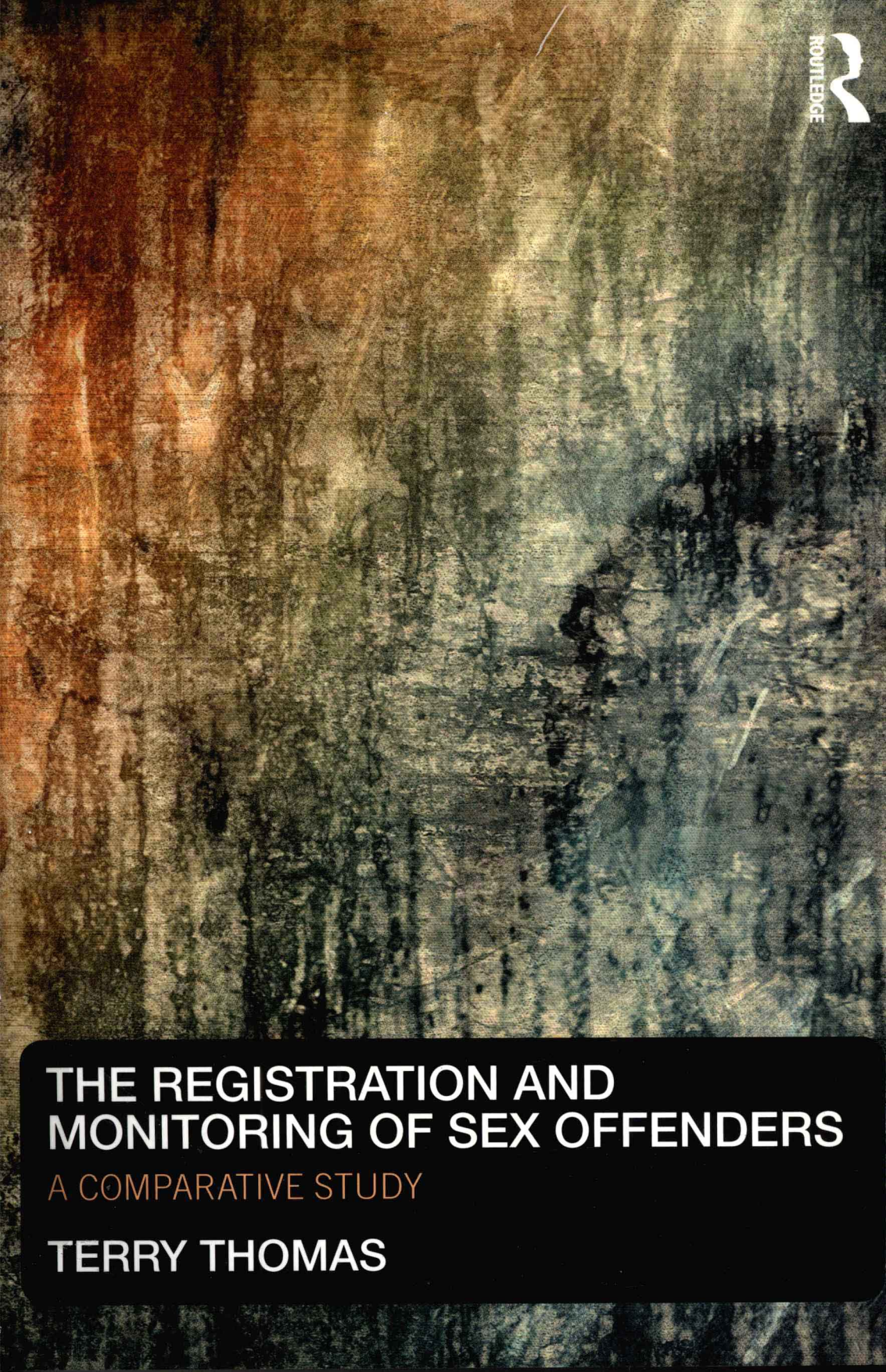
ROUTLEDGE
THE REGISTRATION AND MONITORING OF SEX OFFENDERS
A COMPARATIVE STUDY
TERRY THOMAS

The Registration and Monitoring of Sex Offenders

A comparative study

Terry Thomas

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Terry Thomas
Leeds

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1 Introduction

This is a book about the state registration of people who are convicted of sexual offences. This is the practice that started in the USA among a few states after the Second World War and which has more recently spread to all fifty US states. It is a public protection policy now adopted by a number of other countries in disparate parts of the world, and a practice actively being considered by even more countries. The book seeks to look at the purpose of registers, describe the origins of the sex offender register, the process of registration and the legal and ethical questions that surround these registers. The book asks questions about the efficacy of registers to reduce levels of sexual crime, and seeks to contextualise registers in terms of crime prevention and public protection policies.

