

Scarlet Letter Still Brands 'Sex Offenders'

By E. H. DUNCAN DONOVAN

The law requiring former "sex offenders" in California to register with their local police departments is one of the dehumanizing practices reminiscent of the Puritans' branding adulterers with a scarlet "A." It contributes almost nothing to the well-being of the community while inflicting a crippling stigma on an otherwise law-abiding person.

What constitutes a "sex offender" varies from place to place and from time to time. It seldom refers to an ax-murderer. In California, it is anyone convicted of rape, child molestation or lewd conduct—or seduction by the promise of marriage! The bulk of registrations are for so-called "victimless crimes" involving lewd conduct. Most of these are for sexual activity, or solicitation of sexual activity, in more-or-less-public places—streets, parks, bars, theaters.

A sampling of Southern California police departments indicates that registration has little or no value in criminal investigations. Yet registration endures, with devastating effect on individuals and, ultimately, on all of society.

The kind of personal damage that registration as a former "sex offender" can do was recently brought to the attention of the Lesbian and Gay Rights Chapter of the American Civil Liberties Union of Southern California. It was the case of an upper-middle-class man, happily married, the father of three children. I repeat, he was happily married. He had been convicted of an act of lewd conduct with another man. Now, totally beyond the price that he had to pay for that offense, he is registered, stigmatized with a criminal status and open to the whims of any police investigation. Long after the sentence against him has been passed and executed, the trauma to him and to his family remains, a continuing presence not unlike the scarlet letter of Hester Prynne. She lived in 17th-Century Salem when that Puritan town was really a theocracy. But he lives in a democracy in which the church is separate from the state. The excesses of religious bigotry in Salem assured that.

If this man had been a mass murderer, his "debt to society"—whatever that means—would be considered paid. But society is still pursuing him in the form of a police procedure that at any time can rip away his privacy and the privacy of his family. At any moment his past could be exposed to his neighbors, his employer, his co-workers. Can you imagine him moving into a small town? Not a small town in the Deep South with a caricature sheriff, but a small town right here in the metropolitan area—a town like Signal Hill. His past would be an open book. As a former newspaper reporter who covered the police beat both here and in San Francisco, I can assure you that any interesting story is grist for gossip in a police department. And "The Scarlet Letter" has long been interesting.

Apart from personal considerations, registration of former "sex offenders" is in conflict with a fundamental principle of English law, a principle that sets the English tradition apart from that governing most of the world. That tradition, basic to the American concept of

freedom, is the presumption of innocence. We believe that a man or woman is innocent until proven guilty. Registration presumes the opposite. It presumes that a man or woman is guilty of a status until proven innocent.

In times of social panic in this country, various kinds of registration have been proposed. In the 1950s, it was proposed that communists be registered. The American Civil Liberties Union opposed that. Thank God for our freedom, it did not happen.

More recently, we've heard demands that everyone carry a domestic passport. This radical proposal to hobble the free movement of Americans is supposed to control immigration from Latin America. Let us pray that it does not happen. The system of policing citizens, as is done in the Soviet Union or Africa, is in conflict with our way of life and our sense of the value of the individual human being.

In the 1940s, a 3-year-old girl was sexually assaulted and murdered. Her body was found in the Baldwin Hills area. During the subsequent communitywide panic, male homosexuals were rounded up by the Los Angeles Police Department for questioning. Please note that male homosexuals were rounded up to investigate the murder of a female baby. There is absolutely no relationship between the behavior of the adult male homosexual and the behavior of rapists of female babies. But in times of social panic, fanned by sensational stories in the media, such irrational things occur.

It was also during the 1940s that registration of former "sex offenders" was made law in California. Five other states in the Union have such laws.

Until a few years ago, even a married couple could be arrested for committing acts of intimacy considered immoral by others in the population.

Since ancient Greece, thinkers who have been concerned about morality and government have recognized that a tension exists between the state and the individual. Our Founding Fathers recognized this tension. They said that the power of the state was so overwhelming and so subject to abuse that the individual must be protected from that power.

Police states of the left and police states of the right do not see the need to protect the individual. They oppress the individual in the name of order. Violence by the state is no substitute for order. True order is more likely to be found in a country like ours that protects the freedom of the individual.

It is time to look at the pernicious registration law in light of the evil effect that it has on our traditions of justice, equality, privacy, protection from the state, and enforcement of laws without regard to social position.

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