent Predator Laws
DSM-IV The Diagnostic and Statistical Manual of Mental Disorders

List of legal terminology

Criminal punishment: A defined crime punished with a defined criminal penalty in accordance with and imposed by the relevant law enforcement.

Civil Commitment: A form of involuntary confinement enacted on an individual by a state authority under general legal principles of Parens Patriae and Police Power.

Ex Post Facto law: Latin for “from after the action” or “after the facts”. Law that retroactively changes the legal status or consequences of actions that were committed before the enactment of the law.

Double Jeopardy: A procedural defence that forbids a defendant from being tried again on the same or similar charges following a legitimate acquittal or conviction.

The Necessary and Proper Clause: A Constitutional Clause assessing necessary or proper any Congressional action in accordance with its enumerated powers. See U. S. Constitution article I § 8 cl. 17.

Parens Patriae: The power of the state to act as guardian of those individuals deemed unable to care for themselves, such as children or disabled individuals.

Police Power: The fundamental right of a government to make all necessary laws. In the United States, state police power comes from the Tenth Amendment of The Constitution.
The Community Protection Act: Also The 1990 Community Protection Act and the Sexually Violent Predators Statute. Enacted in response to two cases of violent sex crime. Respectively, the abduction and murder of a young woman, Diane Ballasiotes, and the abduction, sexually assault and mutilation of a seven year old boy from Tacoma. The Act was assented to April 24 1990.

Megan's Law: Named after Megan Kanka, a seven year old girl who was raped and murdered. At federal level the law is named after the murderer; The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Passed at federal level May 8 1996.

Jessica's Law: Named after Jessica Lundford, a young girl who was sexually battered and murdered. Passed in Florida and effective from September 1 2005. 42 states have introduced laws modelled after Jessica's Law since its first passing. A version of this law, Jessica Lundford's Act, was introduced at federal level the same year but never enacted into law by Congress.

The Adam Walsh Child Protection and Safety Act: Named after Adam Walsh, a young boy who was abducted and murdered. A federal statute that was signed into law July 27 2006.

The USA Patriot Act; Preserving Life and Liberty: Signed into law October 20 2001 in response to September 11 2001 attacks, this Act of Congress expands the government's right to conduct surveillance and collecting information regardless of the existence of a suspected crime.
1 Introduction

1.1 A second wave in U.S. sex offender laws

In January 2013 I read “The annals of crime: The science of sex abuse”,¹ a *The New Yorker* article by journalist Rachel Aviv, narrating a potential scenario of some of the de facto legal reality of sex offenders in the United States. First of all, its controversial headline struck me. Thence, reading the article, I discovered the subject to be equally controversial. It concerned recent developments in the legal management and punishment of sexual offenders in the United States. Where violence – including sexual –, is usually administered through criminal prosecution, conviction and punishment, twenty U.S states and the Federal Government have now enacted individual legislation that prescribe civil systems of confinement, allowing indefinite civil commitment of sexual offenders post completed prison sentence.² As I was trawling through media for more accounts of this subject, I discovered that these legal schemes had already been the subject of case law, continuously tried in different court cases.³ Here, the legal conflict concerns the extreme deprivation of rights and liberties civil commitment schemes pose on those convicted. Further, their process, why deemed civil in nature, need not provide the safeguards afforded criminal proceedings. As such, they constitute constitutional violations by not securing the Fifth Amendment right against self-incrimination, the Sixth Amendment rights to assistance of counsel and jury trial and requirement of proof beyond a reasonable doubt.⁴ In spite of the latter constitutional jeopardise, the U. S. Supreme Court has seen these schemes free of constitutional scrutiny on their promise of affording mental treatment to the convicted.⁵

This promise of treatment was established with the 1990 Community Protection Act and the Sexually Violent Predators Statute⁶ that changed the legal definition from sex offender to *sexually violent predator*.⁷ With this definition followed the perception that sexual offenders suffer from a *mental abnormality* or *volitional impairment*.⁸ Such pathological definition, demands for an intervention on the relevant individual,⁹ and thus was established legal legitimisation and a sole imperative for the civil commitment of those sex offenders upon whom proof can be shown of a lack of

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⁵ cf. chronology.
⁷ Ibid.
⁸ cf. Chronology section “Modern sexual predator laws” “Two overall criteria for commitment”.
⁹ cf. chronology section “State responsibility in involuntary hospitalisation”.
control of behaviour potentially leading to a threat of sexual crime. These civil commitment schemes find legal justification for their challenges to basic rights and constitutive amendments in the treatment imperative the pathological definition of sexually violent predators prescribes and demands. Thus, with the Community Protection Act was initiated what has been deemed a second wave in sex offender legislation; the Sexually Violent Predator Laws (onward SVP laws). Preventive and punitive and defying basic constitutional rights and safeguards, these laws are constituting a significant shift in the legal practice and protection of rights of this group of criminals. As such, they constitute a concerning rupture in the U.S. legal tradition of criminal punishment.

1.1.1 The rupture

In this work, rupture is drawing on the definition afforded to it by French philosopher Alan Badiou and by similar ideas of the French philosopher Michel Foucault. Rupture is here meant to signify the event of deviance from some perceived continuum; a shift in the condition of things. In this context, the rupture is expressed as the shift from a legal tradition of criminal punishment of sex offenders to that of civil commitment, and is initiated with the redefinition of the criminal from sex offender to the pathologised sexually violent predator.

This definition of rupture implies a particular understanding of what defines and directs continuums, or in other words, normalised societal orders. A rupture is thus understood as more than a mere shift. Rather, it implies larger discursive relations. The theoretical analysis of this work will inform this idea further, as its raison d’etre is scrutinising norms and dominating discourses.

1.1.2 The legal tradition

As above noted, sexual violence is usually administered through criminal prosecution, conviction and punishment. As likewise noted, SVP laws are dismissing constitutional safeguards provided such proceedings [criminal] after the Supreme Court deemed their nature civil and not criminal. Such dismissal is feasible solely on the treatment promise these laws hold qua their

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11 ie. legal principle of parens patriae and police power
13 Cf. chronology, datum 1990 and Janus.
pathological definition of the offender. As will be later discussed, these civil schemes defy the basic principles governing punishment qua their indefinite and continuous commitment of a convicted for the same crime.

1.2. Aim and research questions

The effort of this work is to scrutinise a detected *rupture*. The Aviv article, I have learned, is part of a momentum in the debate surrounding SVP laws, growing in the aftermath of the signing and federal enactment of the Adam Walsh Child Protection and Safety Act on July 27 2006 by, then, President George W. Bush. This act followed the 1996 enactment of Megan's Law and the 2005 enactment of Jessica's Law all serving the purpose of strengthening and broadening the scope of sex offender legislation. The momentum is expressed in a heightened journalistic and academic production throughout the year of 2006 and those following. A selection of the journalistic production constitutes the source material processed in this work in the effort to inform the following query;

**Question:** how has this *rupture* in the management of sex offenders been framed in the U. S. media?

The following working questions will guide the procession of material and analysis;

- question 1: which themes emerge from the selection of media?
- question 2: how do they narrate the *rupture*?

To answer these questions [1 and 2] this work will conduct a content analysis of a selection of media material. The procession of the material is guided by the choice of theory that is accounted for in section 1.5 and later appropriated in section 4.

1.3 Relevance to the field of Human Rights

SVP laws' civil commitment schemes allow for indefinite confinement of an individual post completed prison sentence if such [individual] is deemed too dangerous for re-entry into society. Such commitment schemes, why civil in nature, need not afford the same constitutional safeguards as criminal proceedings and thus come to render their systems subject to challenges of both ex post facto

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15 cf. section 3 “Content Analysis” sub-section 3.2.(1), 3.2.(2).
16 cf. chronology United States v. Comstock
17 cf. chronology datum 2006.
18 cf. chronology datum 1996.
20 cf. chronology assessment criteria.
and double jeopardy.\textsuperscript{21} Per definition, civil commitment constitutes deprivation of basic liberties and rights. This work suggests a significant dismissal [ie. \textit{rupture}] of basic rights by individual state powers [parens patriae and police power]\textsuperscript{22} directed and mandated by paranoia and anxiety, impersonated in a constructed pathological criminal subject, that has been politically mobilised and in effect, by law, undermined U. S. Constitutional provisions.

The above suggested holds strong incentive for further research into this matter, as it raises concerns over, firstly, the situating and subjugation of human rights to national contexts and the potential threats the prevailing factors [ie. above] of that context pose. Secondly, it presents a compelling case and strong argument for furtherance of mandated intervention for the protection of human rights when is observed severe and repetitive national dismissal of such.

1.4 Methodology

The following section will present the methods used in this thesis and shortly discuss the methodology.

1.4.1 Ontology

This work lists among social science research. The processing of the source material is guided by the appropriated theory that aims to scrutinise the order of things in consideration of why and how constructions and naturalisations emerge and become embedded as normative claims in various relations.\textsuperscript{23} As such, the ontological outset is critical in assuming normalised societal orders to be socially constructed and thusly scrutinised.\textsuperscript{24}

1.4.2 Qualitative method

This work, being directed by its ontology,\textsuperscript{25} looks to identify different themes and narratives in a selection of media material. For this purpose qualitative methodology is used to permit a comprehensive processing and detailed analysis of the selected source material.\textsuperscript{26}

\textsuperscript{21} Miller: 2010 p. 2095-97, cf. chronology
\textsuperscript{22} cf. later section 2.2.1 “State responsibility in involuntary commitment”
\textsuperscript{23} cf. section 1. 5 “Theory”.
\textsuperscript{25} cf. section 1.4.1 “Ontology”
1.4.3 Legal method

Establishing the legal composition of this work, empirical legal theory is appropriated. This method serves to identify and extract rules from court decisions and collect legislative data to comprise a competent chronology of the SVP laws and their development.\textsuperscript{27} The chronology serves as a contextualisation of this particular work in the larger history and development of this legal concern. The chronology is presented in section 2 and serves and an informed introduction to the following content analysis.

1.4.4 Content analysis

In its simplest form, content analysis is a method of sorting freely occurring text. In its more ambitious forms, this method seeks to make sense of and analyse diverse ranges of texts with respect to content, message and audiences.\textsuperscript{28} Such can be done by identifying general semantic concepts, stylistic characteristics and themes.\textsuperscript{29} The latter will be the centre motive of the content analysis of this work. Directed by questions 1 and 2 and guided by the theoretical framework,\textsuperscript{30} the following content analysis will process the compounded source material in the effort to answer this work's main inquiry: Q.\textsuperscript{31}

1.5 Theory

This section will present the theoretical framework and define its central concepts. These theoretical conceptualisations will later assist an analysis of the thematic findings of the content analysis. *Crip Theory; Cultural Signs of Queerness and Disability*\textsuperscript{32} is the 2006 publication of Columbian College Professor Robert McRuer's work, presenting a theoretical framework for scrutinising the order of things. Drawing on Foucauldian discourse analysis and critical theory, *Crip Theory* presents with a particular understanding of how constructions and consequences of “disabling”\textsuperscript{33} are discursively created by a system of compulsory “able-bodiedness”\textsuperscript{34} and normality.

\textsuperscript{30} cf. section 1.5 “Theory”.
\textsuperscript{31} cf. section 1.2.
\textsuperscript{32} McRuer: 2006 *Crip Theory; Cultural Signs of Queerness and Disability*.
\textsuperscript{33} “disabling” meaning the process or act of deeming someone unable or with disability. It is as such the pathologisation, be it overt or covert.
\textsuperscript{34} McRuer: 2006 p. 2.
1.5.1 Disability

In *Crip Theory*, “compulsory able-bodiedness” is McRuer's term for the dominating norm of “able-ism”\(^{35}\) that is closely related to heterosexuality, embodying imaginations of normality that are embedded in economic, social, political and cultural relations as pervasive normative claims of normal, *capable, healthy bodies*\(^{36}\) and existences. Thus, the claim follows, neither heterosexuality nor “able-bodiedness” are fixated attributes of any given identity. Rather, they are those attributes invisibly allowed dominance, in part, by the visibility of their pathologised antonyms, that are needed, McRuer asserts, for those normative systems of dominance to thrive.\(^{37}\) Disability is thus produced by, and contingent on, a system of “compulsory able-bodiedness”. Disability is not a strictly neutral or objective condition, rather, its pathologisation and thence diagnostic definition derive from constructed perceptions of “able-ism” and normality.

