Seduction at the Boundary of Horror

The limits of bodily autonomy in sexuality

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Thank you, to my supervisor Dimos for guiding me through this work.

Thank you, to my friends and family for supporting me.

Thank you, to all the interview participants, for your time, trust and thorough information.

And thank you to Davide, for loving me and never stopping to believe in me.
List of abbreviations

BDSM – Bondage and Discipline, Domination and Submission, Sadism and Masochism

Def.: sexual preferences and behaviors involving physical restraints, an unequal power relationship, or pain, including the practice of bondage, discipline, dominance, submission, sadomasochism, etc. (Dictionary.com, 2020, BDSM)

SM – Sadomasochism

Def.: gratification, especially sexual, gained through inflicting or receiving pain; sadism and masochism combined (Dictionary.com, 2020, Sadomasochism)
Abstract

The thesis discusses the topic of bodily autonomy as a Human Rights related matter in connection to sexuality, specifically BDSM. In the realm of BDSM concerns regarding bodily autonomy, bodily integrity, perversion, physical and mental health can be found. Therefore the space of BDSM is analysed in regards to aspects, such as medico-judicial institutions, social and personal perception factor in on the space of bodily autonomy and its transgression, with the aim of getting a deeper understanding of the concept of bodily autonomy. Three different countries, the United Kingdom, Germany and Denmark are being analysed and compared in a content analysis. Foucault’s theory of power, self-disciplining, transgression as well as Bataille’s theory of transgression and eroticism are made use of. This shows how and which topics relate to bodily autonomy and each other and how bodily autonomy and its use changes depending on the factors relation to each other and their prioritization.

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Table of Contents

1. Introduction ......................................................................................................................6
  1.1 Relevance 6
  1.2 Aim 6
  1.3 academic, social and/or ethical implications 6
  1.4 Research question 7
  1.5 Delimitations 7
  1.6 Literature review 8

2. Theory ..................................................................................................................................9
  2.1 Discipline, Punish and Bodily integrity 9
  2.2 Bodily Autonomy and perversion 10
  2.3 Transgression 11
  2.4 Ethics 13
  2.5 BDSM 13

3. Method ................................................................................................................................16
  3.1 Methodology 16
  3.2 Material 16
  3.3 Interview 17
  3.4 Coding Scheme 18
  3.5 Language proficiency and Bias 18

4. Content Analysis .............................................................................................................21
  4.1 Legal 21
    4.1.1 United Kingdom 21
    4.1.2 Germany 25
    4.1.3 Denmark 26
  4.2 Health 26
    4.2.1 United Kingdom 26
    4.2.2 Germany 27
    4.2.3 Denmark 28
    4.2.4 Discussion 28
  4.3 BDSM community 31
    4.3.1 Consent 31
    4.3.2 Physical health 33
    4.3.2 Mental health 36
    4.3.3 The influence of the legal status of BDSM on the community 38

5. Conclusion .......................................................................................................................40

References...............................................................................................................................42
1. Introduction

1.1 Relevance

An important part of the study of human rights is the topic of bodily autonomy. Several rights protect the body from harmful interference, such as the right to not get tortured, the right to life or the right to health. On the other hand, a person ought to enjoy the freedom to choose what to do with their own body, and have their activities protected by the right to privacy. The right to privacy protects, amongst other things, a person's sexual life, given that their sexual activities are not unlawful. But how far does bodily autonomy go and when does consensual sexual activity become unlawful? One area of debate, where the limits of bodily autonomy are discussed is Sadomasochism (SM). In the following I will be discussing the topic of BDSM (Bondage and Discipline, Domination and Submission, Sadism and Masochism), more specifically impact play and SM, and will aim to trace the areas of transgression to see the limits of bodily autonomy.

1.2 Aim

Previous research surrounding SM has dealt with the institutional point of view regarding how SM is or ought to be treated, either legally or from a medical perspective. I will be looking into the aspect of bodily autonomy as a human rights related matter; how is bodily autonomy perceived and how far can it go. In order to do so, I will analyse previous court rulings, and interview SM practitioners. I will take a deeper look into where the controversies and disagreements stem from and what practices are considered transgressive.

SM is an umbrella term under which plenty of different practices fall. Discussing SM or even BDSM as such is important, but abstract, so I will aim to look for specific actions to find the line of transgression. From looking into previously done research it can be seen that non-SM practitioners have a vastly different understanding of SM than people in the BDSM community. Therefore, I will aim to bring it down to a concrete set of actions, evaluate their transgressiveness and map out the limits of bodily autonomy according to the medical and judicial institutions as well as BDSM practitioners.

1.3 Academic, Social and/or Ethical Implications

This study is of importance, as there seem to be major disagreements between the institutional positions on BDSM and the experience of BDSM practitioners. There is little research done on the whole of the BDSM community, especially the majority of the community, who is
practicing BDSM without experiencing major problems for themselves. Most data have been
taken from people who were seeking help, be it legal, medical or psychiatric. (Chaline, 2006)
This research contributes to the academic field as it investigates the lived experience of BDSM
practitioners themselves. Therefore, it can contribute to a deeper social as well as academic
understanding of BDSM. The question of bodily autonomy in BDSM is also of importance, as
BDSM is exactly the category of people to look at when the limits of bodily autonomy are of
interest. It makes the question “but what if you want to hurt yourself/ each other?” very
practical, not just hypothetical. Further studies like this could contribute to the acceptance of
this sexual minority. Most important though is this type of study for law and policy making, as
a deeper understanding of the current law as well as the experience of BDSM practitioners can
help to adjust policies in a way that they protect society, but not infringe on the sexual freedom
of a minority group. The navigation through the field of BDSM can be seen as a matter of ethics,
as will be shown later. Therefore, the additional information gathered through interviews will
have ethical implications, in so far as it contributes to an understanding of the factors which
influence ethical decision making. This means that the thesis as such is not normative, but the
results may be used as a basis for ethical questions.

1.4 Research question:
Q1:
How do the factors which shape the space of transgression regarding the right of bodily
autonomy relate to each other in the case of BDSM?
Q2:
How does the space of transgression created by the medico-judicial sector connect to the
lived experience of BDSM practitioners?

1.5 Delimitations
This thesis is only concerned with consensual BDSM practiced by adults. Cases of paedophilia,
assault, bestiality or coercing are not discussed in this thesis. The focus is on actions that are
taking place on a physical level. The psychological part of BDSM would need to be investigated
for a complete picture, but this would require a deeper discussion on psychology and go beyond
the topic of bodily autonomy. While a further analysis could be done looking at abusive
relationships or coercion, this is not of concern here. While childhood sexuality is used to
explain the theory, it is not of concern in the analysis.
To narrow down my area of interest in terms of time the samples will start with beginning modernity. In regards to area, it is limited to Western Europe, with a focus on Germany, the United Kingdom and Denmark.

1.6 Literature review

The cases that I will be discussing have been discussed in previous literature, in regards to their legal implications, autonomy and state paternalism. A large part of academic literature is concerned with the discussion if BDSM ought to be classified as assault or not.

The theory used in the thesis is mainly based on Foucault’s works. In particular ‘History of Sexuality’ (1995), ‘Discipline and Punish’ (1975) and ‘Abnormal’ (2003). Further, works of Bataille are being used, specifically the ones concerning eroticism, such as ‘Erotism: Death and Sensuality’ (1957). Foucault’s and Bataille’s works connect in the area of transgression and sexuality. In his ‘Preface to Transgression’ Foucault has paid homage to Bataille.

Further works that, more loosely, fall within the theme of this thesis, are Hannah Arent’s ‘the Human Condition’ (1958), as it discusses the political, private and social sphere human’s interact in. Giorgio Agamben’s ‘Homo Sacer’ (1995) discusses questions of power and ethics in modernity. Agamben also links these questions with Sadomasochism, by referencing De Sade and stating that BDSM is an area of sexuality in modernity that brings light to the ‘bare life’, meaning life that is just biological and not protected by law.
2. Theory

2.1 Discipline, punish and Bodily integrity

Bodily autonomy and bodily integrity are both integral parts of the study of human rights. While bodily integrity is the freedom from harmful interference with one’s body, bodily autonomy is the right to have choice over one’s body. Bodily integrity is, amongst others, protected by Article 4 of the Universal Declaration of Human Rights: the right not to be tortured or be subjected to cruel and inhumane treatment. (United Nations, 1948) It can also be seen in national law, where murder, manslaughter and assault are generally unlawful. This, together with the fact that states hold the monopoly of violence ought to create a system where everyone’s physical safety, or bodily integrity, is ensured.

