

Twentieth-Century Canadian Law, Psychiatry, and Social Activism in Relation to Pedophiles
and Child Sex Offenders

By

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ABSTRACT

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The contemporary conflation of pedophiles and child sex offenders is a prevalent aspect of reporting in news and social media, as well as in government-sponsored efforts to prevent child sexual victimization. Throughout twentieth century Canada, however, legal experts, psychologists and psychiatrists, and social activists were recognizing the harmfulness of grouping individuals who may have a propensity to commit crime with those who have committed the most heinous of criminal acts. As early as 1938, Canadian legal experts suggested that criminal insanity was a myth, advocating for a divergence between legal punishment and psychiatric healthcare, but after World War 2 had enacted serious efforts targeting criminal sexual psychopathy. Successive Royal Commissions investigating sexual victimization and child abuse revealed that Canadian courts, jails, prisons, and remand services were unable to solely deal with the realities of child sexual victimization. Psychologists and psychiatrists of the American Psychological Association increasingly researched sex and sexuality, classifying pedophilia as a paraphilia using child sexual victimization as a diagnostic indicator and criterion. Gay liberation activists discussed inequalities posed between hetero- and homosexual ages of consent and, more rarely, thought about the total abolition of age of consent. Each of these discourses firmly advocated for a separation between thought and action, recognizing the pedophiles who had not and would not harm children. The historical roots of the conflation of pedophiles and child sex offenders makes an important contribution to understanding contemporary discourses on criminality, victimology, sexology, and sociology, and to the development of efforts which can more successfully reduce child sexual victimization.

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Introduction: A History of the Modern Child Sex Offender

In 1938, after four years of rigorous study and investigation, Chairman Joseph Archambault wrote in the Royal Commission Report for Penal Reform in Canada that

*Your Commissioners are of the opinion that there is no class of persons who can be termed 'criminally insane'. Those who have committed, or are likely to commit, violent or unlawful acts by reason of their insanity are essentially a medical problem and not a legal one. They are, in no sense, criminals, because their violent tendencies are due to mental disease.*¹

This report signaled a landmark shift in Canadian penology as legal experts and testimony sought to move the focus of criminal justice from retribution to rehabilitation; it made novel connections between endemic poverty, mental illness, and crime,² and initialized the foundation of the system of conditional release, more commonly referred to as parole. Mindful of the notion that some individuals lacked the possibility of being meaningfully rehabilitated, the Commissioners also prescribed the foundations of 'habitual offender status' – the predecessor to modern indeterminate sentencing.³ Since its publication, however, nearly fifty federal prisons have been established,⁴ widespread deinstitutionalization reduced the number of psychiatric vacancies from 4 beds per 1000 in 1964 to less than 1 bed per 1000 in 1979,⁵ and the number of criminal code offences which require mandatory minimum sentencing increased from three to

¹ Joseph Archambault, *Report* (Ottawa: King's Printer, 1938), 156.

² Archambault, 177-178.

³ Another form of indeterminate sentencing had been available in Ontario since 1916, though it functioned similarly to non-custodial supervision rather than indefinite confinement.

⁴ Gerald Fauteux, *Report of a Committee Appointed to Inquire into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada* (Ottawa: Queen's Printer, 1956), 39.

⁵ Patricia Sealy and Paul C Whitehead, "Forty Years of Deinstitutionalization of Psychiatric Services in Canada: An Empirical Assessment", *Canadian Journal of Psychiatry*, 49(4), 2004: 250.

twenty-nine.⁶ In less than a century, support for penal rehabilitation had seemingly died.

The death of rehabilitation, or conversely, the resurrection of retributive justice, is perhaps best demonstrated by the child sex offender. Occupying a particularly heinous place in current society, child sex offenders are generally deplored as degenerates, as predators, and serve as the representative example of “stranger danger”⁷ at its worst. Yet in mass media, alongside social media, pedophilia and pedophiles are often used interchangeably to decry acts of child sexual exploitation, predation, and victimization, despite the knowledge that not all of these offenders are pedophiles – and that not all pedophiles enact sexual offences.⁸ Despite the lack of any legal definition provided for pedophilia in the *Canadian Criminal Code*, despite a clear indication of the need to differentiate between pedophiles and persons with a pedophilic disorder,⁹ and despite the development of pre-offence prevention programs which seek to prevent child sexual exploitation, laymen and populist discourses continue to use the terms synonymously. Unfortunately, this has led to a widespread misunderstanding of all pedophiles as inevitable child sex offenders, consequently redirecting therapy funding to carceral institutions;¹⁰ such a redirect is necessarily self-fulfilling, since any participants seeking such programmes in prison would be convicted sex offenders.

The broadest purpose of this thesis is to historicize how, when, and why pedophiles have become synonymous with child sex offenders within the Canadian context. I argue that the conflation of pedophiles and child sex offenders is a multifaceted and interdisciplinary result of

⁶ Justice Canada, "Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models". Last modified January 7, 2015. http://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr05_10/p2.html

⁷ Stranger danger refers to the sentiment that strangers are the most common perpetrators of crime and violence, rather than persons known by the victim (within the family or extended social circle, as examples).

⁸ Ray Blanchard, “The DSM Criteria for Pedophilia”, *Archives of Sexual Behaviour* 39 (2010): 309.

⁹ Individuals who have acted upon their sexual desires, whether it be with the consumption of child pornography or the perpetuation of a direct contact sexual offence.

¹⁰ James Cantor, quoted 9:52 in *I, Pedophile*, directed by Matthew Campea, (Ottawa: CBC Firsthand Documentary Series) televised 10 March 2016, available at <http://www.cbc.ca/firsthand/episodes/i-pedophile>

the individual compromises of legal, psychiatric, and social activist discourses promising the protection of children. With respect to the law, criminal sanctions, constitutional responsibilities, and the development of probation and parole systems all contributed to the modern distinctiveness of the child sex offender: penal institutions and incarceration were reformed to promote a reduction in recidivism; criminal sanctions were reformed to highlight the uniqueness of child sexual victimization and to better clarify and define the extent to which it was entrenched in Canadian society; and, since the 1980s, criminal laws have been reformed to increase the severity of punishments ascribed to sexual offences with the intention of increasing their effectiveness as deterrents. In terms of psychiatry, the medicalization and pathologization of non-heterosexual expression obstructed the profession from progressing beyond morality politics before the advent of the *Diagnostic and Statistical Manual of Mental Disorders, Third Edition* (DSM-III), whereas thereafter the profession was seen as offering liberalism over science in its arguments for the declassification of homosexuality as a mental disorder and the decoupling pedophiles and child sex offenders.¹¹ Finally, in terms of social activism, the need to expunge the abolition of age of consent and reduce the presence of pedophiles were necessary to mainstream Canadian gay liberation, forcing pedophiles to either form their own activist groups or to individually go underground.

The central argument of this thesis is that, at least insofar as thoughts and feelings, pedophilia is a sexual orientation similar to other orientations. This argument is not new, since the definition and limits of sexual orientations have been posed in relation to pedophilia by

¹¹ American Psychiatric Association (APA), “Statement on DSM-V Text Error: Pedophilic Disorder Text to be Corrected” (Press Release). Arlington, VA: APA Press, 31 October 2013), accessed 1 March 2015 at <http://www.dsm5.org/Documents/13-67-DSM-Correction-103113.pdf> and Fred S. Berlin, “Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder”, *Journal of the American Academy of Psychiatry and the Law* 42(4)(December 2014), accessed 1 March 2016 at <http://www.jaapl.org/content/42/4/404.full>.

Michael C. Seto,¹² and extensive research into non-heterosexual orientations occurred throughout the twentieth century. Seto argued for the need to differentiate between orientation types: sexual gender orientation referring to the relationship of attractions between males and females (hetero-, homo-, and bisexuality) and sexual age orientation (pedophilia, gerontophilia,¹³ and other subcategories of pedophilia analyzed in Chapter 3).¹⁴ Varying editions of the DSM have attempted to classify paraphilias based on an individual's sexual object of choice, but risked reducing children to a similar level of objectification as high-heeled shoes, foot fetishism, or voyeurism. This thesis defines sexual orientation as a fair representation of one's sexual preferences for other persons, though said preference may not necessarily be exclusive in nature. This caveat aligns with research demonstrating that some pedophiles are also attracted to normative sexual partners.¹⁵

However, pedophilia differs from other sexual orientations when it results in sexual interactions, encounters, and/or intercourse with children. Such acts, due to the physical, social, economic, and psychological power imbalances, are inherently victimizing. When strictly limited to sexual thoughts and fantasies, I argue that pedophilia is no more problematic or mentally disordered than homosexuality *per se*, and that the disorderly consequences of pedophilia are related to the societal conflation of pedophiles and child sex offenders. If one considers the philosophical question of whether or not a man attracted to other men is homosexual, or if he only truly graduates to homosexual status after performing sexual acts with other men, it is likewise important to ask whether or not pedophiles are fundamentally different from child sex offenders. I argue that they are, that conflating these two groups is explicitly harmful to

¹² Michael C. Seto, "Is Pedophilia a Sexual Orientation?", *Archives of Sexual Behaviour*, 41(1) (2012), 231-236.

¹³ A sexual preference, or exclusive attraction, to elderly persons.

¹⁴ Seto, 231-232.

¹⁵ Seto, 233-234; Ray Blanchard, "The DSM Criteria for Pedophilia", *Archives of Sexual Behaviour* 39 (2010): 309.

pedophiles and supportive organizations – such as *Virtuous Pedophiles* – which aim to reduce child victimization, and that the need to distinguish between them has already been advocated by legal, psychiatric, and activist sources in twentieth century Canada. This project is an attempt to illuminate how each of these disciplines argued for a separation between thought and action, with regards to sexuality and pedophilia, and the extent to which disciplinary experts sought to challenge the conflation of pedophiles and child sex offenders.

This thesis began with a recognition that, following the enactment of the federal Canadian sex offender registry in 2004, efforts to reduce child sexual victimization have increasingly blurred the distinction between pedophiles and child sex offenders. At times, the term pedophile was used synonymously with child sex offending, such as with *StopPedophiles.ca*. I sought to understand the consequences of implying that all pedophiles are, or are soon-to-be, child sex offenders through the aforementioned Canadian historical context. Given the presence of *StopPedophiles.ca*, the popularity of *To Catch a Predator* and of *Creep Catchers* more recently, and the development of the government-funded *CyberTip.ca* project – which enables instant and anonymous online reporting of child sexual abuse, it is fair to suggest that the conflation of pedophiles and child sex offenders is rooted in the broader Canadian social consciousness. The purpose of this thesis is to clearly understand the ontological roots of this through the lens of a socio-legal historical project.

A related yet equally important goal of this project is to understand the relative lack of research on child sexual victimization, especially before the results of the Badgley Report – a national inquiry into the realities of child abuse in Canadian society – were published in 1984. This may partially be due to the difficulty in discussing the reality of child sexual victimization within a single discipline, since the subject matter necessitates an understanding of the physical,

emotional, psychological, and social harms of sexual acts, as well as an understanding of criminology, victimology, and law. Additionally, research into child sexual victimization, child pornography, and social media platforms which pedophiles use to correspond risks opening scholars to criminal and legal liability, which by extension can lead to physical, social, and professional harm. Child sex offenders have been researched prevalently in psychology and psychiatry, in criminology, and in penology, but a historical project seeking to determine when, how, and why pedophiles and child sex offenders have become conflated remains distinctly absent. While addressing this gap, this project also attempts to develop pedophiles as subjects of historical inquiry.

This project draws from a variety of secondary sources which can be sufficiently grouped into the following categories: the historiography of sex offenders, the historiography of sexual minorities in Canada, a general historiography on emotions – such as shame, fear, and disgust – in relation to crime and law, and a historiography of Canadian social conservatism. In terms of primary sources, the first chapter draws from the Canadian constitution and Canadian Criminal Code, from five Royal Commissions dealing with mentally-ill offenders, and analyzes the legal dimensions of age of consent. The second chapter discusses the development of the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders* (DSM), as it transitioned from a list of mental illnesses to the central dictionary of American psychiatry alongside the World Health Organization’s *International Classification of Diseases* (ICD). The third chapter revisits gay liberation discourses through an analysis of *The Body Politic*, a Toronto-based queer periodical that became a unifying voice for sexual minority activism during the 1970s and 1980s, in comparison to the advocacy of the North American Man/Boy Love Association (NAMBLA). The fourth and final chapter of this thesis, the epilogue, synthesizes the

reflections of the former three chapters in connection with their contemporary manifestations. This epilogue is grounded in the re-emergence of the new right, within Canada, and offers a contextualization of the rise of vigilantism during the same era.

