

THE UNIVERSITY OF HULL

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Moral Entrepreneurs and Child Witnesses

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Abstract

The ability to achieve justice is fundamental to us all and to society as a whole. This dissertation will consider two criminological theories around how to change, and perhaps improve, the law around child witnesses in England and Wales, comparing the theory of a moral panic alongside the theory of moral entrepreneurship. It will initially outline the historical view of young child witnesses in the organisations within the Criminal Justice System, consider whether these views are backed by evidence and contrast young children's ability to give credible evidence when compared to adult witnesses. The dissertation will then consider the success, or otherwise, of two campaigns around harm to children and evaluate how they proceeded and whether and how they achieved their stated aims. The dissertation will identify key steps to be understood to achieve success in the delivery of change around the law. It will conclude that Becker's theory around moral entrepreneurship can deliver effective change if properly understood and implemented.

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1 The question

How useful is Howard Becker's theory of moral entrepreneurship in understanding the introduction of law and procedure around child witnesses in the Criminal Justice System in England and Wales in the late 20th century?

2 Introduction

One of the most important documents in English and arguably the western world's legal history has a clause that says, *"To no one will we sell, to no one deny or delay right or justice"* (Magna Carta: clause 40). Signed at Runnymede under duress and the watchful eyes of angry nobles in 1215 by King John, Magna Carta was a crucial document about the administration of the rule of law. Although it did not necessarily extend those lofty aspirations to all the Kings citizens immediately, it has formed the basis for the legal systems of many countries since its enforced and begrudging implementation (Turner, 2003). The way in which laws or procedure are changed to improve the proceedings and quality of justice should concern everyone subject to the law and especially those closely involved in legal proceedings in any way. The investigation of allegations and the way the Criminal Justice System (CJS) operates should be fair to all: victims; witnesses, and defendants. Indeed, it can be argued that recent changes to legal aid funding due to the oft stated need for austerity may seem to contradict this lofty ideal of justice for all espoused in 1215, with reduced sources of legal assistance and delays in legal proceedings (Newman, 2013). Despite the fine intentions of Magna Carta about no one suffering injustice, for centuries child witnesses (and the term witness here will include the child victim as an all-encompassing term for clarity) have been viewed with what can be considered as a marked element of suspicion by the CJS. The criminological theories around

how the law is changed (the sociology of law) will be considered along with the concepts of moral panics and moral entrepreneurs and all will be reviewed and critically analysed. This dissertation will consider two previous high-profile cases, one including the supposed murder of up to 13,000 children a year, where major change was not achieved, then consider a campaign on child abuse and a landmark review around the treatment of child witnesses, namely the Cleveland report issued by the then Justice Butler-Sloss in 1988 (Smith and Tilney, 2007). That ground-breaking report and ongoing debate and campaign led to pressure for significant change to the way child witnesses were treated in investigations and in court proceedings. This historical background will be reviewed and contrasted alongside the high-profile campaign run by a television personality called Esther Rantzen (Spencer & Flin, 1993) just before the Cleveland report was published and through the debate and political discussion around changes to the law on child witnesses. Rantzen's campaign involved extensive use of the media, politicians, non-governmental organisations and experts and featured extensively on a highly watched BBC weekly television show called *That's Life*, which ran several campaigns including the issue of child abuse and the way child witnesses were treated by the CJS. The use of a prime-time Saturday night show that garnered 15 million viewers helped to deliver the clamour for change to the law around child witnesses, most especially the ability to give evidence via video link and video recorded evidence. The changes to the procedures used by agencies and courts around the treatment of child witnesses will be assessed to see if Ms Rantzen fits the definition of a "moral entrepreneur" as explained in *Outsiders* (Becker, 1997). The key elements of moral entrepreneurship will be outlined and compared to the campaign headed by Ms Rantzen. The conclusion that the definition is apt and fitting will then drive the ultimate aim to look at how a successful campaign was run and use the key lessons from that campaign as a template for future changes in the CJS.

3 Aims and purpose of the dissertation

The aim of this research is to outline the key elements of a successful campaign to change the law and regulations as identified by sociological theory, then discuss the theory of moral entrepreneurship (Becker, 1997) and consider if that can actually influence how to effect change by the use of two disparate case studies. The purpose is then to critically review recent changes to the law around child witnesses (at that time defined as anyone under the age of 16 years) and establish if they fit the requirement of this theory and consider how effective they may have been in enabling justice for child witnesses. The final purpose is to see if Becker's theory can provide good practice to give an example of an effective delivery of change for organisations or people wanting to improve the CJS in England and Wales.

4 Literature review

In preparing this dissertation a literature review was conducted, with the intention of identifying what existed, what was supportive of the relevant aspects of the research and what was critical of it. The review also enabled gaps in either research or data to be identified. A balanced approach was taken, to ensure the literature used is academically solid, reflective of opinion and relevant to the research. The key aims were to outline the theory of moral entrepreneurship as described by Howard Becker in his book, *Outsiders: studies in the sociology of deviance* (1997) and also consider whether the theory around moral panics may be more applicable. Critical reviews and discussions were sought to ensure that either theory can be tested as relevant and appropriate to this dissertation. Additionally, further literature including academic sources, newspaper articles, legal texts and then case studies that sought changes to the legal process in a concerted campaign were reviewed to enable comparison

against Becker's theory and support the analysis of each case study and finally the conclusion of this dissertation. The relevant ethical issues were submitted for approval to the University and were accepted as being at a low-risk of any ethical issues arising.

4.1 The Sociology of Law.

As the introduction outlines, the ability to receive justice is fundamental to us all, particularly those who are especially vulnerable. To understand how to change those laws that are unjust or failing is an important need for society as a whole. In order to answer the research question, it is important to understand how law can be changed in England and Wales, to review the academic literature and see how law is made or influenced, and although there is a relatively small amount of research to enable this aspect to be addressed, this is gradually increasing. Initially the bibliography by Chamblis et al., (1970) was consulted to gather relevant material. Roshier & Teff (1980) cover that law and society sit side by side, the one influences the other. Their outline of how the sociology of law is affected and influenced is particularly strong as they consider sociological theory and the introduction of laws. Cotterell (1992) considers how moral panics and crusades may change the law and the value of consensus in the changing of laws. The relationship between power, conflict and the emergence of laws will be evaluated using Carson (2018).

