

THE HUNTLEY CASE: HOW FAR DOES IT TELL US THAT WE NEED TO COMPROMISE PERSONAL LIBERTIES FOR PUBLIC SECURITY?

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ABSTRACT

The aim of the following literature review is to attempt to discover whether public protection outweighs civil liberties or vice versa. The murders of Jessica Chapman and Holly Wells in 2002 threw this topic in to the spotlight. Ian Huntley, in 2003, was convicted of their murders and this consequently launched the instigation of the Bichard Inquiry Report. The report was commissioned as Huntley was known to Humberside Police and prior to the murders had allegations of a sexual nature made against him. Key concepts presented in the review include Beck and 'risk society', Foucault's 'carceral society' and the Utilitarianism and deontological concepts of liberty. Legislation such as the Human Rights Act 1998, the Data Protection Act 1998 and the introduction of ViSOR are made reference to, in an attempt to discover whether Huntley should have been closely monitored and not employed in a school. No definitive answers in this arena can be provided and many cases have specific and individual circumstances surrounding them. What has emerged however, from the extensive literature that has been collated, is that members of the public do fear the risks that are posed in today's society and are therefore in favour of the implementation of systems such as the Violent and Sex Offenders Register (ViSOR) if it ensures the prevention of incidents such as the Soham murders from occurring again, and allowing someone like Huntley to 'slip through the net'.

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INTRODUCTION

In 2002 Jessica Chapman and Holly Wells, two school children from Soham, Cambridgeshire, were murdered. In 2003, Ian Huntley was found guilty of their murder. This relatively recent event is still proving topical both in the media and criminal justice system. It raised considerable concern amongst the public and highlighted anxieties about the functioning and procedures of a number of statutory agencies, as it was discovered that Huntley had a number of previous allegations made against him. These allegations ranged from engaging in consensual sexual intercourse with girls under the age of sixteen years to rape. This therefore, constantly raised the question 'how could an individual, already known to pose a risk to young girls, 'slip through the net' and be employed at a school'?

The purpose of this critical literature review is to investigate whether civil liberties outweigh public protection or vice versa. Even though Ian Huntley was never cautioned or convicted of having either consensual or non consensual sexual intercourse with minors, there were some concerns and reports made against him. These were then either deleted, recorded incorrectly or never even noted (Bichard, 2004). Therefore, the aims and objectives of the review is to look into the Government report produced by Sir Michael Bichard and link the issues and key points raised to key criminological theories and concepts.

The critical literature review will consequently discuss the philosophical concept of liberty along with the concept of increased surveillance. Contrasting philosophies of liberty, namely the deontological Kantian discourse with a more Utilitarian approach, as written by Jeremy Bentham, will be placed within a third paradigm, Michel Foucault's work surrounding power and control.

According to Beck, the move into late modernity has '*...manufactured uncertainty...and everybody is facing unknown and barely calculable risks*' (Beck, 1998 cited in Prins, 1999 pg.1). Thus, we are living in a 'risk society' where individuals take risks daily. These risks however, need to be assessed and managed accordingly to ensure that the probability of harm is minimal. Huntley was never acknowledged to be a potential risk as information held regarding his allegations was deleted. Humberside Police, possibly fearing 'risk' from prosecution themselves, deleted this information as they thought they were required to under the Data Protection Act 1998. Therefore, one of the main concerns surrounding the Soham murders was why numerous pieces of 'soft intelligence' were deleted, when if the numerous reports made against Huntley were retained, a development of Huntley's sexual profile would have been established. However, returning to Ulrich Beck, risks are unknown and barely calculable, Huntley may never have posed any serious threats. This leads onto Foucault's concept of surveillance and governmentality.

Foucault's work on surveillance, developed from that of Bentham, and the 'Panopticon' is a key theme. The Panopticon, an inspection house, allowed the unobserved observation

of inmates resulting in the inmates controlling themselves (Rock, 2002 cited in Maguire et al 2002). Foucault argued that *'The carceral society was a machine in which everyone was supposed to be caught...it relied on diffuse control through unseen monitoring and the individualization...of control'* (Rock, 2002 cited in Maguire et al, 2002 pg.64). This idea of increased surveillance parallels with the emerging theme of increased surveillance in today's society, where citizens are observing others to assess their behaviour. This links to governmentality, the devolvement of power from the State, where individuals are responsible for implementing surveillance procedures. An example of this concept is provided in the Bichard report when a neighbour of Huntley's commented *'there was something funny going on'* (Bichard, 2004 pg.37).

There are various documents that need to be examined as demonstrations of the above concepts. These are the Data Protection Act 1998, The Human Rights Act 1998, The Bichard Inquiry Report and the introduction of ViSOR (Violent and Sex Offenders Register).

This critical literature review will commence with the methodology. This section will define the term secondary research along with providing a critical analysis of the varying methods used to conduct the review. The literature review will then follow, providing a balanced and critical overview of the published work of Kant, Bentham, Beck and Foucault in relation to the Soham murders and the publication of the Bichard Inquiry. This then leads onto the discussion section. Here, the findings of the review will be related back to the questions and aims posed, to discover whether the findings have met the initial questions. The literature review will then be concluded with a re-statement of the main findings.