I draw from and build upon these primary sources to make thematic arguments within each respective chapter. In chapter one, I analyze the perspectives of various legal authorities on pedophiles, child sexual victimization, and criminal sexual offending. In chapter two, I argue that the specific revisions offered for pedophilic disorder demonstrate a progressive trend toward differentiating between pedophilia as a sexual orientation and individuals with pedophilic disorder, legally categorized as child sex offenders. More generally, I analyze how the *DSM* became the foundation of the Canadian psychiatric profession during the twentieth century, and its revision processes highlighted the North American tendency to perceive heterosexuality as the norm, pathologizing most other sexual behaviours, actions, and fantasies. In chapter three, I draw from *The Body Politic* to contextualize the use of social activism to challenge legal and medical authorities. In the epilogue, I discuss modern trends toward the establishment of sex offender registration systems, the near-exclusive allotment of federal funding to carceral and correctional based therapeutic interventions, and the simultaneous creation of community-based support groups for and vigilante justice groups against child sex offenders. By synthesizing the suggestions of medico-legal experts and social activists, this project seeks to uncover the roots of the complex realities of child sexual victimization in twentieth- and twenty-first century Canada. This periodization encompasses the main Royal Commissions which focus indirectly and directly on child sexual victimization, the advent of psychiatric and neuropsychiatric research, as well as the development of sexual minority activism and queer pride, all of which are integral to the emerging conflation of pedophiles as child sex offenders.

The existing historiography of child sex offenders is sparse in general, and when limited to Canadian history, sparser still. Elise Chenier's *Strangers in Our Midst* (2008) tracks the construction of the male sex offender in postwar Ontario with a particular focus on criminal sexual psychopath legislation; however, as Chenier readily admits in the introduction, it is neither "a history of sex offenders, nor is it a history of victims of sexual assault".¹⁶ Although Chenier similarly tracks the waning theme of rehabilitation in relation to the frequent subversion of psychiatric expertise by prison wardens and authorities, she intentionally divorced her analysis of the criminal sexual psychopath from any specific type of sex offender. My thesis extends her argument – that rehabilitative programming was doomed to fail due to the incompatibility of the psychiatric and carceral perspectives of criminal sexual deviance¹⁷ – in order to determine why these intellectual projects were incompatible.

Anna C. Salter's *Predators: Pedophiles, Rapists, and Sex Offenders: Who They Are, How They Operate, and How We Can Protect Ourselves and Our Children* (2003), by contrast, rejects any attempt for objectivity whatsoever, and essentially serves as an explanatory guide to just how pervasive the inability to detect sexual victimization really is. Although writing on the U.S., Salter's themes also permeate Canadian discussions of sexual predation and child victimization. It would be unfair to suggest that this project does not likewise attempt to analyze the historical efficiency of legal, psychiatric, and activist solutions proffering the protection of children. However, this thesis rejects the notion that pedophiles – presumed, again, to be synonymous with child sex offenders – are solely to blame for the continued existence of child sexual victimization.

From the Canadian historiography on queer minorities, I draw from Gary Kinsman and

¹⁶ Elise Rose Chenier, *Strangers in Our Midst: Sexual Deviancy in Postwar Ontario* (Toronto: University of Toronto Press, 2008), 4.

¹⁷ Chenier, 12.

Patrizia Gentile's *The Canadian War on Queers: National Security as Sexual Regulation* (2010). It is insufficient to say that homosexuality and pedophilia were regulated simply because they were not heterosexual, or because of the religious condemnation of extramarital sexual practices. Although Chapter One analyzes the religious tradition of several Canadian constitutional amendments and controversies throughout the twentieth century, and of Canadian social conservatism, queers were regulated – as the title suggests – as real threats to national stability. Before the extension of protections under Section 15 (equality rights) of the *Canadian Charter of Rights and Freedoms*, it was much easier and much more commonplace to disrupt and destroy the lives of suspected Canadian queers.¹⁸ Kinsman and Gentile challenge the narrative that because queer citizens have achieved individual human rights victories and protections that, overall, the charge behind 1970s queer liberation is over. Certain queer acts, such as anal intercourse with more than two persons present, are still criminally prosecuted as acts of indecency, as is anal intercourse before the age of eighteen.¹⁹ Supreme Court decisions have provided leeway for heterosexuals to practice anonymous sexual encounters in sex clubs – which would otherwise be classified as public spaces, and therefore indecent acts – but have not done the same for bathhouses, potentially because bathhouses do not regularly cater to heterosexuals.²⁰ Throughout this thesis, it is clear that though legal extensions and psychiatric experts emphasize the equality rights of non-heterosexual individuals, heterosexuality still very much enjoys its position as the natural and right expectation for sexual orientation. Further, though some queers have come to enjoy “normality”, “respectability”, and inclusion in the “national fabric of Canada” – white, middle-class homosexual males, primarily – others remain

¹⁸ Gary Kinsman and Patrizia Gentile, *The Canadian War on Queers: National Security as Sexual Regulation* (Vancouver, UBC Press, 2010), E-Book Version, Preface, xv.

¹⁹ “Anal Intercourse”. CCC, R.S.C. 1985, c C-46, s 745, s 159.

²⁰ Kinsman and Gentile, xvi.

marginalized and unable to claim neither queer nor equal status.²¹

Additionally, I look at Tom Warner's *Never Going Back: A History of Queer Activism in Canada* (2010) and *Losing Control: Canada's Social Conservatives in the Age of Rights* (2010) to contextualize Canadian gay liberation discourses in relation to social conservative opposition. Though the Stonewall Riots of 1969 were certainly pivotal in bringing gay liberation forward in North American social consciousness, it is important to highlight the different trajectory that Canadian gay rights followed. Although Canadian laws, as well as societal norms and mores, were frequently sourced from Christianity and religious traditions, the tendency to reject gay liberation purely as a religious abomination was much more prevalent in American anti-homosexual discourse. In Canada, rights to equal access to public services and protection from discrimination in the workplace were attained earlier overall – as early as 1977 in Quebec – as was the repeal of anti-sodomy legislation. As was argued by Miriam Smith's *Political Institutions and Lesbian and Gay Rights in the United States and Canada* (2008), and echoed in both of Warner's monographs, the differences in federal jurisdictional power in challenging and reshaping provincial legislative acts was central to the quicker advancement of gay rights in Canada.

This thesis considers the historiography of emotions in three ways: first, in relation to how shame has been used to not only justify the moralization and criminalization of acts, but also as a tactic of ridicule, ostracization, and segregation; second, how disgust has been used to segregate and subjugate certain forms of human sexual expression, and to obstruct discourse on the rights of certain individuals, namely child sex offenders for this project; and, third, how both disgust and fear have shaped the justifications for child protection and obstructed oppositional

²¹ Kinsman and Gentile, xvi-xviii.

viewpoints. Perpetuating the notion that a sexual act or behaviour is disgusting is onerous²² and distracts from other necessary considerations, such as legality and constitutionality. With regard to shame, I draw from such sources as David Nash and Anne-Marie Kilday's *Cultures of Shame: Exploring Crime and Morality in Britain, 1600-1900* (2010), Susan Miller's *The Shame Experience* (1985), and Judith Rowbotham, Marianna Muravyeva, and David Nash's *Shame, Blame and Culpability: Crime and Violence in the Modern State* (2013). Through these monographs, it is clear that the human emotion of shame has come to be understood as a personalized sense of the wrongdoing of individual acts and behaviours, one which has been extended to an argument of the legitimacy of criminalizing sexual acts and deviations. With regard to disgust, I reflect on William Ian Miller's *The Anatomy of Disgust* (1997) and Susan B. Miller's *Disgust: The Gatekeeper Emotion* (2004) to contextualize how the heinousness of child sexual offending comes to attract so much public attention when, if one considers the sexualisation of children, the contents of child pornography, and mass media reports on particularly egregious cases, the reality of the subject should be repellant and aversive. In the same vein as William Ian Miller, I analyze how Paula S. Fass's *Kidnapped: Child Abduction in America* (1997) reveals the oxymoronic allure and repulsion of child victimization, especially in the reporting of heinous crimes. Disgust permeates the marginalization of homosexuality and of adult-child sexual relations: if disgust is considered an instinctual and intuitive force, then surely feeling disgusted by anal intercourse or pedophilia is representative of innate wrongfulness.²³

Finally, I consider Hugh Segal and Pamela Wallin's *The Right Balance: Canada's Conservative Tradition* (2011) and Warner's *Losing Control: Canada's Social Conservatives in the Age of Rights* (2010) to situate this thesis within a broader context of postwar Canadian

²² William Ian Miller, *The Anatomy of Disgust* (Cambridge, MA: Harvard University Press, 1997), xi.

²³ Susan B. Miller, *Disgust: The Gatekeeper Emotion* (Hillsdale, NJ: The Analytic Press, 2004), 2-3.

conservatism. The creation of a parole system in Canada, debates over the responsibility of providing medical and mental health treatment for convicted criminals, and the reform and eventual deinstitutionalization of mental hospitals were all issues which divided liberals and conservatives throughout the twentieth century. Social conservatives could previously have faith in the religious undertones of both constitutional and criminal law, but as the century progressed, omnibus legislative amendments submitted by Liberal party leadership (notably, Bill C-150 in 1969, which decriminalized anal intercourse) – in conjunction with Supreme Court decisions like *R v. Morgantaler* in 1988 (which declared the criminalization of abortion violated Canadian women’s right to security of the person)²⁴ and *Egan v. Canada* in 1995 (which prohibited discrimination based on sexual orientation, a violation of equality provisions)²⁵ – slowly but surely eroded conservative foundations. This is not to suggest that the twentieth century was uniformly liberal, politically and judicially speaking. The recommendations of the Badgley Report – which is thoroughly discussed in Chapter One – revealed that child abuse and sexual victimization had become prevalent problems across the country, empowering social conservatives to decry the state of the traditional family while reinvigorating their opposition to the normalization of non-heterosexual partnerships.

Twentieth-century social conservatism in Canada, therefore, is a useful contextualization of public responses to the legal, psychiatric, and social reform movements discussed in this thesis. A wariness of the excessive reform of institutions and a sense of familiarity with Christianity as a social and moral authority are hallmarks of Canadian conservatism,²⁶ so opposition to the reformation of prison as an institution, or the reformulation of pedophiles as

²⁴ *R v. Morgantaler* [1988] 1 S.C.R. 30.

²⁵ *Egan v. Canada* [1995] 2 S.C.R. 513.

²⁶ Hugh Segal and Pamela Wallin, *The Right Balance: Canada’s Conservative Tradition* (Vancouver: Douglas & McIntyre, 2011), 18.

diseased individuals rather than criminals, or the extension of equality rights to non-heterosexuals could reasonably be expected. Canadian conservatism emerged as a way to ensure civility and order, as well as a way to defend against any significant reform or opposition to the status quo, at least in the eyes of its proponents.²⁷ It is for this reason that social conservatism enjoys a peculiar relationship with federalism, supporting a decade of ‘Tough on Crime’ measures aimed to curb modern Canada’s laxity with criminal prosecution while simultaneously rejecting the growth of the judicial power over democracy. Further, it is the reason that some proponents have advocated for conservatives to reimagine the *Charter* as a prospective ally to protect traditions, rather than as a judicial enemy which slowly destroys them. In short, social conservatism clarifies and contextualizes how and why various recommendations of Royal Commissions were accepted or rejected, how Canadian perceptions of the psychiatric professions functioned in relation to the reformation of the *DSM* across its multiple revisions, how the ‘age of rights’ – as Warner identifies the *Charter of Rights and Freedoms* era from the late 1960s to the mid-1990s – shifted conservative expectations of the provincial and federal powers, and how a re-emergence of vigilantism has occurred in modern Canadian society.

In addition to these main bodies of literature, I also reflect on Thomas K. Hubbard and Beert Verstraete’s *Censoring Sex Research: The Debate Over Male Intergenerational Relations* (2013) and how social scientific research regarding pedophilia has been limited, stifled, or directly censored since the 1990s. Focusing on the Rind et. al (1998) controversy – following the publication of a meta-analysis study of child sexual assault which controversially concluded that the harm caused by said assault was neither necessarily pervasive or lifelong.²⁸ The authors

²⁷ Segal and Wallin, 23.