1.5.2 Managing disability

Disability is defined “in its place” as a stigmatised antonym to a system of “compulsory able-bodiedness”. That means that disability is *contained*\(^{38}\) outside the norm.\(^{39}\) But what is the engine, so to speak, directing these normative conditions? Neoliberal capitalism, McRuer asserts, is the dominating economic and cultural system in which these identities are constructed.\(^{40}\) This system demands and thrives on “able-ism”\(^{41}\) but thrives, as well, on some constructions of disability. When contained,\(^{42}\) disability is therefore not simply frozen in its social, political and cultural stigmatisations but part of prevailing conditions. Under such systemic conditions\(^{43}\) is produced a de facto managerial response to disability; an impulse to *contain* [the term appropriated onwards] or restrict it. Such response to perceived societal dysfunction of disability will be scrutinised in later sections.

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\(^{35}\) Meaning ability or capability, terminologically constructed qua “able-bodiedness”. The OED defines “able-bodied” as *having an able body, I.e one free from physical disability and capable of the physical exertions required of it; in bodily health; robust* (McRuer: 2006 p 7).

\(^{36}\) cf. former *supra* note.

\(^{37}\) Ibid.

\(^{38}\) The act of defining outside the norm but, importantly, not in “diffuse” terms. Rather, in a restrictive perception of its difference, deviance, subordination.

\(^{39}\) Talking back to terms of “able-bodiedness” and containment, meaning some form of management, McRuer: 2006 p. 40.


\(^{41}\) cf. section 1.5 these imaginations are contextualised in the cultural and economic systems of prevalent within the neoliberal capitalist paradigm.

\(^{42}\) Cf. *supra* note 38

\(^{43}\) i.e. neoliberal capitalism.

\(^{44}\) Perhaps dysfunction would be the more appropriate term when exemplifying its societal, systemic malfunction.
Suffice it for now to confer the above discussed impulse to contain disability with McRuer’s contemplations over its psychological whim. As such, the act of containment constitutes symptomatic relief of cultural and societal anxiety over perceived threats and insecurities.\(^{45}\) Such, McRuer exemplifies with the hyped 1964 arrest of Walter Jenkins, a prominent member of the Lyndon B. Johnson administration on charges of *disorderly conduct (pervert).*\(^{46}\) Playing out in the midst of the Cold War, this individual case turning a scandal\(^{47}\) embodied prevalent, contemporary anxieties about American national identity and security, masculinity and homosexuality.\(^{48}\) That instance served as a direct strike at an embodiment of those anxieties; a containment and punishment of deviance, indecency and perversion that served the reaffirmation of normality, decency and conformity.\(^{49}\)

### 1.5.3 The flexible and “the docile body” under post-modern conditions

The economic modus of neoliberal capitalism demands “flexibility”\(^{50}\) from all subjects qua its own modus operandi of *flexible specialisation, flexible production and flexible, rapid response to an ever-changing market* [...].\(^{51}\) Flexibility, is the economic modus and simultaneously its popular denominator or buzzword, McRuer exemplifies, with reference to management guides and vision statements of various corporate companies, and paraphrases that of a Hewlett-Packard; *We encourage flexibility and innovation.*\(^{52}\) Such is the economic modus but what with the cultural –?\(^{53}\) As the cultural equivalent to this economic system, McRuer refers to Harvey’s “condition of post-modernity”\(^{54}\); *a well-nigh universal valuation of flexibility.*\(^{55}\) Conferring with section 1.5.1, constructions of norms are conditioned by the modi of existing systemic relations. Thus, the imagination of “able-bodiedness”\(^{56}\) is also subject to these systemic requirements of flexibility. As flexibility is per definition ductile, the best way to make its particular meaning here palpable and visible, is to point to instances where subjects fail to perform or act flexibly. Flexibility presents interestingly double in its demand for “able-bodied” or normal existence to be a constant adaptive ability. Paradoxically, the demanded flexible ability is

\(^{45}\) McRuer: 2006 p. 23.
\(^{46}\) McRuer: 2006 p. 10.
\(^{47}\) Along with others (cf. McRuer).
\(^{49}\) Conformity in terms of sexuality but also all the other norms and normalities under perceived threat.
\(^{50}\) McRuer: 2006 p. 16.
\(^{51}\) Martin in McRuer: 2006 p. 16-17.
\(^{52}\) Martin in McRuer: 2006 p. 16
\(^{53}\) i.e. the cultural and economic conditions (section 1.5.1).
\(^{54}\) Harvey in McRuer: 2006 p. 17.
\(^{55}\) McRuer: 2006 p. 17.
\(^{56}\) cf. earlier OED definition.
restrictive in nature, controlled and monitored by disciplinary institutions, that detect and define adaptive of flexible inability as deviance from the norm by behavioural and physical difference.\textsuperscript{57} The flexible body need be a docile one and that is when it may be subjected, used, transformed, and improved.\textsuperscript{59} Flexibility then, opposite its original definition, is per its normative demands, both restrictive and punitive towards inflexibility that is then defined as not docile, meaning norm deviant. The responses to deviance, disability etc. are myriad extends of containment.\textsuperscript{60} 

1. 6 Material

This section will briefly present the origins of the source material and discuss some delimitations.

1.6.1 35 news paper articles

The majority of the selected material is published in the immediate period following the signing of the Adam Walsh Child Protection and Safety Act while some are published in the period from 2011 to 2013. The gap in time within the latter period is explained by the difference in time of legislative enactments by the individual states. In spite of this timespan, those later articles are viewed as an equally significant account of the journalistic response to the 1996, 2005 and 2006\textsuperscript{61} legislative developments of the 1990 enactment of The Community Protection Act.\textsuperscript{62} Approximately half of the news material is serialised articles from one of the most popular daily American newspapers; The New York Times. Its online edition is, per 2011 reported, one of the most popular American news sites with more than 30 million visitors per month.\textsuperscript{63} Both ownership and publishing is by Arthur Ochs Sulzberger Jr., the chairman of The New York Times Company.\textsuperscript{64} The New York Times is a popular agenda setting news source, and its particular exposé of SVP laws has been acknowledged by other critical journalism\textsuperscript{65} for its significant diversity and in depth scrutiny. Thus, this series of articles make up a

\textsuperscript{57} Own emphasis to emphasise the paradox that arises between a demand of flexibility and a problematisation of difference. 
\textsuperscript{58} McRuer: 2006 p. 21. 
\textsuperscript{59} Foucault in McRuer: 2006 p. 20. 
\textsuperscript{60} cf. section 1.5.1. 
\textsuperscript{61} cf. chronology for representative dates. 
\textsuperscript{62} cf. chronology datum 1990. 
vast part of the source material because it manages to collect concise facts and expose a wide spectrum of (and in fact at large comprises) the news coverage of the subject in the relevant period. The second half of the material is more sporadically spread over this time period as these articles are local responses to activity in SVP legislation from online news sites of individual areas and states. Therefore, they do not manage the same national range as The New York Times. As such, these news articles are significantly differing from those of The New York Times in terms of a narrower span in size, range and popularity. As example can be named the Salt Lake City, Utah, based Deseret News, that is owned by Deseret News Publishing Company, subsidiary to a holding company owned by The Church of Jesus Christ of Latter-day Saints, The Deseret News is described as moderate to conservative in assumed reflection of its ownership. Its online version was launched by managing editor Don Woodward in 1995. Also represented is The Los Angeles Times, listed fourth in size over American Newspapers but not comparing in range and popularity with The New York Times. Confined by the limits of space, the two above listed need serve to exemplify the character of the second part of source material. Though necessarily limited to the confinement of space and time of this particular work, the source material is sought to represent the afore described journalistic surge.

1.6.2 Delimitation

The reason for using qualitative method lies in its capacity to facilitate detailed processing of material and critical and deeper analysis of perceptions and opinions expressed in a given source material. That is the aim of this work; to identify the narratives and themes of the U.S. media's framing of the legal rupture. By that same token, precaution and focus need be afforded any bias, stylistic choices etc. in the relations between the material and its representation and that which it supposes to represent. Further, having chosen media and thus news articles as source material, such define the limits of what can be concluded from this study. Thus, this work is limited to account only for the themes and narratives represented in this particular news material. The appropriated theory will serve to guide an analysis of such. Material quality and methodological limitations considered, it must be noted

66 cf. later section 3.1. “Methodological steps”.
70 See elaborated in later section 3 “Content analysis”.
71 cf. supra note 17.
that much more, both thorough and extensive, research should be undertaken to adequately cover this subject. In the effort to account for some of the aspects this particular work necessarily has to leave out, the following section will present the fields of research this work rests on and seeks to add to.

1.7 Earlier research

The SVP laws have been classified by Eric S. Janus, president and dean at William Mitchell College of Law, specialising in the interactions between law and psychiatry, as the second wave of sex offender commitment schemes. In the first ten year period after the legislative changes of 1990 alone, publications of research on the subject of civil commitment in the U.S and the subject of sexually violent predators rose significantly, along with the number of states enacting individual laws for the civil commitment of sexually violent predators, until the latter reached the 2010 number, prevailing today, of twenty states with civil commitment legislation for sex offenders of the kind defined by Janus as second wave.

In the period starting from 1990, a wide array of fields have provided research on the subject of civil commitment of sexually violent predators. Here are listed the predominant as political science, psychology, law, social sciences and criminology. Most legal research takes issue with the contested constitutionality of the civil commitment of sexual offenders. From the legal criticism stems much other academic work varying over the fields above listed. A controversial, but often emphasised

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76 Malmö University Library Summon search, accessed April 2 2014.
criticism concerns an alleged politicisation of the matter towards the end of alienating – physically by long-term or indefinite confinement and societally by the social stigma – a group of people viewed as undesirables. The same criticism phrased differently, sums the SVP laws largely as products of social outcry, a misunderstanding of mental illness and, and ineffective correctional theory. This criticism refers to and consents with a significant work by Eric S. Janus. Published in 2006 Failure to Protect: Americas Sexual Predator Laws and the Rise of the Preventive State problematises the diagnostic pathologisation of the group of offenders that takes place with this second wave legal definitions that caused the causal link between acts of sexual violence and mental abnormality and volitional impairment.

Further, Janus criticises the distortion of the reality of sexual abuse the stereotypical and monstrous predator definition and terminology create. While there are accounts of extreme sexual violence that fit the predatory label, Janus stresses, the majority of sexual violence remains a pervasive societal and structural problem, domesticated or relational, at large perpetrated in those domains by acquaintances and intimates. The U.S Department of Justice general statistics affirm this reality, finding a dominating domesticity and intimate or acquaintance relation between offender and victim. Such tendency increases when the victims are young adults or children. Further, the structural argument is supported by the estimated distribution of victims of rape and sexual assault, reported to be 91 percent female and nearly 99 percent of offenders of single-victim incidents to be male.