Sex offender registration is based on laws that require people convicted of designated sexual offences to keep in contact with the police or other law enforcement authorities in order to notify them of any changes in their circumstances. The registers are premised on the idea that sex offenders are likely to re-offend. The argument is that with improved data quality the police and other agencies will be in a better position to protect the public from future offending behaviour, and the offender themselves will experience an element of deterrence and prevention by the very existence of the register. The police, for their part, will more quickly be able to apprehend the perpetrators of any new sexual crimes in a given geographical area. Overall the sex offender register is an attempt to reduce sexual offending and to improve levels of community safety and public protection.

The person on the sex offender register has usually to report to the police, or a similar law enforcement agency, for initial registration and the provision of various items of personal information and sometimes for the taking of photographs or giving of fingerprints and DNA samples. Reporting thereafter is whenever any of these details change and especially if there is any change to the registrant's name or address. If nothing has changed there is often an additional requirement to report for an annual meeting to verify that – indeed – nothing has changed. The reporting is usually required by a personal visit to a police station or other form of registration office and it continues for a fixed period of time but sometimes indefinitely; failure to report or comply

in any other way with these registration requirements will constitute a criminal offence in itself.

It should be noted at the outset that the term 'sex offender register' or 'sex offender registry' (the word used in the USA and Canada) and the idea of the 'registered sex offender' should be treated with caution. In the UK, for example, there is no register as such, only a law requiring those people who have committed certain designated sexual offences to 'notify' the police every time they change address or name. The UK national laws on notification make no mention of a register. The term 'sex offender register' has arisen as a form of shorthand to describe these notification requirements.

Throughout this book the term 'sex offender register or registry' and 'registered sex offender' will be used as a form of shorthand for ease of reference, but the reader should be aware that the term may not be a legal term used in the statutes of the relevant country we might be talking about. In Northern Ireland the Ministry of Justice has deliberately started using the term 'sex offender notification requirements' in preference to that of 'sex offender register' which they say is 'slightly misleading' (Northern Ireland Assembly 2010).

Some registers of sexual offenders have been opened to the public in policies of 'community notification'. The aim is to inform communities so that they might better protect themselves by knowing a registered sex offender lives near them. Such policies of 'community notification' have been most widely adopted in the USA but other countries have more controlled or discretionary forms of disseminating information about sex offenders.

Sexual offending itself is, of course, a particularly unpleasant and harmful crime. It is an intrusive and violent experience that invades the psychological and bodily integrity of the person assaulted. The harm only intensifies when the victim of a sexual assault is a child or young person who does not understand the significance of what is happening to them. Sexual offending calls into question our whole ability to live peacefully together with one another in social settings.

The traditional way of dealing with sex offenders – and indeed any convicted offenders – has been to either punish them or to treat them. Registration and monitoring is neither punishment nor treatment but represents a third approach that is an attempt to protect the public and prevent the known offenders from re-offending. Enhanced criminal laws and policies to deal with sexual offending, and the public protection policies to regulate the known offenders and minimise sexual crime taking place, have been at the forefront of political agendas in a number of countries since the early 1990s.

According to the US National Center for Missing and Exploited Children there are now over 500,000 registered sex offenders in the USA, and:

> Sex offenders pose an enormous challenge for policy makers: they evoke unparalleled fears amongst constituents; their offences are associated with

> a great risk of psychological harm; and most of their victims are children and youth.
>
> (NCMEC 2009)

The UK register had 32,336 names on it at the end of 2009 (CJJI 2010: 22).

Sex offenders do not form a monolithic grouping but vary in the crimes they have committed; the sex offender has often been viewed as synonymous with the child sex offender or paedophile. The absence of consent may be a common denominator of offending, and often victims of sexual crime are children who cannot consent; but other victims are adults. Some offences involve violence and threats and others are focused on deception. Some involve commercial exploitation, others do not. Some sexual crimes are committed when activities are prohibited regardless of their apparent consensual nature; such crimes include incest and 'abuse of trust' crimes where a teacher or other person in authority over children has taken advantage of their position.

Sexual crimes may also be broken down into those considered 'non-contact' crimes and those which involve 'contact'. The former might include those people who seek out illegal child pornography but have no contact with actual children. The latter would be those who want to go further than just looking at images and want to commit sexual crimes against real children. The images of child pornography do, of course, depict contact crimes taking place.