²⁸ Bruce Rind, Philip Tromovitch, and Robert Bauserman, “A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples”, *Psychological Bulletin*, 124 (1), 1998: 31.

cautiously limited their conclusion, stating that the findings were relevant only to the argument that adult-child sexual acts were always physically and psychologically traumatic,²⁹ and the study was published in the American Psychiatric Association's peer-reviewed *Psychiatric Bulletin*. After widespread condemnation and criticism by social conservatives in the United States, the APA unprecedentedly called for an independent review of the methodology and findings of the study³⁰ and in July of 1999, both the US House of Representatives and the Senate voted unanimously, 355-0³¹ and 100-0³² respectively, to declare that sexual relations between adults and children are always harmful. By extension, the final validity of scientific and academic matters were now apparently subject to democratic appeal, potentially disrupting the ability for any controversial study to be punished thereafter.

Hubbard and Verstraete's edited volume continues this discussion with an analysis of Rind's article on pederasty, which was likewise controversial. It features nine academic responses both in support and in opposition to Rind's conclusions – in this instance, that consent was the central determinant of whether or not relationships of pederasty were perceived negatively³³ - and is a rejection of the censorship of academic inquiry. Using the form of a text-based classically engaged debate between interdisciplinary experts on the subject of pederasty, child psychology, and sexologists, it proves that controversial matters of inquiry have a place in academic discourse, a notion which motivates the purposes of this thesis. The issue of censorship is further amenable to this these since conservative campaigns have successfully limited the

²⁹ Rind et al., 48.

³⁰ Scott O. Lilienfeld, "When Worlds Collide: Social Science, Politics, and the Rind et al. (1998) Child Sexual Abuse Meta-Analysis", *American Psychologist*, 57(3), March 2002: 180.

³¹ GovTrack.U.S., "H.Con.Res. 107(106th)", accessible at <https://www.govtrack.us/congress/bills/106/hconres107/text>.

³² US Congress, "H.Con.Res. 107", accessible at <https://www.congress.gov/bill/106th-congress/house-concurrent-resolution/00107/all-actions-without-amendments>.

³³ Thomas K. Hubbard and Beert Verstraete (Eds.), *Censoring Sex Research: The Debate Over Male Intergenerational Relations* (Walnut Creek, CA: Left Coast Press, Inc., 2014), Back Cover.

inclusion of queer histories in textbooks and the hiring of queer specialists in academia.³⁴

Due to the interdisciplinary basis of the literature used to develop this project, I categorize this thesis as a work of socio-legal history. Although there are certainly medical and psychiatric elements, notably in Chapter Two and its modern continuities in the Epilogue, the arguments are mainly grounded in the social and legal barriers which serve to conflate all pedophiles as child sex offenders. Psychiatric professionals repeatedly suggested that nosological classifications (such as pedophiles and schizophrenics, later individuals with pedophilic or schizophrenic tendencies) were developed strictly for use in medical settings, and that their roles as experts could not be extended within the legal courtroom to determine culpability.³⁵ In this sense, the focus of this thesis is on the reciprocal relationship between the law and social norms and values: as laws prescribe, limit, and prohibit certain forms of action, behaviour, and expression, social activism and progressivism challenge the law in order to either strengthen and extend or to reform and restrict its reach. Psychiatry, at the centre of this relationship, codified and classified behaviours in relation to expected normative values and behaviours, but at times also challenged social norms and values, and by extension, the law. As an example, the deletion of homosexuality from the DSM also removed one of the most authoritative sources of the abnormality of homosexuality from socio-legal discourses.

The research questions which guide this thesis are as follows: How and why have pedophiles and child sex offenders come to be synonymous? How does this conflation impact the ability for non-offending and pre-offending individuals to seek legal, psychiatric,

³⁴ Marc Stein, *Rethinking the Lesbian and Gay Movement*, E-Book Edition (New York: Routledge, 2010), Introduction, 3-5.

³⁵ Each DSM, following *DSM-III-TR*, includes a discretionary “Cautionary Statement” section on the limitations of psychiatric categorization. While not discouraging the use of psychiatric and/or medical expertise in the courtroom, the APA distanced itself from allowing *DSM* classifications in order to determine cases of legal guilt, unless limited explicitly to proving medical insanity.

psychological, or social assistance? How have the issues of pedophilia and child sexual exploitation been historically defined, conceptualized, and dealt with, explicitly in terms of law, psychiatry, and social activism? Centrally, this project seeks to evaluate the efficacy of measures intended to protect children from sexual violence and exploitation in twentieth-century Canada in order to determine the purposes and ramifications of conflating all pedophiles as child sex offenders.

Given that this interdisciplinary project draws heavily from criminology and criminal law, from psychiatry and neuroscience, and from gay liberation activist discourses, I will define some of the more specialized terms of reference. Thus, the following sections will contextualize how the technical terms found throughout this project will be used in order to maximize its accessibility, as well as to refine its accuracy. In many cases, this is simply a matter of clarifying how concepts and terms are used differently across disciplines – the term pedophile, for example, evokes different meanings for psychologists than it would for legal experts. In others, it is to provide a clear and concise definition which may be unknown to readers outside of particular disciplines or areas of expertise.

Pedophile

This project seeks to problematize the lack of a unified legal definition of pedophilia.³⁶ The Canadian Criminal Code (CCC) differentiates between intentional acts which violate the law and status offences, which subject one to prosecution and culpability as a result of *being* rather than *doing*. Until the *Young Offenders Act* (1982),³⁷ status offences were primarily used to

³⁶ Conversely, the psychiatric definitions provided by the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) are discussed in Chapter Two.

³⁷ Traffic offences or offences such as s. 210(2)(b) – being found within a bawdy- house – encompass most modern status offences.

judicially deal with issues that were age-dependent, such as the consumption of alcohol by minors and truancy. Due to the lack of any definition ascribed to pedophilia within the CCC, the primary foci of criminal statutes necessarily shifted to sexual acts performed on or against youth,³⁸ with or without consent, falsely conflating all pedophiles as child sex offenders. I redress this by defining pedophiles as persons who feel sexual desires for (pre)pubescent youth and child sex offenders as those who criminally act upon said desires, a dichotomy seconded by the *DSM-V*.³⁹ Though it may be more accurate to use infantophile, hebephile (early pubescence), or ephebophile (mid-to-late pubescence) to distinguish between subgroups, I use pedophilia to describe adult males attracted to individuals under the age of eighteen to avoid discrepancies with legal changes to age of consent laws and between revised editions of the *DSM*.

By contrast, the *DSM* has variously defined pedophilic disorder across multiple revisions, but is sufficiently explained as a sexual interest in – or interest in sexual activity with – prepubescent children under the age of thirteen. Subcategorized as a *paraphilia*, “recurrent, intense, sexual urges, fantasies, or behaviours, that involve usual objects, activities, or situations **and** cause clinically significant distress **or** impairment in social, occupational, or other important areas of functioning”,⁴⁰ pedophilic disorder is problematized in comparison to the expectations of normative human sexual behaviours and orientations. The definitions provided for pedophilic disorder by various *DSM* editions are the subject of much academic scrutiny, inside and outside of the discipline. For instance, the lack of a clear and concise definition for clinically significant distress has left such a distinction up to individual psychiatric professionals, while potentially

³⁸ Youth is legally defined as persons under the age of 18 under "Consent no defence", *Criminal Code*, RSC 1985, c C-46, s 150.1.

³⁹ APA, *DSM-V* (Digital Edition), Paraphilic Disorders. Accessed 1 May, 2016, at <http://dsm.psychiatryonline.org.proxy.bib.uottawa.ca/doi/full/10.1176/appi.books.9780890425596.dsm19>.

⁴⁰ APA, *DSM-IV-TR*, Sexual and Gender Identity Disorders, 571-572.

precluding paraphilic individuals who are not at all distressed by their sexual urges.⁴¹ Similar to the deletion of homosexuality from the *DSM* in 1973, it is possible to contend that social and occupational impairment are just as likely to be the products of discrimination and segregation, rather than inherently pathological feelings associated with the paraphilic disorders themselves. Finally, with an earlier onset of puberty for girls, and a modern trend toward earlier onset of puberty more generally,⁴² it is important to question the appropriateness of age thirteen as a psychiatric indicator of child sexual attraction.

The incongruence between legal and psychiatric considerations of pedophilia and child sexual offending is a topic of focus in Chapters One and Two.

Consent

The CCC legally defines consent as the voluntary agreement to engage in sexual activity.⁴³ Accordingly, age of consent legally functions as the threshold at which a person can freely and fully agree to perform or receive sexual acts. The general age of consent in Canada was raised from 14 to 16 by the *Tackling Violent Crime Act* (2008) – the first increase of its kind in 116 years.⁴⁴ In order to protect sexually maturing youth from prosecution under the new law, two close-in-age exemptions were included, allowing persons aged 12 and 13 to consent to sexual activity with a person less than two years their senior, and allowing persons aged 14 through 16 to consent to sexual activity with a person less than five years their senior.⁴⁵ These

⁴¹ Blanchard, 309.

⁴² M.A. Bellis, J. Downing, and J.R. Ashton, "Adults at 12? Trends in Puberty and Their Public Health Consequences", *Journal of Epidemiological and Community Health*, 60(11), 2006: 910-911.

⁴³ "A Definition of Consent to Sexual Activity", *Criminal Code*, RSC 1985, c C-46, s 273.1.

⁴⁴ Marilyn Pilon, "Canada's Legal Age of Consent to Sexual Activity", *Library of Parliament, Parliamentary Information and Research Service*, last modified 12 April 2001, <http://www.parl.gc.ca/Content/LOP/researchpublications/prb993-e.htm>

⁴⁵ Department of Justice, "Age of Consent to Sexual Activity – Frequently Asked Questions", *Government of Canada*, last modified 12 February, 2015, <http://www.justice.gc.ca/eng/rp-pr/other-autre/clp/faq.html>

exemptions inherently precluded consent within a relationship of authority or trust, muddling the prosecution of sexual offences involving young offenders. Additionally, legal distinctions between age of consent for vaginal intercourse (16) and anal intercourse (18)⁴⁶ remained legally binding, despite a successful Charter of Rights and Freedoms challenge in 1995.⁴⁷ Summarily, this project seeks both to clarify the state of age of consent legislation in Canada while strictly precluding any advocacy for child-adult sexual relations.

Dark Figure of Crime

First collected in 1962, the Uniform Crime Reporting Survey (UCR) is an annual compilation of crime statistics drawn from the number of incidences recorded by law enforcement officials.⁴⁸ This information includes all crime data substantiated by police, including “the number of criminal incidents, the clearance status of those incidents, and persons-charged information”.⁴⁹ As a resource, it allows police and policy analysts to determine trends in criminal action, victimization, and enforcement, which can then be used as the basis for legal reform. However, the reliance on police-collected statistical data precludes a greater number of crimes dealt with without the involvement of police, as well as crimes which are not brought to police attention whatsoever. These unrepresented incidences are referred to as the dark figure of crime.

The dark figure of crime problematizes the strict reliance on officially-drawn data which

⁴⁶ "Anal Intercourse", *Criminal Code*, RSC 1985, c C-46, s. 150.

⁴⁷ Timothy Ross Wilson, "Youth Sodomy Law Ruling", accessed 23 December 2015 at <http://www.qrd.org/qrd/world/legal/youth.sodomy.law.ruling.txt>

⁴⁸ Statistics Canada, "Uniform Crime Reporting Survey (UCR)", accessed 21 May 2016 at <http://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SDDS=3302>

⁴⁹ *Ibid.*

tends to drive crime prevention policies.⁵⁰ With only officially-recorded numbers to inform policy, legal experts and legislators may be misinformed about the reality or prevalence of any given particular offence. This problem is aggravated when specific offences, such as sexual assault, domestic abuse, sexual interference, or statutory rape,⁵¹ have particularly low reporting rates, since the reality of victimization is insufficiently captured by the UCR. In 1985, the General Social Survey (GSS) was formed to collect information on a variety of key topics every five years, one of which is victimization.⁵² By capturing self-reported incidences of victimization, policy analysts and legislators can better understand why some crimes are dealt with by extrajudicial means, and why police involvement is not always seen as beneficial or necessary. Unfortunately, the GSS precludes incarcerated individuals,⁵³ despite evidence that certain types of criminals have been historically victimized; this is especially true of child sex offenders.⁵⁴

Limitations

In order to sufficiently narrow the scope of this project, it is unfortunately necessary to eliminate aspects of child sexual victimization and predation that are already poorly understood. As stated by the Badgley Report of 1984, the revelation of the pervasiveness of child sexual victimization and exploitation within Canada shocked interdisciplinary experts, provoking a retributive trend which persists today.⁵⁵ The extent to which child sexual victimization can be analyzed is nearly limitless, and as such, this project discusses the conflation of pedophiles and

⁵⁰ Albert D. Biderman and Albert J. Reiss, "On Exploring the 'Dark Figure' of Crime", *Annals of the American Academy of Political and Social Science*, 374(1), November 1967: 4.

