1
A Short History of Sex Offending

> The law on sexual offences is confused and confusing. It is comprehensive but incoherent and has many anomalities that need resolving.
> *Paul Boateng, former Home Office minister*

These first two chapters seek to place our current obsession with sex offenders and paedophiles in a historical perspective, and to provide a context within which to understand better those other issues and themes which we will develop later. In this first chapter we spend some time looking at how Britain has attempted to combat sexual offending, which is also placed within a historical context. For, in looking at the past, we attempt to see if our present approach – symbolically characterized by the Sex Offender Register – has been tried before. In doing so we provide an analysis of one largely forgotten incident from the Victorian period – the garrotting panic of 1862, which culminated in the Garrotters' Act of 1863 and the registration of "ticket of leave" men. However, we also provide a contemporary context for our later chapters. We present, for example, a statistical breakdown of the extent of sexual offending between 1987 and 1997, as gleaned from Home Office figures, and in doing so begin to deconstruct what it is that we mean by the term "sex offending". In this respect we introduce the concept of "consent". Above all in this first chapter we attempt to see how those activities that come to be called "crime" are neither fixed nor unchanging, but vary over time and between cultures. As such our story starts in April 2001, with a local trader who becomes known as "the metric martyr".

In April 2001 Steven Thornburn, a 36-year-old greengrocer in Sunderland, was found guilty of having sold, several months previously, a pound of bananas that had been weighed on imperial scales to an official from the city's Trading Standards Office, who had posed as a customer. Thorburn's imperial-only weighing scales were subsequently confiscated, given that his refusal to switch to a set of metric scales breached a European directive which had been incorporated into the Weights and Measures Act 1985. Thus he had broken the law – he had committed a "crime" – for which he was given a six-month conditional discharge and a heavy fine.

Thornburn's prosecution is a very good example to remind us that what we call "crime" changes over time, and can vary between countries. Thus, it had been perfectly permissible for Thornburn to have sold bananas weighed only in pounds prior to the adoption of European legislation into English law, and it is still permissible to sell bananas in pounds in various other countries of the world – including Jamaica, the biggest exporter of the fruit. In this case a "crime" – using an imperial-only weighing machine – has been invented, and as such becomes just the latest of a long list of "new" crimes over the last twenty years; these include not wearing a crash helmet on a motorbike, or a seat belt in a car where they are fitted, selling beef on the bone, stalking a former partner, or "hacking" into someone else's computer. Equally, "crimes" can be abolished. Thus, for example, a range of sexual behaviours which had previously been "criminal" are now perfectly legal – such as consenting homosexual behaviour between men over the age of sixteen – an area we discuss more fully below.

The key element in all of this is power – the power to create "crime". Clearly we do not all possess the power to label behaviours with which we might disagree as "crime", nor do we all have the power to remove that label once it has been applied to behaviours in which we might engage or of which we might approve. This power resides largely in the hands of politicians who create and judges who interpret the law, which is in turn the responsibility of our police, and others (including trading standards officers), to enforce. However, politicians do not exercise this power in isolation. Rather, they often respond directly to various pressures and anxieties within society, which at certain times can become focused on a particular event, group or issue, which ultimately forces those with power "to do something".

Moral panics and deviancy amplification

Two criminologists, Stan Cohen and the late Leslie Wilkins, offer us several helpful ways of understanding those processes at work when society demands that "something should be done" about the activities of certain groups or individuals, eventually leading to the criminalization of the activities of those groups or individuals. Wilkins (1964), for example, employs the description of "deviancy amplification" to describe what happens when society chooses to outlaw a particular group and then isolate that group from the normal functions of society. Thus, he describes how being isolated allows such a group to develop its own norms and values, which society thereafter perceives as even more deviant than before. In turn this encourages even more social reaction against the group, which becomes still further isolated, and in an ever-increasing cycle of deviance and crime the group becomes more and more criminally orientated. The key to what Wilkins describes is to understand that crime increases as a result of social controls on the group being effective, not as a result of controls on the group having failed.