Other criticism has concerned the post-conviction mental health treatment of sex offenders. The treatment imperative of the civil commitment that follows the sexual psychopathy diagnosis remains highly criticised, firstly due to its lack of positive results in recidivism prevention and secondly, for its questionable and constitutionally challenging indefinite deprivation of freedom of the convicted. The procedures of civil commitment being significantly criticised, the causality between pathology and sexual crime in which civil commitment is legally justified, is frequently contested by psychological

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81 Cf. Chronology section “Modern sexual predator laws” “Two overall criteria for commitment”.
and legal experts. Such criticism is for example represented in Mercado et al,\textsuperscript{86} again referring to Janus, formulated as a lack of clear and coherent conceptualisation within case law, empirical research, legal theory and practice guidelines, rendering the legal justification for civil commitment; the determination of \textit{volitional impairment}\textsuperscript{87} of the offender highly problematic and possibly amounting to \textit{unstructured moral guesswork}.\textsuperscript{8889} The Association for the Treatment of Sexual Abusers consents with such criticism by deeming the volitional impairment standard \textit{untenable, meaningless and unworkable}.\textsuperscript{90} This branch of criticism of SVP laws is supported by poor, incoherent findings in the little empirical research done on the reliability of the formal commitment criteria\textsuperscript{91} conferred with the determination of characteristics of sex offender's, rendering them high risk of offending and re-offending.\textsuperscript{92}

For the sake of clarity, the legal debate over civil commitment of sex offenders can be roughly divided into two arguments. The first argument is pioneered by Eric S. Janus who criticises and challenges the constitutionality of the SVP laws he defines second wave. Janus stresses, firstly, that only in the strictest of circumstances may the state deprive a person of liberty. Secondly, he stresses that new sex offender laws violate basic constitutional provisions and procedure of traditional criminal punishment by allowing punishment to precede the crime by regulatory prevention of potential recidivism by indefinite civil commitment.\textsuperscript{93} The second argument is first time advocated by the King County prosecutor and Chair of \textit{The Governor's Task Force on Community Protection} Norm Maleng.\textsuperscript{94} He argues for the necessity and legality of sex offenders' civil commitment by its establishing ground for treatment of a very small number of offenders who, beyond a reasonable doubt, suffer from mental disorders that make them likely to reoffend if released without treatment.\textsuperscript{95} This imperative is likewise recognised by Janus as well as the right and duty of society to impose penal control over offenders, but criticised for its poor effectuation [ie. prevailing SVP laws] and its many fatal direct and indirect consequences.\textsuperscript{96} To validate this generalised division, it is important to emphasise the earnest intentions of Maleng's argument partly by the chronological difference causing an indifference between Janus and

\begin{thebibliography}{99}
\bibitem{} Mercado, Bornstein, Schopp: 2006.
\bibitem{} Janus in Mercado et al: 2006 p. 596.
\bibitem{} Mercado et al: 2006 p. 590.
\bibitem{} Mercado et al: 2006 p. 597.
\bibitem{} \textit{Supra} note 69 and cf. chronology on expert determination of volitional impairment.
\bibitem{} Ibid.
\bibitem{} Janus: 2006 p. 12.
\bibitem{} Maleng: 1992 p. 826.
\bibitem{} Janus: 2006 p. 16.
\end{thebibliography}
Maleng. The former forming a strong criticism of the latter and earlier, on the knowledge gained over time and with experience with these laws. Still, there are other and more recent proponents of these new laws. These, I have found, are mainly politicians and practitioners (psychologists, psychiatrists) in some way occupied with the enforcement of SVP laws. Little empirical support for these proponents of the laws is provided by reference to statistical accounts of increasing prosecutions, expert evaluations of offenders and the popular support for increased societal protection etc.\(^{97}\)

1.7 Disposition

Section 1 has now introduced the subject of this thesis, presented its main enquiry and accounted for methodological choices and theoretical concepts. Further, section 1 has critically assessed the apppropriated source material, delimitations and accounted for earlier research. Section 2 comprises a chronology over the legislative enactments and political decisions that have lead to and composed prevailing SVP laws. Section 3 presents thematic findings of the content analysis and section 4 will conclude this work by analysis of the findings of section 3 mediated by the theoretical concepts presented in section 1.

2 Contextualisation: Civil commitment of sex offenders in The United States

The civil commitment schemes of SVP laws provide with a mechanism that can keep sexual offenders isolated, post completion of prison sentence, until assessed no longer a threat for society.

2.1 Chronology

1990: with The Community Protection Act and the Sexually Violent Predator Statute,\(^{98}\) a new form of civil commitment law is enacted by the state of Washington coining the title of the criminal \textit{sexually violent predator} and the laws accordingly.\(^{99,100}\) This Act, and the many individual state statutes that follow are classified by Eric S. Janus as the second wave of sex offender commitment schemes. This form of law operates as an extension to already determined prison sentences. The different states

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\(^{100}\) Wangenheim: 2010 p. 570 in text \textit{supra} note 82.
take different approaches to the implementation of SVP laws, but, commonly, these second wave laws present two legislative innovations. One, they allow for states to withhold offenders or mentally disordered [definition follows] who have served full prison sentence in protective custody for as long as assessed dangerous. Two, they require the registration and public notification when individuals convicted of sexual crimes make their re-entry into society.

1996: Megan's Law is signed and enacted at federal level on May 8. Following the Community Protection Act, Megan's law requires states to, firstly, register individuals convicted of sex crimes against children, and, secondly, make private and personal information on registered sex offenders available to the public. See supra note for online registration systems etc. As a result of Megan's Law, all 50 U.S. states have now enacted sex offender community notification laws.

1997: By dismissing constitutional challenges brought under Ex Post Facto and Double Jeopardy clauses, The U. S. Supreme Court, in the case of Kansas v. Hendricks, uphold SVP laws and their civil commitment statutes as constitutional. Many states follow suit, enacting their own SVP legislation. The legal definition of offenders, as in need of treatment because mentally unfit, permits indefinite custody.

2005: Jessica's Law or Jessica Lundford's Act passes in Florida, effective from September 1. A version of this law is introduced at federal level but never enacted into law by Congress. 42 states have introduced laws modelled after the Florida law since its passing. The law, amongst other requirements, conditions sex offenders to undergo a mental health screening.

2006: On July 27, the then President George W. Bush signs the Adam Walsh Child Protection and Safety Act. Sorting sex offenders into three tiers, the Act furthermore creates a national sex offender registry and mandates all states to establish identical registries. Here, sexual offenders shall register their permanent whereabouts and such are made available to the public.

103 http://www.klaaskids.org/meganslaw/ accessed May 2, 2014, see here also a list and map over states that have enacted Megan's Law.
105 Wangenheim: 2010 p. 572-573 and supra note 97, p. 593.
the Act authorises the federal government to civilly commit sexually dangerous individuals, subjecting federal prisoners in the custody of the Attorney General or Federal Bureau of Prisons to commitment on the same basis as states' SVP laws. Under this act, the definition of a sexually dangerous person is stretched to encompass any person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others. To be sexually dangerous to others thus means that the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released. 18 U.S.C. § 4248 provides that the attorney General may conclude such findings on the prisoner or detainee regardless of the conviction of a sex crime.

2007 (2008 and 2009): As per the U. S. Constitution, the federal government does not hold explicit authority and the congressional power to civilly commit potentially dangerous persons is limited by the Necessary and Proper clause. The 18 U.S.C. § 4248, declared and challenged to be unconstitutional by some federal district courts, is contemplated by the U. S. Supreme Court for final verdict.

2009: The Court of Appeals for the fourth circuit of the 18 U.S.C. § 4248 issues its first federal appellate decision concerning the constitutionality and mandate of the federal SVP scheme in the case of United States v. Comstock. United States v. Comstock concerns five individuals' constitutional challenges to the Adam Walsh Child Protection and Safety Act. All five cases following a similar trajectory of that of the lead plaintiff, Graydon Comstock, who the Attorney General certified as sexually dangerous, staying his release from prison six days before the end of a thirty-seven months prison sentence for receiving child pornography.

2010: United States v. Comstock, now granted certiorari, is heard before the Supreme Court.
The Court holds that, in this case, Congress does not possess the power similar to that of individual states that enables them to control civil commitment by exercise of parens patriae and general police power. In spite of these findings, other court rulings on similar cases hold that Congress can, in some cases [cf. 18 U.S.C. § 4248 conditions supra notes], civilly commit prisoners. The extend of this mandated power remains unclear.

2010: twenty states and the Federal Government all have involuntary SVP commitment statutes. While variations in language of these laws exist, most of the states define a sexually violent predator as a person who: *has been convicted of or charged with a sexually violent offence: suffers from a mental abnormality or personality disorder: is likely to engage in act of sexual violence.* The term sexually violent predator applies to offenders who *target strangers, have multiple victims, or commit especially violent offences of a sexual nature.*

2.2 Sexually Violent Predator laws and Civil Commitment

2.2.1 State responsibility in involuntary commitment

State governments act on their basis of enacted laws defining the standards of involuntary treatment and civil commitment on two basic legal principles. The first is *parens patriae or parents of the country,* and refers to a doctrine assigning the government as responsible for intervening on behalf of citizens deemed unable to assess and act according to own best interest. The second legal principle is that of *police power* that requires the state to protect its citizens' interests. This second legal provision concerns not only the person intervened on but stretches to encompass consideration of and protection for all citizens within the relevant territory. Thus, the second principle permits a restriction

121 cf. section 2.2.1. “State responsibility in involuntary commitment”.
122 See also Mahan: 2010 p. 123-12.
126 Nieto: 2004 p. 3.
127 Testa and West: 2010 p. 31.
of liberties of one individual on the prospect of a larger societal benefit.\textsuperscript{128}

2.2.2 Statutory treatment requirement

All states with civil commitment statutes provide treatment for the convicted and confined sexually violent predator.\textsuperscript{129} This treatment imperative and protection of society are joint aims of civil commitment and universally emphasised by all state statutes. The treatment provisions of SVP laws validate these enactments' deprivation of basic rights, liberties and Constitutional safeguards on the convicted offender.\textsuperscript{130}

2.2.3 Mental damage or defect

With some resonating publications of findings, it becomes widely recognised that sexual violence is resulting from mental damage or defect and the justification of civil commitment, as a means for effective treatment towards an end, is justified as such.\textsuperscript{131} Thus, generally the civil commitment of sex offenders exercises unique and considerable focus on determining the mental capacity of the convicted upon his (hers) conviction or potential entrance of plea. This consideration is different from a criminal trial.\textsuperscript{132} The mental illness of sexually violent predators is related to the Diagnostic and Statistical Manual of Mental Disorders [DSM(-IV)] in which all seventeen sexual disorders are listed and recognised as mental illnesses,\textsuperscript{133} but no stringent guideline for diagnostic definition is provided.

2.2.4 A separate commitment process

Those offenders convicted as sexually violent predators require a commitment process. The separate commitment process to address sexually violent predators' need for long-term treatment and the increased threat they pose to society, is determined on a perception of poor prognosis for rehabilitating sexually violent predators in prison.\textsuperscript{134}

\textsuperscript{128} Testa and West: 2010 p. 31 and Miller: 2010 p. 2101.
\textsuperscript{129} An overview of state's management of sexual predators in procedures and treatment is available at https://www.library.ca.gov/crb/04/12/04-012.pdf., accessed April 10 2014.
\textsuperscript{130} Miller: 2010 p. 2100-2101.
\textsuperscript{131} Wangenheim: 2010 p. 562 in text supra notes 28, 29, 30, 31.
\textsuperscript{132} Wangenheim: 2010 p. 564-565.
\textsuperscript{133} Wangenheim: 2010 p. 565.
\textsuperscript{134} Miller: 2010 p. 2101.
2.2.5 Two types of assessments

There are two stages upon which two types of assessments are mandated by the SVP laws. The first concerns an initial process of determining if an offender should be committed or not. The second concerns the reassessment of commitment status of individuals who are committed. Be it altered to a less restrictive status or a full discharge of the commitment status.135136

2.2.6 Three basic categories for mandated evaluation

First, by employment by the relevant state agency or a referring state agency, evaluators must meet prescribed rules for requirement. Second, by contract with the relevant state agency that permits such assessments, though not being employed by specific state agency. Third, through private employment by defence and/or prosecuting attorneys. The evaluators are predominantly licensed psychologists or psychiatrists with experience in working with sex offenders or, as a minimum requirement, with variations of violent criminals.137

2.2.7 Two overall criteria for commitment

General for the different SVP laws are the two overall criteria for commitment; firstly, the legal status of the individual of particular concern to prosecutors and, secondly, issues more directed for evaluators. For the assessment of the first criteria, all states have listed in their act the crimes relevant; the sexually violent acts,138 for the commitment process. Some are strictly specified, others more loosely.139 The second criteria concerns a mental evaluation and requires the assessment and testimony of a mental health professional. The legal specification of the mental condition sought measured is typically defined by the individual legislatures of the particular SVP law. Thus are the concepts established that clinicians [evaluators] are required to assess. The most commonly appropriated term of these laws is mental abnormality or volitional impairment.140 By such is generally meant a congenital or acquired condition affecting the emotional [, cognitive] or volitional capacity which predisposes the person to commit sexually violent acts [in a degree constituting such person a menace to the health

136 See also Wangenheim: 2010 p. 578-579.
137 Doren: 2002 p. available online, section “Who is allowed to do these evaluations” accessed April 10, 2014.
140 Doren: 2002 p. available online, chapter 1 section “The requisite mental condition” and supra note 29 in same text accessed April 10, 2014.
and safety of others].\textsuperscript{141} Or personality disorder\textsuperscript{142} is the most common additional phrase defining the requisite mentality of most state acts. This term is left undefined and thus, supposedly, for the appropriated evaluator to interpret in accordance with the diagnostic phrasing of the DSM-IV.\textsuperscript{143}

3 Content Analysis

This section comprises the content analysis of the source material. Firstly, the source material and the methodological steps of the content analysis will be accounted for, thence, the findings of the analysis will be presented.