4.2 The Criminological Theory

Having established how laws may be changed, the next issue to consider is how the impetus to change laws may come about. Is it through genuine concern for improving the law or do

some people and groups have agendas to push and therefore are biased in their concerns? The example of moral panics will be considered, where sections of society are labelled as deviants and action taken against them will be implemented (Cohen, 2011) and then reviewed critically using the work of several academics such as David Garland and Tim Newburn. There is a wealth of critical opinion on moral panics and these have been reviewed along with its proponents to ensure that a balanced argument is presented. The theory of moral entrepreneurs was reviewed and again its applicability was tested using academic sources both advocating for and against its principles. Although very influential at the time, Becker's theory has subsequently been called tame (Downes & Rock, 2003) and he was strongly criticised by Taylor et al. (1988).

4.3 The legal history and theory of child witnesses

To enable the context around child witnesses to be understood, relevant prominent legal cases and contradictions will be outlined, with some changes to witness rules identified over the centuries since Magna Carta was signed. The theory around child witnesses was reviewed, most especially around their ability give credible evidence and some of the misconceptions around that. Spencer & Flin (1993) cover in detail the psychology of child witnesses, with other studies looking at the suggestibility (or not) of child witnesses, and the legal issues around them (Perry & Wrightsman, 1990). The fact that both academics and legal professionals have changed their views of especially young child witnesses is particularly noticeable. Data from the UK Ministry of Justice will conclude that young children are seen as credible witnesses by juror's contrary to the previous views of some in the CJS.

4.4 The campaigns

Two campaigns based around harm to children have been considered, the first around Infanticide in the late 19th century and the second around child abuse in the late 20th century. The first of course was undertaken at a time when data and academic research was somewhat scant, and this has hindered several areas of research, most noticeably on quantitative data. The second is well documented, with a rich media profile of the campaign, and the use of a very detailed public inquiry report into related key issues (Butler-Sloss, 1989). In addition, media reports will be included to highlight how the later campaign reached a prodigious audience, and one particularly important audience member. It must be said that the British Library catalogues provided great assistance to ensure that the range of opinions was varied and reflected differing views on the campaign.

5 The Methodology

This dissertation does not include any new data and is based on material available at the Brynmor Jones Library at Hull University, online academic sources and material available at the British Library (mostly media reports) along with some relatively minor quantitative data available online. Key word searches were used, reviewed and refined to ensure that as wide a search as possible was conducted. Existing academic material was reviewed to ensure disparate sources were used then all of this material was reviewed against the research question, enabling those sources that contributed to this research to be identified, and considered for inclusion. This research has followed the steps espoused by Bryman (1988) in his book on Social research methods. This recommends the use of both qualitative and quantitative data to create a fusion of data which allows the strengths and weaknesses of

each to be identified and used to best achieve the aims of the research. This suggested six crucial steps (although these have been slightly modified to fit this research) as:

1. Define the question.
2. Explain the issue.
3. Examine relevant cases and consider if they fit.
4. If the cases do not fit or disprove the hypothesis, consider re-defining the question.
5. If hypothesis is confirmed, continue data collection and review of materials.
6. Conclude the analysis.

6 Analysis and discussion, Moral Panic or Moral Crusade?

Initially the significant and public concern over child witnesses in the 1980's could potentially be viewed as fitting the definition of a moral panic as evinced by Stanley Cohen in his classic 1978 tome *Folk Devils and Moral Panics* (2011). He outlined that a moral panic needs an event, person or group that pose a threat to society and its values, the media portrays this group in a stereotypical way and the media agitates around this. Experts then come up with solutions and the panic then disappears from view. There are five generally accepted elements to a moral panic, and these are helpfully defined by Goode and Ben-Yehuda (2009) as: concern, there needs to be something to be concerned about; hostility, there needs to be an increase in hostility to a certain group; consensus, there should be widespread agreement around the threat and an acceptance that it is real and someone is to blame for that threat; disproportionality, that the threat is larger than it actually is despite actual evidence to the opposite and: volatility, that the panic is time limited and a change will address the issue or another panic may take its place. When looking at the second case study around 20th century

child abuse and considering the five elements, it is clear that the first three are there but then it will be argued that the last two do not fit the description and therefore the moral panic theory does not apply. There is clearly a concern around child abuse and this has been used previously by certain groups to seek changes to the law with differing levels of success, there is a hostility to child abusers (and frequent stories in the media do not help in reducing that hostility) and there does seem to be a consensus around child abuse, that “something must be done” with a substantial element of public concern. In his tome Cohen (2011) himself cites child abuse as one of the potential sources of moral panics, where folk devils are set up and something must be done about them or it, he then argues that reactions to such abuse involve the shifting of moral grounds and uses the term “sensationally atypical cases outside the family” (Cohen, 2012:xvi). It is hard not to argue that some extreme child abuse issues were, indeed, moral panics. On the 19th December 1988 the conservative MP David Wilshire said in the House of Commons during a debate on the very important Children Bill (to become the hugely significant Children Act) “...my second example is satanism. All too often, its mention produces giggles and images of witches on broomsticks, but satanism is not the same thing as witchcraft. It is about the ritual mutilation and torture of people, particularly children, human and animal sacrifice and cannibalism....If any of my colleagues are tempted to believe that those things do not happen here, I must tell them that only 10 days ago one of my local newspapers, the Egham and Staines News, carried a headline stating: Baby in satanic killing. Throat cut by coven members” (Hansard, 1988). Whilst it is tempting to argue with the conclusions of the Egham and Staines News, even locally a prominent child abuse campaigner, Dianne Core, wrote a book entitled *Chasing Satan: Investigation into Satanic crimes against children*, whose first line is “Evil stalks the streets of our cities. Evil in the guise of Satan” (Core & Harrison, 1991:1). In 1994 research into 84 alleged cases of ritualistic abuse found evidence