His theory of deviancy amplification is difficult to test empirically, and Wilkins tells us little about why certain deviant activities become amplified as opposed to others, or how amplification would stop. However, Stan Cohen (1972) argues that, at times of wider social unease or rapid change, "folk devils" and "moral panics" serve to create a sense of control over those events, individuals or groups who appear to threaten the status quo. He bases his analyses on research that he conducted into the activities of working-class London youths who gathered together at Clacton in Essex over the Easter Bank Holiday in 1964. As so often happens in England, the weather was bad; the youths got bored and seem to have engaged in minor acts of vandalism. This became front-page news, with claims being made that the youths had rampaged through Clacton, and that there had been running battles between "Mods" and "Rockers" – even though neither "Mods" nor "Rockers" were "new" ("news" is, after all, the plural of "new"). The media attention that was given to this reporting led to more intensified policing, and also served to create a more coherent sense of being a "Mod" or a "Rocker", which in turn served to polarize these two groups even further – leading to a greater number of arrests, and which thus served to justify the original reporting. Thus, in all of this, it is important to

recognize the central role that the media plays in publicizing the activities of the group that is causing disquiet – in this case young people with disposable income – and how it shapes debate by providing further information, which serves to reinforce the original reporting. Above all Cohen suggests that this scare became news as it symbolized wider anxieties about young people, and that "Mods" and "Rockers" served as a specific scapegoat for these more general worries.

From our recent criminological history Mike Levi argues that there have been moral panics about mugging, battered women, rape, racial violence, the ritual Satanic abuse of children, rural violence, dangerous dogs, and assaults on the police. However, in using this concept of moral panic further we have chosen to look at an incident from our Victorian past, given that aspects of the reaction to these incidents throw some light onto our contemporary approach to paedophiles – in particular, the use of a sex offender register.

The garrotting panic of 1862

In the winter of 1862 London was gripped by what *The Times* described as "a new variety of crime", and as a result was in the midst of a "reign of terror" (all quotes taken from Pearson, 1983: 128–55). What this new crime amounted to was a form of robbery whereby the victim was temporarily incapacitated by an assailant, who had approached from behind, while an accomplice effected the robbery from the front as the victim was being choked. No one likes to be robbed, but robberies in London were hardly new. However, what made matters worse was the fact that one of the first victims of this "new" crime happened to be Hugh Pilkington MP, who was attacked and robbed as he walked from the House of Commons to the Reform Club. This seemed to act as a "trigger device", and newspaper editorial after newspaper editorial railed against the garrotters; *Punch* in particular provided its readers with advice on how to avoid being garrotted by using a vast array of all sorts of ingenious gadgets. What's more, the newspapers knew who was behind this wave of garrottings – the "ticket of leave" men.

In the middle years of the nineteenth century, and in particular with transportation to Australia ending in 1857, Londoners had to get used to something which they hadn't had to deal with before in

any great numbers – prisoners being released from jail back into the community. The Penal Servitude Act of 1853, for example, while it had increased prison sentences, had also created a system of licensing for the release of discharged prisoners known as "ticket of leave" (c.f. Thomas, 2000: 40–4). Not only that, but the mood of the time was optimistic about how prisoners could be reformed through the discipline of the new penitentiaries, and correspondingly there was less emphasis on physical punishments such as whipping, flogging and hanging. As a consequence this period would see public hangings come to an end in 1868, and flogging abolished for prisoners in 1861.

Ultimately the Garrotters' Act was passed in July 1863, but a series of other pieces of legislation, such as the Penal Servitude Act of 1864 and the Habitual Criminals Act of 1869, were more important as they were aimed directly at curbing the activities and freedoms of the ticket of leave men. Thus, for example, under the Penal Servitude Act there was a requirement that ticket of leave men should report to the police within three days of leaving prison, and thereafter on a monthly basis, or within forty-eight hours if they changed their address. Thomas (2000: 42) reports that this system of registration did not work, and that the police did not, for example, have a central register to which they could refer. The Habitual Criminals Act of 1869 repealed the ticket of leave arrangements – except for those with two felony convictions (perhaps an early example of "two strikes and you're out") – and introduced a new national register of offenders, known as the Habitual Criminals Register. The register applied to England, Wales and Ireland, and was extended to Scotland through the Prevention of Crimes Act of 1871. The register was held at New Scotland Yard, and was meant to be regularly updated. Indeed a Convict Supervision Office was created for this purpose, but eventually, in 1910, this form of police surveillance was dismantled by Winston Churchill while he was home secretary. Petrow (1994: 82) sums up the success or otherwise of the Habitual Criminals Register:

> On balance police supervision, while theoretically valuable, has been practically useless. It helped the police manufacture a criminal class, without really deterring criminals or diminishing crime.

As with the moral panic about Mods and Rockers which we described above, the important point to grasp is that legislation aimed at the

ticket of leave men merely became a symbol of wider anxieties in society, and in this particular case was concerned with articulating a devout opposition to penal reform and the possibility of rehabilitation. As Geoffrey Pearson (1983: 152) has put it, "the people who created The Garrotters Act, together with the gentlemen who egged them on from the sidelines, helped to fashion the vocabulary of objections to penal reform which remain with us to this day." Thus the issue was not so much that there were ticket of leave men – or Mods and Rockers – but rather that they came to symbolize dramatic change to the established order and received opinion. Change creates unease and anxiety, and in an effort to regain control over that anxiety the demand that "something should be done" becomes all-pervasive. We will return to this theme when we consider the Sex Offender Register below, given that there are echoes there with the response to ticket of leave men.