METHODOLOGY

The subject of civil liberties versus public protection is currently proving to be a very topical subject area. Examples include; the current fears surrounding terrorism (Whitehead, 2006), the recent coverage that teachers cautioned or even convicted of a sexual offence are still being employed within the education system, for example the case of William Gibson (Greenhill *et al*, 2006) and the continuing mention of the 'Name and Shame' campaign, instigated by the News of the World, to publish the names of paedophiles living in the community (www.news.bbc.co.uk).

The subject area surrounding Ian Huntley, civil liberty and public protection, as previously mentioned, was chosen owing to the issues surrounding this case specifically, along with its popularity in the media. Whether or not this case appeared to take precedence due to the subject matter and issues surrounding it, Huntley's previous allegations, or whether there was just simply no other news to report at that time, perhaps warrants further research. Nonetheless, whatever the 'newsworthiness' of the story, there are key issues which are of broader significance.

This section of the review is imperative in addressing the sources of information used to collect and collate information relevant to the review. Hart defines the methodology section of a literature review as; '*A system of methods and rules to facilitate the collection and analysis of data. It provides the starting point for choosing an approach made up of theories, ideas, concepts and definitions for the topic*' (Hart,1998 pg.28). However, before a concise explanation of the methodology implemented for this review is described, a definition of criminological research needs to be considered.

Garland (2002) defines criminology as '*a specific genre of discourse and inquiry about crime that has developed in the modern period and that can be distinguished from other ways of talking and thinking about criminal conduct*' (pg. 7). Noaks and Wincup (2004) comment upon the importance of criminological research because it provides the opportunity to research the area of unreported crime, '*because it leads to an 'appreciation' of the social world from the point of view of the offender, victim or criminal justice professional*' (pg.13) and because it contributes to the development of polices of crime control. The subject area focused on in the literature provides an excellent example of the investigation and development of polices to attempt to curb the 'risk' of an incident similar to that of the Soham murders occurring again, hence the production of the Bichard report and the instigation of ViSOR.

Owing to the subject area that formulates the literature review and as numerical data will not be used, the review will be of a qualitative nature. Bryman defines qualitative research as research that emphasises words rather than quantification (2001). Noaks and Wincup (2004), support the use of qualitative research in the field of criminology, stating that '*qualitative research has a long and distinguished history in the social sciences*' (pg.3) and identify that qualitative research in the criminological field can be dated back to the 1920's and the Chicago School. More specifically, the research strategy primarily

consisted of an investigation surrounding the topic of epistemology. Epistemology '*...denotes a branch of philosophy dealing with the nature, kinds, conditions, scope, and mutual relations of belief, doubt, truth and knowledge*' (Pablo, 2001 pg.176). An epistemological focus is clearly visible in the review as literature that has been investigated and considered for inclusion in the review is predominantly philosophical works from key writers in the field, such as Ulrich Beck, Michel Foucault and John Stuart Mill.

Due to the limited timescale available to complete the study, research in the secondary form was the only realistic approach to adopt. Even if there was a more flexible timescale, the collection of primary data specifically surrounding the Soham murders would have proved unfeasible. This is due to the high profile of the case, with the involvement of statutory agencies proving key in relation to the lack of information retained about Huntley.

Hart recommends executing a literature review and comments that a review of literature is important; '*...because without it you will not acquire an understanding of your topic, of what has already been done on it, how it has been researched and what the key issues are*' (Hart, 1998 pg.1).

Initially, the main research method that was implemented was the Internet. As the Huntley case raised many concerns and incidents from the past, it was appropriate to use the internet to search credible websites, such as the BBC and the Times, in an attempt to try and gain a general understanding of Huntley's 'criminal' history. Bell (2005) makes note to using websites such as the BBC, praising their specialist sections and well referenced reports. Other websites, such as the websites of tabloid newspapers, for example the News of the World, were disregarded due to their rather emotive and perhaps elaborative headlines. Obtaining a general understanding of the case of the Soham murders was extremely important in discovering the scope and avenues that the review could take. It also helped to obtain an understanding of the case and the impact that the case had in relation to the criminal justice system.

The internet, as a research tool, must be used carefully however. Scott, 1990 (cited in Bryman, 2001) highlights some important criteria when considering using the Internet. These include the authenticity of the website and the credibility of it. However, as well as utilising the Internet to obtain relevant information, the use of an autobiography produced further interest into the subject area, along with helping to define the scope of the project further.

The first book that was read was entitled '*Goodbye, Dearest Holly*', written by one of the victim's father's, Kevin Wells. This provided a detailed account of being involved in a tragedy that resulted in the immediate intrusion of both the media and the criminal justice system. Questions raised in the book by Kevin Wells were mirrored by members of society. How could a man, with previous allegations involving young females, be employed as a caretaker at a school? This book provided an extremely detailed account of the investigation that was launched by Cambridgeshire Police. When reading the book, it

was rather important not to adopt an emotional stance, due to the book obviously being written in an emotive style. Bell (2005) suggests '*try to stand in the position of the author of the document and see through his...eyes*' (pg.133). Obviously, Kevin Wells in some parts of his book, for example regarding Police procedure, may have been slightly biased. Bell writes, '*if you detect bias, that does not necessarily mean that the document should be dismissed as worthless*' (2005, pg.132). Reference in the book was briefly made to the Bichard Report; hence, the next step in the methodology was to review the inquiry that was produced investigating into an accumulation of failings, ultimately resulting in the Soham murders. It was imperative to review the report as it was specifically produced as a result of the murders.