of child abuse but not ritualistic or satanic abuse in any single case (La Fontaine, 1994). Despite both statements that clearly reflect a moral panic over the influence of Satan, there was no actual evidence for the assertion, and it was clearly disproportionate to the issue generally. But it is argued that in the case of child witnesses the issue is a broader and longer lasting issue around a key and basic human right, fairness of access to justice and the right to give evidence and have your evidence assessed. It surely cannot be seen as disproportionate to allow a witness to tell their story in a court as other witnesses do. It is hardly a shifting moral ground to allow a competent and willing witness to testify as other witness can and do and have their day in court (to use an oft quoted phrase) however unpleasant that experience may be. Cohen in his later analysis of moral panics further refines his definition and argues that they require temporal boundaries, that is they are time limited. Even allowing for that time limit to be elongated, it is still hard to argue that the ability to get justice falls into either of those categories of having to shift your morals or being time limited. It is similarly difficult to say that the abuse of young children should be ignored because of the inability of the Criminal Justice System to deal effectively with child witnesses and allow them to receive justice and give their evidence fairly to all, both witnesses and defendants. It is important to remember that a central tenet of justice is the ability for jurors to assess the credibility of any witness (Dennis, 2013). It is also important to reduce the harm that child abuse causes, Franklin (1978) outlines the severe impact that child abuse can have on subsequent development, with a study showing only eight of twenty-three abused children showing reasonable development post the abuse and some already showing problems at school. In 1982 the NSPCC estimated that in England and Wales, 6,388 children were abused with 647 killed or seriously injured (Jones, 1987). A study on behalf of the NSPCC in 2011 found that one in five children had experienced severe maltreatment, and that that directly impacted on

development and mental health. Even accepting that the NSPCC may not be an entirely neutral observer, that is a huge number of children who may be victims of severe maltreatment. The Office of National Statistics counted the population aged under 19 in England and Wales in 2017 as approximately 14 million (ONS, 2017) Even at that rate that means some 2.8 million children are or may have been abused in some way. Finklehor (1986) reviews various studies around the prevalence of child abuse and they range from 6% through to significantly higher rates. If we assume the lowest prevalence of 6% that may mean that 840,000 children may have suffered sexual abuse at some time in England and Wales. That number surely does not fit the term disproportionate. Newburn (2017) outlines a number of historical child abuse enquiries and of course there is the current Independent Inquiry into Child Sexual Abuse looking at the way child abuse allegations have been handled over decades. Owing to the duration and scale of the issue (even taking the lower rates of prevalence) it cannot be argued that the topic of child abuse and concern around it is disproportionate or suffering from what Cohen defines as deviancy amplification, where increased policing produces increased an increased number of the relevant crime (Cohen. 2013). There existed a real problem, not a manufactured one, and the scale of it is immense. For those reasons the theory of moral panics is not applicable here. So, the issue of child witnesses is not a moral panic, but does it fit into the category of moral entrepreneurship?

Becker's definition of moral entrepreneurship was first outlined in 1963 and has been refined since and covers how certain individuals or organisations use their initiative and power to change rules that they perceive to be deficient or wrong in some way or introduce new laws entirely. It argues that a person breaking such a rule may be labelled as deviant and effectively

ostracised and punished. Becker (1997) outlines that there are two essential elements to moral entrepreneurship; rule creators and rule enforcers. In the opening line of his discussion of rule creators, he directly mentions the crusading reformer as someone who is not satisfied with the status quo and seeks to change the rules to deal with what evil they believe the current rules fail to address, whether this is a frivolous or necessary change. The rule creator is described as someone who is driven, who will use any means to deal with the perceived evil and achieve the change they desire. Becker uses the terms fervent, righteous and even self-righteous. Becker describes that some rule creators can be prohibitionist, but then concedes that some rule creators are also strong humanitarians, and he covers two contrasting prohibition campaigns, the first the abolition of slavery (obviously now viewed as a good moral crusade) and the effort to make Marijuana illegal in the USA, which he discusses in detail. He outlines how experts are used to support the suggested changes, how some of those supporting the change may have conflicts of interest around the issue being crusaded about. He cites that industrialists supported the drive for prohibition of alcohol in America as they felt it would make workers more manageable and potentially make their life easier. The need to motivate certain groups of people and especially the media is highlighted, and this view reinforces that the moral entrepreneur needs to harness many sections of society to effect the change that is sought. The crusade must harness many groups, such as what are now called stakeholders; the media, politicians and relevant experts to deliver the required change. Ultimately, Becker highlights a key conundrum around the role of a successful rule creator, that if they achieve their required change, they are, in effect, out of a job. He says that often the rule creator then seeks another “evil” to tackle, another rule to change. An unsuccessful rule creator may also seek another moral crusade, using skills developed during

the previous campaign and any organisation that may have surrounded the earlier campaign to seek another crusade to deliver.

Rule enforcers, the people who oversee the rule changes, Becker describes as either existing enforcers or a new enforcement body that may be created to deal with the new rules. The enforcers institutionalise the change and ensure that those who are breaking the rules become what he terms as outsiders, as someone who is in the wrong, someone who breaks the rules and is therefore outside of normal society, or deviant. Rule enforcers may undertake the role out of a sense of interest in doing good, or merely as a role to be completed as part of a job. Becker quotes a study into a local police force where a perceived outsider may be roughed up to encourage that individual to respect the enforcer, with 37% of enforcers saying they would do that. It seems striking (pun intended) that the use of violence will engender respect in the outsider for someone purporting to uphold the law. The irony of this situation seemed lost on the enforcers who were interviewed, that by using gratuitous violence they are breaking the rules and should themselves be viewed as outsiders. Becker outlines the fact that some enforcers use discretion with those breaking the rules, even though these outsiders are violating the rules the enforcers are supposed to oversee.

6.1 The Infanticide campaign

Over the centuries, some advocates of what is now called child protection have attempted to raise the issue of child abuse and child safety, with some campaigns proving more successful than others. During the literature review, a case study was found that can be viewed through