These opening sections of this first chapter have attempted to introduce a variety of concepts. First we have attempted to show how what we call "crime" is neither fixed nor unchanging, and we have introduced the idea of power being exercised when crime is created or abolished. In this respect we have used two criminological theories – moral panic and deviancy amplification – to show how society's response to certain groups that are seen to be deviant might in fact make matters worse rather than better, and how this response is often based on wider anxieties which become fixed on these groups. We have introduced the concept of power when thinking about how "crime" is either created or abolished. Finally, we have attempted to use a historical example to throw light on all of these themes, but we have so far avoided any concerted discussion about sexual offending. We turn to this issue now.

Sex and sex offending

In the same way that crime in relation to not wearing a seat belt, or hacking into another person's computer, or even selling bananas by the pound, can be created, so too can crime in relation to a range of sexual behaviours be invented, or indeed abolished. Thus, for example, Donald West (1987: 1) has pointed out that any form of sexual expression other than in "the missionary position", between a "man and wife" for the purpose of producing children, was once an

offence against canon law, and a sin in the eyes of the Christian Church. According to Catholic teachings, reinforced by a papal statement in 1976, masturbation was a sin, and in the nineteenth century there was a flourishing trade in mechanical restraints to prevent children playing with their genitals. Before the passage of the Sexual Offences Act of 1967, all homosexual contacts between men in England and Wales were criminal acts punishable by imprisonment, and the law did not recognize the concept of rape within marriage. This latter example should also remind us that there are "public" and "private" spheres to sexual offending, and so, for example, the law decriminalizing homosexual activities stipulated that these must be "in private", without defining what that meant. Thus, in 1997 seven men were prosecuted in Bolton for engaging in homosexual activities within a private household, but in the presence of others, which meant that these activities were no longer considered to be private (*The Guardian*, 23 January 1998).

However, no one now seriously questions the legality of sexual behaviour between consenting heterosexual adults in a variety of positions, and not just for procreation. Nor do we seek to stop young people masturbating. Equally, the law recognizes homosexual behaviour between adults – although there is still an ongoing debate about reducing the age of consent from eighteen to sixteen (see below), and since 1988 in Scotland and 1992 in England and Wales the common law has recognized that rape can take place within marriage. However, writing some time ago, Donald West came to the conclusion that "our sex laws are less than satisfactory" (West, 1987: 15), and he has latterly found support for this position in the unlikely guise of Paul Boateng, former minister of state at the Home Office. In introducing the terms of reference for a review of sexual offences, Mr Boateng commented that:

> The law on sexual offences is confused and confusing. It is comprehensive but incoherent and has many anomalies that need resolving. Many of the offences were created a long time ago and reflect the social and legal system of their time . . . The law must be brought up to date, both to take on board human rights issues and to reflect the better understanding we now have of patterns of sexual abuse. (Quoted in Thomas, 2000: 7)

Taking this one stage further, we begin to see what Mr Boateng was meaning if we look at some of the numerous lists that have been

Table 1.1 A sexual offence (England and Wales)

"Sexual offence" means any of the following:

- an offence under the Sexual Offences Act 1956, other than an offence under section 30, 31, or 33 to 36 of that Act;
- an offence under section 128 of the Mental Health Act 1959;
- an offence under the Indecency with Children Act 1960;
- an offence under section 9 of the Theft Act 1968 of burglary with intent to commit rape;
- an offence under section 54 of the Criminal Law Act 1977;
- an offence under the Protection of Children Act 1978;
- an offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit any of the offences mentioned above;
- an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit any of those offences;
- an offence of inciting another to commit any of those offences.

drawn up about sexual offending, and which are used for various purposes. Thus, for sentencing purposes there exists a list in the Criminal Justice Act 1991 for England and Wales (see table 1.1) and another for the Criminal Procedure (Scotland) Act 1995. There is a list in the Sex Offenders Act 1997 for those offenders who will have to register, but it is actually subdivided into three lists – one for England and Wales, one for Scotland and another for Northern Ireland. These lists should not be confused with the more long-standing "Schedule 1" list of the Children and Young Persons Act 1933, which enumerates all the offences it is possible to commit against a child (see table 1.2).

In short, none of these lists has the same content, which gives some flavour to the difficulty of defining a sexual offence. Further insight into these difficulties can be gleaned by looking at the issue of consent, which, as Thomas (2000: 7) reminds us, "is central to defining sexual offending".