3.1 Methodological steps

As earlier stated, the chosen source material is a selection of 35 news articles responsive to the same kind of legislation.\textsuperscript{144} As the introduction testified, I first learned of the subject of sexually violent predator legislation by reading Aviv's \textit{The New Yorker} article.\textsuperscript{145} This initial read lead research to continue and be executed in the same domain [ie. news], that then revealed a rather concentrated journalistic production concerning the SVP laws. A final selection of 35 articles now constitutes present source material. There has been no bias in selecting the material, rather, it is the amount of articles limitations of time and space of this research allowed me to compile. While the source material is found appropriate for the aim of this work, it is not primary source material. Therefore, for this works legal research on the \textit{rupture},\textsuperscript{146} see section 2 “Chronology”. As stated, the source material is comprised by online newspaper articles, and precaution must be paid to potential impartialities etc. regarding content and representation. Therefore, before their contents are scrutinised, some initial division need be made. Such is, firstly, according to the form of the articles. This categorical division aligns three general groups; “Popular”, “Local” and “Radical”. Confer Appendix 1 for a complete overview of the source material listed according to form.\textsuperscript{147} Having thus far made this categorical division, the following groupings of impartialities are especially attended to in the content analysis of the articles.

\begin{footnotesize}
142 Ibid.
143 See individual state's variation of definition https://www.library.ca.gov/crb/04/12/04-012.pdf table 1, accessed April 10 2014.
144 cf. section 1.6 Material, “legislative changes” meaning those following and supporting the 1990 Community Protection Act.
146 ie. definition section 1.1.1. “The rupture”
147 Appendix 1.
\end{footnotesize}
Firstly, stylistic orientation; are the news representations objective, political, emotional, opinionated? Secondly, quality of data; are the representations supported by expert opinions or are they political or else biased interpretations and is the data accurate? Any such impartialities will be explicitly noted in the presentation of the analysed content.

The first grouping “Popular”, comprises one *The New Yorker* article and 13 serialised *The New York Times* articles, published by the two originally New York based newspapers, now also gone online. Regarding the listed concerns of impartialities, these are rather extensive journalistic pieces compiling and referencing subject relevant research, psychiatric, legal – and other expert assessments. Though not primary sources, their references and data are concise¹⁴⁸ and compose an in-depth and serious exposé of the composition and practice of the SVP laws. This is also acknowledged by David Rosen, the author of “The New Disappeared”, the article published by the independent, investigative news source *CounterPunch* and part of this works group “Radical”.¹⁴⁹ While the first group of articles does not function as strictly objective source material (as they are representations), they do manage to compile and present the broad spectrum of SVP legislation. As such, they constitute a critical, serialised exposé.

The second group “Local” comprises 16 individual articles from different local or state online newspapers, responsive to local or state activity concerning SVP laws. Therefore the spread in year of publishing. Not as the first group serialised, they tend to be less stringent in composition. Their orientation is more biased, presenting political opinion, emotional accounts and other opinionated quotations in overt relation to their particular context. A few articles are highly emotionally and rhetorically loaded. As is listed in Appendix 2, apart from the Davidson and the Forghani and Sign articles,¹⁵⁰ this group of articles showed to be, similarly, rather extensive pieces scrutinising and critically presenting the issue.

The third listed group “Radical”, is named according to content. Comprising individual pieces, not serialised as the first, the third group differs from the former two by being overtly opinionated, radically critical or supportive responses to SVP legislation. One article is published by *CounterPunch*, the slogan provides sufficient stylistic orientation when stating *Tells the Facts and Names the Names*,¹⁵¹ Another by *The Guardian*, a newspaper with a heritage of journalistic independence and a production in relative accordance,¹⁵² The Ridgeway article exhibits an acceptable example. A third is published by

¹⁴⁸ cf. those chronologically listed and section 1.7 “Earlier Research”.
¹⁵⁰ cf. Appendix 1 and 2 articles (15) and (24).
The Nation but written by Alexander Cockburn, coeditor of CounterPunch and a well known American radical political journalists. These three pieces offer direct criticisms of the subject, and that with emphasis on the political –. The two latter are published opinions of prominent Republican affiliates or supporters and express – likewise openly but differently – support for SVP legislation.

3.2 Presentation of themes

All the above considered, the content analysis of the 35 articles has presented with eight, repetitive themes. Appendix 2 comprises a schematic count of these recurring themes that have been titled according to their dominating framing. In the following will be listed, supported by article quotation, the major claims and narratives prevalent under the themes. The additional supporting quotations are referenced in supra notes. Any deviation from the general thematic orientation of the news framing will be accorded as the themes are presented in the following order; (1) A treatment?-diagnosis, (2) Constitutionality?, (3) Failing treatment?, (4) “Catch-22 a predator”, (5) The private business – and its costs, (6) A political topic, (7) Anxiety and (8) “In exile”. The last three sections are thematically divided but presented in correlation similar to their framing in the articles.

3.2.(1) Treatment?-diagnosis

14 of the 35 articles [Appendix 2] explicitly discuss the statutory treatment requirement following the 1990 legal definition of the sexually violent predator. A definition the Supreme Court affirmed to justify civil commitment of an offender when proof be found that a criminal is suffering from mental abnormality or volitional impairment. The diagnostic thematic is, apart from in the Davidson article, framed with significant criticism and such is supported by references to research findings, expert opinions and other material of relevance. In the following will be listed the major claims and narratives prevalent under this theme. The additional supporting quotes are referenced in supra notes.

3.2.(1).1 A diagnosis that requires treatment

In the ruling, the justices found that a “mental abnormality” like pedophilia was enough to meet a standard to qualify someone for commitment, not the different standard of “mental illness” that had

154 cf. chronology datum 1990.
156 cf. chronology datum 1990.
157 cf. Appendix 1 and 2 article (15).
been traditionally used.\textsuperscript{158} Civil confinement permits the state to transform a criminal sentence with a specified duration into an indeterminate life sentence [...]. In keeping with current Supreme Court rulings, the New York law makes treatment mandatory both during incarceration and after release.\textsuperscript{159,160}

3.2.(1).2 How to clinically diagnose such mental abnormality?

More often, these cases come down to contentious duels between psychologists over how best to analyze an offender's history and likelihood of repeating crimes [and the results of the screening process are inconsistent].\textsuperscript{161} Most Coalinga [a California state mental hospital] patients don't have mental illnesses that can be treated with medication [...]. Many psychologists do not believe that hard-wired sexual deviance can be "cured".\textsuperscript{162} The diagnosis being open for interpretation, contradictory assessments occur as when Dr. Michael Taylor, a Des Moines psychiatrist and the state's expert witness, said Davis' mental abnormality predisposed him to committing another sexual offense if not confined to secure facility. The defense's expert, Luis Rosell, a Mt. Pleasant psychologist, gave greater weight to psychological tests and concluded Davis' mental abnormality didn't reach the level required by the state law.\textsuperscript{163,164}

3.2.(1).3 A problematic diagnosis in legal and practical terms

as [most psychologists agree that mental illness is not a prerequisite for sexual violence; some rapists are perfectly sane, at least from a legal standpoint. So instead of having to prove insanity or illness to lock away sex offenders in psychiatric institutions, the law only requires that the offender have "mental abnormalities." It's a vague and unscientific term, and has the attorney general's office working to find mental disorders in men who may have never been diagnosed with any before.\textsuperscript{165} Instead of being narrowly focused to subdue the worst of the worst, it has a ridiculously broad definition of who is a "sexually violent predator" that includes the creeps who secretly videotape women in changing rooms. It leaves all-important decisions about a person's mental state and likelihood of committing new crimes not in the hands of mental health experts, but with a committee of prosecutors.\textsuperscript{166} Most troubling, it establishes a new crime category (i.e., sexually motivated felony) that attempts to identify potential sex
offenders prior to committing a crime\textsuperscript{167\textsuperscript{168}} So who might such diagnostic assessment select? [...] not always the most violent; some exhibitionists are chosen, for example, while rapists are passed over.\textsuperscript{169} The law can thus apply even to "Romeo and Juliet" cases of consenting teens who yielded to their roaring hormones, or to exhibitionists, peeping Toms, and other relatively harmless types.\textsuperscript{170\textsuperscript{171}} And in practice the diagnostic definition is likewise questioned; Michael Fee, a psychiatric social worker with more than three decades of experience, worked at Coalinga for a year before leaving this spring [...] said that although all Coalinga patients qualify as violent predators on paper, he believes that more than a third of them would pose no threat if released.\textsuperscript{172\textsuperscript{173}}

3.2.(1).4 and then is framed the weight of that burdensome two-word label\textsuperscript{174} with the [...] 10 years of public shame on the state's online sex offender registry. Rather than bear the burden that comes with that label, Sargent accepted a four-year prison sentence on a more serious charge.\textsuperscript{175}

The diagnostic determination is a recurrent theme throughout the 35 articles and vastly criticised along with what consequences accompany it. This thematic resonates in the following themes; (2) Constitutionality?, (3) Failing treatment? (4) “Catch-22 a predator”, (5) The private business – and its costs. This will be evident in those respective sections.

3.2.(2) Constitutionality?

The articles' recurrent criticism of the diagnostic determinism and the legal confusion over its diffuse definition raise important questions over the Constitutional status of SVP laws. Confer section 2 “Chronology” for legislative facts, court rulings etc. In the 35 articles the question of constitutionality is explicitly discussed in 21 of them [Appendix 2]. All these articles present with a critical account of and hesitant consent with this theme. Importantly noted in this work's sections 2 and 3.2.(1), SVP laws are legally legitimised by their constitutional treatment requirement. This section concerning constitutionality is closely related with section 3.2.(4) “Failing treatment?”, as the majority of the articles' lines of critical arguments are composed accordingly.\textsuperscript{176} In the following are listed the most

\textsuperscript{167} cf. Appendix 1 and 2 article (31).
\textsuperscript{168} Additional quotes supporting this argument cf. Appendix 1 and 2 articles (8), (18), (28).
\textsuperscript{169} cf. Appendix 1 and 2 article (3).
\textsuperscript{170} cf. Appendix 1 and 2 article (29).
\textsuperscript{171} Additional quotes supporting this argument cf. Appendix 1 and 2 article (31).
\textsuperscript{172} cf. Appendix 1 and 2 article (19).
\textsuperscript{173} Additional quotes supporting this argument cf. Appendix 1 and 2 article (23), (10), (13).
\textsuperscript{174} cf. Appendix 1 and 2 article (27).
\textsuperscript{175} Ibid.
\textsuperscript{176} cf. supra notes on sections 3.2.(1) and 3.2.(2) for the repetitive pattern in articles.
consistent claims of the 21 news articles regarding constitutionality.

3.2.(2).1 "It's a highly controversial law," – said Kelly Cunningham, superintendent of the McNeil Island facility. "You are talking about restricting someone's freedom after they have served their prison sentence, not for what they have done, but for what they might do." [...] Despite being upheld by the U.S. Supreme Court, civil commitment has faced continuous attacks. Critics call it double jeopardy [cf. chronology], punishing a person twice for the same crime, a grave violation of constitutional rights.\textsuperscript{177} Constitutional contestations are many and the articles refer to many a legal expert stressing such, as Eric Janus,\textsuperscript{178} professor at William Mitchell College of Law in St. Paul, who has challenged Minnesota’s civil commitment law in court,\textsuperscript{179} Judge Jacqueline W. Silbermann of the State Supreme Court in Manhattan when in 2007 contesting the confinement of 12 men 11 of whom are still held involuntarily at psychiatric hospitals in New York City.\textsuperscript{180} Further, concern is expressed by Attorney David Tull when stating that "It [the constitutionally required treatment]demanded a lot of stuff that could possibly incriminate them a little later on," Tull says. "It's a real catch-22."\textsuperscript{181} Moreover, The Maine Supreme Judicial Court [...] expressed concerns about the state’s registry, including its retroactive application to older crimes.\textsuperscript{182} Lastly, the U.S. District Judge Susan Illston placed a restraining order on the measure, deeming it "punitive by design and effect." Illston found that Proposition 83 was likely unconstitutional.\textsuperscript{183}\textsuperscript{184}

3.2.(2).2 The Constitutional status then, is a legal reality of SVP laws affirmed by the 1997 Supreme Court ruling and that is acknowledged by all the 21 articles explicitly discussing it. Critical as their framing is, the constitutional status becomes the legal reality up against which all their contestations, as above exemplified (and further in following sections), are pointed. The United States Supreme Court ruled in 1997 that such programs do not constitute double jeopardy, and that the laws are legal as long as the state can prove the offender suffers from a mental abnormality that makes him "unable to control his dangerousness."\textsuperscript{185} Again, The

\textsuperscript{177} cf. Appendix 1 and 2 article (28).
\textsuperscript{178} cf. section 1.7 "Earlier Research".
\textsuperscript{179} cf. Appendix 1 and 2 article (3).
\textsuperscript{180} cf. Appendix 1 and 2 article (6).
\textsuperscript{181} cf. Appendix 1 and 2 article (6).
\textsuperscript{182} cf. Appendix 1 and 2 article (6).
\textsuperscript{183} cf. Appendix 1 and 2 article (27).
\textsuperscript{184} cf. Appendix 1 and 2 article (29).
\textsuperscript{185} Additional quotes supporting this argument cf. Appendix 1 and 2 articles (11), (16), (20), (25), (30), (31).
court also rejected the notion that civil commitment amounted to double jeopardy (a second criminal punishment for a single crime) or an ex post facto law (a new punishment for a past crime), noting that Kansas's statute was not meant to punish committed men but, like other acceptable civil commitment statutes, intended “both to incapacitate and to treat” them therapeutically.  