the lens of either moral panic or moral entrepreneurship, and it is that of the alleged murder of very young children, typically new-borns in the nineteenth century, the crime of infanticide. A national outcry occurred from 1860 to 1870 over the rise in perceived infanticides across the country, highlighted by a prominent doctor called Edwin Lankester who became the Coroner for Middlesex and was keen to use the media (although it is important to remember that it was then just the print media) to aide his case, about which he clearly felt passionately. The bodies of new-born infants had been found in parks, alongside railway tracks, in canals, even in sewers and this led to the offering of a reward of £150 (clearly a substantial sum at that time) by the Home Office to find those responsible for the deaths and depositions (Behlmer, 1979). The issue was raised several times in parliament and even the Catholic Pope sent an emissary to heretical London to establish the facts of this modern-day slaughter of the innocents. The subsequent report concluded that 13,000 children were murdered each year by their mothers in England and Wales, the methodology of that figure is hard to verify as data collection was stated even by Dr. Lankester as patchy at best, although he stated the lack of good data was because the issue was not a priority. In England and Wales, individual Coroners were eventually given the authority to enquire into all child deaths but the local justices of the peace, who were to bear the cost of inquests, refused to pay for them and ordered the police to withhold evidence, a truly remarkable situation (Behlmer, 1979). In 1861 the Lancet reported that in London in the last five years the bodies of 500 children had been found and they had all been murdered, based on the figures from Dr. Lankester (Goc, 2013). The Times of London reported for a total of ten years on the scandal of infanticide but put the blame squarely on the shoulders of deviant women, mostly working women or servants who were not watched closely enough. Interestingly the Coroner also raised the spectre of Bentham's panopticon, asserting that middle-class women must watch closely their

servants at all times to stem the rate of infanticide as the women relied on secrecy to hide their pregnancies and then killed the baby with little fear of being discovered, the ability to conceal the pregnancy and the subsequent murder of the child being crucial to avoiding any legal repercussions. The issue was placed at the feet of the women, apparently ignoring the fact that a man was involved somewhere along the way (Kilday, 2013). Lankester surmised that the fact that a woman was known to be pregnant would render her unlikely to kill the child as the current law, in effect, allowed stillbirths to be ignored with impunity but not live births, which had to be registered. Clearly this was pre-DNA science so any dead baby could not be attributed to any particular woman, especially if she had not been known to be pregnant. Lankester also suggested that a register of all births was crucial to deal with the issue, including the registering of still born and abortions as opposed to live births (as the law currently stood), but met some resistance. The Registrar-General of Births and deaths told Dr Lankester that “it would be very disagreeable to ladies in high life to have their abortions recorded”. Lankester then says that this “was at the bottom of the dislike of the House of Commons to deal with the question, but this is not the spirit on which we should legislate” Goc (2013:86). In reviewing how laws are changed, Newman (1958:746) suggests that the researcher should “cast his analysis not only in the framework of those who break laws but in the context of those who make laws as well” so perhaps the comment about high born ladies has real meaning at a time when contraception was virtually non-existent. The effort also coincided with a fall in prices and wages and what has been called the second industrial revolution which introduced machines that demanded less labour, and therefore a need for fewer workers with the new mechanical processes being introduced (Jevons, 1931). There then followed the Great Depression of 1873-1896 which meant that the loss of thousands of potential workers did not cause undue concern (Hobsbawm, 1968). The newly established

Pall Mall Gazette further disputed the Coroners figures around infanticides and the August British Medical Journal also criticised his use of data, with Lankester subsequently accepting the figures may be low or high but saying his premise of reducing infanticide was still a worthy one (Goc, 2013), it is hard to argue with the sentiment but the basis of his argument had been the huge scale of the problem, and this was undermined, perhaps fatally. Attempts to substantially change the law on infanticide failed owing to the criticism around the data and debate over the morals of single mothers and a lack of political drive and passion. Indeed, the proponents of changes to the law around infanticide at that time have been described as isolated political players in Parliament (Kilday, 2013). Eventually in 1871 a relatively minor change to the law was made, described as bringing about an eventual decrease in infanticide, although the issue of infanticide was not directly addressed until much later, in 1922 (Goc, 2013). Unfortunately, in 1874 Dr. Lankester died at the age of 61. The crusade around infanticide had lost its chief moral entrepreneur at a key moment, although a minor change had happened, much more was needed if the issue was to be addressed. The fact that infanticide was effectively side-lined by other issues of the day such as baby-farming, abortion, child cruelty and parental neglect meant that these other issues came to the fore in parliament (Kilday, 2013). Truly the death of Dr. Lankester was a huge loss to the crusade around the cause of infanticide, with a dubious and conflicted parliament sceptical over the importance of dealing with infanticide amongst a host of other important issues and a divided and conflicted press and scientific community (Goc, 2013).

6.2 The campaign around Child Witnesses.

The history of child witnesses in England and Wales was researched to ascertain how they were viewed, Spencer (1990) and Hamlyn (2004) both detail that English courts have traditionally preferred oral evidence as opposed to written testimony, and that juries like to assess in person the credibility of a witness to reach a decision on guilt or innocence. The history of child witnesses clearly goes back a long way but in 1684 a 13-year-old boy was asked by the prominent Judge Jeffries (the trial judge) a series of questions to see if he was a competent witness, able to give sworn evidence bearing in mind his relatively young age. The quotation is from R v Braddon (1684) and it goes thus:

“Judge: Suppose you should tell a lie; do you know who is the father of liars?

Boy: Yes

Judge: Who is it?

Boy: The devil

Judge: If you should tell a lie, do you know what will become of you?

Boy: Yes

Judge: What if you should swear to a lie? If you should call God to witness to a lie what would become of you then?

Boy: I should go to hell fire”

In this case the boy was sworn as a witness. In 1779 a court in London declined to hear direct testimony from a five-year-old girl who had been the victim of an assault but agreed to take the evidence of her telling what had happened to her to her mother, hearsay evidence which

was normally ruled inadmissible (Spencer & Flin, 1993). Hearsay has almost always been ruled inadmissible except subsequently in rape cases where it is called early complaint (Dennis, 2013). Eventually, in 1933 Parliament attempted to create a separate category of a less believable type of child witness when it sought to allow a child of “tender years” to give their evidence unsworn if this was corroborated by another witness or any additional evidence was available to support the child witness (Dennis, 2013). As the scope of forensic science was severely limited at that time, and it is not common for those who abuse children to do so with witnesses (Jones, 1987; Davis et al., 1999), this was not a successful attempt to adhere to those principles outlined in Magna Carta that all should receive justice (Spencer & Flin, 1993). There are many examples of such a negative view of child witnesses throughout the centuries, such as a study on children’s suggestibility that concluded that leading questions were a particular issue for the child witness, in that the child usually agreed with the question (Whipple, 1910). In 1958 a girl of 5 years was called as a witness in a trial in England, and Lord Chief Justice Goddard said “The court deprecates the calling of a child of this age as a witness...the jury could not attach any value to the evidence of a child of five: it is ridiculous to suppose they could...” (R v Wallwork, 1958). Particularly young children were still viewed as unreliable witnesses, even as late as 1984, when Spencer and Flin (1993:285) record a lawyer’s opinion that says “First a child’s powers of observation and memory are less reliable than an adults. Secondly, children are prone to live in a make-believe world...” a remarkable view that seems to hark back to the prejudices of 1779. Cotterrell (1992) discusses the perception of some in the legal system that they were somehow adrift from society, talking of a self-sufficiency and comprehensiveness in their legal universe that made them hugely reluctant to change. If, as Magna Carta tried to establish that all should be eligible to receive justice, any section of witnesses who are automatically barred from giving their oral testimony