The Bichard Inquiry Report was commissioned in 2004 by the then Home Secretary, David Blunkett MP, to '*urgently enquire into child protection procedures in Humberside Police and Cambridgeshire Constabulary in the light of the recent trail and conviction of Ian Huntley for the murder of Jessica Chapman and Holly Wells*' (Bichard, 2004 pg.1). This report was a key document in attempting to address the questions and aims described in the introduction. Perhaps, owing to a rather limited time frame, less time should have been spent reviewing many of the cases that were investigated by Sir Michael, but more time focusing on the recommendations made. However, a thorough review of this particular key paper highlighted specific key areas that would form the focus of the literature review.

Reading the information provided in the review, from a criminological viewpoint, key themes emerged. For example, the risks that Huntley posed to the children were statistically high, due to a number of sexual allegations previously made against him. The flawed monitoring of Huntley, using databases and other forms of technology, such as telecommunications, is a prime example of Beck's work on late modernity and the 'risk society' (Beck, 1992) and in the words of Virilio, '*...[if we wish] to continue with technology...we must think about both the substance and the accident...*' (1983, cited in Adam et al, 2000 pg.33). The Bichard Report also identified the concept of requiring an increase in surveillance. The stance that Huntley should have been monitored and watched closely taps into Foucault's work on the Panopticon, which then leads onto the impact of both the Data Protection Act and the Human Rights Act.

Consequently, information surrounding the subject of risk was obtained through the Huddersfield University library. The library catalogue was searched and as suggested by Bell (2005), book titles were scanned and the most 'suitable' books that linked to the subject area were obtained. However, as the issue of risk is an expansive and varying one, texts had to be selected carefully. Therefore the search had to be refined with the key writers of risk being included and those performing secondary analysis on the topic, being excluded. Hence, books by Beck, Douglas, Hudson and Lupton were obtained. Whilst reading extensively around the topic of risk, due to the limited time scale, indexes proved imperative to exclude more general work around risk to allow the inclusion of risk in relation to public protection. Bell (2005) suggests scanning the content of chapters, index lists and references to ensure that no time is wasted analysing information that would prove erroneous to the review. Other books included the key text of 'Discipline

and Punish' by Foucault and 'On Liberty' by Mill. Numerous texts surrounding the Data Protection Act and the Human Rights Acts were discovered, but as this information is written in Statue, a range of differing sources were not required.

Journals, both in hard copy and electronic form were used. Key criminological journals were initially reviewed specifically in relation to the case. A limited number of results, however, revealed that journals relating to the Huntley case were minimal. Therefore, the methodology had to be re-focused and adopt a more health orientated approach. One particular journal that appeared to contain many articles relating to the Soham murders was the 'Police Review'. Unfortunately, the library did not subscribe to this journal, perhaps, as mentioned by Bell, due to the expense of subscribing to journals; *'Journals are expensive...many institutions have to make decisions about what they can afford'* (2005, pg.81). The collection of journal articles proved rather 'addictive' however, and after a considerable number of articles being obtained, either in hard copy or in electric form, the search for journal articles had to be narrowed immensely. This was done by re-reading the question and the aims of the review.

Emailing key organisations in the criminal justice field proved rather disappointing (refer to Appendix 1). The Police, NACRO and the human rights organisation, Liberty were emailed in an attempt to discover the organisation's ethos surrounding public protection and civil liberties, specifically in relation to the recent implementation of ViSOR (the Violent and Sex Offenders Register). NACRO, the National Association for the Care and Resettlement of Offenders, did respond to the email, but claimed that they did not understand the nature of the topic. However, this was confounded by statements found on their website, which appeared to show some concern about the balance between public protection and civil liberties. For example, in a statement released by NACRO they stated that *'we have got to learn to distinguish between the vast majority of ex-offenders who pose no risk whatsoever and the Ian Huntley's of the world'* (www.nacro.org). Liberty was emailed along with Lancashire Constabulary, who actually formulated the concept of ViSOR, but did not reply to the email. These non-responses prompted the resending of the email to another member of the organisation. The method of emailing perhaps should have been substituted with another research method. For example, a structured interview with members of the organisation, perhaps over the telephone may have proved useful. However, if these organisations consented to being interviewed, interviewing as a research method can prove problematic. For example, error may occur due to the interviewee misinterpreting the question being asked along with the risk that the interviewer may record the data produced by the interviewee incorrectly (Bryman, 2001). This would have also provided a source of primary research, problematic due to the reasons previously stated.

The key words, therefore that were used in an attempt to collect relevant information for the review were; risk society, public protection, civil liberty, data protection and human rights. A constant problem that was experienced whilst collating information for the review however, was the volume of information that was available, specifically work on risk and liberty. The criterion for work either included or excluded in the literature review was decided by re-reading the aims and objectives of the review. This proved extremely

useful. When considering whether the content of an article should be included the following factors were considered; Does this relate to the subject of civil liberty and public protection? Does it link to the Soham case? Where is the source from? Who is it produced by? Is it written by a key writer in the field?

The varying forms of research methods implemented were; the Internet, an autobiography, books, journals and the use of electronic mail. Despite various problems, for example the unsuccessful use of emails and the vast amount of information collected from books and journals, key concepts and extremely interesting data was still effectively extracted to help construct the review.

