

The cover features a complex abstract design. On the left, a dark hand holds a red key with a blue ring, attached to a coiled cord. A large, bright orange shape, resembling a stylized 'K' or a keyhole, is positioned in the upper left. A beam of light from this shape illuminates a white, curved, shell-like form in the upper right. The background is composed of various shades of orange, tan, and grey, with geometric shapes and patterns. A large, dark orange circle is in the top right. In the lower right, a circular arrangement of red chairs is shown, illuminated by a beam of light from above. The title 'The Shaming of Sexual Offenders' is centered in a large, bold, dark blue font. Below it, the subtitle 'Risk, Retribution and Reintegration' is in a smaller, bold, dark blue font. The author's name 'ANNE-MARIE McALINDEN' is at the bottom in a bold, dark blue font.

The Shaming of Sexual Offenders

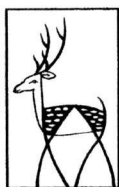
Risk, Retribution and Reintegration

ANNE-MARIE McALINDEN

The Shaming of Sexual Offenders

Risk, Retribution and Reintegration

Anne-Marie McAlinden



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THE SHAMING OF SEXUAL OFFENDERS

Sex offenders, particularly those who offend against children, feature prominently in contemporary law and order debates. Child sexual abuse is a small component of the broader category of 'gendered and sexualised violence' which causes significant trauma for victims yet continues to evade conventional approaches to justice. This is evidenced not only by the low number of prosecutions, due mostly to low levels of reporting and evidential difficulties at trial, but by the failure of the justice system to prevent re-offending, largely due to the limited availability and effectiveness of prison treatment programmes.

Following Braithwaite's dichotomy of 'reintegrative' and 'disintegrative' shaming, this book argues that contemporary popular and state-led responses to the risk posed by sex offenders are largely disintegrative in nature. At best, the offender may be labelled, stigmatised and ostracised from the community, while at worst, he may be subjected to violence and vigilante action and ultimately return to offending behaviour. The failure of these retributive responses means there is considerable scope for exploring alternative forms of justice and their potential for improving the outcome for victims, offenders and communities affected by sexual offences.

This book examines the controversy of whether restorative justice can be applied to child sexual abuse as one of the most intractable of contemporary societal problems, and if so, what special considerations might apply. Although restorative schemes with sex offenders are in short supply, a few initiatives have developed in Canada and parts of the United States which have effected significant benefits in 'reintegrative shaming.' The book examines whether such ad hoc schemes may be of general application with child sexual abuse and whether they may be implemented on a more holistic basis.

For Stephen, Maria and Pat

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Anne-Marie McAlinden
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PART I:
THE THEORETICAL CONTEXT

Introduction

During a week of disturbances on the Paulsgrove Estate, residents demonstrated outside the homes of suspected paedophiles, issued threats and destroyed local property. Children even joined in with banners such as 'Don't House Them Hang Them.' As a result of these protests, a few families fled, one convicted paedophile went underground and two suspected paedophiles committed suicide.¹

IN RECENT YEARS, there has been acute popular and official concern with managing those perceived to be a danger to society. Paedophiles in particular have captured the public imagination and have become in a sense the new 'moral panic' (Cohen, 1972/ 1980). The media have tapped into this public anxiety and fear with the adoption of 'name and shame' campaigns. As a result, the management of risk posed by sexual offenders, particularly those who offend against children, has become an issue which features prominently in the 'law and order' debate.

A plethora of legislation to both control and manage the dangerous has been enacted within a relatively short space of time, most notably, sex offender registration and community notification. As Rose (2000) argues, however, there is considerable divergence and seeming contradiction in contemporary strategies for crime control (Garland, 1996, 2001; O'Malley, 1999, 2002; Pratt, 2000). These range from punitive demands for preventive detention of dangerous individuals to the development of multi-agency work on the assessment and management of risk and the use of rehabilitative alternatives via community programmes and reintegrative shaming (Rose, 2000: 321). The current focus of criminal justice policy therefore is seemingly on a 'what works' approach (McGuire, 1995) which may help to explain the wide variation of measures used. That is, emphasis is placed on evidence-based policy and practice where the formulation and implementation of crime prevention measures is primarily empirically rather than theoretically driven. When it comes to sexual offences, however, particularly those against children, the traditional retributive form of state justice does not seem to be working (McAlinden, 2006a).

¹ For a detailed account see Ashenden (2002) and Williams and Thompson (2004).