is clearly therefore disadvantaged, acknowledging that juries prefer to hear that oral testimony and judge the credibility of any witness. This was the effect for child witnesses, particularly those who were especially young, and those who are most vulnerable to abuse and least able to defend themselves from it. In reality it is a fact that some witnesses are unreliable, but that is not linked to age. Perry and Wrightsman (1991) outline that jurors ultimately decide on the evidence of the witness regardless of age, Dent and Flin (1992) cite an experiment where they used the same structure and paradigm to compare children's testimony as against an earlier study with adult witnesses. They re-ran the study to compare whether children are inherently less reliable as witnesses than adults. The study showed both categories of witnesses made some inaccurate statements, but that "children are not perceived to be less credible than adults" (Dent & Flin, 1992:84). Jones and Krugman (1986) review the testimony of a three-year-old girl from the USA who gave evidence about her sexual assault and the attempt to kill her. The case relied on the testimony of the very young child and the review concludes she gave accurate answers to appropriate and child friendly questions and the defendant was convicted. After he was imprisoned, he was interviewed and confirmed the exact details given by the child. The issue was to interview the child as a child, not a mini-adult. The need to effectively deal with the testimony of children in the CJS has long been recognised (Spencer & Flin, 1993; Dennis, 2013). This is the view also outlined in the landmark case in England and Wales from 2010 linked to the Baby P case where a four-year-old girl was the only witness to her abuse when she was nearly three years old. The Court of Appeal emphasised that a child was competent if asked the right questions in the right way (R v Barker, 2010). It is hard to argue with this description; any witness should be questioned appropriately, and their evidence judged by the jury. Indeed, this has been recognised recently by the United Nations (2009) as the model way to deal with child witnesses. It seems

seriously unfair that children could not give their evidence and be assessed by their peers. It may be difficult for a barrister to phrase simple questions for a five-year-old, but it is not impossible. Truly the CJS appears to have come a long way in the treatment of tender child witnesses, so how did this happen and what were the key moments in it.

There have been many disparate and ultimately tragic child abuse incidents that have pricked the conscience of a large number of people and received significant media attention, from Maria Colwell who was killed by her stepfather in 1973 and Jasmine Beckford being abused and killed by her stepfather in 1984 (Newburn, 2017). It is also important to understand the political context at the time. The Conservative Party was elected in 1979 with a policy of addressing perceived lawlessness, to tackle what has been called law-breaking and order-defiance, and to tackle a perception that law and order and the traditional family was under attack (Downes & Morgan, 2007). On the 16th March 1986 the BBC TV programme "That's Life" ran its first segment on the issue of cruelty to children (Daily Telegraph, 1986b). The topic was covered over the next few months and it was reported that the Government was working with the BBC and other agencies to enable child witnesses to give evidence (Daily Telegraph, 1986a). This drive to do something around children and the family very much chimed with the view of the right-wing politicians. The telephone service Childline was established after the campaign fronted by Esther Rantzen, a TV personality, this was described as a crucial development in fighting child abuse (Newburn, 2017). This view was not shared by all, the lack of support for professionals to deal with the vastly increased workload was highlighted, along with the speed of the setup of Childline and potential pitfalls (Observer, 1986). The transmission of two special episodes called Childwatch was broadcast

on Thursday 30th October 1986 on BBC1 (Spencer & Flin, 1993; Newburn, 2017). The BBC gave primetime spots to this special, in two halves between the 9 o'clock news, a huge commitment of valuable airtime. The helpline received 50,000 calls from children, although only 2,000 were actually answered, the rest getting a recorded message (Observer 1986). This initiative was the subject of significant media interest, being watched on one of the four TV channels then available and netting a total of 15 million viewers (Daily Telegraph, 1986b). It must be remembered this was a time before the internet and the option of multi-channel TV. Subsequent coverage of the special edition included the view that a veil of silence hung over the issue of child abuse and that the programme would attempt to lift that veil on a cruel yet common crime (Times, 1986). On the 5th November despite some misgivings over child witnesses even Barbara Amiel, a conservative columnist for the Times, conceded that Esther Rantzen had "the power of the state at her fingertips" (Amiel, 1986:15). On the 12th November 1986 in Parliament the then Prime Minister, Mrs Thatcher, gave a speech about the upcoming legislative agenda (which included both the hugely important Criminal Justice Bill and the Children Bill) in which she said "by allowing children who have been the victims or witnesses of sexual or violent attacks to give evidence to a court by way of a television link, it will make it more likely that the perpetrators of these horrifying crimes are brought to justice" (Hansard, 1986:22). The Daily Mail on the 13th November outlined that a briefing by 10 Downing Street had said the Prime Minister had been appalled by the nature and scale of child abuse on the recent special programme by Ms. Rantzen and said that changes to the proposed law would occur as a result of it (Daily Mail, 1986). It is also noticeable that Mrs Thatcher was a contributor and a reader of the Daily Telegraph, and Ms Rantzen was profiled and interviewed by the Daily and Sunday Telegraph frequently. In a seminal work on the media influence on the new political right, Policing the Crisis (Hall, 2013), Hall discusses the

wrong-headed reaction to the offence of robbery (helpfully renamed as mugging), he expressly cites both the Daily and Sunday Telegraph (amongst others) as having influence with the new radical right in the Conservative party. He mentions the evident concern in the Tory party around the apparent threats to family and to their *raison d'être* as a party of law and order. Although impossible to explicitly determine, it is interesting to ask if Ms Rantzen knew what her powerful primary political audience read and therefore targeted the two Telegraph publications to hone in on what in modern terms is called an audience of one. In his book on how to lobby and change legislation, Zetter (2011) discusses how each Prime Minister invariably consumes much media and watches it closely, particularly the media that is generally supportive of them. Though this advice came after the Rantzen campaign it is almost a text book discussion of what she did and how she did it. The media was not all positive as in 1987 *The New Statesman* published an opinion piece that identified what it called a new spirit of puritanism around child abuse and highlighted the massive increase in such cases, pointing the blame at *That's Life* and cursing the lack of support to children and professionals to deal with the increased workload. *The Guardian* (1987) ran an opinion piece entitled *Alarm isn't a policy*, citing the storm created around the sexual abuse of children and saying that policy driven by TV shows was not likely to be good policy. However, it is reasonable to assume that Mrs. Thatcher was not an avid reader of either publication. At the same time that this campaign around child witnesses was ongoing a second child abuse issue was raised and became prominent in the media.