LITERATURE REVIEW

The murder of Jessica Chapman and Holly Wells in 2002 led to an extremely high profile investigation. In 2003, Ian Huntley was found guilty of their murders and was sentenced to a minimum of 40 years imprisonment (www.news.independent.co.uk). Further investigation into the case, discovered that Huntley actually had a string of sexual allegations involving females under the age of 16 years. The allegations, however, were made against Huntley whilst he was living in Grimsby, Humberside. By October 2001, Huntley was employed as caretaker at Soham Village College, Cambridgeshire. On the 4th August 2002 the girls were murdered. On the revelation of Huntley's history involving young females in Humberside, the immediate public and media reaction was how someone like Huntley could be employed within a Cambridgeshire school?

There are many important themes that have emerged from a closer investigation into the Soham case. It also allows the application of key criminological theories that underpin many of the identified themes and developments derived from the case. This part of the review will commence with a brief introduction into the subject area, and will outline the scope of the review. Key themes and issues that will be addressed in the review, in an attempt to meet the aims and objectives stated in the introduction, will be presented using headings. This will provide a concise and clear approach to the subject area.

The Bichard Report:

The Bichard Report was produced highlighting the findings into the errors that occurred, in data retention and data sharing amongst statutory agencies, consequently leading to the murders (refer to page 9 for its brief) and to provide recommendations to try and ensure the prevention of something similar. As Beaumont (1999) comments, the Government have to be seen to respond officially to serious incidents of crime, such as the Soham murders. However, the report, in some instances, relies on the memories of many of its witnesses and rather brief information surrounding allegations etc. The information surrounding Huntley was rather scarce and insufficient before the Soham murders, so attempting to collect facts during the course of the investigation proved difficult. This can be identified by some of the terminology used within the report, for example, the term 'no recollection' is frequently used.

The History of Ian Huntley:

Between August 1995 and July 1999, Huntley had contact with Humberside Police and Humberside County Council Social Services in relation to eleven separate incidents. These consisted of one allegation of burglary, the non-payment of a fine with the remaining nine incidents involving sexual offences. These were; four allegations of unlawful sexual intercourse with girls under the age of 16 years, four allegations of rape and one allegation of indecently assaulting a 11 year old girl.

The Retention of Data Surrounding Huntley:

On many occasions, information from each incident in which Huntley was involved, was either dismissed completely, due to the information being seen as irrelevant and therefore not warranting retention, or incorrectly entered into the PNC (Police National Computer). In hindsight, the errors that occurred in the decisions to retain the information proved fatal.

The Data Protection Act 1998 consists of eight principles in which any personal data held about a subject is required to adhere to. Four of these eight principles directly related to the Huntley case (refer to Appendix 2). As Huntley was never cautioned or convicted of any of the offences that he was alleged to have committed, Humberside Police were rather resistant to retain any information. Their interpretation of the Data Protection Act meant that they felt the retention of any information in relation to any other cases, or for future reference, would consequently breach the act. If there were any doubts whether to retain or delete any data, the data would be deleted (Bichard Report, 2004). Hence, after the murders, the Chief Constable of Humberside Police was quoted as saying that data was deleted in accordance to the Data Protection Act, and therefore blamed the Data Protection Act for not allowing a history of Huntley's criminal behaviour to be established. Later, the Chief Constable retracted this statement (<http://news.bbc.co.uk>) and commented on Humberside's rather hasty procedure to delete information. He later accepted that *'patterns of behaviour are important in crime generally and are particularly important in the context of sexual offences'* (Bichard Report, 2004 pg. 88). Pitt-Payne (2004) comments that the area of data protection law is an intimidating area, *'it needs to be approached with common sense, recognising that law does not give absolute protection to personal privacy.'* (pg 23).

The risks that Huntley posed to young females were high. This can be linked to Ulrich Beck's work surrounding 'risk society'.

Ulrich Beck's Risk Society:

Ulrich Beck, in his book entitled 'Risk Society', argues that the move into late modernity is consequently producing unknown risks and opportunities (Beck, 1992). *'Whereas modernity involved rationality and the belief in the potential offered by harnessing scientific knowledge, in late modernity the world is perceived as a dangerous place in which we are constantly confronted with risk'* (Furlag and Cartmel, 1997 pg. 3). Therefore, today's society consists of its members living in, what they perceive to be an 'unsafe' place. This can be highlighted at an individual level by people adopting and investing in crime prevention techniques, for example alarms, in an attempt to reduce the risk of becoming a victim of crime (McLaughlin and Muncie, 2001).

Hayles comments that *'the preoccupation with risk...permeates the human services and nowhere more so than in the field of criminal justice...'* (2006 pg.67). For example, the Probation Service's remit, previously to 'advise, assist and befriend', was notably redefined by the Criminal Justice Act 1991 to 'enforcement, rehabilitation and public protection' (www.probation.homeoffice.gov.uk), Humberside Police claim to be aiming to making 'your community safer' (www.humberside.police.uk). Both these

organisations refer to the concept of living 'safely' in a 'protected' sphere. Lupton (1999) comments; *'control over one's life has become increasingly viewed as important, the concept of 'risk' is now widely used to explain deviations from the norm...This concept assumes human responsibility and 'that something can be done' to prevent misfortune'* (pg. 3). Therefore, it is the expectation of members of society, that public protection agencies will reduce the risks posed by offenders. It is cases, such as the Soham murders, that create the notion of panic and increase public frustration, when it is discovered that statutory agencies have actually failed to 'protect the public' and therefore not making the community as safe as it could be. In the case of the Soham murders, this was referred to as allowing Huntley to 'slip through the net'.