When looking at bodily integrity from a historical perspective it can be observed that in the Western world’s penal punishment decreased in the 18th century. Foucault describes that the body is no longer the target of punishment through pain, but now “serves as an instrument or intermediary: [it is] caught up in a system of constraints and privations, obligations and prohibitions”. (Foucault, 1975 p.11) This decrease of pain and corporal punishment happens simultaneously with the increase of another form of discipline, and is a phenomenon of modernity.

In “Discipline and Punish: the Birth of the Prison” Foucault talks about the history of the prison complex, punishment, and the exercise of power. According to Foucault, power does not only get exercised top down, by an authority that rules over his subjects, but it is rather a complex system of different subjects exercising power which leads to a behaviour of self-regulation. This system of power has the following key components: normalizing judgement, observing hierarchy, and examination, also referred to as ‘gaze’.

This gaze “makes it possible to qualify, to classify and to punish. It establishes over individuals a visibility through which one differentiates them and judges them”. (Foucault, 1995, p.184) This means there are authorities who state what ought to be done, but instead of punishing a transgression directly, a peer judgement takes place, as everyone is familiar with the rules. The joint pool of dos and don'ts get applied in each individual case that is examined. Additionally, Foucault talks about what he calls “Panopticonism” (Foucault, 1995, p.195). The Panopticon is a type of prison where the prison guard has the possibility to see inmates at any given time, but the prisoner cannot tell when he is being watched. This uncertainty of the presence or absence
of the gaze leads to a self-disciplining. This means the prisoner will internalize the rules and obey them just in case he is being watched. According to Foucault this is a metaphor on how the power structures in society work: rules, norms, and knowledge on what ought to be done gets internalized and citizens act in accordance as there is a constant possibility of them being observed, judged and their behaviour being examined. Therefore, Foucault observes that with the beginning of modernity there is a shift from the application of the law to the body to the application of the law to a juridical subject (Foucault, 1975, p.13)

The category of bodily integrity is of importance to the analysis in so far as BDSM can be seen to go against the principle of bodily integrity. It will be applied to the material to capture what is considered harmful to bodily integrity according to different groups and institutions. Further, power in a Foucauldian sense will be made use of to understand how BDSM practitioners are subject to observation from the medical sector, judgement from society, and discipline from the judicial sector.

2.2 Bodily Autonomy and Perversion

As mentioned above, in addition to bodily integrity, bodily autonomy is a key aspect of human rights. It is a principle that applies especially in the liberal tradition, where the right to have choice over one’s body is valued highly. While the matter of bodily autonomy and bodily integrity are both fundamental parts of the human rights framework, their relation to each other can become complex. As can be seen with the self-discipline that emerges in the 18th century, the increase of bodily integrity does not necessarily mean the increase of bodily autonomy. In order to understand this relationship further, it is important to draw attention to a key difference of bodily autonomy and bodily integrity. Bodily integrity, except for lawful interference by the state is a right. How the matter of bodily autonomy differs, becomes clear in Foucault’s Abnormal (2003): When Foucault talks about the masturbating child, there are two key points to the child's bodily autonomy. As masturbation is seen as a severe health danger it should be prevented by all means. The child ought to be in a space where he is free from all types of seduction that could lead him to masturbation. This means, the child is protected from physical interference and his behaviours and health are not to be corrupted. But, and that is the most important part, if the child still attempts to masturbate, there will be consequences, such as having to sleep with hands restrained. This shows that bodily autonomy, especially when it comes to sexuality does not come without prohibitions. It is located in the same space of obligations and restrictions as all other behaviour. Bodily autonomy gets protected from outside
corruption, as long as the child complies with the rules. When the rules of masturbation are transgressed, bodily autonomy gets infringed upon again. (Foucault, 2003, p.246ff) It can also be said that the child must be protected from his own desires. (Interview, 1978) Therefore it can be said that bodily autonomy is a privilege, rather than a right, in the sense that it is protected as long as one acts within the range of acceptable behaviour. In the case of transgressive behaviour bodily autonomy can get restricted. Bodily autonomy as a privilege is another phenomenon of modernity. It coincides with the logic of bodily autonomy and the shift from corporal punishment to (self-)discipline. Bodily autonomy and its limitations will be of importance in the analysis. The logic of modernity will be applied to the material, to identify when bodily autonomy is being supported, and when it is being limited.

The masturbating child is not the only case of this phenomenon. The discourse of the eighteenth and nineteenth century aimed to understand and categorize abnormal sexuality. When talking about restriction of bodily autonomy, especially in the context of sexuality it makes sense to make use of the category of perversion:

Perversion, while still condemned legally and morally, became a matter of scientific investigation, legal and psychiatric concern. Perversion was on a separate register from debauchery and rape, and from productive matrimonial intercourse. Foucault rejects the hypothesis that sexuality or perversion was repressed, as it was investigated and talked about. Rather than repressed it was adopted into the discourse, examined, but still condemned. (Foucault, 1976, pp 38-49) The category of perversion will be used to identify which elements of BDSM fall within this category.

2.3 Transgression

In order to fully explore the issue of bodily autonomy and its restrictions it is useful to take a closer look at transgression. Transgressions, as stated above, influence when bodily autonomy becomes restricted. Transgression is defined as “the act or process of breaking a law or moral rule” (Cambridge Dictionary, 2020). This shows that transgression is of moral as well as judicial concern. Foucault elaborates on transgression by adding that in order for a transgression to exist, or be possible, the possibility of crossing a limit is required. Foucault describes it as ‘pointless’ if it were “merely [...] a limit composed of illusions and shadows”. (Foucault, 1977, p.34) The transgression as such, “has its entire space in the line it crosses”. (Foucault, 1977, p. 34) It can be pictured to be a space of the lawful and acceptable, a line of transgression and a space of the unlawful, unacceptable, or abnormal. Both of these spaces need to be accessible
and the line of transgression needs to potentially be passed in both directions. This means that activities that are not realistically feasible are not of concern, but the focus is on possible, maybe hypothetical, actions. Where this transgressive line is located exactly is determined by different factors. The individual’s moral compass and cultural factors play a role, as well as what Foucault calls ‘medico-judicial power’ (Foucault, 2003, p.39). The medico-judicial power is a complex of transgressions, determined by the institution of the psychiatry, as well as the law. Foucault describes these two institutions as overlapping since the beginning of modernity. Psychiatrists bring their expertise into courts and vice versa. Further Foucault notes that the line of transgression is not placed according to medical or juristic knowledge, rather by what he calls ‘normalization’ (Foucault, 2003, pp.42-43). The normal is the range of behaviours in which the individual and society ought to discipline themselves. Self-disciplining, in a Foucauldian sense, has been described above.

Transgression brought in connection with sexuality is not only important to make sense of the limits of bodily autonomy, but it has an additional factor to it.

“[Transgression] suspends a taboo without suppressing it. Here lies the mainspring of eroticism” (Bataille, 1957, p.36) According to Bataille eroticism is a human phenomenon, as it relies on the awareness of transgression and taboo. Transgressing a taboo, doing something forbidden, to Bataille essentially is what sparks the erotic excitement of sexuality. In the “Story of the Eye” Bataille writes: “Extreme seductiveness is at the boundary of horror” (Bataille, 1928). This quote summarizes the dynamics of playing with transgression and the constant relationship that eroticism and taboo are in with each other. What Bataille calls the boundary of horror, is the space of transgression according to Foucault.

Further, eroticism and self-discipline are in a constant tension with each other, but eroticism could not exist without the awareness of what is ‘normal’ and what is taboo. In the example of the masturbating child this means that the prohibition of masturbation creates a greater desire for the child to masturbate.

Together with the identification of factors that limit bodily autonomy and the category of perversion, the space of transgression will be outlined. It will be seen if, and how the space of transgression varies depending on the group and/or its location. The category of eroticism will be identified in the material and used to make sense of, as well as problematize, the tension between desire and taboo.
2.4 Ethics

The matter of ethics can have different meanings. It is often defined as being the solution to an unsolvable problem, but can also be meant as a space of creative freedom. The latter interpretation of ethics is the one used by Foucault, amongst other scholars. Foucault's description of a power struggle that is not symmetrical, but constantly influenced by behaviour or the lack thereof, results in the conclusion that the individual is not trapped within a system of power, but has a space in which to act. (Foucault, 1996, p.386). According to Foucault ethics is not a code of behaviour that prescribes actions, but “the relationship you have to yourself when you act” (Foucault, 1996, p.380). Therefore, the problem of limits of bodily autonomy, as well as the tension of eroticism and self-discipline, are a matter of ethics in a Foucauldian sense.