At a most basic level "consent" is often simply equated with the "age of consent" – the age at which children and young people are able legally to agree to participate in sexual activity. For hetero-sexuals the age of consent was fixed at ten in 1285, but in the mid-Victorian period this was raised first in 1875 to thirteen and thereafter in 1885, by the Criminal Law Amendment Act, to six-teen. (Of note: this Act also made illegal acts of gross indecency between males – and was famously used to prosecute Oscar Wilde.)

Table 1.2 Offences listed in Schedule 1 to the Children and Young Persons Act 1933

Common Law Offences:
- the murder of a child or young person under 18
- common assault and battery

Offences Against the Persons Act 1861:
- s.5 Manslaughter of a child or young person under 18
- s.27 The abandonment or exposure of a child under two so as to endanger its life or health

Infant Life (Preservation) Act 1929:
- s.1 Child destruction

Children and Young Persons Act 1933:
- s.1 Cruelty to (including assault, ill treatment or neglect) a person under 16
- s.3 Allowing a person under 16 to be in a brothel
- s.4 causing or allowing a person under 16 to be used for begging
- s.11 Exposing a child under seven to risk of burning
- s.23 Allowing a person under 16 to take part in a dangerous performance

Infanticide Act 1938:
- s.1 Infanticide

Sexual Offences Act 1965:
- s.1 Rape (or attempted rape) of a girl aged under 18
- s.2 Procurement (or attempted procurement) of a girl under 18 by threats
- s.3 Procurement of a girl under 18 by false pretences
- s.4 Administering drugs to a girl under 18 to obtain or facilitate intercourse
- s.5 Intercourse (or attempted intercourse) with a girl under 13
- s.6 Intercourse (or attempted intercourse) with a girl between 13 and 16
- s.7 Intercourse (or attempted intercourse) with a mentally deficient girl under 18
- s.10 Incest (or attempt to commit incest) by a man against a female, where the victim is under 18
- s.11 Incest (or attempt to commit incest) by a woman, where the victim is under 18
- s.12 Buggery (or attempt to commit buggery) with a person under 18
- s.13 Indecency between men where one or both is under 18

Table 1.2 (*cont'd*)

- s.14 Indecent assault on a girl under 18
- s.15 Indecent assault on a male under 18
- s.16 Assault with intent to commit buggery
- s.19 Abduction of an unmarried girl under 18 from a parent or guardian
- s.20 Abduction of an unmarried girl under 16 from a parent or guardian
- s.22 Causing (or attempting to cause) prostitution of a girl under 18
- s.23 Procuring (or attempted procuration) of a girl under 18
- s.24 Detention of a girl under 18 in a brothel or other premises
- s.25 Permitting a girl under 13 to use premises for intercourse
- s.26 Permitting a girl between 13 and 16 to use premises for intercourse
- s.28 Causing or encouraging prostitution of, intercourse with, or indecent assault on, a girl under 16

Indecency with Children Act 1960:

- s.1 Indecent conduct towards a child under 14

Suicide Act 1961:

- s.2 Aiding, abetting, counselling or procuring the suicide of a person under 18

Other Offences:

Any offence involving bodily injury to a person under 18

The pressure to increase the age of consent in 1885 was prompted by a series of popular campaigning articles in the *Pall Mall Gazette*, edited by William T. Stead, which drew attention to the extent of child prostitution in Victorian London – although it is of interest that this campaigning zeal did not extend to incest, which did not become a crime until 1908 – again reflecting differences between private and public spheres to which we have drawn attention. After the Act was passed a National Vigilance Association was established to ensure that requirements under the Act were implemented, and vigilance committees started to patrol areas of the city calling for the closure of brothels and lodging houses – all of which was given greater prominence with the murders of a number of prostitutes attributed to Jack the Ripper, which began in 1888.

Thomas (2000: 8) has argued that the age of consent is "gender specific and socially constructed", and we can see something of these issues in the debate that has taken place about lowering the age of consent for homosexuals. The age of consent for homosexual activity was first fixed at twenty-one by the Sexual Offences Act of 1967, but this was not established in Scottish law until 1980 and in Northern Ireland until 1982. The Criminal Justice and Public Order Act of 1994 lowered the age of consent to eighteen for all parts of the United Kingdom but – in response to a case brought by Euan Sutherland and Chris Morris – the European Court of Human Rights ruled that British law contravened the European Convention on Human Rights, given that the age of consent for heterosexuals was lower than the age of consent for homosexuals.