The development of technology has brought with it many disadvantages as well as advantages. The rise of, for example, the internet has led to an 'information boom' (Jones, 1999), where information can be obtained and shared through the medium. It also allows paedophiles to utilise it to groom potential victims (Gallagher et al, 2003). Hence, information technology is a development of modern society and therefore a development of a whole host of *'unknown and barely calculable risks'* (Beck, 1998 cited in Prins, 1999 pg.1). In the case of the Soham murders, there were numerous database systems in operation, for example, the Police National Computer (PNC), Humberside's own Criminal Information System (CIS Nominals) and the Integrated Criminal Justice System (ICJS). Each of these systems operated in an attempt to retain relevant information surrounding known offenders, for example information surrounding cautions and charges (Bichard, 2004). The advantages of the invention of such technology, is that information can be stored surrounding an offender, the disadvantage is that the system is only as good as the data that is entered into it. This is referred to in the technological field as GIGO (Garbage In, Garbage Out). In the investigation launched after the murders Sir Bichard commented; *'most of the information put onto database[s] in dealings with Huntley was wrongly entered. This meant that it could not be searched later in any event'* (Bichard, 2004 pg.77). These are technological risks that consequently and evidently, impacted upon society.

Beaumont (1999) comments that *'the major preoccupation in relation to offenders has always been the risk they pose to others'* (pg.120). Vast amounts of evidence suggest that Huntley was a risk to young girls. The underlying reason why Huntley was never convicted of any of the allegations made against him, was due to the decision of his victims not to prosecute. Some simply did not want to prosecute their 'boyfriend' and in a specific case where the victim was prepared to proceed with the prosecution, the Crown Prosecution Service was not. High attrition rates in rape cases are not uncommon, for example between 1999 and 2000, sexual offences accounted for 1% of all reported crime (Corbett et al, 2003).

An interesting idea that Beck presents is that *'like wealth, risks adhere to the class pattern, only inversely: wealth accumulates at the top, risks at the bottom'* (1992, pg.35). This is not the case with sexual offenders. For example, recent evidence illustrating that convicted sex offenders were being employed in the education system identified that a convicted paedophile was offering private tuition (Koster, 2006). This recent revelation,

fuelling society's fear of living in a risk society, is evidently making individuals become more observant, looking for 'deviations from the norm', and therefore attempting to police their own community. An example of this was a neighbour of Huntley's commenting *'there was something funny going on'* (Bichard, 2004 pg.37) after discovering that he had been having sexual intercourse with a 15 year old. This could be sign of self-policing or simply a retrospective rationalisation of the event.

Foucault and the Carceral Society:

Foucault's key text entitled 'Discipline and Punish' attempts to describe the implementation of different and contrasting punitive regimes historically (Merquerior, 1985). Committing a crime was no longer seen as an attack on the sovereign, rather a breach of the social contract (Foucault, 1977) Merquerior comments that *'punishment as a gruesome spectacle receded; large prisons...spread. 'Carceral society' was born'* (1985, pg.87). Hence, a Dantesque torture, physical torture, was replaced by the Panopticon. Developed by Bentham, the purpose of the Panopticon was to allow the thorough observation of each inmate. *'Prisoners, not knowing when they are observed, have to behave at all times as though they were being watched'* (Merquerior, 1985 pg. 91). The development of the Panopticon signified a development shift by the authorities; punishment was now mentally, not physically.

Wilson (2002) comments on how Foucault saw the *'carceral impulses swarming outside of the Panopticon'* (cited in McLaughlin and Muncie, 2002 pg.26) and that the emergence of surveillance is apparent in everyday live, for example, in the form of CCTV. Norris (1999) agrees that some principles of the Panopticon can be identified in society, for example, the 'electronic gaze of the camera' facilitating self-control through anticipatory conformity, but Fyfe and Bannister recognise that CCTV is not exactly the same. *'The inmates of...institutions are 'captive'..and cannot escape the surveillance gaze..the street population is not so powerless...conformity may be a strictly...temporal phenomenon'* (Norris, 1999 pg.92). This links to the Huntley case illustrating the lack of surveillance, which led to Huntley's repeat offences. Many of Huntley's relationships with minors, involved the girl staying at Huntley's home (Bichard, 2004), out of the public eye and therefore not under any surveillance. The relationships were only brought to the attention of the authorities, in most cases, after a member of the girl's family discovered the nature of the relationship. Some attempt to record these allegations was made, often insufficiently, and was therefore a failure in a surveillance technique. With hindsight, surveillance of Huntley and sufficient communication between different Police forces, may have resulted with Huntley not being employed at Soham College. However, is the surveillance of someone with no cautions or convictions against them a breach of their civil liberty?

Liberty and Public Protection:

Many texts (for example Mill's 'On Liberty') and organisations (for example 'Liberty – Promoting Human Rights') exist, providing theory and advice about the importance of upholding one's liberty in society. Mill states that *'liberty is essential for human flourishing..freedom of thought and freedom of action [and is] the basic conditions of well-being and happiness'* (Hudson, 2003 pg.14). However should the liberty of one that

poses a risk to society be restricted, attempting to provide the public with protection? The concept that underpins this notion is that of Utilitarianism. Bentham established the philosophy of Utilitarianism and describes it as seeking *'to promote the good of all members of society'* (Hudson, 2003 pg xi) ethics are contingent upon the social context, hence *'...the greatest happiness for the greatest number'* is frequently used when attempting to define the term (Hudson, 2003 pg.13). However, opposing the concept of Utilitarianism is the deontological discourse. Founded by Immanuel Kant deontological theories *'are theories which inquire not into the nature or essence of goodness, but into the nature of ethical duty.'* (Hudson, 2003 pg. xi). Hudson continues to describe the deontological discourse as one that allows individuals to pursue their own ideas in life in peace and without the interference of others.