Drawing back to the relationship of bodily autonomy and bodily integrity, a variety of ethical discussions, such as abortions, euthanasia or medical staff’s codes of conducts occur. In euthanasia, bodily integrity, a person's life, and bodily autonomy, and a person's right to choose are in a tension with each other. This tension is a space of ethics.

The same tension of bodily integrity and bodily autonomy can also come about in adult sexuality: What if one wishes to have their partner inflict physical pain on them, or vice versa, because it gives them sexual pleasure? Here, this tension is further influenced by the awareness of sexuality that is considered ‘normal’, the notion of ‘perverse’, the self-disciplining that comes with them and the experience of eroticism stemming from their transgression.

All these components relate to each other, in the topic of BDSM, through the space of transgression. By having a scenario where the concepts are in tension with each other, it becomes necessary to examine the limits of each concept. This helps to create a more defined understanding. Further, by observing the tensions it can be seen how the different components are prioritized, thus giving a clearer understanding of them, as well as the ethical landscape.

2.4 BDSM

BDSM stands for Bondage and Discipline, Domination and Submission, Sadism and Masochism and describes the various activities of giving or receiving restraint, rules and pain, consensually and for pleasure. Oftentimes BDSM is associated with sex, and while for many BDSM means sexual pleasure, it is not a sexual activity for everyone. It can cause sexual pleasure with and without genital stimulation, or not be perceived as sexual at all. While it
definitely would be possible to discuss BDSM in the realm of sexual rights, this would not adequately reflect the full spectrum of the perceived experiences. Therefore, BDSM will be looked at through the lens of bodily autonomy, specifically its transgression. While BDSM also can contain a mental or emotional power dynamic, especially the part of domination and submission, the focus will be on the body; giving and receiving physical pain. A thorough discussion of the Domination/Submission dynamic would need further aspects into consideration, such as a discussion on social and gender role, patriarchy, abusive vs healthy relationships and many more.

Sadomasochism, as stated above is the activity of giving or receiving pain, with the goal of (sexual) pleasure. Beatings or whippings with canes, paddles, floggers, or whips are referred to as impact play, probably the most prominent form of SM. Pain can also be caused by needles, clamps, chemicals irritations, the use of electricity, or restraints. All these, and more elements can be combined according to the pain level that is aimed for and the consent of the masochist as well as the sadist. This can be done in a variety of ways and to different degrees. The frame of one encounter, usually limited by time gets referred to as a session. The activities, or the kinks one is interested in get referred to as play.

While other wording can be used this is very common and it hints at the conceptualisation that SM practitioners have. It is a play situation. Similar to a childlike play pretend, where different roles get assumed and scenarios are played out. “It is an acting out of power structures by a strategic game that is able to give sexual pleasure or bodily pleasure.” (Foucault, 1996, p.388) This does not necessarily need to be role play, as in police officer, sexy nurse, doctor, or firefighter, but even sadist and masochist are roles that get assumed in regards to each other. The role is not necessarily a costume, but refers to the interpersonal relationship. Just like every person has different roles in their everyday life, such as the role of a parent, an employee, a sibling, a child, a teacher, etc, sadist and masochist are roles in regards to each other or the community of people.

Besides the conceptualisation as game play, it can also get conceptualized as a recreation of real-life power dynamics and oppression, or as a response to those. While factors like age, gender, race, socioeconomic status, and sexual orientation cannot fully be left out, the conceptualisation as game play seems to represent the lived experience of Sadomasochist the best. (Bennett, 2015)
The problem of bodily autonomy in BDSM can be compared to sport, especially martial arts. In “Physical Culture, Power and the Body” Wacquant writes about “the social logic of sparring”. It is described as a type of controlled violence, with neither norm nor contract but a ‘working consensus’ (Wacquant, 2007, p.148). Both partners have to learn to read the physical signs and clues (Wacquant, 2007, p.150) and manage one’s emotions (Wacquant, 2007, p.153). This is done to create a scenario that is similar to a real fight, but keeps the dangers of injury to a minimum.
3. Method

3.1 Methodology
The method content analysis captures a variety of different approaches, with the aim to “describe data as an abstract interpretation” (Frey, 2018, p.393) There is no unanimous definition of content analysis. Content analysis can be done qualitatively as well as quantitatively. “A major goal of any scientific investigation is to provide a description or explanation of a phenomenon in a way that avoids the biases of the investigator.” (Neuendorf, 2017, p.19). Qualitative content analysis can be “defined as a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (Hsieh, Shannon, 2005, p.1278). Neuendorf describes it as a process of micro-documenting a phenomenon or a case. (Neuendorf, 2017, p.24)

Directed content analysis can be applied for a previously described phenomenon to be described further. (Hsieh, Shannon, 2005, p.1281) In this case this is the phenomenon of the masturbating child, whose bodily autonomy is limited as he acts in a transgressive way, or in the case of this study, the phenomenon of bodily autonomy being transgressive when Sadomasochism is practiced. Directed content analysis calls for the researcher to develop a coding scheme, which is a structured way to organize and evaluate data. The way this coding scheme looks is dependent on the research problem as well as the relevant theory. The advantage of this is that the method can be adjusted adequately to the material and theory. Further, this analysis technique can capture the complexity of a phenomenon.

3.2 Material
To find the elements of transgression I will trace the limits of bodily autonomy and map out the elements that are considered transgressive. Further I aim to bring the analysis down to a concrete level, which actions are considered transgressive.

I will do so by looking into previous court rulings including judges’ comments, legal regulations, the medical status of BDSM and BDSM affiliated activities, as well as conducting interviews with SM practitioners. The material is therefore grouped into three categories: law-related material, health-related material and interviews. The analysis will follow this structure respectively. Further, each category of material is organized according to three regions: the United Kingdom, Denmark and Germany. The analysis will follow this sub-division. It is
important to note that not all material covers all three countries. There is a lack of legal material for Denmark, as well as interview material from the United Kingdom. The lack of legal material in Denmark is due to a language barrier. When no country specific information is given, more general regulations, mainly on the European level will be used. Interview participants are only from Germany and Denmark. Efforts to find interview participants in the United Kingdom have been made, but the community seems to be more suspicious towards academics due to their legal regulations and public discourse. Further, as it is a very intimate matter for many, without having direct access to the community through people who can assure your credibility and motivation, it creates an access barrier. Lastly, due to the Covid-19 pandemic, field studies in person in the United Kingdom have not been possible. The interviews will all be in one section and not be divided into Germany and Denmark. This is because the results did not show a substantial difference in regards to the country of residents of the participants. For the study and the reader, this information regarding individual interviewees is not of relevance. Therefore, in accordance with ethical research conduct, I will not disclose this information.

3.3 Interview

In addition to medical and legal material interviews will be conducted. This will be done to get a holistic assessment that not only includes the institutional point of view, but also that of members of the BDSM community. The interviews are semi-structured, as they aim to focus on the matter of bodily autonomy and transgression, but also aim to bring about the lived experience of the interviewee without imposing a narrative by the interviewer. Interviews can be said to be “almost by definition, accurate accounts of the kinds of mental map that people carry around inside their heads” (Luker, 2008, p.167)

Choice of interview participants

The interview participants are people who engage in consensual BDSM. They have been chosen to represent the variety of the community. They represent an age group from 20 to 70, men, women, cis- and transgender people, and include dominants/ sadists, submissives/ masochists and Sadomasochists (people who take on both roles, usually revered to as switches or being switch). The interview participants have been informed about the aim of the study and have consented to giving an interview. The names of all interview participants have been changed. They have been given pseudonyms for readability of the thesis.
3.4 Coding Scheme

Firstly, the material will be organized by the category ‘speaker’. The speaker can either be a private person, part of an organization, or an institution. The first question, by which the analysis will also be structured answers the question of ‘who’. The second part of the scheme is ‘what’: what specifically is the speaker addressing? The community? A certain type of play? The concept as such? This is done for two reasons: firstly, it breaks down what is actually talked about. Masochism, Sadism and BDSM are umbrella terms, under which a large variety of activities fall. Is there a specific level of impact that is of concern, a special practice, or a variation by dynamic? The second reason for this is that it will show a pattern if an institution is more preoccupied with one area than another. The third and last dimension is the reasoning. Why does the speaker find this act transgressive? Here the intertextuality will also play a part. What does the network of cross references look like? Is there a pattern of reasoning that gets used more frequently than another?