⁵¹ Statutory rape refers to sexual activity with an individual under the age of consent and outside of the close-in-age exemptions discussed previously.

⁵² Statistics Canada, "General Social Survey – Victimization (GSS)", accessed 21 May 2016 at <http://www23.statcan.gc.ca/imdb-bmdi/pub/4504-eng.htm>

⁵³ Ibid.

⁵⁴ David M. Greenberg, John M.W. Bradford, and Susan Curry, "A Comparison of Sexual Victimization in the Childhood of Pedophiles and Hebephiles", *Journal of Forensic Sciences*, 38(2), March 1993: 432-436.

⁵⁵ Robin Badgley (Chairman), *Report of the Committee on Sexual Offences Against Children and Youths* (Ottawa: Supply and Service Canada, 1984), 13.

child sexual offending solely in relation to legal policy and reform, psychiatric treatment and reform, and activist discourses of liberation. Due to the predominant legal and psychiatric focus on male offenders and patients, as well as the prevalence of male representation within *The Body Politic*, this project focuses on male pedophiles and child sex offenders. Likewise, due to the separation and variances in punishment, availability of programming, likelihood of suspended sentencing, and legal and psychiatric categorization, this project focuses on adults rather than young offenders or therapy participants. Much research remains to be done on female pedophilic disorder, on female child sex offenders, and on developing appropriate and relevant programming for said women inside and outside of carceral settings.

This thesis remains duly mindful of the populations it excludes by necessity. It is an intentional challenge of the reluctance with which socio-cultural scholars have come to approach issues of child sexual victimizers and victimization in the wake of the 1998 Rind et. al controversy, which sparked an interdisciplinary discussion on the merits of academic censorship. Further, this project reveals a historically recurrent inability of legal and psychiatric experts, social activists, and laymen to deal with child sexual abusers, but also with mentally ill offenders more broadly. In this sense, the advocacy of legal reformers, of psychiatric professionals, and of gay liberation activists was partially bound by the legal and moral limits prescribed upon them by their respective social contexts. In unity, these themes cement a century of interdisciplinary advocacy into a foundation from which historians can question the interwoven nature of law, psychiatry, and activism.

Chapter One – The Death of Rehabilitation: The Prescription of Criminal Law Against Mentally Ill Offenders

Between 1938 and 1984, five federally commissioned reports on the nature and status of criminal justice occurred in Canada: the *Royal Commission on Penal Reform in Canada* (1938); the *Report of the Committee to Inquire into the Principles and Procedures followed by the Remission Service of the Department of Justice of Canada* (1956); the *Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths* (1958); the *Report of the Canadian Committee on Corrections* (1969); and the *Report of the Committee on Sexual Offences Against Children and Youths* (1984). As a shared focal point of analysis, each report made suggestions regarding the prosecution, punishment, and incarceration of mentally ill offenders. Although an insanity defence against culpability had existed within the Canadian Criminal Code (CCC) since its adoption in 1892, reflective of the earlier *M'Naghten* case¹ judged by the British House of Lords in 1843, it was seldom used successfully; even in the event that a judge accepted a defense of insanity, no acquittal would be granted, and the defendant would remain an indefinite custodial ward of the provincial Lieutenant Governor.² The almost total lack of clear, practical, and constitutional solutions for dealing with mentally ill offenders continued to plague Canadian criminal justice despite more than a century of published recommended amendments.

At the same time, Canadian legislation became increasingly concerned with sexual offences. The 1892 CCC offered a number of protections for female children and youth from

¹ The case verdict also created the M'Naghten rule, which required juries to weigh whether or not the defence successfully established that an offender was incapable of weighing the difference between right and wrong during the commission of the offence. This rule remains the modern insanity standard in nearly half of American states but has been refined as the mental disorder defence in Canada and much of the United Kingdom. See Chapter Three of Ellsworth Lapham Fersch's *Thinking About the Insanity Defense: Answers to Frequently Asked Questions with Case Examples* (Bloomington, IN: iUniverse, 2005) for a comprehensive analysis of the case.

² Marilyn Pilon, "Mental Disorder and Canadian Criminal Law", Publications of the Government of Canada, last updated 22 January 2002, <http://publications.gc.ca/collections/Collection-R/LoPBdP/BP/prb9922-e.htm>

male predation, a gendered sentiment that would come to be problematized due to its almost total erasure of male victimhood. Offences such as seduction of women under sixteen, seduction under promise of marriage, seduction of females who are passengers on vessels, the defilement of women and girls (by parents and by landlords), and the prostitution of Indian women were all prosecuted as offences against *morality*, a departure from offences against the person.³ By the end of the next century, the CCC contained nineteen offences regarding sexual acts against, or committed in the presence of, children. Despite a reiteration of the need to consider sexual offenders primarily as a medical problem in 1956,⁴ incarceration persisted as the most common solution used by Canadian courts. Although steady decline in the use of public shaming occurred throughout the century – the last public executions occurred in Toronto in 1962, capital punishment was formally abolished in 1976, and a motion to reintroduce the death penalty failed in 1987 – populist support for the shaming of child sex offenders remained prevalent.

This chapter will review the recommendations made in each of the aforementioned legal reports in order to create a narrative on judicial rehabilitation in Canada. A brief contextualization of the culture surrounding Royal Commissions will better inform readers of the unique circumstances in which they occur and are directed. Thirdly, a discussion and analysis of the resultant CCC and legislative revisions will track the centrality of rehabilitation and of retribution within the Canadian correctional process. For example, an increase or development of a mandatory minimum sentence shall be considered an increase in retributive focus, whereas the availability of suspended sentences, fines, or other alternative means of punishment shall be considered rehabilitative. Lastly, the development and implementation of after-care services

³ *Canadian Criminal Code*, 55-56 Victoria, c. 29, 1982 (Ottawa: Queen's Printer), 17.

⁴ Gerald Fauteux (Chairman), *Report of the Committee to Inquire into the Principles and Procedures followed by the Remission Service of the Department of Justice of Canada* (Ottawa: Queen's Printer, 1956), 48.

following the publication of the Archambault Report will be compared to services and programming developed for the treatment and management of child sex offenders more specifically.

Several of the primary sources analyzed throughout this chapter deal primarily, if not exclusively, with mentally ill offenders. The recommendations and arguments provided by these sources are also amenable to child sex offenders more specifically because their actions are the result of psychological predispositions, and because they make up a non-negligible portion of the incarcerated mentally ill populace. I argue that the CCC has failed to successfully address the issue of child sexual victimization. Despite nearly a century of commissions of inquiry and recommendations for the reform of institutional segregation, Canadian criminal law prioritized retribution and facilitated incarceration, even at the apex of the socio-medical model. By socio-medical model, I refer to the social context of the 1960s and 1970s wherein community therapy and support were given primacy over institutional care. This suggests that the necessity of including harm reduction strategies was not fully understood by legal and judicial policy makers.⁵ I argue that these failings are evidence of the death of rehabilitative justice in Canada and seemingly give proof to a century-long willful ignorance of the need to provide appropriate mental health treatment alongside punitive sentencing. Despite legal recommendations for the establishment of psychiatric treatment facilities appearing as early as 1938, prison remained – and still remains – the primary destination of mentally ill offenders.

⁵ Patricia Erickson et. al (2008) *CAMH and Harm Reduction: A Background Paper on Its Meaning and Application for Substance Use Issues* described how victimization and criminality were intrinsic aspects of the harms associated with substance use and abuse. For example, heavy alcohol use or alcoholism may not be inherently illegal but can lead to instances of spousal and/or child abuse, child neglect, or impaired driving. Treatment options which reduced the use of alcohol therefore reduced crimes committed under its influence. Germany is currently the only country offering a pre-offence harm reduction option for pedophiles (<https://www.dont-offend.org/>) which will be discussed more thoroughly in the Epilogue. See James A. Inciardi (Ed.), *Harm Reduction: National and International Perspectives* (Thousand Oaks, CA: Sage Publications, Inc., 2000) for a history of harm reduction and for a comparative study of its application.

The Royal Commission – Context, Purpose, and Process

Royal Commissions are federally directed investigations of specific national problems. They are a constitutional power inherited from the British Royal prerogative power to order investigations, although each provincial Lieutenant-Governor in Council may also order a public inquiry, often referred to as Commissions of Inquiry.⁶ As defined by the *Inquiries Act* (1868), Royal Commissions are investigations "made into and concerning any matter conducted with the good government of Canada or the conduct of any part of the public business thereof".⁷ As the reported results of Royal Commissions often contain far-reaching policy implications and areas in need of redress, the government is often explicitly selective of the subject matter identified for study, of the person appointed as chair of the commission, and of the time frame allotted for completion of the inquiry. The extent to which these recommendations are enacted, or to which any legislative changes are made, often depends on the politicization and nature of problem investigated: the *Royal Commission on Bilingualism and Biculturalism* (1963-1967) culminated in the passing of the *Official Languages Act* (1969) whereas the *Royal Commission to Investigate the Demands of Coal Miners in Western Canada* (1943) is almost entirely forgotten.⁸ Persons appointed as commissioners of an inquiry are empowered to summon any witnesses to give evidence under oath and made responsible with the collection of documents such that a full

⁶This nomenclature has been the source of much confusion. Royal Commissions are just one of several types of commissions of inquiry enabled by "any one of 87 or more federal statutes". See Privy Council Office, "About Commissions of Inquiry" available at <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=commissions&doc=about-sujet-eng.htm> for a general overview of commissions of inquiry in Canada. See Gregory J. Inwood and Carolyn M. Johns, *Commissions of Inquiry and Policy Change: A Comparative Analysis* (Toronto: University of Toronto Press, 2014) for a collection of essays analyzing commissions of inquiry in terms of their scope, intent, and outcomes.

⁷ *Inquiries Act*, R.S.C., 1985, c.I-11, s2.

⁸ Gregory J. Inwood and Carolyn M. Johns, *Commissions of Inquiry and Policy Change: A Comparative Analysis* (E-Book Edition) (Toronto: University of Toronto Press, 2014): Foreword, 1.

investigation can be completed.⁹

Although the variety of research fields covered by these Royal Commissions is all but universal, they share in common the trait of existing in order to address problems that the acting government could not tackle alone. The Badgley Report (1984), for example, explicitly identified the problem of child sexual abuse as "so pervasive and deep-rooted... so far-reaching and complex that [it extends] well beyond the jurisdictional authority of one or two federal departments or one level of government alone" and immediately recommended the creation of an Office of the Commissioner to coordinate non-government and government actors.¹⁰ Royal Commissions additionally provide an avenue of escape from some of the typical problems of partisan electoral cycles, of majority and minority governments, and of political deadlock.¹¹ The ability to make extensive policy recommendations without the executive authority to implement policy changes allows a fuller consideration of inquiry reports, especially when allowing for time to pass when addressing extremely contentious or heavily politicized issues. The vast collection of sworn testimony and evidence also establishes primary source databases on specific issues situated within specific historical contexts.¹² Further than the intentional goal of the collection of knowledge on an issue, commissioners inherently also create useful collections of historical information for future research.¹³

⁹ *Inquiries*, s.4.

¹⁰ Robin Badgley (Chairman), *Report of the Committee on Sexual Offences Against Children and Youths* (Ottawa: Supply and Service Canada, 1984), 13.

¹¹ Inwood and Johns, *Why Create Commissions of Inquiry?*, 1-3.

¹² Patrik Marier, "The Power of Institutionalized Learning: The Uses and Practices of Commissions to Generate Policy Change", *Journal of European Public Policy* 16 (8), 1206.