On the 1st January 1987 a new consultant paediatrician commenced work in the South Tees health district in the north of England, having previously worked in an adjacent area where

she had examined two children from the South Tees area who she determined had been sexually abused (Butler-Sloss, 1988). Over the next months she and another doctor diagnosed further children using a controversial diagnostic technique. Over one weekend 10 children were diagnosed as having been sexually abused and admitted to hospital. This pattern continued with three large waves of children subsequently diagnosed. This led to the local Member of Parliament being contacted by parents. It is significant that in total 321 children were identified as being at risk of physical abuse in this small area between 1st January 1987 to 31st December 1987. 125 of these were diagnosed by two doctors between February and July 1987. This led to unprecedented demands on all services involved and extreme media attention on the issue. It is fair to say that the children, once diagnosed, were interviewed in a very variable manner, with a lack of consistency and planning (Butler-Sloss, 1988). The formation of an inquiry on the 9th July 1987 (the local MP had been told of the issue in June 1987 and put down a question in the House of Commons on the 29th June) is almost unprecedented and reflects the contemporary importance of the issue and the urgency of it. The inquiry reported in July 1988, an incredibly short timescale for such a large inquiry, perhaps due to the huge media interest and the public outcry that ensued (Newburn, 2017). Amongst many ground breaking recommendations was that children should be video-interviewed to enable agencies to assess their testimony. This did not go so far as to require that courts should automatically allow the video interview to be admitted, but it was a step forward in capturing their evidence and treating them fairly. It is ironic that the creation of a possible child abuse hotspot in Cleveland actually produced a report that supported the need to allow children to give their evidence fully and carefully. A proposed bill in parliament that started in 1986 was the Criminal Justice Bill and in 1988 it had proposals that suggested the introduction of the use of a live video link for child witnesses in sexual offences, and pressure

groups pressed for this to be introduced (Allen, 2005). In June 1988 a committee was established to look at this, called the Pigot report (Dent & Flin, 1992). This committee recommended a compromise, but the government declined these, and decided that the child should give evidence either in person at court or via a video link, if competent to do so. It is interesting to contrast the previous comments of the then Prime Minister around video evidence and the somewhat reserved intentions of the Home Office (Dent & Flin, 1992). It is also true that Esther Rantzen continued to campaign on the same issue during this time (Sunday Telegraph, 1989). Harold MacMillan, when Prime Minister, was asked what a Prime Minister should fear most, he replied “events, dear boy, events”. The campaign and several events, it is argued, came together to influence change, through a government that championed the family and the enforcing of law and order as its natural political territory (Downes & Morgan, 2007).

The theory of moral entrepreneurship has been described as a useful way to understand a process to achieve changes to the law (Roshier & Teff, 1980) although this is disputed by Taylor et al., (1973) who describe Becker as confused and even tame in his description. They cite that a person killing another person cannot just be labelled as a murderer, in one context such as war, it is acceptable and it may even be someone’s patriotic duty to kill, in other circumstances it is entirely understandable, such as what the French call crimes of passion, but in murder it is correctly called deviant. The act remains the same, the taking of a life, but the context is everything. They say that the same action by a person can be labelled as deviant or non-deviant, being labelled as a deviant is clearly central to moral entrepreneurship (Taylor et al., 1973:145). This seems somewhat simplistic as Becker outlines two very different

prohibitionist acts, one around slavery and one around marijuana so he does consider the overall context of the crusade and admits some crusades are driven by the right motives and seems to understand that context is important and avoids undue simplicity. Tierney (2010) confirms that the labelling of a whole group as deviants is important to Becker's theory, however it is hard to argue that child abusers were not already labelled, and the effect of the change was not to seek to label any further rule-breakers but enable equal justice in a situation where the scales were tipped against certain children. Rock (2014) talks of the generation of an awareness that can be produced by unofficial reformers, this may include the press, moral entrepreneurs or moral crusaders who exert pressure on those in power to take their concerns seriously. He talks of some crime waves producing that "something must be done" statement even though the issue is, in effect, a mirage. He concludes that law is not to be seen as a one-way flow, but the outcome of constant complicated exchanges. If we use the five tests of moral entrepreneurship that Goode and Ben-Yehuda (2009) outlined, we can review both campaigns. As regards the first issue of a concern, it cannot be denied that either campaign initially had this in large amounts, the death of children and the abuse of children, and both tried to use the media to change the status quo. The second issue was hostility around the deviants, here the infanticide campaign focusses on the woman and effectively ignores the male part of the creation of a child somewhat indicative of the perception that the campaign included some Victorian hypocrisy, but the child witness campaign focussed on a group constantly attacked by the media and universally disliked by pretty much all society, those who hurt and abuse children. The third element of consensus starts to demonstrate the differences between the campaigns, the Infanticide campaign gained some but was undermined by a lack of data and conflicted parties, even being attacked by august scientific journals, Magistrates and those with power (Behlmer, 1979: Goc, 2013). The child witness

campaign had support from the political elites at the time, the right-wing press and although it was attacked by certain sections of the media this was an element viewed as already hostile to the conservative legislators. To this end the child witness campaign gained a bigger foothold in the key demographic to change the law compared to the infanticide campaign. The next element is disproportionality and by viewing them both through modern values both appear to have this in equal measure as being highly proportionate to the problem. Viewed through a Victorian lens however the infanticide campaign suffers from that setting. It attacked an issue of unwanted pregnancy that was difficult for some men (all MP's at that time being male) and some women, it happened at a time when the need for labour was reducing and improvements in sewerage in London were raising people's health, alongside other such improvements (Goc, 2013). The child witness campaign was targeting a failing in the legal system that was raised by other similar events and could hardly be seen as disproportionate, the 50,000 calls to Childline made a strong case (even allowing that most of the calls were not even answered) and other data confirmed that the issue was real. The last category around moral entrepreneurship is volatility, or the end of the crusade, if the infanticide campaign had achieved its aims it would have fitted that criteria, the need to register all births and abortions with the current system of registering of live births would have enabled the relevant action to be taken and the issue addressed. The child witness campaign however targeted certain child witnesses not all, and one of the defects in their argument is that some children should be able to give evidence in a better way but not all. This seems a partial solution ignoring other categories of child witnesses, if it is right for some child witnesses to give evidence in this way, why not all. Despite this obvious issue around the two campaigns, it is argued that the child witness one fits better the full number of key elements of moral entrepreneurship.