These two concepts could be applied to the Huntley case. For example, using a Utilitarianism approach, it could be argued that the 'soft intelligence' surrounding Huntley's previous allegations should have been retained to create a profile of Huntley's sexual behaviour. After all, PC Harding who investigated into one of Huntley's allegations completed a Form 839, a Humberside Intelligence Report stating that; *'It is quite clear that HUNTLEY is a serial sex attacker and is at liberty to continue his activities. It may well be that other women have been forced to have sex with him...and decided not to report it'* (Bichard 2004, pg. 52). This is the first time that a Form 839 was completed and like other intelligence on Huntley, was deleted. It is evident from this report alone that Huntley needed to be monitored to ensure the protection, the 'happiness', of females in the Humberside area, therefore adopting a Utilitarian approach, doing the greatest good, for the greatest number.

Being aware and monitoring the behaviour of Huntley in an attempt to promote the greatest happiness for the greatest number, contradicts with the ideas surrounding deontology and one's liberty. John Stuart Mill, the key writer in the field of liberty, refers to the subject as *'the nature and limits of the power which can be legitimately exercised by society over the individual'* (Riley, 1998 pg.39). The individual therefore *'ought to be free from all forms of coercion if his action does not harm others'* (Riley, 1998 pg 46). Mill continues to describe how behaviour or conduct that deviates from the 'social norm', that others may *'intensely dislike'* (Riley, 1998 pg 48) does not warrant the intrusion into one's liberty. In many of the cases Huntley was engaged in a consensual sexual relationship with a 15 year old. This was viewed by many, especially the parents of the female involved, as immoral and 'wrong'. However in these instances, no further action was taken against Huntley as there was no complaint made. According to Mill, you have the right to live *'without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse or wrong'* (Riley, 1998 pg 49). However, *'the high value Mill places on liberty leads to his principle of harm: that the only reason for which liberty in any person may justly be curtailed is to prevent harm to others'* (Hudson, 2003 pg 15). These two comments, both by Mill, illustrate perfectly the tension between liberty and public protection, excellently incorporating Beck's work surrounding the risk society. As the Royal Society (1992) comment; *'however safe or dangerous the environment may be, we all settle for a level of risk taking that keeps life as dangerous as we want it'* (pg 6), it is about assessing the risk

posed. For example, Huntley may legitimately have had long-term and meaningful relationships with younger females (an example includes William Gibson, the school teacher that went onto marry his 15 year old pupil (Greenhill *et al*, 2006) however, this was not the case. The lives of children in Soham undoubtedly proved to be at greater risk due to the lack of monitoring amongst statutory agencies surrounding Huntley. Huntley, himself on one occasion contacted Social Services to inform them that a 15 year old girl was to spend the night with him, and that he was worried about the moral issues surrounding being alone in the house with her (Bichard, 2004). The Humberside Social Services interpreted this information and assessed the risk as 'zero'.

The Human Rights Act 1998:

Moving away from the philosophical works surrounding liberty and freedom, Article 6 of the Human Rights Act states that *'everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law'*.

Article 8 of the Human Rights Act states that *'Everyone has the right to respect for his private and family life, his home and his correspondence'*, and that there *'shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security [and] public safety'* (www.hri.org). This links to the concepts mentioned by Mill above. Huntley was never convicted by the Criminal Justice System and consequently labelled a sex offender; he simply had a string of allegations surrounding him and therefore, under this legislation, his liberty could not have been curtailed. It would have been a breach of Huntley's human rights.

Obviously, incidents such as the Soham murders highlight the dangerousness some offenders can pose when they are not sanctioned with a caution or conviction, therefore 'slip through the net'. A recommendation provided by Sir Michael was to create a new bespoke system that would be available nationwide. This system would pool all the information held by the Police, Customs and Excise, the National Crime Squad, the Criminal Records Bureau and so on, so that individuals could be searched on one national system. This therefore attempts to reduce the lack of information passed from one force to another (Bichard, 2004). Hence, the creation of ViSOR (Violent and Sex Offenders Register).

ViSOR – Violent and Sex Offenders Register:

ViSOR was built by the Police Information Technology Organisation (PITO), but was instigated by Lancashire Constabulary. *'ViSOR provides online, for the first time, complete and up-to-date information on the country's most dangerous offenders... ViSOR is a big step forward for public protection'* (www.egovmonitor.com). ViSOR allows the intelligence and risk assessment information collected on an individual to be shared instantly across the country via a national database. The database also contains the details of those who have *'not yet [been] convicted of a crime but who...nevertheless...[are] considered 'potentially dangerous' by the Police.'* (www.sundayherald.com). The introduction of ViSOR, therefore is to protect the public and be aware of people that pose a risk, like Huntley. *'It's no good having systems that only cater for people after they've committed serious and horrendous offences. That doesn't protect people'*

(www.sundayherald.com). In the limited documentation that has been published surrounding ViSOR, reference is made to ViSOR complying with both the Data Protection Act and the Human Rights Act. After the principles of the Data Protection Act being brought into the spotlight after the murders, the use of ViSOR can be justified. The Human Rights Act perhaps is not so clear. The justification for the use of ViSOR is to protect the public, therefore linking back to Bentham's concept of Utilitarianism. However convincing the idea of having a detailed database may be, that can even include information about a person's 'distinguishing marks' (www.egovmonitor.com), financing can always halt proceedings (Ford, 2005).