What I am naming ‘speaker’ often gets referred to as ‘source’, especially when working with a source-message-receiver data linking approach. While this is similar I want to avoid confusion as I am making a distinction between the primary source of information (speaker), and the source on why the speaker relies, or meta source (reasoning).

Example:

<table>
<thead>
<tr>
<th>Speaker</th>
<th>Concern</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Early Psychiatry</td>
<td>Flagellation on and below the buttocks</td>
<td>Above the buttocks is self-discipline, below is sexual. Sexual arousal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>through pain is deviant.</td>
</tr>
</tbody>
</table>

3.5 Language proficiency and Bias

While conducting this research, I have to at the same time be proficient in the language of the message pool, but also avoid my bias. (Neuendorf, 2017, p.9) This may not seem contradictory at first, but the language used by the BDSM community, the nuances between the roles and archetypes, the terms for different tools and the vocabulary of play develops as one grows to be part of the community. While being part of the community gives me access to talk to others and conduct interviews, on another level I also have to be clearly aware of my bias. The method of
content analysis therefore is the most suitable as it combines the analysis of primary sources, with an expedient coding scheme. The application of a coding scheme allows me to organize my findings and evaluate them, as a proficient speaker of the language, while minimizing the bias.

**A language disclaimer**

Even though the BDSM community might be small, BDSM is a broad umbrella term for Bondage and Discipline, Domination and Submission, Sadism and Masochism. While these categories intersect, they also differ from each other. Previous research has mainly used the term SM, Sadomasochism, interchangeably with BDSM, referring to practitioners as Sadist and Masochist. But besides Sadist and Masochists, the BDSM community is made up of a variety of different identities such as tops, bottoms, dom(me)s, subs, masters, mistresses, owners, slaves, pets, mommies, daddies, boys, girls, sluts, hedonists, sensualists, fetishists, switches, riggers, rope-bunnies, primals, degraders, degradees, age players, exhibitionists, voyeurs and many others. In the following I will primarily refer to the subjects as Sadist and Masochist, for three main reasons: simplicity, coherency and accuracy.

For a person that is not familiar, or only vaguely familiar with BDSM, the language and terms used within the community might be difficult to understand. While each term has its definition, the meanings of the words are also defined by the participants. While I could have an elaborate discussion and explanation of the meaning of these terms, I aim to provide an understandable reading for someone who is not familiar with BDSM. When necessary I will give an explanation to the terms used.

In order for coherency with other academic writings I will adhere to these labels, as far as they are appropriate. This shows that in the language that is used, there is an overlap between academic language and the language used in the community. The language of the community is constantly changing and individuals might define terms differently. There are no clear boundaries between the different labels. There are also no clear boundaries between academic and social language. Some terms are used in both fields with similar meaning, such as ‘Masochist’, or ‘to discipline’. The language that Foucault uses resembles the language used within the BDSM community, which makes sense as Foucault was also part of this community.

I will mainly use the terms Sadist and Masochist because they describe my area of interest the most accurately. While there are plenty of ways to practice BDSM, I am most interested in what
is happening on a physical level, not the psychological dominance and submission. Not everyone who enjoys pain primarily identifies as a Masochist. The infliction of pain might be part of being a top, a dom(me), a mommy or a daddy, but it does not have to be. As the pain part is most accurate for what I am interested in I will use the labels of SM, Sadist and Masochist unless another label is more appropriate.
4. Content Analysis

4.1 Legal

4.1.1 United Kingdom

Spanner Case

Laskey, Jaggard and Brown v United Kingdom, better known as the Spanner Case or Operation Spanner was ruled on by the European Court of Human Rights in 1997, and was the continuation of an appeal against R v Brown. The case R v Brown dealt with homemade videos of a group of homosexual SM practitioners that showed heaving spanking, whipping, hot wax, hook suspension, and sandpaper and needles used on the genitals.

After the police got hold of videos, Mr. Laskey was prosecuted and sentenced to imprisonment for four years and six months. This included a sentence of four years’ imprisonment for aiding and abetting and keeping a disorderly house as well as a consecutive term of six months’ imprisonment for possession of an indecent photograph of a child. Under section 47 of the Offences against the Person Act 1861 ("the 1861 Act" - see paragraph 27 below), Mr Laskey also received concurrent sentences of twelve months’ imprisonment in respect of various counts of assault occasioning actual bodily harm and aiding and abetting assault occasioning actual bodily harm. Mr Jaggard was sentenced to imprisonment for three years. He received two years’ imprisonment for aiding and abetting unlawful wounding, contrary to section 20 of the 1861 Act, and a further twelve months’ imprisonment for assault occasioning actual bodily harm, aiding and abetting the same offence, and unlawful wounding. Mr Brown was sentenced to imprisonment for two years and nine months. He received twelve months’ imprisonment for aiding and abetting assault occasioning actual bodily harm, a further nine months’ imprisonment for assault occasioning actual bodily harm, and a further twelve months’ imprisonment for further assaults occasioning actual bodily harm.

The judges commented that this judgement was a protection against a ‘cult of violence’. Further they stated that: “Pleasure derived from the infliction of pain is an evil thing. Cruelty is uncivilised. “

“In my view the line falls properly to be drawn between assault at common law and the offence of assault occasioning actual bodily harm created by section 47 of the 1861 Act, with the result that consent of the victim is no answer to anyone charged with the latter offence ... unless the
circumstances fall within one of the well-known exceptions such as organised sporting contests or games, parental chastisement or reasonable surgery ... “

“It is not in the public interest that people should try to cause or should cause each other actual bodily harm for no good reason. “

The case was then brought in front of the European Court of Human Rights. Laskey, Jaggard and Brown claimed their right to privacy, according to Article 8 of the European Convention of Human Rights was violated. The court found no violation of Article 8. The court argued that because the activities were filmed and distributed amongst a closed group of about 40 people, the activities do not fall within the scope of ‘private’ anymore. Further the court stated that the interference by public authority was in accordance with the UK law, and pursued the legitimate aim of the “protection of health and morals” within the meaning of Art. 8.2.

**Pay v. UK**

Pay was a correctional officer who worked with sex offenders. Privately he engaged in Sadomasochism and D/s (Domination and submission) activity as well as the organization of kink-positive events. According to his employer, the government of the United Kingdom, these private activities made him unsuitable for his work. Therefore, he claimed unfair dismissal and went to the ECHR claiming that his rights to privacy, freedom of expression and freedom from discrimination have been violated.

Whilst the Court considered that Pay’s human rights had been interfered with by the termination of his employment, they also considered that this interference was justified on the basis that it was ‘in accordance with the law’ and that it had a ‘legitimate aim’ which was ‘necessary in a democratic society’ (Pay, 2009: paras 24–26). As the United Kingdom found the step of terminating Pay’s employment necessary to uphold respect for the police force, this action lies within their margin of appreciation.

**R. v. Wilson, UK**

In R. v. Wilson (1996) a man had been convicted of assault, causing bodily harm because he had branded his initials on his wife’s buttocks with a hot knife. His wife had consented to this activity, therefore the Criminal Division of the Court of Appeal allowed Wilson’s appeal. In the course of the court’s judgment, Lord Justice Russell stated: “... there is no factual comparison to be made between the instant case and the facts of either Donovan or Brown: Mrs Wilson not only consented to that which the appellant did, she instigated it. There was no
aggressive intent on the part of the appellant...We do not think that we are entitled to assume that the method adopted by the appellant and his wife was any more dangerous or painful than tattooing … Consensual activity between husband and wife, in the privacy of the matrimonial home, is not, in our judgment, a proper matter for criminal investigation, let alone criminal prosecution.”