3.2.(2).3 The constitutional requirement

is then what is repeatedly problematised; There is, however, evidence that civil commitment can become a judicial fraud, with men being sent away on the psychological testimony of uncertified nonexperts into programs compromised by their conflicting mandates of offering therapy and being lockups.  

Being constitutionally upheld by their treatment requirement, the SVP laws are highly dependent on their sufficient providing of such. Addressing the many challenges, court rulings and legal controversies SVP laws have constituted (cf. 3.2.(2).1), this last thematic subsection is afforded stark criticism by the 21 articles in their presentation of the constitutional status. The following section will thoroughly address the articles' framing of the constitutional requirement for treatment.

3.2.(3) Failing treatment?

The two former sections have now well established that the constitutionality of the SVP laws rest on the treatment required for the mental abnormality the diagnostic definition of the sexually violent predator provides. Of the 35 news articles, 16 are explicitly addressing this treatment imperative [Appendix 2]. In fact with the headline For Sex Offenders, Dispute on Therapy's Benefits, treatment is an explicit thematic throughout The New York Times exposé. In their framing of treatment, these articles presents with five overall areas of critical concern. They will be presented in the following with in text quotes extracted from the articles and additional supporting references.

3.2.(3).1 Can this mental abnormality be treated?

[...O]ne of the few authoritative studies of the method, conducted in California from 1985 to 2001, found that those who entered relapse prevention treatment were slightly more likely to offend again than those who got no therapy at all.  

According to the Times and other sources, there appears to be
no accepted longitudinal studies demonstrating that confinement works. As the Times states: "Reliable studies on the treatment of civilly committed offenders do not exist, since so few have been set free." 194 Additionally, there is no mechanism to determine risk of re-offense, according to Barbara Schwartz, director of the Department of Corrections Sex Offender Treatment program. 195 This scepticism is general for the articles and should be related to this work's section 1.7 “Earlier Research”. Presenting the little empirical research executed, section 1.7 formulates a similar criticism resting on poor findings for support of the treatment imperative. 196 197 Rather, a couple of articles note that some studies have indicated that [r]ecidivism among sex offenders is lower than many other criminal offenses. According to the Department of Justice, "Sex offenders were less likely than non-sex offenders to be rearrested for any offense." 198 Two interesting observations are presented as part of the articles' treatment scepticism. Firstly; More than 400 of the men in civil commitment are 60 or older, and a number of studies indicate a significant drop in the recidivism rate for this group, many of whom have health problems after years in prison. David Thornton, treatment director of Wisconsin’s center and an expert on recidivism rates, said the decline was increasingly well-documented. 199 This quote suggests that a few allegedly well documented statistic on recidivism indicate, that it [recidivism] is positively related to the decline in physical ability and mobility resulting from old age. Secondly, some articles present the criticism stemming from indications that efforts to treat or prevent recidivism of sexual offence is possibly misunderstanding the actual nature of sexual offence; While estimates by scholars vary, estimate suggest that overwhelming number of all child molestations, 80 percent of girls and 60 percent of boys, are committed by people who know the victim, including relatives, friends, baby-sitters, persons in positions of authority over the child, or persons who supervise children. 200 This is likewise a point noted in section 1.7 of this work.

3.2.(3).2 First comes treatment then comes –
most often not release, it seems. According to numbers presented by the articles, the 19 different treatment facilities around the country all share extremely low rates of successful treatment. 201 Only

194 cf. Appendix 1 and 2 article (31).
195 cf. Appendix 1 and 2 article (27).
196 Section 1.7 “Earlier Research”.
197 Additional quotes supporting this argument cf. Appendix 1 and 2 articles (2), (12), (28), (18), (22).
198 cf. Appendix 1 and 2 article (31) referencing [Dept. of Justice, “Criminal Offenders Statistics”; “Sex Offender Treatment,” Pennsylvania Dept. of Corrections, March 2004], additionally article (33).
199 cf. Appendix 1 and 2 article (3).
200 cf. Appendix 1 and 2 article (31), additional quotes supporting this argument (20), (26).
201 cf. Appendix 1 and 2 article (20).
Two offenders out of the 123 men committed to the Iowa facility since it opened have been discharged after completing five required steps culminating in a court ruling to free them.\(^{202}\) In stead, numbers show that the majority of those released are not so due to completed treatment. Of the 132 committed in an Iowa treatment center, 27 have been discharged, only two of them by having successfully completed a treatment program. Instead, eleven were discharged through court actions initiated another way, three were moved to other services and seven have died there.\(^{203}\)

3.2.(3).3 The problematic requirements of treatment

This aspect will be elaborated under the theme of “Catch-22 a predator”. Suffice it for now to briefly note the framing of the paradoxical relation between committing to treatment and official efforts towards completion of and release from such. But many of those committed get no treatment at all for sex offending, mainly by their own choice. In California, three-quarters of civilly committed sex offenders do not attend therapy. Many say their lawyers tell them to avoid it because admission of past misdeeds during therapy could make getting out impossible, or worse, lead to new criminal charges.\(^{204}\)

3.2.(3).4 The facilities of treatment

Like above, this aspect will be elaborated in a following section 3.2.(4) “The private business and its costs”. For now, the following quotation and supra note additions will testify the general criticism prevalent in the articles; Because civil commitment centers are neither prisons nor traditional mental health programs, no specialized oversight body exists. None has been created, in part because its base of financial support, the 19 civil commitment programs around the country, would be too small, several experts who study the programs said. But the need, they said, is urgent.\(^{205}\)

3.2.(3).5 Staffs, general quality and management of treatment facilities

In 2000 OPPAGA published the Office of Program Policy Analysis and Government Accountability Report\(^{206}\) comprising a compelling criticism of the effectiveness and monitoring of Martin Treatment Center for Sexually Violent Predators. This rapport is repeatedly referred to in the The New York Times exposé, and the 21 articles that explicitly concern the treatment imperative accompany it with a vast criticism of the running and general management of the facilities that are to provide it [ie. treatment]. The following quotes exemplify, the additional supra notes support; Civil confinement centers like the

\(^{202}\) cf. Appendix 1 and 2 article (22), additional quotes supporting this argument (21), (3), (2).

\(^{203}\) cf. Appendix 1 and 2 article (22), additional quotes supporting this argument (21), (3), (21).

\(^{204}\) cf. Appendix 1 and 2 article (22) additional quotes supporting this argument (21), (3), (20).

\(^{205}\) cf. Appendix 1 and 2 article (3) additional quotes supporting this argument (20), (31).

one run by Liberty Behavioral Heath Corp. in Arcadia, FL, and detailed by the Times, are failures. Poor or no oversight is in place; offenders have access to home-brewed alcohol, drugs are easily smuggled in, violence among inmates is common and sex among offenders and offenders and staff is a regular feature; and, worse still, little treatment takes place.\textsuperscript{207} “It was like walking into a war zone,” Jared Lamantia, one of the visiting workers who signed the memorandum, recalled in an interview. “The residents in that place ran the whole facility.”\textsuperscript{208}

3.2.(4) “Catch-22 a predator”

Named after the headline of one of the articles,\textsuperscript{209} this section concerns news framing of the legal and managerial complications SVP legislation creates. Discussed and criticised is, so called, murky balance between criminal punishment, treatment imperative and upholding constitutional safeguards. 26 of the 35 articles address this [Appendix 2]. As was noted in section 2.2.1 of the “Chronology”, state governments enact involuntary treatment and civil commitment under the two legal principles of parens patriae and police power; Their mandated responsibilities to protect, respectively, a citizen incapable of such and all its citizens from potential harm.\textsuperscript{210} What the articles point especially critical attention toward, is an often conflictual balancing between the two legal principles in their managerial attempts of intervention and protection. Thus, the first of the contestation is presented;

3.2.(4).1 A murky legal road

As section 3.2.(1).2 critically frames, the legal definition of a sexually violent predator has shown problematic in its practical application. Similarly framed is the broader spectrum of SVP legislation throughout the articles. Referring to legal authorities; “There’s no question about it,” Professor Janus of William Mitchell College said, “it’s a very murky area of the law.”\textsuperscript{211} Confusion over the process of civil commitment is shared by Judge William Wetzel.\textsuperscript{212} The articles repeatedly address the increase in criminal penalties, the upending of principles of the criminal justice system and the legal limbos SVP legislation creates.\textsuperscript{213} The following quotation provides example of this problematic; At the Manhattan.
Psychiatric Center on Ward's Island, a man named Michael Parker is stuck in a strange legal limbo. He's in custody, but he's not serving a criminal sentence. He was actually released from state prison in the spring after completing his required stay there. He's also not been officially committed as a psychiatric patient. He's being held in a separate area from the patients at the center who suffer from severe psychosis.

3.2.(4).2 Civil commitment: punishment or treatment?

The questionable balance between the two legal principles of state responsibilities that prevail in civil commitment is a continuous subject of criticism in the articles framing it. The query remains; “There’s a little bit of confusion,” Ms. Nayda said. “What is this place? Is it a prison? Is it a mental health center? A residential treatment facility where people are clients? What is it? We ask that question sometimes too. We really don’t have a lot of guidance around what it is the state wants the facility to be, and we would encourage the state to look at that.”

3.2.(4).3 Registration

Beside complications over the legal process of civil commitment, is the establishment of a system of registration of sexually violent predators. Such is mandated by the 1996 enactment of Megan's law and further with the 2005 enactment of Jessica's Law. Confer section 2 “Chronology” for the official, legal requirements of registration. The articles address the registration as per its close relation to the above outlined general legal complications of SVP laws. Robert Rigg, Drake Law School professor and director of Criminal Defense Program affirms this relation in a prolonged 10 year or lifetime special parole by the inevitable post-prison or treatment registration on public registration lists. The bill [as prescribed by Megan's law] creates a national database of convicted sex offenders and requires them to register their whereabouts every month in person. Failure to register is now a felony. Until now, most offenders had to register only once a year, and failure to do so was just a misdemeanor. The criticism the articles present regarding registration varies over the severe deprivation of liberty and freedom of movement and the public exposure of personal information. Such are not once noted in the effort to

214 cf. Appendix 1 and 2 article (20).
215 Susan Keenan Nayda, vice president of operations for behavioral health program at Liberty Behavioral Health Corporation cf. article (10).
216 cf. Appendix 1 and 2 article (10).
218 cf. Appendix 1 and 2 article (21).
219 Ibid.
220 cf. Appendix 1 and 2 article (15).
221 cf. Appendix 1 and 2 article (25), (26) for additional quotes supporting this argument articles (7), (15), (21), (25), (27), (15), (31).
excuse sexual crimes, rather, the empirical concern is summed up as follows; \textit{A decade ago, only a few crimes required sex offender registration. Now, that list includes close to 20 categories of crimes}.\footnote{222} Besides the public shaming such listing facilitates \textit{Most experts agree that residency restrictions are little more than feel-good laws that do nothing to protect the public. The city of Bangor came to that conclusion last winter when it rejected a similar proposal brought by a concerned citizen}.\footnote{223} Further supporting this criticism; \textit{One study, co-written by Jill Levenson, chair of the Human Services Department at Lynn University in Boca Raton, Fla., found no connection between where sex offenders live and whether they will commit another crime, and that residency restrictions force sex offenders into homelessness and increased instability, "undermining the very purpose of registries and exacerbating known risk factors for criminal recidivism".}\footnote{224}