This concludes this section of the review. All the relevant concepts and theories that were mentioned in the introduction have been covered by utilising research collated as described by the methodology section.

DISCUSSION

The literature review concluded that the methodology adopted to perform the review was sufficient to ensure a concise and detailed review. The main concepts and theories that were mentioned in the introduction were all commented upon and related to the case of Ian Huntley. This section of the review will discuss more precisely how the findings from the review of the literature met the initial aims of the study.

The initial aim of the review was to attempt to discover whether public protection outweighs civil liberties owing to the case surrounding the Soham murders. The high profile nature of the case led to public uproar that demanded the explanation of how someone known to the authorities could have been employed at a school, hence, the introduction of the Bichard Inquiry Report. The Bichard Report, as already stated was launched to discover the accumulation of failings that occurred, ultimately allowing Huntley to be employed in a school and after less than a year of being employed there, murder two pupils. As with every high profile case, an inquiry is immediately launched to try and understand why the incident happened, therefore attempting to reduce the risk of something similar occurring again. Her Majesty's Inspectorate of Probation (HMIP) expressed its concern surrounding risk and how statutory agencies could feasibly respond to the findings of Government reports produced as a consequence of a 'disaster'; *'...[owing to] concern about personal safety in response to rising levels of recorded crime..[the] Government must be seen to be acting to protect the public'* (HMIP, 1996 pg 2, cited in Kemshall, 2000 pg 147). The Bichard Report did do this, even though the recommendations that it made have still not been implemented (Ford, 2005).

According to Beck, late modernity has generated the opportunity for more risk. Society is becoming much more precautionary, due to high profile cases such as the Soham murders and therefore *'the emphasis [shifts] from proof and evidence to fears of 'what if'* (Kemshall, 1998 pg 278). This can be linked not only to the concept of risk, but also the Foucault's work surrounding the 'carceral society' and also the concept of governmentality. Citizens are constantly placing people under 'surveillance' assessing people's behaviour and assessing their risk, as illustrated earlier by a neighbour of Huntley's. It is understandable that this is the case, after all, agencies such as the Police and Probation Service whose duty it is to protect the public, fail to do so. However, in some cases, acting in the name of 'public protection' can lead to false accusations being made, which has profound consequences for that individual (Henley, 2006). As Hudson mentions *'adherence to long-held principles of justice is endangered by excessive concern with safety..the idea that 'it is better for ten guilty persons to go free than for one innocent person to be convicted' is seen as naive and 'soft' on criminals'* (Hudson, 2003 pg x). Hence, *'at the cusp of the millennium, in almost every area to which the public have access we are under surveillance'* (Norris, 1993 pg 3).

Even law such as the Data Protection Act, that attempts to protect data that is held about a subject, is proving imperative in attempting to build a profile of one's life. The Information Commissioner, in a report after the Soham murders stated; *'It is for the Police to decide what information should be kept, and how long for, for their job of*

preventing or detecting crime' (www.ico.gov.uk). The introduction of ViSOR illustrates even further the development of the 'carceral society' and the creation of a 'Big Brother State', as those who impose risk, and possess no cautions or convictions, are eligible for inclusion onto it. Hayles (2006) states that *'The trust that is required to give someone another chance is difficult to exercise in a climate in which the public's right to security is paramount'* (pg 67-68). This can therefore be related and applied to the implementation of ViSOR, an example of a surveillance technique. If someone has been assessed as posing a risk to society, they are weakening the trust that they, as a member of society possess. They can therefore be included on to the register and their behaviour, along with their whereabouts can be monitored. This can be related back to the earlier concept of the 'carceral' and conformity through the unobserved observation of individuals.

The introduction of new legislation, for example the Sexual Offences Act 2003 has created new offences that can now be defined as a criminal and widens the scope of existing offences. For example, under the Sexual Offences Act 2003, it is now offence to engage in sexual activity in a public lavatory. The same act also includes widening the definition of the term 'rape' (www.cps.gov.uk). This Act could therefore be criticised. In today's surveillance society where the reduction of risk and the increase in protection appear to be imperative, someone engaging in consensual sexual intercourse in a lavatory can be charged under the same act as rapists and child abusers. Is this an example of contemporary society 'widening the net' a little too far and impinging on one's liberty unnecessarily?, hence, grouping together those who commit minor sexual offences with those who commit more serious sexual offences. If you have committed a sexual offence, society may automatically assume that you are a paedophile.

CONCLUSIONS

This literature review has attempted to address the vast and rather delicate subject surrounding public protection and civil liberty. This has been done using the case of the Soham murders to illustrate key criminological theory. Therefore, the literature involved a large amount of differing data to be collected on the concepts surrounding; the risk society, the carceral society and the Utilitarianism and deontological concepts of liberty.

Each of these topics has been addressed, and as commented in the methodology section of the review, the method adopted, on the whole, proved accurate in providing a range of information from different sources. This allowed for a critical understanding of each of the concepts to be adopted, ensuring a depth of knowledge in that area.