Perhaps the key difference between the two campaigns, is that the infanticide campaign did not reach a sufficient range of concerned persons of the right power base, with some viewing it as a mirage owing to a lack of evidence and data and also significant resistance amongst what is sometimes called the establishment. In the child witness campaign, the titular head of the political establishment had already stated that the campaign would succeed despite a similar lack of initial evidence, but with a growing body of data (however obtained) that the issue was of national concern. Those with implicit and explicit knowledge of the problem (Rock, 2014) began to realise some of their knowledge around child witnesses was being directly challenged and usurped by the campaign and the events unfolding in the press and a number of incidents that reinforced that some children must be allowed to give evidence in a logical and sensitive manner. Cotterrell (1992) calls this type of campaign a strongly moralistic one where a consensus of the elite (an influential minority if you will) leads to a common view that influences a change to the law. The nineteenth century sociologist Emile Durkheim wrote that society had two types of law, one being a penal or repressive law, aimed to punish the law breaker, which he called mechanical solidarity based on some shared values, and the second type was restitutive or cooperative laws aimed at the restoration of the status-quo between those parties in conflict, what he called organic solidarity (Wollff, 1960). It is easy to see that the child witness campaign demonstrated both elements of this principle on how law is made or changed with punishment for those law breakers and an equalisation of status in witnesses, in this campaign both were evident. It is argued that the Infanticide campaign was almost entirely based around the mechanical solidarity, looking to punish the “feckless” women who were pregnant and hid it, ignoring the role of men in the issue, and clearly some people in the elite were hostile to the campaign and its aims despite some desultory support, however isolated.

What of the key moral crusader in each campaign? Dr. Lankester died during the campaign and this naturally restricted its impact, even before his death questions had been raised about his evidence, and his use of figures (which even he admitted were somewhat sketchy). It took another fifty years to change the law as he suggested. Ms. Rantzen came from a successful campaigning background and had the standing and credibility cited by Cotterrell (1992) as crucial to effect changes to the law. In October 1988, the Sunday Telegraph said in a profile of Ms Rantzen "The fact remains that, apart from Mrs. Thatcher, Esther is the most influential woman in Britain and by far the most effective campaigner" (Sunday Telegraph, 1988:13). The same paper almost a year later ran another fairly complimentary article but also contrasted that view with the fact that she was resented by some for drawing attention to the issue of child abuse, something she strongly contested in the interview (Sunday Telegraph, 1989). This, in some ways, mirrored the divisions in the press seen in the Infanticide campaign, but Esther Rantzen had a huge advantage, a prime-time television slot to carry on her crusade week in and week out and deliver the message to 15 million people directly. Becker (1967) talks of a superordinate group who have credibility and the right to be heard by a subordinate group, it is interesting to suggest Ms Rantzen had joined this superordinate group by dint of her pulpit, which she had previously used to successfully campaign for rear seat belts in cars and a national transplant register (Sunday Telegraph, 1989). After some of her campaigns she received praise from politicians, in January 1992 the then Secretary of State for Education, Michael Fallon MP., said "but I would also wish to give credit to Ms. Esther Rantzen's programmes about Crookham Court school, which have done much to bring to everyone's attention the horrors which can be perpetrated on schoolchildren. Her campaign on behalf of children at risk of abuse influenced the amendment of the Children Act" (Hansard, 1992: 1207). In 1993, Roger Sim MP cited Ms Rantzen saying "A number of interesting initiatives

that affect children have emerged in the past few years. Childline, set up by Esther Rantzen, enables children in trouble to pick up a phone and talk to people who may be able to help them. There is no doubt, from the thousands of calls that Childline has received, that this service has met a very real need” (Hansard, 1993: 562-632).

7 The Result of the Child witness campaign

Durkheim (1997) states that as society develops it becomes more rational and logical, refining law through a consciousness that changes over time, if this is correct then perhaps the changes around child witnesses would have happened anyway eventually, even without the campaign. His view that as society becomes more sophisticated it alters the way laws are created and changed chimes with the basis of this dissertation. But it cannot be doubted the child witness campaign, along with several inquiries into large scale child abuse issues, led to several changes in existing legislation going through Parliament in 1988, which had not been envisioned in the original proposals. Both the Children Bill and the Criminal Justice Bill (later to both become Acts) changed the way child abuse was dealt with by the relevant agencies, but more importantly allowed certain categories of child witness to give their evidence in court and allow juries to assess their credibility (another Criminal Justice Act in 1991 further allowed pre recorded interview of children under 14 to be used in court). Further changes to allow more child witnesses to use what are now called special measures have been rolled out to both children, vulnerable adults (for example those with a disability or learning difficulty) and rape victims. The question is, do juries trust child witnesses any more than adults, although the earlier research suggested children are no less reliable than adults is this what happened in actuality. Although the data produced by the relevant departments (who change

names and responsibility regularly) varies and is not entirely consistent owing to changes in Government and their priorities, there is some interesting data that suggests juries do trust child witnesses more. For six years the Ministry of Justice for England and Wales produced statistics on certain convictions after the law on sexual offences was changed in 2003 (Sexual Offences Act, 2003). These data included conviction rates for the very similar offence of Rape of a female under 13 and Rape of a female 16 or over. This is essentially the same offence albeit a 13-year-old cannot ever consent to sex (Smith & Tilney, 2009), and the decision to charge goes through the same Crown Prosecutor code around a realistic prospect of a conviction and if the prosecution is in the public interest. The chance of forensic evidence will significantly be the same, and the chance of additional witness evidence or corroboration is likely to be substantially the same (Davis et al., 1999). The conviction rate for a female 16 or over hovers around the 30% mark, the lowest being 24% the highest 32%. For a female under 13 the average is around 50% but the lowest is 35% and the highest in 2010 is a staggering 68%.