3.2.(5) The private business – and its costs

This section, when directly confronting the economics of SVP laws, is divided into two overall sections that, in reversed chronology of the headline, concern, firstly, the costs of the treatment facilities and programs the constitutional requirement prescribes. Secondly, the industry surrounding these programs. 14 of the 35 articles address the economic aspects of these laws [Appendix 2]. With the accounts of expenditures listed rather rigidly in the articles', inherent such presentation exists a framing of its controversy with an unbroken critical tone. With headlines such as \textit{“State pays millions for contract psychologists to keep up with Jessica's Law”}\footnote{225}, \textit{“State wastes millions helping sex predators avoid lockup”}\footnote{226}

\textbf{3.2.(5).1 The costs of treating sexually violent predators}

Two characters speak volumes of the economic costs; the duration of the treatment programs and their formal requirements. Let the following quotes exemplify the articles' general presentation of such. For additional accounts refer to \textit{supra} notes. \textit{The cost of the programs is virtually unchecked and growing, with states spending nearly $450 million on them this year. The annual price of housing a committed sex offender averages more than $100,000, compared with about $26,000 a year for keeping someone in prison, because of the higher costs for programs, treatment and supervised freedoms}.\footnote{227} Affirming
this point; 10 men have been moved to Ward's Island, at a cost to taxpayers of $200,000 per patient each year. (Keeping them in state prison costs considerably less—about $35,000 a year.) And for the requirements of professionals to accompany such programs; "It's been a boatload of money, to put it colloquially," psychologist Shoba Sreenivasan said during court testimony in November. Working only part time, she billed the state nearly $900,000 last year and at least $290,000 this year. A civil servant doing the same work earns $101,000 to $110,000 annually. Further, Jessica's Law is also expensive. The state spends about $65 million a year to purchase and operate GPS equipment to track sex offenders, though the technology itself does nothing to prevent crime.

The duration and formal requirements of the programs result in states making an open-ended commitment of scarce resources to create an entirely separate prison system — costing as much as $100,000 a year per inmate in some states — to lock down men who are a tiny subset of the sex-crime problem. With this last point's reference to section 3.2.(3).1's criticism of the disposition and distortion of efforts afforded the treatment of sex offenders, let this section proceed to its second major criticism;

3.2.(5).2 The private business

Most of the states run their own centers to hold and treat such predators, generally with meager results, but at a time when private solutions are popular for prisons, toll roads and other state functions, a few have teamed with private industry. The quote well exemplifies the framing of the private interests engaging, generally, in prisons and, more specifically, in these treatment facilities. With the enactment of SVP laws follows the pricey installation of required treatment programs and a bevy of companies and well-paid specialists have cropped up like constellations around the expanding demand. Liberty Behavioral Health and Liberty Healthcare Corporation, affiliates with common ownership, have emerged as the most ambitious private contractors in the commitment center arena. As recently as last year, the affiliates had accumulated contracts worth up to $26 million a year in California, Illinois, Pennsylvania and Florida, which was the biggest both in terms of compensation and responsibility. The controversy pervading this thematic section and its news framing must be put

228 cf. Appendix 1 and 2 article (20).
229 for additional quotes supporting this argument articles (10), (22), (28), (31).
230 cf. Appendix 1 and 2 article (18).
231 cf. Appendix 1 and 2 article (26).
232 cf. Appendix 1 and 2 article (13).
233 cf. Appendix 1 and 2 article (10).
234 Ibid. for additional quotes supporting this argument articles (14), and section 3.2.(5).1 supra notes.
in relation to findings of sections 3.2.(2) and 3.2.(3). Evidently, sky-high costs of treatment programs that present with such lack of positive results are capable of earning uncritical news framing when presented to those tax payers that fund them.

3.2.(5).3 “How to catch a predator”

This last subsection is also addressed in section 3.2.(6) but need presentation in conjunction with the above, as it is related as such in the majority of the articles. The headlining imperative is finding explicit support in articles by Hansen and O'Reilly and implicit in the Davidson and Forghani and Sign. The Davidson article uncritically presents an example of the industry that also grows from the concern with sexually violent predators, when it promotes a televised version of the SVP laws imperative by referring to the father of the child that named the Adam Walsh Child Protection and Safety Act; John [Walsh] is host of "America's Most Wanted," Such is likewise the case with the Hansen article that provides a scripted version of one of more sting operations aired on Dateline NBC. This article sounds “Potential predators go south in Kentucky” [...] We're in a new state, in a new part of the country -- southwestern Kentucky. What's not new is the men's reaction to meeting who they think is a young girl. Such programs and their presentation earn criticism from another article; Matters are made worse by TV shows like NBC Dateline’s "To Catch a Predator" that reduce the men who pursue online contacts with apparent underage young people into a moralist’s prurient spectacle: Viewers are sexually titillated by the apparently illicit if not illegal behavior of innumerable "predators," yet implicitly scolded for being seduced by the very titillation that drew them into watching the show in the first place.

3.2.(6) A political topic

Having now presented the news framing of the first five identified themes, 26 of the 35 articles address the political aspect of the SVP laws [Appendix 2]. Addressing this theme, the articles predominantly compose critical exposures of different political representation and mobilisation of the thematics accounted for so far; the constellations of treatment, the legislative enactments, the

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235 cf. Appendix 1 and 2 articles (34) and (35).
236 cf. Appendix 1 and 2 articles (15) and (24) cf. section 3.1.
238 cf. Appendix 1 and 2 articles (15).
239 cf. Appendix 1 and 2 articles (14).
240 cf. Appendix 1 and 2 articles (34).
241 cf. Appendix 1 and 2 articles (31).
commercial and economic aspects. These political representations are repeatedly and critically narrated as three political modi.\textsuperscript{242}

3.2.(6).1 Politics of SVP laws
The majority of the articles addressing this thematic express a vast criticism when observing the mode by which legislative enactments are seemingly steered \textit{[...]legislators across the nation have answered public outrage about heinous sex crimes with civil commitment laws.}\textsuperscript{243} This rather general criticism is expressed as follows \textit{The hurdle is that the discussion about what to do with sex offenders and how to distribute information about them continues to be dominated by emotion rather than common sense or credible statistics. Raw emotion is a valid response to sex offenders, Diamond said, but it shouldn't skew public policy discussions.}\textsuperscript{244}

3.2.(6).2 The political composition of SVP laws
Regarding the modus of composition Donna Lieberman, the executive director of New York Civil Liberties Union, is quoted for saying \textit{“Despite all the talk of reform and openness and a new era in Albany, we once again have three men in a room cutting a deal on a very serious issue without the Legislature even being in town and with no plan for a hearing, ”} she said. The legislation is virtually certain to pass because it was negotiated by the leaders of both houses and the governor.\textsuperscript{245} Explicit as this opinion is, its critique resonates throughout these articles.\textsuperscript{246}

3.2.(6).3 Rhetoric; a method of promotion
On the mode of promotion and advocacy of SVP laws, the majority of the articles note a compelling use of rhetoric. Here are listed some exemplifying quotes; \textit{Attorney General Alberto R. Gonzales called the group “the worst of the worst,” with particular priority given to capturing unregistered and wanted sex offenders who he said posed a “serious threat to our children.”}\textsuperscript{247} and \textit{“This legislation will save lives, protect our children and keep our communities safe by making sure dangerous sexual predators are kept off the streets and get the treatment they so desperately need,”} the Senate majority leader, \textit{Joseph Bruno, said in a statement.}\textsuperscript{248} and lastly; state Sen.George Runner \textit{(Republican California state Senator)’s(…)campaign message was “kids shouldn't have to walk by a sex offender's home on the way...}
to school." The criticism of rhetoric as methods of advocacy continues with a specific example (additional listed in supra note); Meanwhile, let's briefly inspect the document upon which this brouhaha is based. Not surprisingly, it begins with a lie. Or to be kinder, call it cherry-picking -- statistical fudging to push a falsity. Section 2(b) of Proposition 83 states in part: "Sex offenders have very high recidivism rates. According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to re-offend." Along with the 26 articles' critical framing of the political rhetoric promoting SVP laws, a minority of them de facto and uncritically execute such. As afore noted, four of the 35 articles presented with no critical framing of SVP laws.

In fact the Hansen and O'Reilly articles directly mobilise the rhetoric that is so largely criticised above; If you've been watching The Factor, you know we are engaged in a battle to protect young children from sexual predators. Many states don't protect children from sexual predators and allow these criminals back on the street to commit these crimes again. There have been despicable cases all across America in which girls and boys have been raped, abused, and even murdered - often by serial sex offenders who had been released by authorities after serving short prison sentences. And these outrageous crimes could have been prevented, which is why I am calling on every state in the union to pass a version of "Jessica's Law." The legislation is named after little Jessica Lunsford, who was just nine when her life was brutally ended by a sexual predator who had previously been convicted of sex crimes against a child. The crime forced Gov. Jeb Bush and the Florida legislature to mandate stiff minimum sentences for child abusers, who had all too often been slapped on the wrist by lenient judges[...] There is simply no question that Jessica's Law will save lives, and similar laws need to be instituted in every state. Which is why we at The Factor have been putting pressure on Governors.

3.2.(6).4 Political pressure

The last modus framed, is the political pressure that accommodates these laws. This section is related to the above section 3.2.(6).2 on rhetoric and section 3.2.(3).1 that suggest a distortion of the de facto nature of sexual offence. As such, the pressure is to be understood as both rhetorically and de facto demanding. The following quotes serve to exemplify; Politicians "understandably don't want to make any move that will make them vulnerable to charges of 'This guy is soft on sex offenders' in the next count."

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249 cf. Appendix 1 and 2 articles (29).
250 Ibid. for additional quotes supporting this argument articles (3), (9), (17), (20), (29).
251 cf. Appendix 1 and 2 articles (15), (24), (34), (35).
252 cf. Appendix 1 and 2 articles (35).
253 Ibid. for additional quotes supporting this argument articles (15), (24), (34).
election." and Sen. Bill Diamond, D-Windham: “Year in and year out, [the public] wants us to be tough on sex offenders,” he said. “And as lawmakers, we don’t want to be seen as weak. But the more you learn, the more you realize that a knee-jerk reaction doesn’t help.” [...] Few legislators want to publicly disagree.

3.2.(7) Anxiety

As noted in section 3.2, the last three sections are thematically separated but presented in relation similar to their general framing in the articles. To clarify, section 3.2.(7) “Anxiety” and 3.2.(8) “In exile” are related to section 3.2.(6) “A political topic”, in that the former are, to an extend, mobilising the political modi (ie. via rhetoric). The latter is part of what the political mobilisation come to facilitate. Thus, the two last sections can be said to be phenomena related the political mobilisation. The following presentation of the articles' framing of the last two themes seeks to clarify this interrelation.

The theme of anxiety is particularly connected to that of rhetoric, in that they mobilise and facilitate each other, so to speak. 22 of the 35 articles concern anxiety [Appendix 2], an they do so in two general ways. For this presentation, the division is presented as the two following subsections. The former presents the articles' overt framing of the theme, and the latter the covert mobilisation or use of the phenomenon.