New Labour attempted to change the law on this matter by inserting a clause in the Crime and Disorder Bill of 1998 lowering the age of consent for homosexual activity to sixteen. However, this failed to pass the House of Lords, and subsequently failed again when a similar clause was introduced into the Sexual Offences (Amendment) Bill of the same year. They finally succeeded in lowering the age of consent to sixteen by invoking the Parliament Act in December 2000, thus establishing equality between homosexuals and heterosexuals. But whether or not we are dealing with homosexual or heterosexual activity, Donald West has raised another issue in relation to an age of consent. For example he points out that:

> The law maintains that no person under sixteen can give valid consent to a sexual act, so any sexual fondling of children below that age, however eager the children may have been to participate, amounts to an indecent assault. If two youngsters under sixteen indulge in petting, each is guilty of an assault upon the other. This is an example of legal overkill, for few could have passed through adolescence without having indulged in some petting, thereby putting themselves into the category of sex criminal. (West, 1987: 5)

Thus, as West reminds us, the "age" at which sexual activity begins, as far as the law is concerned, is not necessarily the age at which sex begins in practice – although ironically children are held to be criminally responsible from the age of ten in England and Wales, and at the age of eight in Scotland. And, while the law does give some scope for discretion when young people are just below the age of

consent and the defendant just above, clearly there are still difficult issues which need to be raised. For example, when a doctor or nurse gives advice about contraception to a girl – or if they prescribe the pill – even though they know that the girl is below the age of consent, they do so in the knowledge that they may be enabling that girl to permit someone to commit the crime of unlawful sexual intercourse.

Thus on the one hand the age of consent attempts to protect children from being sexually exploited, but on the other hand – if enforced to the strict letter of the law – could in some circumstances prevent information about sexual activity being disseminated, at a time when it is likely that children will be sexually active and curious. How should we strike a balance here? Do we give information about, for example, "safe sex", condoms and the "morning after pill" to thirteen-, fourteen- and fifteen-year-olds, or do we ignore the reality of teenage pregnancies? And, if we accept that children younger than the age of consent are likely to be sexually active, is it right that we should allow companies to market products which aim to capitalize on this fact? Perhaps many would baulk at girls' magazines advising their readers on how to give "better blow jobs", but what about magazines that are aimed at the pre-teen and teenage market, which advise girls about fashion, make-up and relationships? The magazine *Mad About Boys*, for example, produced by Planet Three Publishing Network Ltd., encourages its readers to vote for a "Boy of the Month", and as the editorial in its third issue made clear:

> Time flies when you're looking at loadsa gorgeous boys all day long (tough job, eh?)! And take it from me – this month they ARE gorgeous AND we've got our first Boy of the Month as voted by you lot . . . let me tell you what else we've squashed into this issue – there's truly gorgeous covergirl makeover, fashion ideas that are fantastic for not-so-ladylike laydeez, [and] a quiz that'll make you REALLY think about where your loyalties lie . . . Happy choc-licous Easter, chicksters! (*Mad About Boys*, April 2001)

Is this harmless fun, or does it contribute to the pressures on young girls to be "adult", with all that that entails? What does it tell us about young boys, and this editor's interest in them? Indeed perhaps anxieties about some of these more general questions about child sexuality suggest, as with the moral panics about ticket of leave men

and Mods and Rockers, a reason as to why we have chosen to be so censorious about the activities of paedophiles – at least with them we can be certain. This is a theme that we develop more fully throughout the book.

Another way of looking at "consent" is not to see this in relation to age, but, as with "informed consent", to view it as something which implies permission – based on the person giving that consent being fully aware of the facts and the consequences of its being given. (The term "consenting adults" suggests this dimension, for example.) If consent is not given – as in the crime of rape – then we move into the territory of sexual offending. Indeed, consent in this respect can be invalidated if, for example, the victim was scared, under duress or coerced into giving consent. However, this too becomes more complicated when we consider prostitution, which supposedly allows for sexual activity to take place in return for money, despite the fact that many feminist authors would point out that, in this respect, true consent has not been given as it is merely a function of poverty and inequality. Similarly, in the "Spanner" case of 1990, which involved a group of consenting homosexual men who were interested in sado-masochism, issues of consent did not prevent a successful prosecution of causing actual bodily harm; their convictions have been upheld on appeal and before the European Court of Human Rights.

We have spent some time on this issues of consent as it seems to us to be central to the issue of sexual offending, and while we have deliberately introduced ambiguity about consent this has been done to remind us of the complexity of the discussion that needs to be held, rather than relying on "common sense" assumptions. The final – and perhaps most important – ambiguity in all of this concerns the question: is child sex offending on the increase? Here of course we have to remember that, if "crime" can be invented or abolished, it is difficult to be precise about what it is that we are attempting to measure over any great period of time. And, in relation to sexual offending, there are other problems about using official statistics produced by the police. It is well known that some victims of sexual offences do not want to tell the police, for fear of not being taken seriously or of being subjected to intensive questioning and intrusive medical examinations. If this is true of adults (both female and male victims) it is clearly an even weightier factor in the case of children. Thus there is inevitably an under-reporting of sexual offences. Nonetheless, while these reservations

should be borne in mind, recorded crime statistics do at least provide us with a starting-point from which to consider the overall level of child sexual offending within this country – an issue we discuss next.