¹³ Library and Archives Canada currently maintains an index of approximately 7000 items related to more than 200 Royal Commissions that have occurred since Confederation, including "commission reports, briefs, submissions, evidence, working papers, and other documents". See Library and Archives Canada, "Index to Federal Royal Commissions", last modified 23 April 2014, at <http://www.bac-lac.gc.ca/eng/discover/royal-commissions-index/Pages/index-federal-royal-commissions.aspx>

The Archambault Report,¹⁴ 1934-1938

In 1934, after a series of strikes and riots drew greater attention to the state of carceral life in penal institutions,¹⁵ the government of Canada commissioned an inquiry into the issue of penal reform and former Justice Joseph Archambault – Crown Prosecutor of Montreal in 1922 and former Liberal MP of the Quebec House of Commons¹⁶ – was appointed as its Chairman. Prison life had been heavily criticized a decade earlier by the Biggar-Nickle-Draper Commission which had inquired into successful revisions for the *Penitentiary Act* (1868), an act which had effectively received no amendments since its passage. Its reforms included the guaranteed allotment of hours available to prisoners to leave their cells and access libraries or exercise. The Great Depression paralyzed the ability to implement the significant majority of its recommendations, which would be re-echoed by Archambault. In tandem, the reports collectively represent the clearest emergency of rehabilitative justice in Canadian prisons. It is important to note in contrast, however, that the Biggar-Nickle-Draper Commission did not attempt to institute a paradigm shift on humanitarian grounds, but attempted to rid justice of vengeance “solely because of its stupidity and on grounds of common sense”.¹⁷

Common sense, in this regard, was a reflection on the meaningfulness of suffering under

¹⁴ *The Royal Commission on Penal Reform* is discussed here because it is the most comprehensive approach with the broadest mandate provided for the investigation of penal reform. Other federal and provincial inquiries into penal reform include: the *Report of the Royal Commission Concerning Jails* (1933), the *Report of the Saskatchewan Penal Commission* (1946), the *Report of Major-General R.B. Gibson* (1947), the *Report of the Commission Appointed by the Attorney General to Inquire into the State and Management of the Goals of British Columbia* (1950), the *Report of Commission on Gaol System of New Brunswick* (1951), and the *Report of the Select Committee Appointed by the Legislative Assembly of the Province of Ontario, to Study and Report Upon Problems of Delinquent Individuals and Custodial Questions, and the Place of Reform Institutions Therein* (1954).

¹⁵ These conditions were already somewhat understood due to the grassroots work of Agnes Macphail, first female MP in Canada. Despite advocating for several of the reforms that would appear in the Archambault report (a copy of which was sent to her directly), issues went largely unaddressed until the conclusion of the Commission.

¹⁶ Claude Belanger, “Joseph Archambault, K.C., M.P.”, *The Quebec History Encyclopaedia*, last updated 2004, <http://faculty.marianopolis.edu/c.belanger/quebechistory/encyclopedia/josepharchambaulten.htm>

¹⁷ O.M. Biggar, W.F. Nickle, and P.M. Draper, *Report of the Committee Appointed by Rt. Hon. C.J. Doherty, Minister of Justice, to Advise Upon the Revision of the Penitentiary Regulations and the Amendment of the Penitentiary Act* (Ottawa: Queen’s Printer, 1921), 11.

the auspices of the justice system. Biggar-Nickle-Draper reflected on the near-universal application of capital punishment, suggesting that society certainly did itself some harm in executing all types of offenders, even if society was “well rid” of those committing capital offences.¹⁸ However, with the creation of the penitentiary, imprisonment was intended to protect society via the segregation of dangerous persons from larger society, while providing the opportunity for offenders to reflect on their wrong-doing. Yet, if socialization or environment were to be considered as potential roots of criminality – learning theory would certainly come to be championed as a cause of criminality during the 1960s¹⁹ – then immersing offenders in an environment of legal wrong-doing would potentially obstruct the possibility of penance and reform. Given that, save for those convicted of the death penalty (and later, those sentenced via indeterminate sentencing clauses), release from prison is an inevitability, vengeance and retribution against offenders while incarcerated could potentially weaken them as members of society, and society as a whole at the time of their release.

In its self-penned *History of the Canadian Correctional System*, Correctional Services Canada suggested that prison populations swelled alongside unemployment during the Great Depression, linking increased poverty to a rise in crimes of desperation. Interestingly, the era could serve to challenge the poverty-crime thesis given that crime rates dropped in several major US cities;²⁰ if organized crime was indeed to blame for 70% of the crime committed during the era,²¹ then prohibition would have had a greater total impact than poverty alone. It is impossible to suggest with certainty that these crime rates were paralleled within the Canadian context, since

¹⁸ Biggar, Nickel, and Draper, 11.

¹⁹ See C.R. Jeffrey, “Criminal Behaviour and Learning Theory”, *Journal of Criminal Law, Criminology, and Police Science*, 56(3), September 1965: 294-300; R. Burgess and R. Akers, “A Differential Association-Reinforcement Theory of Criminal Behaviour”, *Social Problems*, 14(2), Autumn 1966: 128-147.

²⁰ James Q. Wilson, “Hard Times, Fewer Crimes”, *The Wall Street Journal*, 28 May 2011, accessed at <http://www.wsj.com/articles/SB10001424052702304066504576345553135009870>

²¹ “Lays 70% of Crime to Organized Bands”, *The New York Times*, 11 April 1930, 19.

all provinces (with the exception of Prince Edward Island) had repealed prohibition by 1927.²² Further, because Canada did not establish its version of *Unified Crime Reporting* until 1962, the “lack of uniformity in collecting statistical information... [was] so pervasive that it would be dangerous to draw definite conclusions”²³ – it is pertinent to note the politicization of rising crime rates would come to be challenged by the Archambault Report.

After four years of investigation and testimony, the Archambault Commission published its findings in 1938. In keeping with the earlier Biggar-Nickle-Draper report, the Commission shifted the focus of crime prevention strategies from retributive punishment to rehabilitative problem solving primarily by seeking to address systemic underlying causes of crime. In this regard, the report identified four major areas of redress conducive to crime reduction: mental illness, “vicious homes”, “defective family relationships”, and poverty.²⁴ While issues of mental illness remained biological in focus, the identification of social factors of crime causality was reflective of a paradigm shift that had likewise occurred in the fields of sociology and criminology, moving from the late 19th Century dominance of biological positivism to the era of the Chicago School.²⁵ By biological positivism, I mean the application of evolutionary science for the purposes of locating a biological root of criminality that could potentially be cured.

The Archambault Report contained significant critiques of retributive justice and of the rational actor premise of criminality more broadly. In keeping with its English heritage,

²² Craig Heron, *Booze: A Distilled History* (Toronto: Between the Lines Press, 2003), 270.

²³ Joseph Archambault (Chairman), *Report of the Commission on Penal Reform in Canada* (Ottawa: King’s Printer, 1938), 174.

²⁴ Archambault, 174.

²⁵ The Chicago Schools of Sociology, Economics, Education, and Criminology focused on the socio-causal dimensions of their respective fields. In criminology specifically, it introduced the use of quantitative methods of analysis via the scientific method. For more on the social dimensions of criminality see Edwin H. Sutherland, *Theories of Criminology* (Chicago: University of Chicago Press, 1924); RE Park, EW Burgess, and RD McKenzie, *The City* (Chicago: University of Chicago Press, 1925); Clifford Shaw and Henry D. McKay, *Juvenile Delinquency in Urban Areas* (Chicago: University of Chicago Press, 1942); Clifford Shaw, *Brothers in Crime* (Philadelphia: Albert Saifer, 1952); and Travis Hirschi, *Causes of Delinquency* (Berkeley: University of California Press, 1969).

Canadian criminal prosecution requires an offence to consist of two elements: the *actus reus* (guilty act) and the *mens rea* (guilty mind). These elements, and the level of proof required to demonstrate them in a court of law, are defined by individual CCC statutes but collectively assume that individuals mindfully opt to violate the law. For example, culpable homicide is defined as “murder (a) where the person who causes the death of a human being (i) means to cause his death, or (ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not”;²⁶ first-degree murder constitutes all “planned and deliberate” causes of death to another person, including those incidental to the commission of other offences²⁷ whereas manslaughter constitutes acts committed under provocation “of such a nature as to be sufficient to deprive an ordinary person of the power of self-control”.²⁸ The responsibility for an act, therefore, rests entirely upon the ability of an accused to know right from wrong, to be able to measure the potential outcomes of his or her actions, and the possession of self-control at the time of commission of the act.

The problem this requirement posed for the insane was obvious to legislators since Confederation. The first edition of the CCC prevented the conviction of “any person by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such act or omission was wrong”.²⁹ Almost pre-cognitively,³⁰ it made a further exemption of culpability for any person suffering from delusions “which, [if

²⁶ “Murder”, *Criminal Code*, RSC 1985, c C-46, s 229.

²⁷ “Classification of Murder”, *Criminal Code*, RSC 1985, c C-46, s 231.

²⁸ “What Is Provocation”, *Criminal Code*, RSC 1985, c C-46, s 231(1).

²⁹ “Insanity”, *Criminal Code*, 1892, 55-56 Victoria, Chap. 29, s 11(1) (Ottawa: Queen’s Printer), 37-38.

³⁰ *R v Swain (1991)* decided on the constitutionality of indefinite detention after Owen Swain acted violently in order to protect his wife and children, whom he thought were being attacked by devils.

existed], would justify his act or omission”.³¹ Although an accused would be found not criminally responsible due to reasons of insanity, they would be detained indefinitely as custodial wards of the Lieutenant-Governor of the Province, released only at his or her discretion. In 1991, the Supreme Court decisions made in *R v Swain* ruled that automatic indefinite detention was unconstitutional, as it violated sections 7 and 9 of the *Canadian Charter of Rights and Freedoms*.³²

Chapter XI of the report, entitled “Treatment of Insane Prisoners”, explicitly tackled this issue. Pre-empting the criticism that the report was making suggestions outside of the realm of penal reforms, Archambault and his colleagues noted that “it [was] not the intention of your Commissioners to prescribe treatment for insane prisoners. [That] is necessarily a task for specialized medical authority”³³ before advocating for a shift to rehabilitative focus; prisons were only to be used as necessary since the CCC already sanctioned the custody of mentally ill offenders in provincial and federal mental health treatment facilities.³⁴ The construction and availability of these facilities at the provincial level, however, was considered an unnecessary financial burden, especially within the broader context of the Great Depression. In a letter written in 1932, the Attorney-General of Alberta disagreed with the expectation that “a Provincial Medical institution should have facilities for the care and treatment of the criminally insane”³⁵. The Deputy Minister of Justice responded that, in accordance with the attitude of the Government of Canada, “it was the obligation of the province to care for insane persons

³¹ “Insanity”, *Criminal Code*, 1892, 55-56 Victoria, Chap. 29, s 11(2) (Ottawa: Queen’s Printer), 38.

³² *R v Swain* [1991] 1 S.C.R. 933.

³³ Archambault, 142.

³⁴ *Ibid.*

³⁵ *Ibid.*, 152.

irrespective of *whether they were of criminal tendency or otherwise*” (emphasis mine).³⁶

Of all the recommendations put forth by the Commission, the Archambault is remembered most strongly for its heavy criticism of Canada’s parole system. Collectively, the recommendations coalesced as a complete condemnation of the then four-person team responsible for remission requests nationwide.³⁷ The goals of the penitentiary and of the remissions board went unfulfilled, in the Commissioner’s view, because recidivism rates had increased by 157% for persons incarcerated three or more times between 1922 and 1936;³⁸ overall, 72% of the federal prison population had relapsed.³⁹ At that time, no inquiries were made into the social background, relationships, or support network available to offenders applying for parole. Archambault stressed the need to attempt to rehabilitate to reduce recidivism and the development of an independent federal parole board to address these shortcomings, as Macphail had done before him.⁴⁰ However, the advent of the Second World War postponed, or indefinitely prevented, the implementation of a majority of the Report’s reforms.

The Fauteux Report, 1953-1956

After the signing of the Paris Peace Treaties in 1947, Canadian attention once again returned to issues of the home front. Women had entered the workforce to fill the void left by volunteer and conscript males but, as soldiers returned home, found themselves in conflict with men who expected to retake their former positions. As an incentive to encourage women to return to domestic roles, especially with respect to child-rearing and maintaining the family, tax-

³⁶ Ibid., 153.

³⁷ Parole Board of Canada, “History of Parole in Canada – The Archambault Report”, last modified 20 October 2015, at <http://pbc-clcc.gc.ca/about/hist-eng.shtml>

³⁸ Archambault, 214.