In the Case R v Wilson, Wilson had branded his initials into the skin on the buttocks of his wife. This resulted in an infection that needed medical treatment and the doctor of Wilson's wife proceeded to make charges. The court ruled that no violation of the Offense against the Person Act had taken place and that the court is not to interfere with the private life of a married couple. Comparing this case to the Spanner Case, several differences can be observed. The branding done by Wilson did need medical treatment, but even if it hadn’t, it is the nature of branding that it leaves behind a permanent scar. This type of scarring can be used, similarly to tattoos, as a type of body modification. If it had been argued that it was made purely for aesthetic purposes, and fallen in the category of body modification, it would have made sense for it to be treated similarly to a tattoo. Both cases involve types of play that has a potential risk of medical attention being necessary. While neither is intended to cause damage, the branding by Wilson was intended to leave a scar, whereas the Spanner case left no permanent damage and was not laid out to do so. What becomes contradictory when looking at these two cases, is the line of argumentation made in the Spanner case. The court stated that impact that breaks the surface skin is prohibited. A damage to the surface skin was clearly made in both cases, but only one case was charged with assault. The key difference here seems to be that the couple in Wilson was married. By being heterosexual and in wedlock, they come closer to what is considered ‘normal’ and ‘acceptable’ as opposed to a group of homosexuals. In the Spanner case, the ECHR stated that their actions are not protected under Art. 7 the right to privacy, as a group of people was involved and the video recording was distributed within a group of about 40 men. Even though there is no clear number of participants that cuts the line between private and non-private, it seems that according to the ECHR, 40 participants is not considered private anymore. In addition to the factor of how many people are involved, their civil status also plays a role. Marriage is an institution, and as an institutionally approved couple they are granted extra protection. This phenomenon evolved in the 18th and 19th century where the exploration of perversion was in the focus of discourse and the “legitimate couple[..] had a right to more discretion”. Foucault, 1976, p.38) Further it could be argued that there is a homophobic bias in the treatment of the Spanner case. By being gay, the participants are moving down the hierarchy
of acceptability of sexuality even further. The homophobic bias can be neither proved nor fully denied.

The legal opinion by Ben Emmerson and Rabinder Singh corners the four scenarios:

“(a) a heterosexual couple wishing to inflict minor injuries which technically constitute actual bodily harm or wounding; (b) a homosexual couple in a stable relationship wishing to inflict minor injuries which technically constitute actual bodily harm or wounding; (c) a heterosexual couple wishing to inflict serious injuries which constitute grievous bodily harm; (d) a homosexual couple wishing to inflict serious injuries which constitute grievous bodily harm.”

According to them, scenario a and b can be legally challenged, whereas c and d remain unlawful due to the severity of the bodily harm. The quality and stability of the hetero- and homosexual couple still differ, and are not considered fully equal. (Emmerson, Singh, 2003)

State of the law

The judgements made in the United Kingdom are according to the Offenses Against the Person Act of 1861. It states:

“Inflicting bodily injury, with or without weapon.

Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and being convicted thereof shall be liable.”

In the United Kingdom, any impact, even if practiced consensually, can be charged as assault. Further, the masochist can be charged as being complicit in their own assault. There are workshops provided by and for the BDSM community in the United Kingdom which explain the legal status of different forms of play. (London Alternative Market, 2018)

“How the law is supposed to work and how it actually works. [...] How the law is applied isn’t actually how it’s supposed to be applied. [...] The law was put in place during a time where if you cut someone there was a reasonable chance that they may die from sepsis from a cut, ok? Medicine has evolved and we now live in a world where you can get disposable plasters and ointments and creams to get you through problems that, a hundred years ago would have been quite impacting on your health. Legislation was written during a time where people were a lot more fragile, healthcare wasn't in place and therefore anything that broke the skin or deep
damage could potentially be highly impacting on your health. Now, thankfully, we don't live in that world anymore. But the bad news is, that piece of legislation still applies.” (LAM, 2018)

**Obscenity Law**

When it comes to online forums and websites, they are accessible from a variety of countries and therefore must apply to different national laws. The United States, Canada and some European countries have an obscenity law in place. The United Kingdom has a law against obscene publications in place. (CPS, 2019) This influences for example the guidelines on the forum fetlife in the following way:

“Limited Blood Play We can't allow the public sharing of visible real or realistic blood in an eroticized context.

Limited Scat Play Unfortunately, we can't allow people to publicly share any pictures or videos where scat play is involved whether it's: visible poop or diarrhea real or fake (simulated) smeared or otherwise coming out of the body or already out If this is your kink we want to make it clear that this is not a judgement on your kink or because it might make some people uncomfortable. This is due to regulations outside of our control. Important: Scat play does not include diaper play, anal play, or enemas.” (Fetlife, 2020)

This is an interpretation of the forum fetlife of obscenity law.

**4.1.2 Germany**

The legal situation in Germany looks different. BDSM activities are not a criminal offense if consent by both parties is given. This also applies when the activities appear similar to battery according to §223 of the Criminal Code (Strafgesetzbuch) or coercion according to §240. The distinguishing factor is that the use of a safe-word is possible, so it is clear for all participants that the activities resemble a game that can be stopped at any given moment by either the dominant or submissive part. (BSD, 2020) If no consent has been given, the consent has been revoked by the time of the play, the consent was given under false pretences, a lack of awareness about the activities or their consequences, or a lack of capacity to consent BDSM activity is a sexual assault. Activities done with informed consent are legal unless they fall under unethicality/ violation of moral principle (Sittenwidrigkeit) according to §216 and §228 of the Criminal Code. This is the case if the life of the submissive is threatened, such as making someone fall into traffic, causing injuries to the head, intensive impact on sensitive body parts or extensive choking that restricts the air or the blood flow to the brain for a life-threatening
amount of time. On the 26th of May 2004, the German Federal Court of Justice ruled that sexual or BDSM activity is not a case of unethicality when the health or bodily integrity is concerned, but only when it is a threat to life. (Patsch, 2020)

4.1.3 Denmark

Denmark was the first country in the world to legalize pornography and repeal the law against obscenity in 1969. (Run Gade, 2010) While there are no public BDSM bars or clubs, there are BDSM associations (foreningen) with venues that have members-only access.

4.2 Health

When discussing the institutional view of SM and transgression, the medical sector, especially the institution of the psychiatry, has to be taken into consideration. Foucault analyses in his ‘History of Sexuality Vol. 1’ the way in which the psychiatry exercises power over people’s sex life and reproductive activity. Psychiatrists not only treat sexual disorders, but also define what is ‘normal’ sexual behaviour and what is ‘sick’. This directly influences the individuals who get pleasure out of giving or receiving pain, but also the way in which sexuality is policed and treated legally and socially. The slogan ‘Safe, Sane, Consensual’ that is often used by the BDSM community as a guideline for their activities. It can also be seen as a defence to criticism, which highlights exactly that point: Sadomasochists and other BDSM practitioners have been deemed ‘insane’ and their activities are a threat to mental and physical health.

Sadomasochism is a diagnosis in the International Statistical Classification of Diseases and Related Health Problems, 10th Edition (ICD-10). It has the diagnosis code F65.5, alongside with Fetishism, Fetishistic Transvestism, Exhibitionism, Voyeurism and Paedophilia category of disorders of sexual preference, F65 (WHO, 2019).

4.2.1 United Kingdom

As I described previously in regards to the Spanner case and R v Wilson, a part of the argument being made is the threat to physical health. The state of the law in the United Kingdom shows this very clearly, by drawing a line at the damage of the surface skin. It is important to note, that body modifications, such as piercings, tattoos, or surgery are exempt from this regulation. Which means, if someone were to do this for sexual pleasure it wouldn’t be acceptable, but if done by a professional it would be. It could be argued that the exemption of professionals from
this law shows the interaction of knowledge and power of institutions. The judges decide that professional tattoo artists, piercers or surgeons are allowed to inflict pain and pierce the surface skin of a customer, due to their being professional. This highlights their position as an authority in their field and puts them above an ‘average, unprofessional’ person.

Another aspect of physical health is the duration of damages. The UK law prohibits lasting damages, but it remains very unclear what is considered a lasting damage: bruises that last for a few days, wounds that heal over the course of some weeks or permanent marks or disabilities? There is a difference between activities that are laid out to last, like branding and activities that are not meant to cause damage, but have a risk, such as rope-bondage. Even if it is not meant to leave marks or cause pain, mistakes can lead to permanent nerve damage.

Here the judgements made in the UK appear to be incoherent. While we don’t know the exact extent of the activities in the Spanner Case, it is safe to assume that they caused wounds that healed after a few weeks, while the branding in the Wilson case is laid out to stay on the skin permanently. The institution of marriage seems to overrule the concerns of physical health.

4.2.2 Germany

One of the most ground breaking works on sexuality and perversion was Krafft-Ebing’s 1886 ‘Psychopathia Sexualis’. Krafft-Ebing was not only a psychiatrist, but also a forensic physician. Therefore, he can be seen as working at the intersection of the judicial and the medical field. Krafft-Ebing described and categorized different paraphilias and sexual perversions, and coined the term Sadism and Masochism. As the first work in this field it has laid a foundation of the contemporary discussion. Even though this and other classifications of his have been controversial such as the medicalisation of homosexuality, which is considered outdated, the categories of Sadism and Masochism as sexual or personality disorders have remained in the catalogue of mental disorders.