Sex crime – the "facts"

The murder of eight-year-old Sarah Payne in the summer of 2000, which in many ways was the starting-point for this book, provoked an understandable bout of national soul-searching about paedophile offending. Callers to radio phone-ins, and writers of letters and emails to newspapers, overwhelmingly articulated the view that violent paedophile crime was getting out of hand, and that the failure to address it by government was a disgrace. Starting with the most extreme end of the spectrum – the murder of children with a sexual motive or element – there is no statistical support for this belief. Both Home Office figures and the Derbyshire police database called CATCHEM – which records all British cases – indicate that the number of child sex murders, where the perpetrator was a stranger, has remained roughly static, at between five and seven a year since about 1970. But what about the data for other sexual offences against children, short of killing?

As we have suggested, this is an area where the statistics have as much capacity to mislead as to illuminate. For example, the number of cautions or convictions for child-sex crimes has declined steadily in recent years. Home Office figures quoted by the distinguished forensic psychiatrist Don Grubin (1998) show that, in 1995, 3530 people were either convicted or cautioned in England and Wales for the six most common sexual offences against children under sixteen. The comparable figure for 1985 was 5136, a drop of 31 per cent. It is stretching credulity to believe that, during that decade, the real amount of sex crime against children dropped by almost a third, so we must look elsewhere for explanations – principally in variations in record-keeping from one police force to another; the withdrawal or downgrading of charges for evidential reasons; and the number of allegations dealt with other than through the criminal justice process.

Grubin (1998) notes that "with increased awareness and media interest in child sexual abuse, has come an increase in the number

of reported cases in the UK." But criminologists disagree about whether this reflects a real rise in the incidence of abuse. Home Office research on offenders (Marshall, 1997) looked at cohorts of men born in 1953, 1958, 1963, 1968 and 1973, with a follow-up period to 1993. About 0.55 per cent of the 1953 and 1958 cohorts had a conviction for a sex offence against a child by the time they were thirty, compared with 0.45 per cent of the 1963 cohort, while the younger two cohorts seemed to be gathering sex offence convictions at an even slower rate. He estimated that 110,000 men in England and Wales had at least one conviction for a sexual offence against a child.

However, a number of victim surveys record a much higher proportion of child sex abuse in the general population than is implied by the Marshall findings. Baker and Duncan (1985), in conjunction with the opinion pollsters MORI, carried out one of the first national surveys, and from their findings extrapolated that over 4.5 million adults had been sexually abused as children, and that over 1.1 million children would be sexually abused by the age of fifteen. In 1992, the Department of Health estimated, from the number of children on child protection registers in respect of sexual abuse, that the incidence of such abuse in the UK was 0.6 per cent per 1000 girls and 0.2 per cent per 1000 boys. The latest Home Office criminal statistics available at the time of writing show child sex offences representing 7 per cent of the 37,300 sex crimes recorded by the police in England and Wales in the year ending March 2001. The largest categories were gross indecency with a child – 1336 – and illegal sex with a girl under sixteen – 1237; 155 people were convicted of having sex with a girl under thirteen.

Having studied all the relevant data available at the time of his study, Grubin comes to a startling conclusion, which helps to put much of the argument discussed in this book in perspective: that the number of children sexually abused each year in England and Wales lies somewhere between 3500 and 72,600. In other words, a detailed analysis of the statistics produces such a wide margin of possible error that no published figures can provide the basis for reliable assumptions, let alone sensible policy-making. Thus the belief (held by the *News of the World* and others) that, by focusing on one narrow measure of sexual crime, the Sex Offender Register, we are contributing to child protection is ludicrously wrong-headed.

Yet we can say with certainty that, as a society, we are undeniably more concerned about paedophile crime than we were twenty or

Table 1.3 Articles mentioning the words paedophile/paedophilia, 1992–1998

Year	*Guardian*	*Indep'ent*	*Telegraph*	*Mirror*	*Mail*	*Times*
1992–5	254	254	309	267	60	168
1996	250	257	288	206	123	178
1997	252	280	219	209	222	236
Jan.–April 1998	112	113	132	80	126	149
Total	868	904	948	765	531	731