³⁹ Parole.

⁴⁰ Biggar, Nickle, and Draper, 11.

credits and payment systems – such as the “Baby Bonus” – were federally enacted.⁴¹ This is not to suggest that provincial and federal governments were not also paternalistic toward working women before the war formally concluded,⁴² but to recognize that efforts to restore the traditional nuclear family to its pre-war, socially conservative roots increased after 1945. In keeping with the expansion of a national welfare state and the hopefulness of never experiencing another international conflict, it was reasonable to expect a return to the legal reforms advocated by the Archambault Report.

The *Pentitentiary Act* was successfully amended that same year and Major General Ralph B. Gibson was appointed as the federal government’s first Commissioner of the Penitentiaries Branch.⁴³ He began instituting a significant number of the Archambault Report’s recommendations and integrated rehabilitation as a core value of the Correctional Services of Canada. An independent federal parole board had yet to be created, however, and the surging wartime economy began to falter. Between 1947 and 1960, the national population of incarcerated offenders almost doubled from 3,362 to 6,344,⁴⁴ and a committee was formed to investigate the principles and procedures followed by the Remission Service of Canada following an arsonist riot at Kingston Penitentiary. At its first meeting, the “Honorable Mr. Justice Gerald Fauteux” was elected as its chairman, carrying with him the experience of a Crown Prosecutor, Chief Crown Prosecutor, and legal advisor to the *Royal Commission on Spying Activities in Canada* (1946), as well as his recent appointment to the Supreme Court of

⁴¹ CBC Archives, “1945: ‘Baby Bonus’ Family Allowance Unveiled”, original broadcast 22 March 1945, accessible at <http://www.cbc.ca/archives/entry/1945-baby-bonus-unveiled>.

⁴² Ruth A. Frager and Carmela Patrias, *Discounted Labour: Women Workers in Canada, 1870-1939* (Toronto: University of Toronto Press, 2005), 91.

⁴³ Correctional Services Canada, “1940-1959: Times of Change”, last modified 20 October 2014, at <http://www.csc-scc.gc.ca/about-us/006-2003-eng.shtml>

⁴⁴ *Ibid.*

Canada.⁴⁵

Although the mandate of the committee⁴⁶ was intentionally broad so that the entirety of Remission Services and parole could be evaluated, its members “realized very early” that a full inquiry and effective recommendations would not be possible without a comprehensive review of the criminal law itself.⁴⁷ By visiting all eight federal penitentiaries, the Prison for Women of Kingston Penitentiary, and the larger provincial institutions to interview inmates on the subjects of remission, clemency, and parole, the committee hoped to capture the truest sense of how the system functioned. Further, they visited England, France, and Belgium to become more learned on how Remissions Services functioned more globally. Though lacking the power of a Royal Commission to compel witnesses, the committee interviewed a great number of experts from the fields of criminology, penology, and law, and published its total findings in spring of 1956.

The report recognized that since Confederation, federal and provincial governments had made sincere efforts to improve aspects of the entire field of penology. However, the committee stated that “at no time” did there appear to be “a real understanding by the public at large of the manifold problems involved, or any widespread demand... for the logical and orderly development of a system of corrections compatible with the national character of Canadians”.⁴⁸ The committee noted that the division of jurisdictional powers under the *British North America Act* (1867) was partly to blame, given that constitutional authority over matters of penology were split between the federal body and ten additional provincial bodies of authority. The power to criminalize acts at the national level, and to enact sentencing guidelines for such acts, is one

⁴⁵ Supreme Court of Canada, “The Right Honourable Joseph Honoré Gérald Fauteux, P.C., C.C., last modified 4 September 2008 at <http://www.scc-csc.ca/court-cour/judges-juges/bio-eng.aspx?id=joseph-honore-gerald-fauteux>

⁴⁶ The capitalization, or lack thereof, of committee is reflective of how each primary source used the word in text.

⁴⁷ Fauteux, 1.

⁴⁸ *Ibid.*, 5.

maintained by federal jurisdiction, but could compete with the provincial powers of ensuring the administration of justice within each province. If private citizens first come into contact with the criminal justice system via the police,⁴⁹ then the first point of contact with the justice system is under provincial jurisdiction, with the exception of contact with Royal Canadian Mounted Police (RCMP) officers. Judicial processing, then, begins as a provincial affair, but potentially extends to federal courts of appeal or the Supreme Court of Canada, at which time matters of penology are settled both federally and provincially. Summarily, then, the reform of a Canadian penal system would be impossible without the collaboration and cooperation of all levels of criminal justice processing and operations, one which would ultimately be reflective of “the kind of correctional system ... the people of Canada want”.⁵⁰

Commenting on the recommendation of the use of indeterminate sentencing – which was intended to increase both judicial discretion and the chances of maximizing offender rehabilitation – by the Archambault Report,⁵¹ the committee found that Canadian justice remained primarily retributive; determinate and indeterminate sentencing were instead being utilized by courts and judges “to maximize the length of term of punishment without parole, and to minimize time which could be spent undergoing trade school, treatment, or similar preventative measures.”⁵² This puzzled the committee since the principles of Remissions Services were overtly infused with rehabilitative intent, especially with regards to the royal prerogative of mercy. As the *de jure* head of the Canadian government, the Queen could exercise royal prerogative to commute death sentences to terms of imprisonment, to remit sentences of corporal punishment, to freely or conditionally pardon an offender, or could entirely remit sentences of

⁴⁹ Ibid., 6.

⁵⁰ Ibid., 7.

⁵¹ Archambault, 222.

⁵² Fauteux, 24.

imprisonment, fines, penalties, forfeitures, and suspensions (of licenses).⁵³ Part of the procedural problems of parole came from its initial enactment under the *Ticket of Leave Act* (1899), essentially a carbon copy of British legislation, which was five pages long, vague, and did not define the purpose of parole,⁵⁴ while others were sourced from the total lack of supervision imposed on the conditionally released. Echoing Archambault, the committee recommended immediate change.

This is not to suggest that change had wholly stagnated. After-care organizations had appeared in the early 20th Century, although many had dissipated during the First World War. The Chief of Police of Toronto, former Brigadier-General Dennis Draper⁵⁵, led the 1929 Citizens Service Association to address the practical needs of prisoners being released from prison – housing, clothing, and obtaining employment.⁵⁶ In 1931, British Columbia reverend J. Dinnage Hobden founded a similar group named after 18th Century prison reformist John Howard, which focused more heavily on rehabilitation and reintegration of released ex-convicts; in 1946, the Citizens Service Association changed its name to the John Howard Society of Ontario, and by 1960, all provinces except for Quebec had founded their own, formalizing as a national society with a constitution in 1962.⁵⁷ The society remains a predominant leader in rehabilitation and reintegration services but, in its early years, was beleaguered by its relative uniqueness.

⁵³ Ibid, 28.

⁵⁴ Parole Board of Canada, “History of Parole in Canada – Purpose of Parole”, last modified 20 October 2015, at <http://pbc-clcc.gc.ca/about/hist-eng.shtml>

⁵⁵ This seems to be Dennis Draper’s only leftist venture, considering he is more widely remembered for his blatant conservative partisanship, his ruthless crushing of employment speeches and protests, and for his anti-Semitism. See Gerald Tulchinsky, “Ben Lappin’s Reflections on May Day Celebrations in Toronto’s Jewish Quarter”, *Labour/Le Travail*, 49 (Spring 2002), 212-221; John Manley, “‘Starve, Be Damned!’ Communists and Canada’s Urban Unemployed, 1929-1939,” *Canadian Historical Review*, 79(3) (September 1998), 465-491; Gwyn ‘Jocko’ Thomas, “This Police Chief Was Clownishly Incompetent”, *Toronto Star*, 30 September 1999.

⁵⁶ John Howard Society of Canada, “History of John Howard Societies in Canada”, accessed 19 January 2016 at <http://www.johnhoward.ca/about/>

⁵⁷ Ibid.

In 1942, Kingston Penitentiary staffed its first – and Canada’s first – classification officer, whose role was to purposefully classify and segregate offenders for the planning of rehabilitative programming.⁵⁸ A university educated sociologist and experienced personnel officer of the Canadian Armed Forces, Frank Miller had previously volunteered with the John Howard Society of British Columbia, and used his social connections there to assist released offenders whenever possible. It was his hope that classification officers, social workers, and program officers would act as a new layer between inmates and officials that would truly be able to tackle recidivism. Alongside Miller, the aforementioned J. Dinnage Hobden became the Remission Service’s first Western representative, and was responsible for the interviewing of federal and provincial inmates between Vancouver and Kingston.⁵⁹ As the first social worker employed by the Service, he introduced and stressed the importance of addressing social factors in parole reports. The socio-medical model of prison reformation put confidence in experts at an all-time high, which undoubtedly expedited the rate at which the Fauteux committee’s recommendations were enacted. Similarly, prison after-care services were described by the report as being “in a stronger position than ever”.⁶⁰

Even with all of these gains, the committee remained dissatisfied with the nature of prison as an institution. If rehabilitation, reintegration, and penance were reliant on the ability for a person to claim self-responsibility, then prison was counterproductive. When entering prison, one joined a “world of regimentation and constant surveillance” and put the control of most daily decisions “into the hands of other persons” in a most “unnatural form of life.”⁶¹ Rather than the

⁵⁸ Parole Board of Canada, “History of Parole in Canada – Agents of Change”, last modified 20 October 2015, at <http://pbc-clcc.gc.ca/about/hist-eng.shtml>

⁵⁹ Parole Board of Canada, “History of Parole in Canada – Hobden and the Chief”, last modified 20 October 2015, at <http://pbc-clcc.gc.ca/about/hist-eng.shtml>

⁶⁰ Fauteux, 74.

⁶¹ *Ibid.*, 56.

independence and liberty fostered in general society, incarcerated Canadians steadily became “institutionalized and dependent” at levels reflective of the duration of their imprisonment. The goals of instilling a natural sense of law-abiding behaviour were thus incompatible with the lengthy segregation. Likewise, the committee realized in a novel way that the process of becoming accustomed to prison life contributed to later to incidents of violated parole, and further to increasing recidivism rates. The “sudden, sharp, and extreme” transition from imprisonment to freedom was viewed equally to the transition from freedom to imprisonment, and the need for measures to alleviate this shock was dire.⁶² The committee reiterated the recommendation of a quasi-independent federal parole board, despite previous failures to do so. This time, in keeping with the rehabilitative hope of the socio-medical model, the government accepted, and both the *Parole Act* (1959) and National Parole Board of Canada were made law.

The Parole Board of Canada began an immediate departure from its Ticket of Leave predecessor. Instead of lacking any definition at all of what parole was intended to be, legislation provided three guidelines to assist in decision making: applicants had to have “derived the maximum benefit from imprisonment”; parole must clearly aid the reformation and rehabilitation of the applicant; and the release of the applicant could not pose an “undue risk to society”.⁶³ As well, the Board undertook community investigations to inquire into the offender’s plans for release, social support network, and employment prospects, and with newfound confidence was releasing nearly a quarter of applicants by 1962.⁶⁴ Speaking to the Kiwanis Club of Ottawa just two years earlier, Miller passionately defended parole, saying:

⁶² Ibid., 70.

⁶³ Parole Board of Canada, “History of Parole in Canada – The Birth of Parole in Canada”, last modified 20 October 2015, at <http://pbc-clcc.gc.ca/about/hist-eng.shtml>. The third criterion was added in 1968, when the new act was first amended. See Correctional Service Canada, “Parole Act and National Parole Board, 1959”, last modified 5 March 2015, at <http://www.csc-scc.gc.ca/text/pblct/rht-drt/02-eng.shtml>.

⁶⁴ Ibid.