Sexual crimes also vary by jurisdiction. In England and Wales, for example, there are a recognised thirty-five designated sexual crimes that will lead to registration, twenty-four in Scotland and thirty-one in Northern Ireland. In Ontario, Canada, twenty-three crimes lead to registration and in the Republic of Ireland there are twenty crimes that lead to registration.

At the most basic level different sexual crimes arise in different countries because ages of consent to sexual activity vary between countries. Sexual behaviour that is a permissible activity in one jurisdiction may be designated as a criminal offence in another.

Young people may commit offences that others describe as 'horse play'. Over the summer of 2010 a case in the UK raised all of these questions when two eleven year old boys were convicted of the rape of an eight year old girl (Jones 2010). Prosecution took place at London's Old Bailey, the highest criminal court in the land. Public concern was that this case might have been 'innocent' game playing or experimentation by children that could have better been dealt with outside of the criminal justice system (Bingham et al. 2010; Camber 2010).

The risk assessments of sexual offenders carried out by professionals and practitioners in various jurisdictions and settings further differentiate those sex offenders into high risk, medium risk and low risk offenders. This again questions the belief that all sex offenders can be grouped together in one monolithic mass. Risk itself may be broken down into the risk of re-offending,

the risk of harm to others and the risk of re-conviction. In court the sentences will vary according to the assessed seriousness of the offence and level of culpability of the offender.

Risk assessment and risk management becomes the mainstay of monitoring sex offenders in the community. The term 'monitoring' itself is usually used to describe police or law enforcement activities by other agencies to keep track of the sex offender. The alternative terminology of 'supervision' might more accurately describe the activities of corrections officers, probation officers, health care professionals and social workers and include an element of helping and welfare. That is not to say that police monitoring may not at times include a welfare element and the respective roles are compatible. Nonetheless, in practice the two roles should arguably always be clearly defined.

All sex offender registration arrangements are premised on the belief that sex offenders are certainly 'different' to other sorts of offenders and that their behaviour is so ingrained that they are likely to continue offending because they are unable to control that behaviour. This is particularly thought to be true of the child sex offender or paedophile. As the British MP David Mellor put it to the UK Parliament, 'Once a paedophile, always a paedophile, is a much more certain saying than once a burglar, always a burglar, or even once a rapist, always a rapist' (Hansard HC Debates 27 January 1997 col. 41).

In fact there is evidence to suggest that sex offenders often do not re-offend and are amenable to treatment, and a good deal of resources have been put into providing such treatment. The web page for Public Safety Canada, for example, is adamant that:

> Research shows that treatment of sex offenders does make a difference. Sex offenders who receive treatment are less likely to re-offend. Offenders who don't receive treatment are likely to re-offend at a rate of 17 per cent compared to 10 per cent for offenders who have received treatment.
>
> (Public Safety Canada – www.publicsaftey.gc.ca/prg/cor/acc/ff6-eng.aspx – accessed 6 September 2010)

The opening sentence of a recent UK inspection of police and probation work on the management of sexual offenders in the community makes it quite clear that 'statistically sexual offenders are reconvicted less frequently than most other offenders', but does go on to add the rider that nonetheless 'many of their offences cause the public great concern' (CJJI 2010: 2).

ATSA – the Association for the Treatment of Sexual Abusers – in the USA makes similar statements on its website:

> Sexual offence recidivism rates are much lower than commonly believed, averaging 14 and 20% over five year follow up periods.

and on the subject of treatment:

> recent, statistically sophisticated studies with extremely large combined samples have found that contemporary cognitive-behavioural treatment does help to reduce rates of sexual re-offending by as much as 40%.
>
> (ATSA Facts about Adult Sex Offenders – www.atsa.com/ppOffenderFacts.html – accessed 6 September 2010)

The Australian Institute of Criminology follows suit with a fact sheet on the recidivism of sex offenders stating that 'despite the assumption that sexual offenders are particularly prone to re-offend, reconviction rates for sex crimes are relatively low' (AIC 2004)

Public concern has often been a concern that has been taken up by the media. In turn the media itself may generate that public concern. As such the more considered debates about sex offending put forward by health care professionals or social scientists may be sidelined by a level of reporting designed to appeal to a given market The newsprint media in particular does not necessarily represent any given social reality and its reporting may be more sensationalist and exaggerated for better effect (Greer 2003). The stories no doubt contain a kernel of truth, but are liable to distortion or images that are more eye catching as the offender becomes the 'monster' or the 'beast'. These forms of reporting may even contribute to moral panics about sex offending and be influential in the way they inform debate among politicians and policy makers (Jenkins 1998; Critcher 2002). In the UK allegations have even been made that policies are dictated by the media (Travis 2006).