even ten years ago. Taking the media as a barometer, Keith Soothill has been able to show that there has been "an explosion of interest" among the six leading British newspapers about paedophiles since 1996 (Soothill et al., 1998: 882; see also Soothill and Walby, 1991). A computer search of *The Guardian*, *The Independent*, the *Daily Telegraph*, the *Daily Mirror*, the *Daily Mail* and *The Times* for the words "paedophile" or "paedophilia" revealed, for example, that the *Daily Mail* had only sixty articles between 1992 and 1995 which mentioned these words, but had over double that number of articles in 1996 alone, and double that number again in 1997. Indeed in only the first four months of 1998, when Soothill did his search, the *Daily Mail* produced more than double the number of articles using these words than they had during the entire four years between 1992 and 1995. This was a pattern that was roughly consistent for the other tabloid newspaper – the *Daily Mirror* – although its interest in paedophiles seems to have peaked in 1997. Of the broadsheets, *The Guardian*, for example, had 254 articles that mentioned "paedophiles" or "paedophilia" in the four years between 1992 and 1995, but the same number of articles in 1996 alone, and the broadsheet with the greatest interest in paedophiles is the *Daily Telegraph*. The full breakdown of Soothill's findings is presented in table 1.3, and we discuss the impact of the *News of the World*'s "naming and shaming" campaign in chapter 8. However, as table 1.3 makes very clear, the media has played a crucial role in providing information about paedophiles and has contributed to creating a "moral panic" at a time when the numbers of sex offenders were actually stable within the sentenced prison population.

Responses to paedophiles and sexual offending

Whether or not the numbers of people being sentenced for sexual offences is stable, increasing or falling off, we do not intend to suggest that these offences are not serious – especially to those who experience them. All offending should be taken seriously, and each victim has a story to tell – an issue we explore in chapter 3. In this final section we present how the government has responded to the threats posed by sexual offenders within the community, and in particular we discuss the impact of the Sex Offenders Act 1997 – which introduced the Sex Offender Register and Sex Offender Orders, which were implemented on 1 December 1998 as part of the Crime and Disorder Act.

The Sex Offenders Act (SOA) received royal assent on 21 March 1997, just weeks before the general election, following a very short period of discussion both within and outside of Parliament. It was rushed through the Commons with cross-party support from the Labour opposition, in much the same way that Labour had supported the Crime (Sentences) Bill, a Tory initiative to introduce mandatory minimum sentencing, which became law after the election under a Labour administration. It was a period which was characterized by New Labour being determined not to be "out-toughened" on law and order by the Tories, which created a consensus between the two main parties, and it was left to the former Tory MP Matthew Parris – now a political columnist – to comment about the Sex Offenders Bill that "there is no reason for this Bill. No reason at all. It is simply a piece of electioneering" (*The Times*, 24 January 1997).

Nonetheless the SOA did have a slightly longer history than this would suggest, and Thomas (2000: 106) points out that, as long ago as 1988, the British Association of Social Workers had proposed a register of sex offenders, and that informal registers were being kept by some local authorities. Indeed the SOA itself came out of a Home Office consultation document on the sentencing and supervision of sex offenders (Home Office, 1996), and the idea of sex offender registration had support within the Police Superintendents' Association. Also of note, a paedophile section had been created within the National Criminal Intelligence Service.

The Sex Offenders Bill had been premised on the idea that sex offender registration would help police identify suspects after a crime had been committed; that it would help to prevent crime; and, finally,

that it might act as a deterrent – issues that were all first explained within the consultation document. The Bill itself was published in two parts. Part 1 was concerned with registration arrangements, and Part 2 with what had become known as "sex tourism". In relation to this first part the Bill had five clauses, which related to:

- those who would have to register and for how long
- the information that had to be supplied
- making failure to supply that information an offence
- the position of young offenders
- empowering the courts to issue certificates stating details of a court hearing.

There were several differences between what had been proposed within the consultation document and the published Bill. For example, the number of offences which would require registration was reduced from thirty-two to fourteen, and thus, while in the consultation document those convicted of bigamy, soliciting a man and incest by a woman were required to register, under the provisions of the Bill they were not. More importantly, while the consultation document had been focused on England and Wales, the Bill was aimed at the whole of the United Kingdom, and thus extra lists of new qualifying offences were introduced to satisfy Scottish law and the law of Northern Ireland. As such Thomas (2000: 109–10) points out that, since the age of criminal responsibility in Scotland is eight, technically registration could take place from that age, despite the fact that a child involved in the same activity in England would not be regarded as having offended at all.

In relation to the debate that did take place within the Commons, three issues emerged which are perhaps still of relevance. Firstly the SOA was not to be retrospective. In other words, the requirement to register related only to those sex offenders who were currently in contact with the criminal justice system. In turn, as is implied by the idea of an "offenders" register, those who are not "offenders", because they have not been reported, caught or prosecuted, would not have to register, although those who were cautioned for a sexual offence would be required to do so. This latter requirement was yet another change between the consultation document and the published Bill. Finally, what was to happen to the information that the police had gathered? In short, what were the police to do with the register so that it actually protected the public? Were they obliged

to disseminate the information to relevant bodies, and were the public to have access to the information?