The purposes of parole, like the purposes of the sentence in the first instance, are the protection of society and the rehabilitation of the offender. Ideally, these two principles are inseparable. While society can be protected temporarily by the detention of the criminal, if he is not reformed, society is no longer protected when he is released. As a democratic people, we desire the rehabilitation of the offender for his own worth as an individual, and in our effort to help him in his rehabilitation, we find our only ultimate defence against him.⁶⁵

For Miller, rehabilitation represented the best solution for both crime and relapse prevention. The Board acted with eagerness to demonstrate this sentiment, controversially releasing inmates serving life sentences and criminal sexual psychopaths in the mid-1960s, which drew public and professional ire: parole was chastised as lenient by journalists, social workers criticized as naïve by police, and the Board viewed as antagonistic by court judges.⁶⁶ Fauteux riposted the concern voiced regarding sex offenders, suggesting that without intensified research, medical solutions should be given primacy.⁶⁷

The McRuer Report, 1954-1958

Fauteux was undoubtedly aware that the *Royal Commission on Criminal Law Relating to Criminal Sexual Psychopaths* was operating concurrently to conduct said intensified research. James Chalmers McRuer, Chief Justice of the Supreme Court of Ontario, was appointed as its Chairman and carried with him a wealth of experience with legal commissioning, civil rights, and individual privacy.⁶⁸ Like Fauteux, McRuer was concerned with the solutions put forth by the public for dealing with criminal acts of sexual violence. To capture the truest sense of how the law was perceived to be dealing with criminal sexual psychopaths, a total of 209 witnesses

⁶⁵ Parole Board of Canada, “History of Parole in Canada – The Ultimate Defence”, last modified 20 October 2015, at <http://pbc-clcc.gc.ca/about/hist-eng.shtml>.

⁶⁶ Ibid.

⁶⁷ Fauteux, 48.

⁶⁸ Law Society of Upper Canada Archives, “Fonds PF73 – James Chalmers McRuer fonds”, accessed 20 January 2015 at <http://www.archeion.ca/james-chalmers-mcruer-fonds>.

were called ranging from interested citizens to police officers to psychiatrists and psychologists.⁶⁹ To ensure the committee was prepared to address issues with what had long been argued as a medical problem, Gustave Desrochers, Assistant Medical Superintendent of St. Michel Archange Hospital in Quebec City⁷⁰, was appointed as co-chair.

As a primary aspect of the mandate, the committee⁷¹ reviewed the existing CCC provisions applicable to criminal sexual psychopaths. Specifically, they were interested in the principles of preventative detention, which were first introduced into law in 1948 and later revised in 1953.⁷² Defined as “detention in a penitentiary for an indefinite period of time”,⁷³ indefinite detention legislation seemed to be a retributive backlash against persons who had failed to be rehabilitated. The committee addressed the concern that both habitual criminals and criminal sexual psychopaths seemed unlikely candidates for short-term rehabilitation and/or parole, yet as with Archambault and Fauteux, McRuer found a disjuncture between public and professional understanding. For example, while the lay understanding of psychopath conjured up a specific type of violent and mentally ill offender, the term was “of no precise value whatsoever” for psychologists and psychiatrists.⁷⁴ This conflicting basis of knowledge was central to the perception of the law relating to criminal sexual psychopaths, since legislation mandated the hearing of evidence from at least two psychiatrists during such trials, one of whom would be appointed by the Minister of Justice.⁷⁵

The report provided evidence of wavering confidence in the expertise of doctors and

⁶⁹ John Chalmers McRuer (Chairman), *Report of the Royal Commission on Criminal Law Relating to Criminal Sexual Psychopaths* (Ottawa: Queen’s Printer, 1958), 2.

⁷⁰ McRuer, iii.

⁷¹ The McRuer report, in a break from legal tradition, used personal pronouns throughout rather than referring to themselves as a committee or as appointees.

⁷² McRuer, 12.

⁷³ “Preventative Detention – Interpretation”, *Canadian Criminal Code*, R.S.C. 1927, c. 36, s. 659(c)

⁷⁴ McRuer, 15.

⁷⁵ “Criminal Sexual Psychopaths”, *Canadian Criminal Code*, R.S.C. 1927, c. 36, s. 661(1)(2).

psychiatrists, as the opinions of psychiatric professionals were increasingly overlooked in favour of legal testimony and expertise. When psychiatric expertise was sought, the committee advised that it should not be on the status of the offender as a criminal sexual psychopath, which was a judicial decision.⁷⁶ While CCC provisions were amended in 1953 to extend the definition of criminal sexual psychopaths to “include persons convicted of buggery or bestiality, gross indecency, or any attempt to commit” any of these offences,⁷⁷ psychiatric treatment professionals argued for the need to better classify and distinguish between types of sexual offenders. For them, ‘moral offenders’ (homosexuals, exhibitionists, and voyeurs) were best served by outpatient therapy, while “aggressive, destructive individuals” (serial rapists, sex slayers, and child sex offenders) required segregation from society.⁷⁸ For moral offenders, there was still a potential for community reform and reintegration, and their offences did not require urgent and immediate segregation, as would a child molester or rapist. The commissioners criticized the extent to which homosexuality fell under the scope of this legislation but conceded that discretion over whether or not individual homosexual acts were grounds for indefinite detention should still ultimately reside in the courtroom.⁷⁹ Notwithstanding, the committee and medical experts were in complete agreement that “no satisfactory form of treatment could be given in an ordinary penal institution”⁸⁰ whatsoever.

Of equal importance, the McRuer report represents an early recognition that criminal law was failing to serve justice adequately for certain types of offenders and victims. Criminal sexual psychopathy legislation required, in relation to an evidenced lack of impulse control, a likelihood

⁷⁶ McRuer, 39.

⁷⁷ *Ibid.*, 12.

⁷⁸ *Ibid.*, 18.

⁷⁹ *Ibid.*, 27.

⁸⁰ *Ibid.*, 84.

of “[attacking] or otherwise [inflicting] injury, pain, loss, or evil on any person”.⁸¹ This vagueness of wording was challenged by the committee because it failed to capture in scope persons who induced or coerced children or youth to participate in sexual acts,⁸² providing limited protection for non-adult victims. Similarly, the enumerated offences under which one could be prosecuted as a criminal sexual psychopath⁸³ varied immensely in severity, grouping together flashers, homosexuals, and murder-rapists. In terms of protecting society from violent sexual offenders, the committee was “convinced that the law in Canada... is not serving its purpose”.⁸⁴ Further, the committee argued that the language used in defining criminal sexual psychopathy had demonstrably contributed to its infrequent use, to the confusion caused in cases where it had been used, and had diminished its ability to serve justice both efficiently and sufficiently. Witness testimony suggested that a tendency to rely on a record of serial offending could muddle the prosecution of offenders who may have only been sexually violent once.⁸⁵ Adults who performed criminal acts which “[produced, promoted, or contributed] to a child’s being or becoming a juvenile delinquent” were subject to prosecution under Section 33(1) of the *Juvenile Delinquents Act* (1952) but were only made liable to a maximum \$500 fine or imprisonment for less than two years, necessitating provincial incarceration. Due to the sentencing leniency that this could be provide for, the committee argued that sexual acts against children be precluded and solely prosecuted by adult criminal courts.⁸⁶

Finally, the commissioners reflected on the overall purpose of justice and whether or not

⁸¹ Ibid., 13.

⁸² Ibid., 24.

⁸³ Rape, carnal knowledge (1) of a female under fourteen years of age, (2) of female between fourteen and sixteen, of previously chaste character, indecent assault on female, buggery or bestiality, indecent assault on male, and gross indecency, or s136, s138, s141,s147, s148, or s149 of *Canadian Criminal Code*, R.S.C. 1927, c. 36, respectively.

⁸⁴ McRuer, 45.

⁸⁵ Ibid., 20.

⁸⁶ Ibid., 28-29.

criminal sexual psychopathy legislation undermined it. It was evidently difficult to conceive of the subject of the sexual offender with which to define the scope of the law, since different prohibitions against sexual activity were dependent on demographic variables (age of offender, age of victim, race of offender, race of victim), on the offender-victim relationship, and on the location where the offence took place: contextually, as normally legal sexual activity could become illegal by occurring in public, and geographically, as provinces, territories, and nations prohibited specific sexual acts individually. The commissioners stated that “good penology contemplates three main objectives, i.e., the protection of society from the prisoner, the reformation of the subject, and the deterrent effect of the sentence on society and others”.⁸⁷ In terms of protection of society, custodial detention was merely a limited protective hold on the prisoner until his release. Considering that the ability for offenders to access reformatory training and treatment was mainly allotted only to inmates serving a determinate sentence,⁸⁸ reformation was least plausible for those most in need. Finally, when considering the rarity with which criminal sexual psychopath status had been successfully argued⁸⁹ likely decreased its deterrent effect, the legislative act seemed to be an abject failure of penology.

The Ouimet Report, 1965-1969

The insufficiencies of the criminal law were more evident than they had been previously, and the criticisms that the McRuer report had launched at criminal sexual psychopath legislation were immediately addressed. In 1960, the *Dangerous Sex Offender Act* was passed, although a dichotomous classification of habitual and dangerous sex offender remained in place. Reflecting on other recommendations made by the McRuer Commission, the Department of Justice

⁸⁷ Ibid., 83.

⁸⁸ Ibid., 45.

⁸⁹ Only twenty-three persons between 1948 and 1955. McRuer, 15.

appointed a third commission of inquiry into Canadian corrections in 1965, chaired by Mr. Justice Roger Ouimet of the Superior Court of Quebec. As its terms of reference, the Committee was to “study the broad field of corrections, in its widest sense, from the initial investigation of an offence through to the final discharge or a prisoner from imprisonment or parole,” to consider any and all steps involved during this process, and to make recommendations as to what changes were to be made if necessary.⁹⁰ The Committee argued that the scope of the mandate had been broadened due to a recognition that “law enforcement, judicial, and correctional processes form an inter-related sequence and should not operate in isolation from one another”.⁹¹ Albeit true, this was also due to a realignment of judicial responsibilities with the creation of the Department of the Solicitor General in 1966, which subsumed control over the Canadian Penitentiary Service, the Parole Board of Canada, and the Royal Canadian Mounted Police.⁹²

Unlike the preceding Archambault and Fauteux Commissions, the Ouimet Commission focused intently on moving beyond merely recognizing mentally ill offenders as a medical problem. As a ground-breaking contribution, the Committee challenged the perception that suspended sentences, probation, and medical treatment were wholly rehabilitative, instead asserting that said measures may not be more humane than incarceration if they “[imposed] more pain, [restricted] freedom for longer periods, or [produced] no results regarded as desirable”.⁹³ A similar sentiment had been voiced in the McRuer report, specific to the self-elected castration of sex offenders, since studies suggested the treatment option failed to reduce all but incidences of specific recidivism – granted that penile penetration became physically impossible, violent sex

⁹⁰ Roger Ouimet (Chairman), *Report of the Canadian Committee on Corrections – Towards Unity: Criminal Justice and Corrections* (Ottawa: Queen’s Printer, 1969), 1.

⁹¹ Ouimet, 9.

⁹² Parole Board of Canada, “History of Parole in Canada – The Ultimate Defence”, last modified 20 October 2015, at <http://pbc-clcc.gc.ca/about/hist-eng.shtml>.

⁹³ Ouimet, 15-16.

offenders often improvised.⁹⁴ Although the goal of societal protection remained paramount across all perspectives encountered by the Commissioners, offenders were seldom recognized as persons also entitled to full protection, a problem which depreciated the goal of carceral rehabilitation.

Additionally, the Committee challenged the notion that good penology was informing Canadian corrections, stating that the inconsistent philosophical goals of retribution, segregation, and deterrence had made harmonious operation impossible.⁹⁵ This inconsistency obstructed the ongoing facilitation of the offender, as police enforced the retributive and custodial goals until courts could process each incidence of crime, reducing the speed with which treatment options could be considered; in fact, police discretion was perceived to be inherently dangerous, as it was susceptible to politicization, discrimination, and was reliant on each individual officer's perception of rehabilitation.⁹⁶ In relation to imprisonment, carceral institutions necessarily fostered a sense of dependency due to their rigorous routine. Worse, the penitentiary functioned better as a school of criminal subculture than it did as a reformatory, with offenders ingratiating a subculture of eluding judicial authority rather than one of socio-legal obedience. Put differently, the Committee fell just short of recognizing that "jail time often made people worse instead of better".⁹⁷ Following release from imprisonment, or from conditions of probation or parole, the responsibility of after-care seemed to be a burden shouldered almost entirely by volunteer organizations, a distinct departure from the optimism that followed the Fauteux Report.⁹⁸ The Committee recommended "supportive and comprehensive funding" of such organizations and

⁹⁴ McRuer, 103.

⁹⁵ Ouimet, 16.

⁹⁶ *Ibid.*, 44.

⁹⁷ Parole Board of Canada, "History of Parole in Canada – The Ouimet Report", last modified 20 October 2015, at <http://pbc-clcc.gc.ca/about/hist-eng.shtml>.