At the Fall meeting of the American Psychoanalytic Association, New York in December 1988, Sydney E. Pulver declared that something is classified as a perversion when “sexual fantasies other than those of heterosexual genital union are either obligatory or preferred for sexual arousal” (Pulver, Akhatar, 1991)

Sadomasochism has remained in the ICD-10-GM (German Modification) in the 2020 revision. Sadomasochism is defined by the ICD-10 in the following way:
“A preference for sexual activity which involves the infliction of pain or humiliation, or bondage. If the subject prefers to be the recipient of such stimulation this is called masochism; if the provider, sadism. Often an individual obtains sexual excitement from both sadistic and masochistic activities.” (WHO, 2019)

As discussed above, health only becomes a concern when life is endangered or there are permanent health risks.

4.2.3 Denmark

Denmark, like Sweden, Norway and Finland, has removed the diagnosis of Sadomasochism in their national version of the ICD (Reed et al, 2016).

In 2018 the ICD-11 has been published. Its coding scheme will be implemented by all countries from January 2022 onwards. (dx revision watch, 2019) In the ICD-11 paraphilic disorders are described to only be of concern when the focus of a sexual fantasy or behaviour is a person who is unable or unwilling to consent, on which the person has acted or by which they are distressed. It further notes that distress from rejection or the fear thereof is not enough to qualify for this diagnosis. “Paraphilic disorders may include arousal patterns involving solitary behaviours or consenting individuals only when these are associated with marked distress [...] or with significant risk of injury or death.” (WHO, 2018)

Additionally, the diagnosis of Sadomasochism has been removed, but the diagnosis of coercive sexual sadism disorder has been added. The new diagnosis specifically stated that sadism and masochism practiced by consenting adults is excluded. (WHO, 2018) This means, while the concerns with non-consenting adults or children, as well as with life and health remain, there is a lot more space given to consenting sexual behaviours. The pure fact of getting pleasure from giving or receiving pain does not justify a paraphilic disorder anymore.

4.2.4 Discussion

There have been movements and groups of activists such as ‘Revise F65’ whose struggle was committed to the change of Sadism and Masochism in the ICD.

The way Sadism and Masochism has been characterized in a psychiatric and/or medical context has not only influenced the general social perception, but has also raised issues in psychotherapy while treating people who are into BDSM or other kink-related activities.
Tashlin and Kaldera bring light to the issues that people with mental illness face in power exchange relationships. One of the stories told in their book ‘Broken Toys’ is about a submissive with a history of self-harm and their struggle of distinguishing when impact play was a coping mechanism to replace self-harm and when it came from a point of sexual pleasure. (Kaldera, 2014)

The distinction, or more so the blurry lines of impact play and self-harming behaviour also get discussed in ‘Mainstreaming Kink’. There is a focus on how non-SM practitioners perceive the lines between self-harm and submission in the movie ‘Secretary’(2002). Nichols (2006) discussed the problems that arise in psychotherapy when the client engages in SM, but the therapist is not kink-aware. This shows that even if there is no diagnosis made specifically, SM practices and power exchange do not seem to be a valid variation of sexuality or relationships. This can result in psychotherapists interpreting BDSM as a symptom of another mental health issue. (Nichols, 2006)

In the ICD-11 the justification has shifted, as well as the way the concern is put into context. If and how this revision will affect the treatment of BDSM practitioners and people with kinks in a medical, legal and social context remains to be seen.

It can be seen that the legal status of BDSM activities differs from country to country. While the law in the United Kingdom seems to be stricter than the German law, in both countries consent is an integral part for BDSM to not be unlawful. Further, both countries are concerned with the physical health of their citizens. The line of transgression is drawn where physical health gets endangered. The difference is what counts as a physical health damage: in the UK any marks and bruises would be unlawful, whereas in Germany only a substantial threat to life is considered transgressive. Further, the United Kingdom still has an obscenity law in place. The definition that obscenity law provides is not helpful to determine an exact transgression, but the implementation of it on websites shows that faeces and blood, coming out of a body or as such in an erotic context is transgressive. This means that a penetration of the surface skin is transgressive, according to obscenity law as well as UK law. While the aspect of permanent marks and scars gets discussed a lot, heterosexual marriage overrules these concerns and gives more freedom to bodily autonomy. Even though this is not explicitly stated, this means also that sex out of wedlock or homosexuality limit one’s sexual bodily autonomy. This mirrors the historical psychiatric distinction that sexual activity outside of heterosexual reproductive purposes is ‘perverse’.
The mere fact that sexual pleasure is connected with giving or receiving pain or restriction is sufficient for a diagnosis. It is remarkable that Denmark, which was the first country to abandon obscenity law, also excluded Sadomasochism from their local edition of the ICD-10. This hints at an interaction from medical and legal institutions. It remains to be seen how the legal status of SM will be affected by the implementation of the ICD-11.
4.3 BDSM community

4.3.1 Consent

Consent and negotiation

The discussion of limits, a negotiation process and explicitly asking for verbal consent is strongly encouraged by the community. Within the BDSM community bodily autonomy and consent are valued very highly.

When talking about bodily autonomy it, especially in a sexual and/ or BDSM context it is important to talk about consent. Previous academics have voiced concerns that BDSM promotes a culture of violence or deviance. It becomes quite obvious to anyone who sees a BDSM session, in porn, movies or real life, that whether the activity is consensual can not necessarily be determined by an outsider. While there are plenty of resources and workshops on how to read the body language of a masochist and get an estimation of how much more pain their body can handle, nobody can read minds. Strong impact, rape play, or consensual non-consent can even to an experienced BDSM practitioner not be distinguishable from non-consensual activities. The community is quite aware of this and has different measurements in place. For example, one BDSM club states on their website that they use a common safe-word. This allows for an environment where people can live out their fantasies and play freely without being disturbed, but will be helped by others as soon as they say the safe-word. Other events have additional measurements in place, such as a pal system.

“The darker and more perverted the play party or the environment gets, the more discussion and negotiation on limits is happening. [...] [At our party, you] can only register when you get an invite by someone who has already been there. Then you go to a party with a pal or two. Basically, the idea is you vouch for each other. If one of you misbehaves, you will both get kicked out. Also we try to keep the events at around 200 people. If it’s more it become anonymous. With around 200 people there is still a sense of community and looking out for each other” - Jonas

“In a dungeon where mainly BDSM is practiced consent is asked for specifically. Either directly to the partner, or to their [dominant partner] or owner. Whereas in a bathhouse it is different. There someone come up to you and grabs you or starts doing things. You don't talk a lot in there. It’s on you to decline if you don’t want something. It works, because everyone who enters that space is ok with this dynamic. For the events that I help organizing we try to encourage both: asking for consent and responsibility to say no, as well as people looking out for each other.” - Jonas
Jonas is one of the organizers of a kink-positive event. He tells me about different ways to approach consent in a dungeon, a bathhouse or a kink party:

**Consent and power dynamics**

<table>
<thead>
<tr>
<th>I met a couple where, when they were at a party, the sub was not allowed to speak without permission of her master first.”</th>
<th>Jonas</th>
</tr>
</thead>
<tbody>
<tr>
<td>“it is a matter of care and responsibility. Some subs want me to decide for them. But that is something that needs to be agreed upon first. If we don't have an agreement on this then I would tell that dom to go ask my sub and she can decide for herself if she wants to play or not.”</td>
<td>Silvio</td>
</tr>
</tbody>
</table>

Something that Jonas mentioned and something that can be witnessed in BDSM clubs or at parties is asking not the person, but their dominant partner for consent. This means if a dominant wants to engage with a submissive that has a dominant partner, the dominant partner of the pursued submissive is asked for consent first. This might seem strange and objectifying at first glance, but it is common practice due to two main reasons: firstly, it is assumed that the dominant partner is aware of their submissive partner’s limits. Most couples have talked about how far they are comfortable with engaging with other people. Secondly, some couples have rules within their dynamic. Approaching the dominant partner first is a sign of respect for their relationship, rather than a disrespect towards the submissive person.

**Consensual non-consent**

One type of play that can be found under the umbrella of BDSM is consensual non-consent or rape play. This means in a scene the submissive pretends to not give consent and the dominant pretends to force them to do or endure certain things. The limits are negotiated beforehand and both partners enthusiastically consent to play out a non-consent or rape situation. A safeword is used, so either partner can stop it at any given moment. While this might appear more drastic it does not differ that much from any other role play. Some submissive people want to be pushed beyond their limits.