3.2.(8).1 Anxiety framed

Though noted in more instances, this case in particular exemplifies the trend, when New York State Senate voted for their bill allowing post-prison commitment of sexually violent predators; Senator after senator invoked, sometimes by first name only, the names of well-known victims of particularly gruesome sex crimes, mostly children. “We don’t want to see any more Etans, Adams or Jessicas,” said Senator Martin J. Golden, a Brooklyn Republican. Mindful of the phenomenon in play, the journalistic criticism follows; Mr. Pataki [former New York State mayor], who is mindful of his legacy, should remember how similar moments of cultural anxiety tend to create bad legislation — like the Rockefeller-era drug laws — that are regretted for generations. A rushed, shabby civil confinement law would be a lasting blot on his record. A final quotation cements this framing of the rhetorical

254 cf. Appendix 1 and 2 articles (26).
255 cf. Appendix 1 and 2 articles (27), for additional quotes supporting this argument articles (3), (5), (9), (28).
256 cf. Appendix 1 and 2 articles (8).
257 cf. Appendix 1 and 2 articles (13) for additional quotes supporting this argument articles (3), (9), (19), (26), (28), (29), (31), (32), (32).
mobilisation of anxiety and its consequences (note again relation to section 3.2.(3).1); *The Forum's fearful trumpetings would diminish sharply if its statistics addressed crime rates rather than merely numbers of crimes* (...) *That's a populist theme that Sen. James Webb seized upon in his response to Bush's State of the Union. Edwards sounds the same theme from time to time, too. The moment is ripe for it.*\(^{258}\) Besides criticising the rhetoric of anxiety, the articles explicitly note the registration programs, presented in section 3.3.(4).3 “Registration”, as a similar measure; *There are more than 14,500 people listed on Arizona's registry of sex offenders, and a tool released by the state can help keep you up-to-date on their whereabouts* (...) *The map also shows there are no demographic boundaries for sex offenders. According to DPS, sex offenders can be male or female, rich or poor, employed or unemployed and come from any race. While there are approximately 14,500 registered sex offenders in Arizona, there are others who have not registered as required by law and hide from authorities.*\(^{259}\) And off of this, the journalistic criticism follows; *Most experts agree that residency restrictions are little more than feel-good laws that do nothing to protect the public. The city of Bangor came to that conclusion last winter when it rejected a similar proposal brought by a concerned citizen.*\(^{260}\) Prior to moving on to the last sub section, the findings of the content analysis so far should be briefly summarised, and here is importantly reminded of the critical proportionality the news framing has so far afforded this subject. Confer sections 3.2.(1) “A treatment?-diagnosis”, 3.2.(2) “Constitutionality?”, 3.2.(3) “Failing treatment?” and 3.2.(4) “Catch-22 a predator” framed as severe extends of punishment, wide scopes of such in civil commitment justified by a treatment imperative and their alleged dysfunctions. These should be conferred with section 3.2.(3).1's criticism of disproportionately and distortion of the nature and reality of sexual abuse as well as the supporting references presented in section 1.7 “Earlier Research”.

3.2.(8).2 Anxiety mobilised

As afore established, four\(^{261}\) of the 35 articles deviate from the generally critical journalistic framing. These, along with exemplifying quotations listed in the other articles, afford some examples of the above sub section's criticism; the de facto mobilisation of anxiety in rhetorical use. *“I am appealing here that we join together to think about the victims, the innocent potential victims,” said Senator Joseph L. Bruno, the Republican majority leader. “And for those that would rather coddle that person*

\(^{258}\) cf. Appendix 1 and 2 articles (32).

\(^{259}\) cf. Appendix 1 and 2 articles (24).

\(^{260}\) cf. Appendix 1 and 2 articles (27) for additional quotes supporting this argument articles (28).

\(^{261}\) cf. Appendix 1 and 2 articles (15), (24), (34), (35).
that has been convicted — that's what we're talking about, violent, violent criminals — think about your constituents with children, with the vulnerability that's there."

Also, such is noted in connection to particular promotions of bills mobilising popular anxiety and outrage associated with particular grave instances of sexual offence (ie. first quotation of section 3.2.(8).1 “Anxiety framed“); His killer was never identified, but the tragedy sparked the national missing child movement. Hatch named his bill in honor of young Walsh, calling it the "Adam Walsh Child Protection and Safety Act." The Hansen article with its headline “Potential predators go south in Kentucky” affords an example of the overt rhetorical mobilisation on anxiety; We're in a new state, in a new part of the country -- southwestern Kentucky. What's not new is the men's reaction to meeting who they think is a young girl. The O'Reilly article continues; Many states don't protect children from sexual predators and allow these criminals back on the street to commit these crimes again. There have been despicable cases all across America in which girls and boys have been raped, abused, and even murdered - often by serial sex offenders who had been released by authorities after serving short prison sentences.

Now it's your turn. We have investigated all 50 states to determine which ones are tough on sexual predators and which ones treat these criminals with kid gloves. You can find out where your state ranks elsewhere on this web site. If your state is soft or noncommittal, I urge you to write your Governor, who is paid by YOU. [...]This is literally a life-and-death battle to save our youngest and most vulnerable citizens from abuse, torture, and murder. I hope you'll do your part.

3.2.(8) “In exile”

The above section testifies some of the rhetoric mobilisation on the public outrage and anxiety associated with sexually violent predators. This final section will address part of the outcome of such mobilisation. The journalistic framing of former section notes, that rhetoric is used to push the voters towards particular legislative enactments (and vice versa). The theme “In exile” concerns the journalistic narration of the SVP legislation provided legal degradation of sexual offenders. “In exile” is thematically presented because it is explicitly articulated in 22 of the 35 articles [Appendix 2]. It is, like the theme of anxiety, at large mobilised within the political realm. Besides the thematic presentation here, this phenomenon will be elaborated in section 4 “Conclusion”.

262 cf. Appendix 1 and 2 articles (8).
263 cf. Appendix 1 and 2 articles (15) for additional quotes supporting this argument articles (10), (20).
264 cf. Appendix 1 and 2 articles (34).
265 Ibid.
266 cf. Appendix 1 and 2 articles (35).
The SVP laws have been subject to a vast journalistic criticism so far, and present theme's particular narration of the legislation as effective expulsion or exile is either explicitly articulated or analysed as such:

3.2.(8).1 Exile articulated

The Rosen article articulates the expulsion headlining; “The new disappeared”, writing accordingly; Convicted sex offenders are joining a growing list of what can only be called "the new disappeared." [...] Today, both U.S. federal and state governments are instituting a less barbaric, but no less effective, means to ensure the disappearance of a variety of unacceptable citizens [...] Today, the terrorist, particularly the Muslim jihadist, and the sex offender, especially the pedophile, are perceived as the gravest evils to civil society. Further articulations of associations of exile; “Most do not escape this largely invisible American gulag,” wrote James Ridgeway in a Sept. 26 Guardian article about Baughman. It is a black hole for those deemed evil.

3.2.(8).2 Exile framed

This section relates to sections 3.2.(1) “A treatment?-diagnosis”, 3.2.(2) “Constitutionality?”, 3.2.(3) “Failing treatment?” and 3.2.(4) “Catch-22 a predator” discussing and criticising the purpose of diagnostic determinism and the effectiveness and execution of the treatment imperative that follows (ie. civil commitment in effect). The following quotations exemplify the critical journalistic framing of the expulsion; civil commitment laws have lead to post-prison warehouses, where offenders check in but don’t check out. Stan Moody, a former legislator and prison chaplain, wrote an OpEd column late last month titled “Maine’s sex offender conundrum.” In it, Moody talks about the short-sightedness of the registry. And “We create something of a lifelong leper colony for people who have been caught acting out fantasies prompted by our sex-crazed culture,” he wrote. The act of exiling or expulsion critically framed; 1993, the Register(...)piece by lawyer Andrew Vachss: “ If we don’t kill or release them [SVP], we have but one choice: Call them monsters and isolate them.” And exile noted in its physical expression; Most states put their centers in isolated areas. Washington State’s is on an island

267 cf. Appendix 1 and 2 articles (31).
268 Ibid.
269 Ibid.
270 cf. Appendix 1 and 2 articles (22), for additional quotes supporting this argument articles (31).
271 cf. Appendix 1 and 2 articles (31).
272 cf. Appendix 1 and 2 articles (2) for additional quotes supporting this argument articles (3), (7), (31).
273 cf. Appendix 1 and 2 articles (27).
274 cf. Appendix 1 and 2 articles (22) for additional quotes supporting this argument articles (23), (31).
three miles offshore in Puget Sound.275

Lastly, the rhetorical exile (cf. sections 3.2.(6).3 and 3.2.(8).2); “This is a good family town,” Mr. Webb [a local investment advisor] said. “We want to preserve that image.”276 Ms. Pirro[...]called it “outrageous and frightening,” adding that it added new urgency to the need to protect children from “these deviants” on the Internet.277

3.3 Findings from Content Analysis

Thus have been presented the eight thematics identified by the content analysis. These represent the news framing of the rupture initially set out to investigate.278 Some general conclusions on the findings; As noted, the articles generally presented with a thorough criticism of the respective thematics surrounding SVP laws. Unless anything else has been noted, the quotations of the respective sections are representative of their general thematic news framing. Four of the 35 articles departed from the general tendency of critical framing by explicitly supporting or narrating support of the SVP legislation. These have been noted and, where relevant, thematically presented.

Theme (1) “A treatment?-diagnosis”, presented a general criticism of the diagnostic determinism following the 1990 legal definition of the sexually violent predator, questioning the efficiency and adequacy of the clinical diagnosis and the treatment imperative it established. Theme (2) “Constitutionality?” followed up the criticism initiated by the former section's scrutiny into the question of the constitutionality of SVP legislation. The general trend of the framing of this theme was hesitant consent with the constitutional and legal reality of the legislation, presenting a vast array of examples of insufficiencies in meeting the requirements such permit. Theme (3) “Failing treatment?” further scrutinised the constitutional treatment requirement, as the news articles provided with many an account of the reality of treatment in various effectuation. Here, was noted most significantly, the lack of successful treatment results. The criticism was accompanied by references to findings from a 2000-report of one of 19 existing treatment facilities. Theme (4) “Catch-22 a predator” further addressed the legal complications the diagnostic definition of sexually violent predators create. With commentary support from judges and other legal experts, the articles' thematic discussion concerned the two legal principles that direct civil commitment that have evidently shown conflicting in both legal and

275 cf. Appendix 1 and 2 articles (3) for additional quotes supporting this argument articles (19), (20), (25), (28), (31).
276 cf. Appendix 1 and 2 articles (14).
277 cf. Appendix 1 and 2 articles (7).
278 Section 1.2 “Aim and research questions”.

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managerial attempts of intervention. Theme (5) “The private business – and its costs” critically scrutinised the economic aspects in establishing and executing treatment programs and revealed some of the private business emerging around treatment facilities. Lastly, it criticised the commercial and entertainment business' profit on different installations. Theme (6) “A political topic” presented with the broadest represented concern across the selection of articles. It critically discussed the political modi with which the majority of the other themes are mobilised and promoted. Further, it presented a highly loaded rhetorical and de facto political pressure surrounding the subject. The last two sections; (7) “Anxiety” and (8) “In exile”, though thematically divided, were presented in correlation similar to the news articles' framing. This, because they were both concerning phenomena mobilised by or mobilising the political modi before presented. As such, they both presented the articles' more analytical criticism of the rhetorical use of anxiety and exemplified some of its explicit use. Lastly, was presented the expulsion in effect and argued the mobilisation anxiety is capable of facilitating.

4 Conclusion

This last section will take its departure from where this work was initiated; where was first detected and defined a rupture in the U.S legal tradition of punishing the crime of sexual offence. In order to not transcend the limits that methodological and material choices have confined this work to, the theoretical concepts presented in the beginning of this work will be appropriated for the conclusive analysis. The theoretical concepts are presented and discussed as initially introduced, but in conjunction with the content analysis’s thematics. Respectively; “Disability”, “Managing disability” and “The flexible and “the docile body” under post-modern conditions”.

Before initiating the conclusive discussion, let one point be emphasised. This work's theoretical usage is not an effort to take hostage a theoretical framework in the excuse of violent sexual behaviour, that is, agreed, highly problematic – especially so, because it has severe consequences for the victimised –. Rather, Crip Theory and its above listed concepts are appropriated in this context qua their capacity to identify and scrutinise normative discourses (ie. “able-ism”) that create and name the abnormal, that here finds expression in mobilisations of the imagined sexually violent predator.

4.1 Disability

279 cf. section 1.1.1 “The rupture”.
280 cf. sections 1.5.1, 1.5.2, 1.5.3.
Firstly, a pause at the defining terminology that launched the *rupture* in a tradition of punishment of sex offenders. With The Community Protection Act of 1990, the criminal act of sexual offence was redefined and the title accordingly and thus, with the sexually violent predator, the beast was named and a new hunt initiated. The Oxford dictionary defines the determinative word in the new legal definition as; *Any species of animal that hunts and kills members of another species for food. Also called a carnivore. Predation n; The hunting and killing for food by one animal species (the predator) of another (the prey) predatory or predacious adj; Habitually hunting and killing animals of other species for food [...]*

The terminology that defines the now pathologised sexually violent predator signifies a mental abnormality so monstrous, threatening and uncontrollable, that radical intervention is necessary. Two observations along this line; Firstly, with this defining terminology was established a legal causality between the predatory crime and the criminal predator who is now suffering from mental abnormality or volitional impairment. As such, a pathological deviance is detected, a disability identified and simultaneously is determined a managerial response; treatment for a mental damage or defect by civil commitment. A monstrous disability becomes definitive of a radical managerial response. Secondly then, the responsive intervention is legally legitimised and de facto executed without any definite guidelines for determining the diagnostic prerogative according to the DSM-IV. This is not to argue incompetence of the diagnostic parameter. It is clinically competent, in an authorised purpose of determining treatment or symptomatic relief from its defined diagnoses. However, what need critical emphasis is that SVP laws’ legal definition of mental disability is not strictly defined according to any such clinical DSM-IV diagnoses, but left open for interpretation by the appropriated evaluator.