THE FAILURE OF FORMAL CRIMINAL JUSTICE

Child sexual abuse is a small component of the broader category of 'gendered and sexualised violence' (Hudson, 2002), including domestic violence and rape, which causes significant trauma for victims (Herman, 1997) yet continues to evade conventional approaches to justice. One of the underlying facets of child sexual abuse is its hidden nature and the fact that it is often allowed to remain a secret. Contrary to popular belief, a high proportion of child victims, figures suggest between 80 (Grubin, 1998: 15) and 98 per cent (Leggett, 2000: 7), are abused by someone known to them rather than predatory strangers. Children or their carers often feel a sense of shame or embarrassment in coming forward to report the abuse let alone confront their abuser. This problem is even more manifest when the abuser is a trusted intimate of the child or their family. Sex offenders themselves are often devious and manipulative in nature and are able to make pervasive use of 'grooming' techniques to gain the trust of the child or their carers to both facilitate abuse and prevent its discovery (Salter, 1995, 2003; McAlinden, 2006c).

These difficulties are compounded by the fact that the traditional justice system is often limited in its response to these types of offences (McAlinden, 2006a). In tandem with significant increases in levels of recorded sexual offending, there is a parallel disillusionment with the ability of the criminal justice system to curb it.² This is evidenced not only by the low number of prosecutions, due mostly to low levels of reporting (Grubin, 1998; Myhill and Allen, 2002) and recording of sexual offences, and evidential difficulties and victim anxieties about the consequences of prosecution (Hudson, 2002),³ but by the failure of the justice system to prevent reoffending, largely due to the limited availability and effectiveness of prison treatment programmes (Furby et al, 1989; Beech et al, 1998).

Research shows that while overall levels of sexual victimisation are increasing,⁴ reconviction rates for sexual offenders have declined (Friendship and Thornton, 2001). More recent research shows that fewer than 5 per cent of sex offenders are ever apprehended (Salter, 2003). Moreover, evidence from self-report studies also suggests that those convicted of sexual offences often reveal the commission of many more offences than are reported to authorities by their victims (Groth et al,

² Recorded crime statistics show that the total number of recorded sexual offences has increased by 9.6% in the period 1999–2000 to 2001–02 and by 94.4% in the last 25 years ('Recorded Crime Statistics: 1898–2001–02', <<http://www.homeoffice.gov.uk/rds/pdfs/100years.xls>>).

³ A recent study of attrition in rape cases found an all-time low conviction rate of just 5.6% in 2002. Around one-quarter of reported cases were 'no crimed.' Evidential issues and victim withdrawal each accounted for over one-third of cases lost. Only 14% of cases reached the trial stage, with a further proportion of these not eventually proceeding due to withdrawal or discontinuance at court (Kelly et al, 2005).

⁴ The British Crime Survey, for example, estimates a high prevalence of sexual victimisation. According to the 2001 self-completion survey, 24% of women and 5% of men had been subject to some form of sexual victimisation at least once in their lifetime. Among women, 7% had also suffered a serious sexual assault at least once in their lifetime (including rape) since the age of 16 (Walby and Allen, 2004).

1982; Abel et al, 1987). In this respect, Home Office research estimates that actual recidivism rates for sexual offenders are 5.3 times the official reconviction rate (Falshaw et al, 2003).⁵ The very nature of the system means that, at best, it can only ever hope to deal effectively with those offenders who have already come to the attention of law enforcement authorities. In practice, this actually covers very few offenders, since as was argued above the majority of abuse remains hidden and undisclosed.

At a more basic level, cases continuously appear in the media of children abused or murdered by habitual sex offenders. Some of the most high profile cases in recent years such as those of Sarah Payne, and Holly Wells and Jessica Chapman, known euphemistically as the 'Soham murders,' demonstrate the failure of the authorities to protect children from even known sex offenders. As Cowan et al argue: 'the sovereign act of punishment is itself regarded as an incomplete method of rehabilitation because these people are regarded as too risky and untrustworthy' (2001: 451). The sum of these difficulties means that there is a need to re-examine and perhaps redefine the current regulatory framework in respect of these offences.

The overall purpose of this book is to analyse critically the current retributive response to the management of the risk posed by released sex offenders, particularly those who offend against children, and the problems presented by their reintegration into the community. More specifically, the book will examine the state's response to sex offending via a retributive legislative framework, the highly emotive popular response by the media and the public, which can also be framed in punitive terms, and ultimately what alternative responses there might be to manage the risk presented by sex offenders in the community and reintegrate them more effectively. All of these issues are explored on a comparative basis in the primary contexts of the United States and the United Kingdom, although other jurisdictions such as the Republic of Ireland, Canada, Australia and New Zealand are referred to for the purposes of comparison and illustration.