As I discuss in the theory chapter, BDSM and eroticism in general make use of transgression. According to Bataille, transgression is something integral to eroticism. BDSM heavily plays with transgressing taboos, while aiming to not cause actual damage. This results in a blurring of lines.
**Feminist concerns**

I asked Sofia about the opinion of radical feminist, that submission as a woman to a man is a recreation of patriarchy:

> “I never felt that I was doing something antifeminist. But quite the opposite, that I was in charge of my body. All the way. I never have given up control over my body in any scene that I ever played. Because there is negotiation and control in safewords. So, I was very much in charge. So, it was very empowering. I also read about this matter of feminism and radical feminism and talked to women who started to be interested in the community. They said that they didn’t want to be submissive, because it goes against all their feminist values. And I asked no, why is it? Because you are the one who is giving up the control. You are the one who agrees to this. If it’s not consensual then yes. But you are the one who is consenting to this. So... yeah. I definitely think it is very empowering. Especially things that actually leave marks on me. [...]” -Sofia

**4.3.2 BDSM community on Physical Health**

Contrary to the law in the UK, within the community, bruises are very accepted, even liked. No interview participant has categorized bruises as a permanent damage or a concern.

Scaring, or actions that leave scars have been discussed according to law. While they were considered a transgression in the Spanner case, they were accepted when done within wedlock.

While bruises or scars are seen as a consensual act, and most practices can be done safely it would be naive to pretend that BDSM does not have any risks at all. I discussed the issue of risks, for example in bondage with Karla.

Simon tells me about the idea of risk profiles. This means that each individual has to assess how prone they are to bruises and scaring, if they have previous health issues, and how much risk they are willing to take. While websites provide resources and venues offer workshops, the risk is up to the individual.

> “In (sex club) I have met people who came there for 2 years and haven't done anything before and people who done it in private for 20 years and just entered the social side. And to be honest I feel like the people who have been in the community for 2 years are well more balanced in acceptance, awareness, and risk. Because also when you play in private you can only play with things that you and your partner are into, so it gives a limitation to the amount of knowledge you can obtain.” -Karla
It is hard, maybe even impossible to make a generalisation about the limits within the community. Regardless, there are some communalities that can be found. When talking to BDSM practitioners. It becomes clear that it is very much about individual hard and soft limits, rather than universal no-goes. Within the BDSM community there are a lot of resources and workshops offered on how to find your own limits and communicate them. A common line that can be found is that BDSM participants aim for ‘re-use, rather than abuse’ as Karla puts it. This means they aim for no permanent physical or psychological damage. Here a distinction needs to be made in what is meant by damage. For example, branding is oftentimes seen as a consensual act within a relationship, that can be consented to, not as damage. In other words, permanent damage, as seen within the BDSM community is something that infringes upon your quality of life, rather than a mere medical assessment of physical trauma. Further the perception of long term differs. Having said that, it is important to note that bruises for many subs, even if they hurt, are a source of pride, rather than discomfort. Certain types of play come with a risk
of leaving scars, such as fire play, knife play and bloodplay. For the people who engage in these activities this risk is commonly acknowledged. But even here, the biggest risk really is a scar that might not be perceived as beautiful or in the worst case reminds the person of a past relationship, but no real medical risk or threat to someone's long term well-being and health.

What is a lot riskier is the lack of safe sex. The regulations against blood flowing or splashing are made more out of the concern of blood spreading and transmitting diseases and out of caution and respect for people who might be sensitive to seeing blood, rather than concerns with the actual type of play.

As discussed in the theory part, the risk of physical damage is acceptable in sports, as there is ongoing consent and each participant constantly evaluates the physical situation of the opponent. As described above, ongoing consent is an essential part of BDSM. The evaluation of the physical state can also be learned and practiced in BDSM.

Sadists educate themselves on the signals that the masochist's body gives, Karla explains to me that for example the hands and the feet can tell a lot about how well the masochist is coping with pain: if they are at their limit or if they can handle more. This education and ongoing conversation are what makes sparring less transgressive and more socially acceptable even though the safety mechanisms are very similar to BDSM. It can be argued that the education and theory part is not prevalent in pornographic or media representation of BDSM, therefore most people outside the BDSM community are not aware of it. This contributes to the perception of BDSM as more transgressive than sparring, even if the same mechanisms apply.
4.3.3 BDSM community on mental health

“Aftercare is the time to land and come back. It is very important to give a soft landing after so many strong and overwhelming emotions. I know how important it is from my bottom (submissive) side. But also, as a top (dominant) it is very important to take this responsibility. No aftercare would make you selfish and abusive. I need to make sure my sub is feeling alright and that she knows it was just a game.” -Silvio

BDSM is “Not necessarily sexual, but more about growing and challenging myself” -Sofia

“It think it makes me generally more self-confident and aware of myself as a person. Makes me assertive, respectful, understanding of other people. In regard to my relationships (I have two girlfriends) BDSM is way more intimate than “just” having sex...To me it is a much stronger relationship than I think people otherwise experience. [...] BDSM is not a "carte blanche" to be an asshole…” -Olaf

“I experience that the people I know in the BDSM community seem to be more in balance with themselves, more accepting of others and more comfortable with their body and sexuality. And they have a zero tolerance for violence, abuse etc” -Simon

No interview participants have expressed that BDSM is a risk or damage to their mental health. Silvio explains to me the importance of after care. It is the time after a play session, where the dominant partner comforts the submissive, provides them with water, snacks, physical contact and tenderness, band aids if needed or whatever they need to feel comfortable. How exactly aftercare looks like is dependent from person to person. But the existence of aftercare is highly important. Aftercare is an important aspect that often gets overlooked. In no court ruling or comment did the aspect of aftercare appear. The way Silvio explains it, and the role that aftercare has, show again that the BDSM community perceives sessions as a sort of gameplay.

When discussing mental health, interviewees have expressed that they experience benefits from engaging with BDSM.
Judgement and community building

“Some couples have this crazy expensive equipment. There are a lot of rich and ambitious people into BDSM. Why is it that people have this misconception about it? It’s something that people are not used to and if they are not used to it, they shame it. [...] If you say ’yeah, this is what I’m into’ then people will respect you. [...] A lot of how big of a deal it is really is on our shoulders and how big of a deal we’re making it”. -Luke

“It is important to talk openly. There is so much ignorance and taboo in society. At munches people can get together and share. For example, people with bad experiences can come and talk about it and realize that what they have done is toxic. Munches are not sexual places. It is good to share and talked without being judged by people who don’t get it. Munches are a way to meet in real life, in the muggles world and not be in a sex club, but meet people who are likeminded and understand you.” -Silvio

“As a theoretical question people seem to be very accepting and that "Fifty Shades" etc have made a positive impact in the general society - but the few people I have told about it have been accepting at first but in reality, have resented it - i.e. by "very not talking about it" or stressed that it was not for them...Rope play [bondage] seem to be accepted like some kind of yoga. Violent/impact play that makes marks - I think people are shocked by the fact that they do not understand what is going on. Humiliation, tears, fear etc is generally regarded as something "nobody wants". Some feminists seem to say that "No woman would accept to be beaten up like that and if they say they do they must be forced to tolerate it" They do not respect the bottoms [submissive’s] own need and accept to do it”- Olaf

“They are taboo, because, well, when I talk about what I do and what I like with my vanilla friends, there is always a look of, oh, this is wrong, oh, you are sick. They don’t really mean it, but they think it’s wrong or weird. Some part of general BDSM, they might be socially accepted. Maybe bondage or maybe a light dominance I guess, that will be fine, but again, mostly actually with those, you know, if it’s a man who says I take control, I am the dominant one, the girl is the sub, that is perfectly accepted. When it is the opposite people freak out. And then when they meet a person like me, a girl which is not switch, not submissive at all, who is really sadist, yeah that is freaking out a lot of people. Also, I look sweet and innocent, so they would never expect me to enjoy such things. So yeah, it’s not really accepted... maybe the mainstream stuff due to those stupid movies like 50 shades...” -Laura

“Don't go to work and tell your colleagues that you met Bob from accounting last week with a strap-on.” -Jonas

BDSM practitioners seem to be very aware of how their sex life is perceived by society. This can lead to a feeling of judgement or ostracization. Therefore, the BDSM community offers places to get together and talk in a non-sexual setting. These are called ‘munches,’ because usually they are at a restaurant.

While some people struggle more with the judgement they face or the fear of being exposed, others are more comfortable with it.

Regardless of the comfort level of the individual, privacy is valued high in the community. While sexual transgressions are played with, very strict rules can be found when it comes to
privacy and discretion. Many events and clubs have rules in place that no phones are allowed, if one gets to know someone in an event, one do not talk to them outside the event unless agreed upon, and people who one encounters in such a setting should not be talked about.