This idea of "community notification" is not simply associated with the SOA, but had occurred as a result of other events during 1997 and the relentless reporting about paedophiles that we have discussed above. For example, in the summer of 1997 the North Wales Police had disclosed information to the local community about two ex-sex offenders, and these two in turn sought a judicial review of the police's decision. In July the High Court (*R* v. *Chief Constable of North Wales Police*, ex p. AB and CD) held that, although there is a general presumption that the police should not disclose information about offenders to third parties, they could do so in order to prevent crime or to alert the public to a perceived danger. The court ruled that, while blanket disclosures were objectionable, any decision to disclose information which was made in good faith, and on the careful consideration of the facts of the case and the risk of future offending, would not contravene Article 8 of the European Convention on Human Rights (right to respect for privacy and family life). The Court of Appeal eventually upheld this decision.

Decisions such as this provided some of the legal footing for the SOA, which now applies to all of those convicted or cautioned of an offence as outlined in Schedule 1 of the Act (see table 1.4). The

Table 1.4 Schedule 1: sexual offences to which Part I applies, offences in England and Wales

- Rape
- Intercourse with a girl under thirteen
- Intercourse with a girl between thirteen and sixteen
- Incest by a man
- Buggery
- Indecency between men
- Indecent assault on a woman
- Indecent assault on a man
- Assault with intent to commit buggery
- Causing or encouraging prostitution of, intercourse with, or indecent assault on a girl under sixteen
- Indecent conduct towards a young child
- Inciting a girl under sixteen to have incestuous sexual intercourse
- Taking indecent photographs of children
- Possession of indecent photographs of children

Act applies across the United Kingdom, and therefore Schedule 1 is subdivided into the law of England and Wales, the law in Scotland and the law in Northern Ireland. Section 2 of the Act sets out the details that are necessary when registration takes place, which can be given in person by the offender or in writing. A failure to comply with these requirements can result in a fine of up to £5000 and/or a period of imprisonment for up to six months. The Act also specifies how long an offender is required to register: thus, for example, someone sentenced to life imprisonment has to register indefinitely, while those given a sentence of six months or less must register for seven years. Those who are cautioned must register for five years.

One of the continuing debates about the SOA was the question of whether or not registration would be "retrospective" – an issue raised during parliamentary discussion about the Bill. The Home Office responded with a consultation document which proposed that there should be a civil order called the Community Protection Order. This was an attempt to allay fears that "unregistered" sex offenders who might be at large within the community would be able to avoid the requirement to register if they had not been in contact with the criminal justice system at the time that the SOA became law, on 1 September 1997. The Community Notification Order would be "triggered" if a person acted suspiciously, for example, outside a school, and the police knew that this person had a previous conviction for a sexual offence. In these circumstances the police could make an application to the court for a Community Protection Order, which would not only require the person to register but also lay down areas of the community which could not be entered.

The Community Protection Order was renamed the Sex Offender Order in the Crime and Disorder Act, and came into force on 1 December 1998. Orders last for at least five years and can be indefinite, and application for an order depends on the police's assessment of the risk that the offender poses to the community – thus using the ruling in the case brought against the North Wales Police. The Greater Manchester Police are reported to have been the first to have used such an order, when a man with convictions for rape committed after breaking into students' flats had once again been seen loitering around student accommodation in the city. The Sex Offender Order required this man to stay out of the southern part of the city between 10 p.m. and 7 a.m. for eight years (*The Independent*, 24 December 1998).

Conclusion

This chapter has been concerned with providing some overall context within which to understand our contemporary approaches to sex offenders and paedophiles. As such it has used the concept of "consent" to discuss what it is that we mean by "sexual offending", and has attempted to explain what we describe as changes in crime over time and between cultures. In relation to this we have used the theoretical concepts of deviancy amplification and moral panic. As such we have sought to explain how sometimes the best of intentions can have some unexpected consequences – often making the problem worse rather than better. In doing so we have looked at our historic desire to register offenders and provided the historical example of the garrotting panic of the 1860s, which saw released offenders – the ticket of leave men – having to be registered throughout the latter part of the Victorian period as a result of the Penal Servitude Act and the Habitual Criminals Act. We have used this historic example to cast some light on the Sex Offenders Act, which introduced the Sex Offender Register, and we have described the media's "discovery" of sex offenders. We have suggested that the media's interest in sex offenders has in the main been unhelpful, fuelling a moral panic and leading to demands for "community notification". Our next chapter looks more closely at one particular type of sex offender – the paedophile.