Table 1. Conviction Rate in England and Wales at all courts, Rape.

Offence type	2004	2005	2006	2007	2008	2009	2010
Rape of a female under 13 % Convicted	35.4	45.5	43.5	66.2	44.5	48.8	68.3
Offenders found guilty - Number	58	85	91	141	143	167	209
Police recorded crime	1,388	1,524	1,487	1,658	1,967	2,243	2,212
Rape of a female 16 or over % Convicted	24.0	29.5	32.1	29.7	29.9	30.8	31.8
Offenders found guilty - Number	342	384	375	382	413	445	433
Police recorded Crime	8,192	8,725	8,222	7,610	7,768	9,027	9,469

Source Ministry of Justice (2012)

It must be said that some academics view the issue of consent and rape much easier to prove for a child under 13 as a result of the 2003 Act (Horvath & Brown, 2009), and this may be so

but it is such a substantial difference that is still significant. So, juries seem to believe young children more than adults for the same offence, (albeit with a perceived nuance around consent), but it is important to consider how the children who give evidence feel after being in court, even via a video link. In 2004 the figure for all witnesses eligible for special measures (essentially the same situation as young children in being able to be judged by a jury or magistrates) at court, and happy to be a witness again was 38% (Hamlyn, 2004). A review of how only child witnesses felt after giving evidence found that 65% would be a witness again, with 50% identifying something good or positive about the event of being a witness (Plotnikoff & Woolfson, 2009). There is still clearly some way to go, but this hugely significant decision to allow children to give their evidence in a way that makes them feel that they are happy to do so again is striking.

8 Summary and conclusions

The campaigns reviewed have some remarkable similarities, they cover significant harm to children, indeed what most would view as the worst harms possible. They both had charismatic leaders who sought to use the press (and the latter campaign the high-profile use of TV), although both received some criticism. The key difference seems to be that Dr. Lankester was attacked by all sides, and that Ms Rantzen was mostly attacked by a press that was hostile to the political elite. The argument here is that the child witness campaign was explicitly not a moral panic as it addressed a real problem and a real, substantial injustice. The campaign for child witnesses explicitly fits the theory of moral entrepreneurship, coming at a politically convenient time with a media that was mostly supportive of it (especially the right-wing media). It is also evident that the campaign targeted the people in place to effect the

change around children and justice. In addition, Ms Rantzen had a track record with the British public, some legislators and the right-wing press. Using Becker's concept of moral entrepreneurship, there are key elements of the child witness campaign that fit it perfectly. There was a rule creator extraordinaire, a TV personality with a track record of effecting change, who knew how to use the media to target those capable of making change happen. Ms Rantzen had the help of experts such as the NSPCC, key professionals and the publication of two public inquiries that very closely suggested the same change for young witnesses. Perhaps most of all she had the most important person listening to the campaign, someone capable of making this moral entrepreneurship succeed, Mrs. Thatcher. It also helped that the declared key themes of the conservative government around law and order and the family chimed perfectly with the child witness campaign. Whether wittingly or unwittingly, it is argued that the child witness campaign benefitted from what happened in parallel with it. Dr Lankester was hindered in that although he had the London Times in his corner, and they supported him thoroughly, there seems to have been a reluctance in powerful circles to address the issue of live births and abortions. Dr. Lankester also conceded that his figures were questionable, while the gathering data around Ms Rantzen's campaign reflected that the issue was a substantial one and not a mirage and several other cases buttressed that claim. In addition, it is hard to reconcile that any competent witness should not be heard in a court, and hard to argue that witnesses should not be judged on their credibility. Accepting that the ability of child witnesses to give meaningful evidence to a court had been established, and that some of the sceptics who expressed extreme doubts over children going to court and giving a fantasy version of what happened to them were proved wrong, there seems little doubt that the push to allow young children to be viewed as competent witnesses and give their evidence at court in a sympathetic manner has worked. The conviction rates are better

than for adults and the views of child witnesses around giving their evidence are more positive than for adult witnesses.

In conclusion, therefore, once the analysis of each campaign was undertaken, the criminological theory applied, and critical analysis completed it became apparent what lies behind the successful use of moral entrepreneurship. Firstly, the issue needs to be one that is likely to have broad support, and ideally universal support but that is not essential, as can be seen from the child witness campaign. There was some opposition to the campaign, but this was from certain interested groups such as lawyers and certain sections of the media. There needs to be an evidence base, or the campaign should seek further data to confirm the issue is a real one and is of sufficient concern to require the desired change. The need for the change and the benefits it will bring to the affected people needs to be outlined explicitly. As outlined by Becker, experts and interested parties should be used to develop a workable solution or solutions that address the need and will deliver it effectively (even if partially like the child campaign which sought the change for a section of child witnesses). Even a partial change can be delivered if the underlying case is strong. It is then crucial to identify who you wish to influence to effect the desired change and consider how that influence will be delivered. A politician is likely to be influenced by the media that is generally supportive of them, so this is the media to target, and convince them to support the campaign. Even negative media coverage is not likely to be terminal to the campaign, as long as it is in the media that is sceptical or hostile to the person who the campaign is trying to use to achieve the change. This may be local, regional, national or international and the newly developed area of social media should be utilised. To this end it is important to establish the media

viewed and followed by the person the campaign wishes to influence. In addition, the campaign should seek out and highlight similar events that demonstrate a continued case for change, as this will further evidence the need for a rule change (as the Cleveland report clearly did in the second case study).

9 Future Actions

Although both campaigns reviewed used the media, it is arguable that the current significantly enhanced and much changed media landscape may impact upon the effective use of any media, most particularly that of what is called social media. Evidence over the effective use of media is emerging, especially since a certain high-profile presidential campaign in the United States of America and its use of social media and the internet. Bradshaw et al. (2018) and Howard et al. (2018) analyse the use of these platforms and, as more evidence emerges, this would benefit from incorporating them into a further analysis of the effectiveness and validity of moral entrepreneurship.

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