While the actual play sessions are not experienced as being a mental health risk, the judgment from society and people around is the most common reason for distress. As mentioned before, the ICD-11 does not qualify the distress caused by fear of judgement or rejection as a mental health problem. The community seems to help themselves through this distress. As a result, privacy is valued very highly. ‘Outing’ anyone is considered a transgression. Other than that, BDSM is even experienced to have a positive effect on one’s mental health.

4.3.4 The influence of the legal status of BDSM on the community

“So, having it illegal would actually lessening the possibility of spreading knowledge and having such workshops. And it would not stop people from doing it in private, but it would just be done unsafely and put people at risk. So, I can't really see a benefit. It depends on what your goal is. If you want to get rid of anything that might make someone feel uncomfortable, yes, then you would have to get rid of BDSM. But you would also have to get rid of anyone's ticks, anyone coughing or large rectangular buildings, because it might offend someone. when your purpose of your system is to coexist in peace there is no problem with properly executed BDSM.” -Simon

“In the society, at least of Denmark, it is impossible, or rather illegal, for someone to consent to something they cannot unconsent to. That makes a tunnel like game impossible. Like, I would not be able to say ‘yes, even if I scream and cry, I consent to this 2 hour torture session and I really want to experience how this feels and you should ignore this and these signals.’ That is something I cannot equally consent to. According to me however, I think that is something that can be done ethically and responsibly, but not with anyone. It needs to be an experience where you start softly and you see how far you can go. You talk along the way, you get some experience, see if I do want this. Then you have an idea. The better a person knows themselves the more they know what they can take, predict their reactions and so on. I don't think its necessarily a problem with a tunnel game, it is just hard to formalise in clear cut lines. And that is the problem with a lot of BDSM. And legally you do need clear cut lines, so that is the result.” -Olaf

The importance of education has been mentioned before. When asked about how they perceive the legal status of BDSM it was expressed unanimously that severe, permanent health damages and threats to life should be illegal. BDSM practitioners generally do not see a risk in BDSM being illegal. On the contrary many expressed concerns that possibilities for educational initiatives would become limited, if it were to be illegal. They see this as a significantly bigger risk, as education decreases the possibility of accidents. Further, when the topic of BDSM and the law has been discussed with BDSM practitioners many raised concerns about where to draw the line, explaining that there are no clear cut boundaries.
BDSM and LGBT

Silvio tells me that he went to a pride parade with a BDSM-group. Even though he is a straight cis man, he felt like BDSM belongs at pride. He made a distinction between being at pride and being part of the LGBT community.

“BDSM doesn't make you LGBT. But there are LGBT people in the BDSM community. Actually, the gay and the BDSM community have a lot of similarity. We all face prejudice. Pride is a place to come out and be yourself. We feel related because all our sexualities are different than what is mainstream. We all have different experiences, but we all face judgement that comes from the same oppression. It chances a bit because of 50 shades of grey, but it is also wrongly explained in that movie. You still can’t really talk about it, so it is kind of a sub culture. But both talking openly about BDSM and being gay can get you in trouble. It depends from country to country. For example, I got arrested in Tunisia because I had sex toys with me.” - Silvio

This experience that LGBT and BDSM belong together and face the same system of oppression is what Foucault describes in his theory. Both of these groups have a sexuality that does not fit into the ‘normal’. (Foucault, 1976, pp.38-39)

Within the BDSM community there seems to be a consensus that while long term disabling of a body is unacceptable, whereas bruises, scratches, love bites and the like are seen as a sweet reminder and worn with pride. Branding can be consented to, but it is important, as Karla highlights, to consent to the long-term effects, not only to the moment where it is done. It would be too extensive to list all different activities that are possible and their health risks. The key point is though, that more pain does not necessarily mean more health risks. Within the community there are plenty of resources and workshops educating on the do’s and don'ts of a specific type of play and its risks. BDSM practitioners value personal choice and consent, rather than an overarching set of rules. As long as it is ‘Safe, Sane and Consensual’, anything seems to be acceptable. There also seems to be a strong consensus about the importance of education within BDSM, to raise awareness about risks and prevent possible health damages. All interview participants expressed that they think it is beneficial for the health and safety of everyone that workshops and information are available. The biggest source of mental distress is the judgement that they are experiencing by society. They do not find moral concerns with safe, consensual behaviour.
5. Conclusion

The question of bodily autonomy and transgression consists of a variety of different aspects. So too does the question of bodily autonomy in BDSM. Where the boundary of acceptable and unacceptable is laid is influenced by a variety of factors, such as physical, mental health concerns, public health and privacy.

In the case of Germany it can be seen that individual autonomy over one’s body is prevalent. Legally, the area of acceptability covers any consensual behaviour that does not cause a risk to life. While the word ‘moral’ or ‘moral principle’ does appear in the German law, the clause of violation of moral principle only applies when life or health is severely endangered. Here the individual is given more freedom, but also individual responsibility. On the other hand, the diagnosis of Sadomasochism has remained unchanged in the latest revision of the ICD-10. This shows that SM is still a mental health concern. This attitude can be compared with the German approach to drug policy; the pure fact of being intoxicated is not illegal, possession and trade are illegal. This shows that in the ‘German attitude’, the autonomy of the individual's body is valued highest, while mental health, as well as medicalisation and psychiatric categorization of perversion remain prevalent. The high value of bodily autonomy can be one explanation to the German approach. On the other hand the legal regulations show that bodily integrity seems to be much more loosely defined in Germany than in the United Kingdom. In the United Kingdom damage to the surface skin is already of concern in terms of bodily integrity, while in German law, only severe damages are relevant. The way in which bodily integrity is used has an influence on the space of transgression. As the German use of bodily integrity is a lot looser, the space of tension with bodily autonomy is smaller. While more freedom regarding bodily integrity is granted in Germany, bodily autonomy is still in tension with, and limited by the use of the category of perversion.

In Denmark and the Danish BDSM community, the relevance of physical and mental safety is very prevalent. The transgression line is similar to the German one, at the point where health or life are in serious danger. But this seems to be a result of a prioritization of the necessity of safety through education. Also, in the Danish context Sadomasochism as such is not a mental health concern, only when causing distress. This means that the psychiatric perversion is not prioritized, but the awareness of possible mental health issues is existing. Concerns of privacy are also valued, which can be seen by having many members only clubs or events. This allows for education for those who are interested without it being too public.
In the UK context, it can be seen that concerns of moral, deviance and perversion, as well as a prioritization on heterosexual monogamy are very prevalent. Therefore the UK has an approach focused on illegalisation and pushing the practice of BDSM much more into the private realm then into the realm of public education.

When talking to BDSM practitioners, it can be seen that individuals see themselves differently when it comes to the willingness to take risks, but overall individual freedom is highly prioritized. In terms of social acceptability some advocate for an approach of sameness and having BDSM accepted as another type of normal sexual expression whereas others enjoy being part of a subculture, but would like to find acceptance in their differences.

It can be seen that there is no universal boundary of transgression and bodily autonomy. The problem of BDSM and bodily autonomy contains several different issues, of physical, mental and public health, morale, consent, individual responsibility, perversion and ethics. How these elements are located and influence each other varies historically as well as locally. This combination of factors that get prioritised differently brings about a field of different conclusions to the same concerns. What also can be seen is that the line of transgression is not permanent, but in a state of permanent fluctuation, influenced by the power exercised. Through the production of knowledge from the medico-judicial sector as well as the BDSM community, these institutions and communities are in a constant struggle that defines, redefines and creates tensions regarding the line of transgression. On the level of the individual it can be said that BDSM is a matter of ethics, in the Foucauldian sense, as the individual relates to itself and navigates through the spaces of tension between perversion and pleasure, privacy, recognition and education, and physical, mental and public health concerns. The different components can be analysed more closely, but I have shown that BDSM and the issue of bodily autonomy can be analysed in different topics that interact with each other, as well as a space that is composed of different tensions.
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**Interviews:**

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Olaf (2020) interviewed by Lara Szabowski
Silvio (2020) interviewed by Lara Szabowski
Simon (2020) interviewed by Lara Szabowski
Jonas (2020) interviewed by Lara Szabowski
Luke (2020) interviewed by Lara Szabowski
Karla (2020) interviewed by Lara Szabowski
Sofia (2020) interviewed by Lara Szabowski

All names of interview participants have been changed, in order to protect their identity. All interviews were done in accordance with ethical research principles, after approval by the Ethics Council of Malmö University and handled in accordance with GDPR.