The central argument is therefore, that since the traditional retributive framework has failed in these respects, there is considerable scope for exploring the use of other forms of justice in tackling the sex offender problem. These approaches may provide a viable means of dealing with the offender's needs in terms of risk management and successful reintegration, but also of addressing the concerns of victims and communities in terms of effective public protection. As such, a primary focus is the application of restorative justice to child sexual abuse as a serious and persistent form of offending and the potential contribution of the community in particular to the reintegration of the offender. Key initial elements to implementing such a 'partnership' approach to justice between state agencies and the community are the theory and practice of reintegrative or 'restorative

⁵ Reconviction rates for sex offenders based on government crime statistics are generally low. Estimates range from 3–9% over a 2–6 year follow-up period (Falshaw et al, 2003); 10% after 6 years (Hood et al, 2002) and 20% over 20 years (Grubin, 1998).

community justice' (Bazemore and Schiff, 1996) and public education and awareness campaigns.

The issue of the application of restorative justice to the area of sexual offences is, to say the least, a highly contentious one. Restorative justice, however, is envisaged throughout as both a pragmatic response to the failings of retributive justice and as a way of extending the theoretical thinking on the use of restorative justice in 'hard cases.' Retributive justice has failed to hold offenders accountable and secure their rehabilitation. Similarly, the popular response to the presence of sex offenders in the community has also prevented the reintegration of offenders. Total impunity for these offenders is not an option. The failings of current approaches therefore create a moral, social, political and practical imperative to be creative, to test received wisdoms, and to draw, as appropriate, from the theoretical, policy and practical experiences of other jurisdictions, in order to devise a more effective response to these types of offences.

This book explores, in particular, the use of shaming mechanisms with sex offenders, particularly those who offend against children. Shaming, a central concept in the broader theory of restorative justice, may be of two varieties. Following Braithwaite's (1989) dichotomy of 'reintegrative' and 'disintegrative' shaming, this book will argue that within the traditional retributive framework of justice, contemporary popular and state-led responses to the risk posed by released sex offenders in the community are largely disintegrative or stigmatising in nature. These include legislative and judicial measures to control sex offenders in the community on release from custody, such as sex offender registration and community notification and novel probation conditions imposed in the United States. The media have followed suit with the adoption of 'name and shame' campaigns, which encourage public outcry and often vigilante justice. Far from securing the offender's rehabilitation or reintegration into society and the prevention of future offending, the net result is often the opposite. At best, offenders may be negatively labelled and stigmatised, serving to heighten their isolation and ostracise them from the rest of the community. At worst, they may be subjected to violence and vigilante action and may ultimately return to offending behaviour (Maxwell and Morris, 1999; Edwards and Hensley, 2001b; McAlinden, 2005).

In effect, contrary to the major arguments put forward by the critics, it is contended, albeit controversially, that some sex offenders against children may actually be suitable for a restorative approach in carefully managed contexts. In the main, it will be argued that unlike traditional retributive measures which make up the current criminal justice response to sexual offences, the theory and practice of restorative justice may offer a more meaningful, progressive and ultimately more effective response to the problem. These potential benefits include improving the safety of victims, providing relief for communities, rehabilitating and reintegrating offenders and ultimately offering a realistic prospect of breaking cycles of abuse.

MANAGING RISK: THE CASE FOR RESTORATIVE JUSTICE

In brief, as noted above, the case for restorative justice as applied to sexual offending, for its advocates, commonly rests on the perceived failings of the current regulatory framework and the greater potential of restorative justice for providing satisfactory outcomes for victims, offenders and communities affected by sexual offences in more cases (Finstad, 1990; Braithwaite and Daly, 1994; Hudson, 2002: 621). Restorative approaches in various jurisdictions may differ but are often based on the following common aims: engaging with offenders to help them appreciate the consequences of their actions and the impact they have had on their victims; encouraging appropriate forms of reparation by offenders towards their victims, if they agree, or the wider community; seeking reconciliation between the victim and offender where possible; and the reintegration of the offender within the community. It is these broad aims which are evidenced in 'reintegrative shaming' (Braithwaite, 1989) efforts with sex offenders.