The main findings of the review, therefore, seem to indicate that all the information surrounding the case of Huntley, specifically the 'soft' intelligence that was possessed only for short intervals, due to its premature deletion, failed to create and establish a profile of Huntley. It therefore illustrates Humberside Police's concerns surrounding breaching the Data Protection Act and can be linked to a more deontological approach with Humberside acting in more of an ethical manner, due to concerns that they could be held accountable for breaching data protection. This is opposed to Humberside Police adopting a Utilitarianism approach and attempting to protect the public, the greatest number.

It is only after incidents such as the Soham murders and more recently information about convicted sex offenders working in the educational system that public protection appears to take precedence in the creation of policy, for example ViSOR, which it needs to be noted, has not been fully implemented to date. Will it take another case of slipping through the net to push through this implementation?

Beaumont (1999) comments *'The messages thus delivered to the criminal justice services are clear. Take no chances...there are no prizes for taking risks, only penalties...err on the side of caution and estimate risks as higher than they are (offenders will suffer, but who cares?)'* (pg 142).

Does this answer whether liberty outweighs public protection, or does it just warn services to be more pessimistic rather than optimistic? Favouring a Kantian, deontological approach led to the murder of two girls, could the adoption of a Utilitarian approach prevented these murders? Perhaps.

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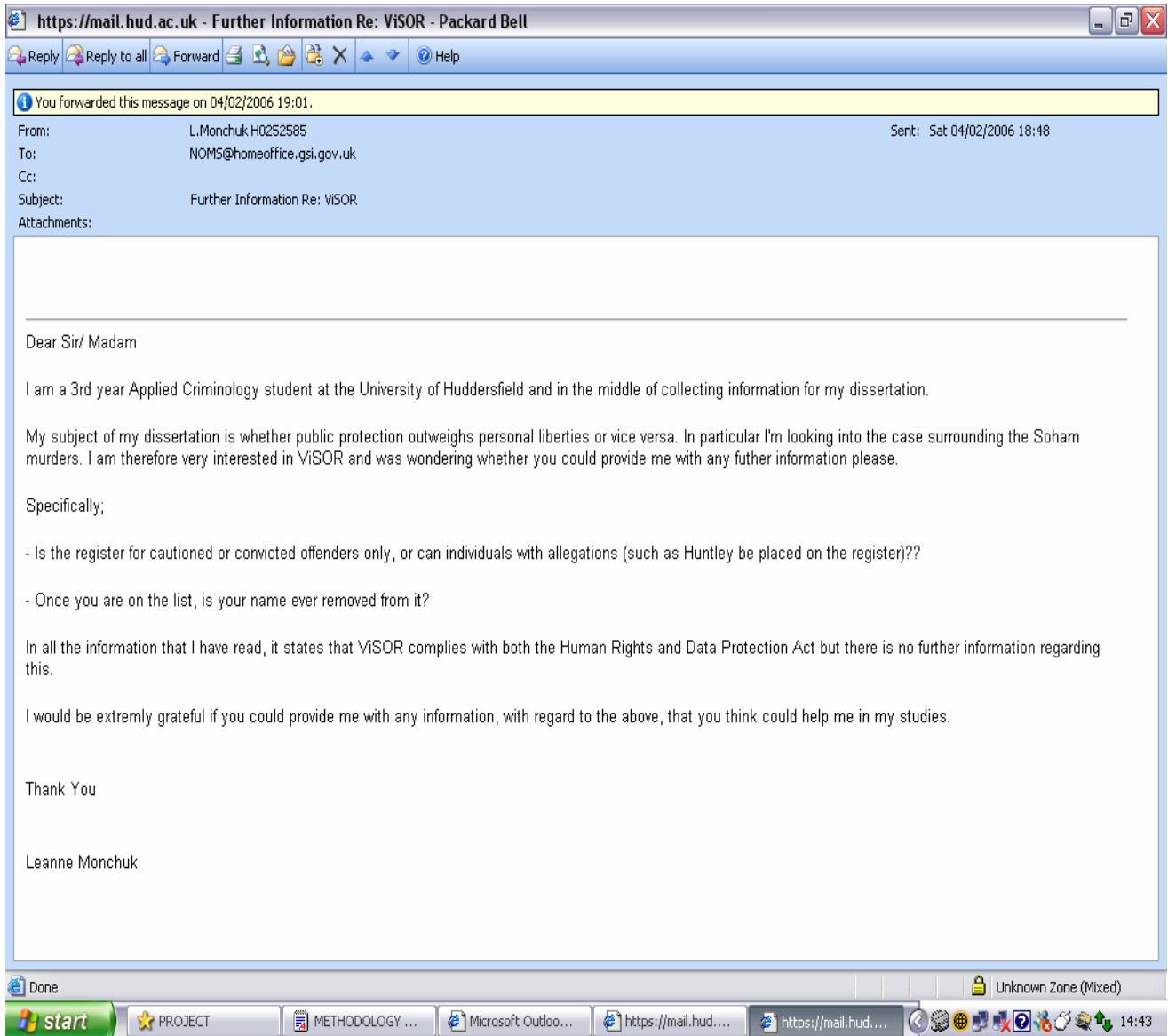
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APPENDIX 1

A copy of the email that was sent to NACRO, Liberty and Lancashire Constabulary asking them for information surrounding the implementation of ViSOR.



(5) Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes
(Richard Inquiry Report, 2004 pg. 110)

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