Section 1.5.1 presents McRuer's perception of the term “able-ism” as denoting the dominating norm or embodiment of imaginations of normality that is embedded in contemporary economic, social, political and cultural relations. Thus follows McRuer's argument, that neither heterosexuality nor “able-bodiedness” are fixated attributes of any given identity but constructions allowed dominance, in part,
by the visibility of their pathological antonyms. Disability is conceptualised as a production of, and contingent on, a system of “compulsory able-bodiedness”.\textsuperscript{290} Disability, perceived as such, aside from denoting clinically defined pathologies, is not a strictly neutral or objective conditioning but stems from, and creates in turn, perceptions of “able-ism”. That is, normative constructions of ability and normality.

The new sex offender imagery created in the sexually violent predator causally links acts of sexual violence to a mental abnormality. The primary denominator, naming the subject, is a sick, deviant pathology [ie. predator] differentiating it from normality.

The above argued constructed differentiation\textsuperscript{291} is confronted by some challenges. Firstly, critical research suggest a discontinuity between this constructed sexually violent predator and the majority reality of sexual offence and abuse. Secondly, this work's content analysis revealed a news framing that was generally critical towards same construction.\textsuperscript{292} The majority of news articles framed their criticism by thematising diagnostic misconceptions and malfunctions in required treatment.\textsuperscript{293} Further, a compelling number of articles framed the political and societal mobilisation of anxiety and radical rhetoric furthering the physical expulsion that has already confined the sexually violent predator to indefinite exile in remote facilities.\textsuperscript{294,295}

4.2 Managing disability

Having reintroduced the content analysis’s criticism of the diagnostic determinism and its questioned following treatment imperative, the above section initiated a discussion of the discursive mobilisation around the pathological imagery of the sexually violent predator. Let this section continue the discussion of such figure.

Section 1.5.2 defines disability as the stigmatised antonym to a system of “able-ism”, that is, disability contained as abnormality outside the norm. Positioned as such, disability can be managed accordingly.\textsuperscript{296} With the 1964 arrest of Walter Jenkins,\textsuperscript{297} McRuer provides with an example of how

\begin{itemize}
  \item \textsuperscript{290} cf. section 1.2.1.
  \item \textsuperscript{291} ie. dichotomous differentiation between extreme pathological deviance and the normality it implicitly reaffirms.
  \item \textsuperscript{292} cf. section 1.7 “Earlier research” Janus' criticism and section 3 “Content analysis” sub sections 3.2.(1).
  \item \textsuperscript{293} cf. section 3 “Content analysis” sub sections 3.2.(1), 3.2.(2), 3.2.(3), 3.2.(4).
  \item \textsuperscript{294} Ibid.
  \item \textsuperscript{295} cf. section 3 “Content analysis” sub sections 3.2.(6), 3.2.(7), 3.2.(8).
  \item \textsuperscript{296} cf. section 1.5.2 “Managing disability”.
  \item \textsuperscript{297} Ibid.
\end{itemize}
anxiety over perceived deviations or abnormalities threatening norms and normality has been contained and managed. Let me suggest a similar scenario;

With the 1990 Community Protection Act, the predator was named and with it was crystallised the subject for an intense intervention by political, legal and psychiatric expertise via the innovative management of sexual offence by civil commitment. Since then, laws have been adopted in response to the highly politically promoted predatory threat resonating societal anxieties and paranoia.\(^\text{298}\) The imperative of the laws has been a promise of a hygienic intervention on the pathological rapist; on a dysfunction threatening society at large. From 1990 until 2010, 20 U.S. states and the federal government have departed from Constitutional provisions and adopted schemes mimicking the 1990 Act's definition. In a period where the terrorist impersonated contemporary societal anxieties and imaginations of evil, he [the terrorist always depicted as a male figure] was subjected to preemptive strikes from an increasingly preventive state's foreign policies. Such strikes were legally and politically cemented with the 2001 USA Patriot Act.\(^\text{299}\) Simultaneously, the sexually violent predator [likewise a male figure] became the subject of preemptive strikes and hygienic intervention in a national context. The terrorist was exiled in Guantanamo and order was symbolically restored; The sexually violent predator was civilly committed in mental institutions and order was symbolically restored; the intense strikes on personifications of anxieties sought (and achieved) symbolic relief through containment. Restorations of order and morality were mimicked.\(^\text{300}\) Take this scenario one step further, and the public registration policies adopted by every single U.S. state since the 1996 enactment of Megan's Law\(^\text{301}\) has symbolically cleared the paedophile from the domestic domain.\(^\text{302}\)

4.3 The flexible and “the docile body”

Conferring with section 1.5.3, de facto managerial responses are created to contain perceived disability.\(^\text{303}\) That is, disability perceived as behavioural inflexibility towards the prevailing economic and cultural modi, that demand particular forms of flexibility defined by McRuer as “able-bodiedness”. That is, normal existence in the form of constant adaptive ability to those dominating modi. In this

\(^{298}\) cf. chronology and section 3 “Content analysis” sub sections 3.2.(6), 3.2.(7), 3.2.(8).


\(^{301}\) cf. chronology datum 1996.

\(^{302}\) cf. 3.2.(4).3 “Registration”.

\(^{303}\) Perhaps dysfunction would be more appropriate in exemplifying its societal, systemic malfunction.
understanding, the flexible body need be a docile one and is therefore controlled and monitored by
disciplinary institutions, that detect and define adaptive of flexible inability as deviance from the norm
by behavioural and physical difference. Containment of the abnormal is one imperative of
disciplinary institutions, and civil commitment has been the latest of such responses to sexual offence.
SVP laws and their inherent civil commitment schemes have meant a de facto rupture in a legal
tradition of criminal punishment. More specifically, it has meant a legally justified disposition of a
group of criminals outside the defined justice system, where crimes are punished and thence the
criminal subject relieved upon serving sentence. With SVP laws' civil commitment schemes, criminal
punishment with the definite release into society has shifted to preventive intervention with an
indefinite aim of treatment.

Counting the thematic criticisms of the content analysis, I will end this part of the discussion
with a critical suggestion. That is, the containing pathologisation of the sex offender largely works
counter the motive. Composing a pathological criminal subject has not, as Norm Maleng, the King
County prosecutor and Chair of The Governor's Task Force on Community Protection heralded,
facilitated successful treatment of a small fragment of mentally disturbed sex offenders. Rather, as the
content analysis findings and critical research suggest, it has created an indefinite disposition and
expulsion of this criminal subject, exactly qua its defined abnormality; A disposition so far from the
acceptable norm, that the management [out there] seems perpetuated by the same disposition.
This argument resonates the main argument of Crip Theory; productions of disability and abnormality in
effect compose alienation in cultural, social, economic and political relations. In the case of this work,
such has allegedly resulted in a legal and societal disposition. Put in the words of the president and
dean at William Mitchell College of Law Eric Janus, the new SVP laws have created de facto second
rank legal individuals or "degraded others". In fact, as the empirical findings and Janus suggest, they
make these criminal subjects prime targets for political intervention and gain by the imagined relief
such targeting awards societal rage and anxiety.

304 cf. section 1.5.3.
305 cf. section 1.1.1 “The rupture”.
307 cf. section 1.5.2 “Managing disability”.
308 cf. section 1.7 “Earlier research” supra note 85.
309 cf. section 3 “Content analysis” sub sections 3.2.(1), 3.2.(2), 3.2.(3), 3.2.(4).
310 Janus: 2006 p. 5, 10
311 cf. section 1.7 “Earlier research” and Janus: 2006 p. 5, 30-32.
Thus, the disability is named and the alienation only seems to escalate.

Summary

This thesis investigated a rupture in the U. S. legal tradition of punishing sexual crime that was initiated by The Community Protection Act and the Sexually Violent Predator Statute, defining the criminal subject as a sexually violent predator: This allowed civil commitment post completed sentence as a means for treating a mental abnormality. This investigation was composed as a content analysis of the framing of the journalistic production responding to the sexually violent predator laws that followed the 1990 Act definition. Section 3 of this work contains the content analysis of the selected source material comprising 35 news articles. The analysis of contents presented with eight repetitive and generally critical thematics; (1) A treatment?-diagnosis, (2) Constitutionality?, (3) Failing treatment?, (4) “Catch-22 a predator”, (5) The private business – and its costs, (6) A political topic, (7) Anxiety and (8) “In exile”. The thematic findings are summarised in section 3.3 “Findings from content analysis”. Seeing as this work is limited by choices of methodology and source material, its findings are confined to conclude within such confines. Therefore, following the content analysis, selected concepts of Crip Theory; a framework that critically scrutinises normative orders and discourses of normality and “able-ism” facilitated a discursive analysis of the thematics. Such lead to the conclusive critical analysis of the discursive composition of the criminal subject of the sexually violent predator.

Outlook

The findings of this work's content analysis add to the existing critical research of the degradation the sexually violent predator is subjected to, be it in legal, political or societal terms. Defining a disability with a resonating legal validity, has shown effective in the immediate and indefinite expulsion – or exile – of the sexual offender from all the above realms.

This work becomes innovative in its particular perception of and focus on the discursive dispositions “disabling” facilitates. Such is qua a dominating norm of “able-ism”, that is, the embodiment of imaginations and normative claims of normal, capable, healthy bodies and existences, embedded in socio-cultural, political and economic relations. The disability that defines the

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312 cf. chronology datum 1990
313 cf. section 1.5.1 “Disability”.
314 cf. supra note 33.
315 Ibid.

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sexually violent predator is not limited to its immediately facilitated containment.\textsuperscript{316} It facilitates a continuous “disabling” of the defined subject throughout all the above relations. Thus, the theoretical analysis affords this work its imperative claim; The \textit{rupture}\textsuperscript{317} is formally and legally initiated with the 1990 Community Protection Act's diagnostic definition of the sexually violent predator. The defined disability \textit{is} the \textit{rupture}. Following this claim and the initial definition of \textit{rupture}, the thematics of the content analysis necessarily become symptomatic of this “disabling”, and are taking expression in accordance to their respective socio-cultural, political and economic relations. The symptomatic expressions of these relations have taken various discursive forms as preemptive political and paranoid mobilisation, societal anxiety and intensified normative claims of disability, normality etc. Further, the economic thematic the content analysis presented seems, in itself, a potential area of research, suggesting symptomatic of contemporary neo-liberal influxes.

My aspiration is to pursue this work's imperative argument further by research into its suggested discursively constructed pathological and its symptomatic expressions.

\textsuperscript{316} cf. section 1.5.2 “Managing disability”.
\textsuperscript{317} cf. section 1.1.1 “The rupture” initially set out to investigate.
Appendix 1

“Popular”


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“Local”


“Radical”


### Appendix 2

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### “Local”

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| (22) Basu    |         | x       | x       | x       |         |         |         | x       |
| (23) CNN Wire |         |         | x       | x       |         |         |         |         |
| (24) Forghani, Sign |         |         |         |         |         |         |         |         |
| (25) Dolan   |         | x       |         |         |         |         |         |         |
| (26) Lagos   |         |         |         |         | x       | x       | x       | x       |
| (27) Russell |         | x       | x       | x       | x       | x       | x       | x       |
| (28) Willmsen |         | x       | x       | x       | x       | x       | x       | x       |
| (29) Schneider |         |         |         | x       | x       | x       |         | x       |
| (30) CBS News |       | x       | x       | x       |         |         |         |         |

### “Radical”

| (31) Rosen   |         | x       | x       | x       | x       | x       | X       | X       |
| (32) Cockburn |         |         |         |         |         |         | x       | x       |
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| (34) Hansen  |         | x       | x       | x       | x       | x       | x       | x       |
| (35) O'Reilly |         | x       | x       | x       |         |         |         |         |
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