Sex offenders are decidedly different to other offenders in that they are the only group of offenders to have their own laws that apply just to them. Most criminal laws refer only to the behaviour and activity that will be determined as an offence. The very names of the USA's Crimes against Children and Sexually Violent Offenders Act 1994, the UK Sex Offenders Act 1997, the Irish Sex Offenders Act 2001 and other legal statutes, make the point that these are all laws specific to this one group of offenders.

Other factors differentiate the sex offender from other offenders. At their worst the sex offenders' crimes are simply horrific and inexplicable. The child sex offenders' intent is hard to fathom and it is this that lends itself to the tabloid language of 'beasts' and 'monsters'.

In prison even other inmates dislike living alongside the sex offender. In UK prisons the other prisoners refer to them as 'nonces', and:

> Hostility towards 'nonces' from 'straight' prisoners is routine. It is usually expressed in straightforwardly vehement moral terms ... to emphasise a sense of frustration at having to share their living space with men whose crimes they consider monstrous. By tradition 'nonces' are expected to know their place and to keep out of the way of 'straight cons'.
>
> (Sparks et al. 1996: 179)

The prison authorities may have to take steps to protect the child sex offender from other prisoners, and to classify them as 'vulnerable prisoners'. The sex offender may have to learn to protect themselves by playing down or even denying their offences, or adopting a more 'viable identity' and effectively living a double life (Schwaebe 2005; see also Akerstrom 1986).

At least in prison the authorities know where the sex offender is. Registration and monitoring of the sex offender is about knowing where they are when they leave the prison; for those receiving non-custodial sentences it starts when they leave court. The premise is that communities will be safer if the authorities have good records of where these people are at any given time, and if the register is open to the public through 'community notification' policies then the public themselves will be better able to protect themselves and again make communities safer.

This aim of knowing where offenders are has to be somewhat qualified by the understanding that most perpetrators of sexual crime are already known to their victims and are not strangers who come out of nowhere; some estimates put the figure as high as 90 per cent (Finkelhor 1994; Greenfield 1997; Ullman 2007). Registers could be said to be based therefore on the wrong assumption that all sexual crimes are committed by unknown assailants whom the register will identify.

Registers in the USA effectively started in the early 1990s although the oldest can be traced back to 1947. The UK sex offender register started in 1997; the Republic of Ireland's in 2001, the first Australian register started in New South Wales in 2000 and the first Canadian register in Ontario in 2001. Chapter 6 gives further details on these and other registers.

Sex offender registration marks one of those significant changes in policy from the traditional penal welfarism of the past where offenders were just brought to trial and then punished or helped in their attempts to rehabilitate themselves to the community. The collation of personal information through registers is the start of a system of trying to regulate future criminal behaviour in order to enhance levels of public protection and community safety (Garland 2001).

The British criminologist Anne Worrall was able to identify the changes and the emerging significance of 'information' in the mid-1990s:

> The debate on working with sex offenders in the community has been virtually foreclosed ... official government discourse now rejects the language of rehabilitation in favour of the language of surveillance and control through information.
>
> (1997: 125)

Surveillance and control based on information would restrict the sex offender in the community while treatment programmes would try to help them change their behaviour and assist in their rehabilitation and reintegration. Sometimes the restrictions appeared to take priority over the helping

and welfare side. The official line has been to get 'the right mix' of the two (CJJI 2010).

Chapter outlines

In Chapter 2 of this book a brief history of registers is attempted that seeks to explore the theme that registers in themselves can be helpful and neutral, while at the same time can be experienced as intrusive and almost 'dangerous'. In particular is the idea that the register is something imposed from above and rarely something that people wish to organise for themselves. The purpose of this history is not a history for its own sake but to try and help us understand the nature of today's sex offender registers and public attitudes towards them. Many of today's experiences of registers are not new. Chapter 3 follows this history into the twentieth century and tries to focus in on registers that record details of offenders, and other people considered 'different' or deviant. It is this period that saw what some have called the 'first wave' of sex offender laws and registration in the USA.

The United States of America is generally thought of as the birthplace of sex offender registers and the country that has given us the model for all sex offender registers. Chapter 4 traces this development from the early 1990s in the 'second wave' of register developments. This 'wave' started in Washington State and a number of other individual states before receiving federal backing in 1994 with the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act. The federal law required all fifty states to have a register in place if they wanted to continue receiving federal financial support for law enforcement matters. Massachusetts was the last state to organise the registration of its known sex offenders in 1996. The Wetterling Act slowly evolved and became more restrictive before being completely replaced by the even stronger federal 2006 Adam Walsh Act.