Although restorative schemes with sex offenders are in short supply, a few piecemeal initiatives have developed in several jurisdictions such as Canada and parts of the United States which are based on reintegrative or restorative principles. There are considerable variations in approach, but at a broad level these programmes involve the development of restorative support and treatment networks for sex offenders where the community works in partnership with the offender and state and voluntary agencies. These schemes have been effective in managing the risk posed by sex offenders on a number of levels: in reducing reoffending (Wilson et al, 2002) and promoting 'reintegrative shaming' (Braithwaite, 1989), and in engaging communities to play a constructive, supportive and positive role in this process (Quaker Peace and Social Witness, 2005: 5). The book examines whether such ad hoc schemes may be of general application with child sexual abuse and how they may be implemented on a more widespread and holistic basis.

In the United Kingdom, the Government has embraced the restorative justice paradigm, albeit on a piecemeal basis, and consequently changed the emphasis of criminal justice in key areas such as youth justice.⁶ Elsewhere, there is a growing recognition that restorative justice, which is routinely confined to low-level forms of offending in this jurisdiction, can be used for the most serious social problems. For example, it has been used in the Truth and Reconciliation Commissions of South Africa (Villa Vincenzo, 1999; Christodoulidis, 2000; Skelton and Frank, 2001) and Rwanda (Drumbl, 2000) with respect to genocide, mass torture and rape. Within this context, this book will explore whether restorative or reintegrative justice can actually be applied to child sexual abuse as one of the most

⁶ By virtue of a range of provisions under the Crime and Disorder Act 1998, the Youth and Criminal Evidence Act 1999 and further legislation, an array of restorative options are initially explored with first time young offenders, with the formal criminal justice system as the backdrop which can be used as a last resort with more persistent offenders (Crawford and Newburn, 2003).

abhorrent yet ubiquitous of contemporary social problems, and if so, what special considerations might apply.

Some may feel that child sexual abuse is inappropriate, unsuitable or too delicate an area within which to use a restorative response and may criticise this book's arguments as either naive or somewhat Utopian. Advocates, in this respect, have addressed some of the traditional critiques concerning restorative justice as applied to 'hard' cases and how they can be overcome (Hudson, 1998, 2002; Daly, 2002a, 2006; Morris and Gelsthorpe, 2000a; Morris, 2002a; McAlinden, 2005). There is a danger of oversimplifying the principal arguments here, but in the main advocates have focused on a range of claims including that restorative justice trivialises what are very serious criminal offences, particularly where children and the vulnerable are concerned; it fails to promote offender accountability and allows the offender to reject responsibility for the offence; it reproduces and reinforces the imbalance of power entrenched in abusive relationships and leads to possible re-victimisation; and it encourages vigilantism.

Such claims have been countered theoretically (Hudson, 1998, 2002; Morris and Gelsthorpe, 2000a; Daly, 2002a) and empirically (Morris, 2002a; Daly, 2006) by arguing conversely that even though the criminal law remains as a symbolic signifier and denouncer, in fact restorative processes which involve the abuser's family and the wider community can meet the affective or expressive need for censure in sexual offences cases; that while the criminal justice system does little to hold offenders accountable and address ingrained patterns of offending behaviour, restorative justice seeks genuine engagement with offenders to help them acknowledge the harm done and appreciate the consequences of their actions; it focuses on the empowerment of victims in a supportive, fair and uncoerced environment in which the victim can make clear to the offender the effects of the abuse on them; that by offering constructive rather than penal solutions, it may be opted for at an earlier stage in the victim's experience of abuse; and finally, that distortions of power, including community control, are addressed when programmes adhere closely to restorative values and principles.

In addition, critics of shaming theory, in particular, also argue that a number of interrelated difficulties such as the lack of empirical research, the lack of social and norm cohesion in contemporary society, the difficulties in promoting social inclusion, and the problematic nature of the terms 'community' and 'partnership', mean that such schemes will not easily be implemented in mainstream Western society. Conversely, however, advocates contend that restorative justice schemes have outcome measures that are broader than a consideration of reoffending rates (Christie, 1977; Maxwell and Morris, 1999, 2002; Bazemore and Griffiths, 2003); popular responses to sex offending demonstrate that there is striking consensus concerning the wrongness of sexual relationships between adults and children (Hacking, 1999); the provision of accurate information about the nature of sex offending against children and approaches to it, would hopefully dispel the commonly held misconceptions, shift cultural attitudes and help to promote social inclusion (Grubin, 1998; Leggett, 2000); and finally, that the involvement of