The USA has also committed itself to having its sex offender register open to the public. These open policies have been termed 'community notification' policies or sometimes 'Megan's Law'; the rationale has been that a better informed public can better protect itself and its children against the sex offender. Community notification is considered separately in Chapter 8.

Chapter 5 examines the origins and current policy and practice of sex offender registration in the UK from its beginnings in 1997 to its current manifestation under the Sexual Offences Act 2003. In common with the USA this is a story of continual changes that seek to 'strengthen' the register and 'close all loopholes' to ensure better public protection. It is also the story of an ongoing demand for policies of 'community notification' to be formulated comparable to those in the USA. At present the UK has resisted this demand and does not have a policy of community notification, but it does have its own variations on just how register information should be disclosed in certain circumstances, and this is also considered in Chapter 8.

As the USA and the UK have led the world in registering sex offenders, other countries have looked at registration and some of them have adopted similar policies. Sex offender registers now exist in such disparate places as Canada, Australia, the Republic of Ireland, France, Jamaica, Hong Kong and Kenya. The Americans remain alone in having a universal open access to their registers. Chapter 6 looks at these different formations of the sex offender register and Chapter 7 examines the debates going on in those countries such as New Zealand that are thinking about registration as a new policy.

Chapter 7 also looks at the problem of the 'travelling sex offender' who seeks to cross state or international borders in order to continue offending where he or she is unknown, or to evade registration and monitoring requirements that have been placed on them at home. In Europe this now includes a monitoring of those who travel internationally to seek employment giving them access to children whom they may wish to sexually victimise.

Chapter 8 examines the monitoring of sex offenders through policies of 'community notification' and letting local residents know where sex offenders are living. 'Community notification' has mostly been confined to the USA but other countries have milder versions of it. The chapter also explores restrictions on where sex offenders may actually live, or areas of cities and towns they are prohibited from moving through. These residency restrictions may be universal for all sex offenders (as in the USA) or selective for specific offenders (as in the UK and elsewhere). Residency restrictions and geographic prohibitions are usually based on the presence of children in places such as schools, parks or play areas, or on the addresses of former victims.

The book draws to a close with its final chapters trying to make sense of the contemporary registration and monitoring of sex offenders. The logistics of how registration works includes the amount of resources they require, the underpinning legalities and the social consequences of being a registrant on a register and possibly subject to 'community notification'. Chapter 9 also tries to answer the question of whether or not this registration and monitoring actually does improve levels of public protection and whether or not these policies are evidence based or just reactive policies to public concerns expressed through the media that are more acts of faith than considered policies. Chapter 10 attempts to draw conclusions and to place these policies in a wider theoretical and political context.

2 Registers – a source of 'tyranny and intimidation'?

In general terms registers and the process of registration are normally seen as a neutral mechanism for aiding organisations to complete their work as efficiently as possible. They are seen as little more than part of the recorded 'memory' of an organisation. In the UK we are used to the routine registration of births, deaths and marriages, of electoral registers confirming who has the right to vote, and of census registers every ten years that started in 1801. We are aware of land registries recording land ownership and school attendance registers that confirm which children are in school and which are not. Doctors, dentists, lawyers, nurses, social workers, child minders and a host of other professionals and practitioners are all 'registered' to the benefit of their clients and patients.

Registers may, however, take on a more sinister form. In the 1940s the US Supreme Court declared that 'champions of freedom for the individual have always vigorously opposed burdensome registration systems' which can lead to 'tyranny and intimidation' (Hines v Davidowitz 312 US 52 70–71 (1941)).

In the mid-1980s a British court was asked to adjudicate on whether or not a local authority was right to include personal details about a child's sexual abuse and the adults who *may* have been responsible on a child protection register. The judge, Mr Justice Waite, was highly critical of the authority's decision. He agreed that registers had some positives but 'nevertheless it was a blacklist and as such had a dangerous potential as an instrument of injustice and oppression' ('Dangerous potential of child abuse register as instrument of injustice', *The Times Law Report* 27 February 1989; R v Norfolk County, ex parte M [1989] 3 WLR 502; see also Martin 1989).

What could the US Supreme Court and the UK's Justice Waite mean when they warned of registers possibly leading to 'tyranny and intimidation' or as having 'dangerous potential as ... instrument(s) of injustice and oppression'? Could registers be something we should feel less 'comfortable' about and even something to be considered as 'chilling' and to be resisted? What would a history of the register look like?