⁹⁸ Ouimet, 37.

the promotion of justice-based education in order to maximize the chances of successful reintegration,⁹⁹ without which the goal of rehabilitation seemed almost moribund.

Rehabilitation was further hamstrung by measures which were developed to maximize societal protection. For instance, the criminal record with which judicial processing was expedited, sentencing aggravated, and recidivism quantified, negatively shaped two central facets of reintegration – housing and employment. News releases intended to inform the public of inmate release sometimes led to the need for offenders to relocate, disrupting existing support networks and removing aspects of familiarity. Although legal reforms had been enacted to modernize the prosecution of and treatment options available to mentally ill offenders, the Committee deplored the continued use of the term insanity, a sentiment shared by medical experts interviewed during the inquiry. Criminal law, as it was being practiced, seemed to have an outdated understanding of psychiatric medicine which directly contributed to rehabilitative efforts;¹⁰⁰ in an attempt to revitalize them, the Committee advocated for the adoption of the term “mental disorder” to be codified and defined as “any disease or disability of the mind”.¹⁰¹

Most notably, the Committee viscerally condemned the *Dangerous Sex Offender Act* (1960) and the impact that its enforcement had left on public perspectives of crime in Canada. Statistically, the total number of convictions increased from 42,148 in 1901 to 4,066,957 in 1965, representing a twenty-five fold increase in crime,¹⁰² so public mistrust of the rehabilitative model was superficially well-founded. As the Committee investigated this increase, however, they found that 98% of it had been for non-violent summary offences, of which 90% were traffic

⁹⁹ Ouimet, 409-411.

¹⁰⁰ Ibid., 220-221.

¹⁰¹ Ibid., 224-225.

¹⁰² Ibid., 23.

violations;¹⁰³ it was the urbanization and rapid increase in private ownership and use of cars that had spiked Canadian crime rates, rather than a laxity on crime or a largescale failure to address violent offenders. Similarly, investigation revealed that the *Dangerous Sex Offender Act* was applied unevenly, sporadically, and often improperly. Habitual offender statutes were mainly used to punish social nuisances, such as vagrants and homosexuals, while only 177 of 2228 offences prosecuted under them were against persons.¹⁰⁴ Of the dangerous sexual offenders prosecuted, a significant number exhibited symptoms of untreated serious mental illness, yet provincial facilities remained solely responsible for the custody of mentally ill offenders regardless of their sentencing level.¹⁰⁵ Due to the immense funding disparities between provincial and federal institutions, the disjuncture between proper jurisdiction and constitutional responsibility was necessitating the failure of rehabilitation.

The Badgley Report, 1981-1984

Canadian concern with health and safety, specifically with regard to children, continued to be preoccupied with issues of sexual activity following the Ouimet Report. In 1977, both the *Habitual Offender Act* and *Dangerous Sex Offender Act* were repealed, and the Department of Justice began a new legal framework forged within the omnibus *Criminal Law Amendment Act*. Interestingly, the roots of habitual offender status could be traced directly back to the Archambault Report, with subsequent revisions and amendments as products of the Fauteux, McRuer, and Ouimet Report. Each commission of inquiry had argued that societal protection was inadequate in some fashion, a recurrence which remained prevalent across governmental departments. In 1980, the Minister of Justice and the Minister of National Health and Welfare

¹⁰³ Ibid., 23.

¹⁰⁴ Ibid., 247.

¹⁰⁵ Ibid., 276.

collaboratively established the *Committee on Sexual Offences Against Children and Youths*, and appointed Robin F. Badgley as its Chairman.¹⁰⁶ The Committee also benefited from the appointed counsel of pediatric, psychiatric, academic, and legal professionals, which produced a uniquely interdisciplinary report in keeping with the spirit of Ouimet's multifaceted approach to justice.

This was duly appropriate since "the problem of child sexual abuse in Canada is so pervasive and deep-rooted... so far-reaching and complex that [it extends] well beyond the jurisdictional authority of one or two federal departments or one level of government alone".¹⁰⁷ The Badgley Committee found that criminal law was egregiously contributing to victimization, as the primacy given to prosecution and investigation insufficiently addressed the victim's immediate and long-term needs, often times foregoing proper follow-up altogether.¹⁰⁸ Triers of fact also lacked the necessary tact to avoid further victimization of defendants, which had the potential to increase the therapeutic needs of victims offering testimony; that is, the process of cross-examination could re-victimize and aggravate the harms experienced by those called to testify. The Committee levied against the legal dismissal of child testimony; young victims were just as likely to provide vague accounts, so the automatic preclusion of a personal account was nonsensical, and a sworn corroboration to make such a recollection more trustworthy was unnecessary.¹⁰⁹ Again, the reliance on professional adults to relay accounts of victimization was potentially re-victimizing, since child testimony, it can be argued, was not inherently less

¹⁰⁶ Badgley was not a stranger to law, nor to federal commissions. From 1975-1977, he investigated abortion as a social issue and his report was a baseline source used during the SCC hearing of decriminalization. See <http://v1.theglobeandmail.com/servlet/story/Deaths.20120428.93292655/BDAStory/BDA/deaths> for a brief biography.

¹⁰⁷ Robin F. Badgley (Chairman), *Report of the Committee on Sexual Offences Against Children and Youths, Executive Summary* (Ottawa: Queen's Printer, 1984), 14.

¹⁰⁸ Badgley, 15.

¹⁰⁹ *Ibid.*, 28-30.

trustworthy than that of any other victim.

Re-victimization was also found to be potentially enshrined within other aspects of judicial processing. The *Canada Evidence Act* (1983) was amended to protect marital and familial relationships from any harm that could be caused when a family member is legally compelled to testify against another. However, in cases of child sexual victimization, this protection was found to obstruct the testimony of persons most likely to corroborate complaints. Fathers, biological or legal, represented 20% of the 703 convicted child sexual offenders analyzed by a National Corrections Survey,¹¹⁰ but were directly interviewed in less than half of sexual assault investigations, with mothers interviewed seven times in ten and siblings two times in five.¹¹¹ Perhaps this is because mothers and the ‘maternal instinct’ were presumed by social conservatives to be “child saving”, in that they would know of the victimization of their children and would be likewise compelled to intervene in cases of child abuse.¹¹² Failure to protect one’s child (or worse, to be the perpetrator of violence against them) also risked a loss of custody and the categorization of a woman as an “unfit mother”, which allowed for denigration, humiliation, and, sometimes, even legal punishment.¹¹³ In all cases, the interviewing of the child victim and of the immediate family speaks to a broader social conservative belief in the traditional nuclear family, rooted in the familial protection and love teachings of Christian faiths. For example, REAL (Realistic, Equal, Active, for Life) Women of Canada was founded in 1983 to, among other causes, reaffirm the purpose of the traditional, heterosexual family – to “nurture the young”

¹¹⁰ Ibid., 26.

¹¹¹ Ibid., 37.

¹¹² Joan Sangster, *Regulating Girls and Women: Sexuality, Family, and the Law in Ontario, 1920-1960* (Don Mills, ON: Oxford University Press, 2001), 134.

¹¹³ Paula S. Fass, *Kidnapped: Child Abduction in America* (New York: Oxford University Press, 2001), 186-187.

and “protect the vulnerable”.¹¹⁴

The Committee recommended that the Act (and corresponding provincial and territorial acts, as necessary) be amended to prevent the non-disclosure of information vital to the protection of child victims. Similarly, the limited sanctions provided by the CCC and *Youth Offenders Act* to allow for closed hearings had been enacted with the intention to maximize transparency and accountability within the Canadian judiciary. Granted that it could prove incredibly hard to obtain a fully candid retelling of what occurred if a child faced a jury, especially if the offender was present in the courtroom, the Committee recommended for an amendment to secure any closed hearings necessary for the prosecution of child sex offenders.¹¹⁵

The formats used to collect provincial and national crime statistics were also argued to directly contribute to the invisibility and erasure of victims of child sexual assault. The Uniform Crime Report (UCR), with which all frontline police statistics were compiled, analyzed, and annually published, precluded age, relationship status, and information pertaining to the specific type of sexual offences perpetrated, eliminating its usefulness as a tool for understanding trends in child sexual victimization. Likewise, the Homicide Statistics Program (HSP) failed to take into account which acts were committed over the preceding period of time before death, further erasing the ability to track trends and the severity of recidivism with regards to child victims.¹¹⁶ By 1980, eight provinces had enacted child abuse registers, but the information tracked and terms used to track offences varied widely. Ambiguously, the term *child sexual abuse* was used inclusively by most registers, which failed to differentiate between children who had been victimized by indecent exposure and those who had been physically penetrated. In essence, all

¹¹⁴ REAL Women of Canada, “About Us”, accessed 4 August 2016 at <http://www.realwomenofcanada.ca/about-us/>.

¹¹⁵ *Ibid.*, 33.

¹¹⁶ *Ibid.*, 44.

child victimizers were held to be similarly deprived, suggesting The Committee recommended the strengthening of a national child abuse register and the discontinuation of provincial registries, given that their use was already infrequent, inconsistent, irregular, and their information unhelpful or incorrect.¹¹⁷ It is, however, important to note that these registries, unlike their American counterparts, were designed to serve as general deterrents and were never designed to be publicly accessible.¹¹⁸

Although the Badgley Report represented an insightful recognition of a paucity of rehabilitative options availed to victims of child sexual abuse, and though it advocated for a reinvigoration of research funding dedicated to understanding their needs, it also represented the most significant return to retributive justice across all aforementioned inquiries. It is fair to suggest that a slight surge in total crime rates, including incidences of violent crime, spiked between 1985 and 1990 in the midst of the Badgley Commission; however, it is likewise accurate to note that after 1990, violent and sexual crime rates have steadily declined.¹¹⁹ Social conservatives of the period championed the recommendations of the Report and associated revisions which, in theory, would save children from sexual victimization and corruption.¹²⁰ The strengthening of child protection, albeit nobly intended, was prioritized to such an extent that the rights and freedoms of offenders were almost entirely overlooked. In the process of reviewing Child Protection Services and the medical services provided to child victims, including hospital care, the Committee laid the groundwork for mandatory reporting clauses for these professionals

¹¹⁷ Ibid., 41

¹¹⁸ Corrine Robertshaw, *Proceedings of a Government/Private Sector Meeting on Child Abuse Study Held at the Conference Centre, Ottawa, March 10 and 11, 1980* (Ottawa: Social Services Division, Department of National Health and Welfare, 1980), 82-86. The contrast between public private registries is revisited in the Epilogue.

¹¹⁹ Statistics Canada, "Canada's Crime Rate: Two Decades of Decline", accessed 4 August, 2016, at <http://www.statcan.gc.ca/pub/11-630-x/11-630-x2015001-eng.htm>

¹²⁰ Tom Warner, *Losing Control: Canada's Social Conservatives in the Age of Rights* (Toronto: Between the Lines, 2010), 85-86.

despite recognizing that the majority of offences remained unreported to either body.¹²¹ With the recommendation for the bolstering of statistical tracking, the Committee recommended the collection of any data which would assist in identifying cases of recidivism, including the specific emotional and physical harms caused by the assailant, as well as their disease and/or infection status in case of transmission.¹²² In relation to adult offenders who had sexually offending by hiring or otherwise acquiring a juvenile prostitute, the Committee recommended the establishment of a media program to give prominent publicity to the identity of those convicted,¹²³ a return to elements of public shaming that had largely been abolished from the CCC by 1900.

This revival of shaming and the strengthening of crime prevention legislation is, in part, a reaction to the shifting nature of Canadian politics and the processing of crime during the Charter era. Before its enactment, Canadian criminal policy stressed the importance of crime prevention and of individual and societal deterrence, over individual rights of due process.¹²⁴ As was mentioned in the introduction, social conservatives increasingly came to view the Charter – and its perceived allegiance with a leftist judiciary – as antagonistic to traditional religious and family values. From their point of view, Canadian courts and judges had overstepped the democratic process in guaranteeing a woman’s right to an abortion, even though Omnibus Bill C-150 – the same Act which had decriminalized homosexuality – had democratically legalized therapeutic abortion under certain circumstances. After the Charter was enacted, an overall trend of favouring the accused in cases heard by the Supreme Court of Canada emerged,¹²⁵

¹²¹ Badgley, 38.

¹²² Ibid., 44.

¹²³ Ibid., 54-55.

¹²⁴ Frederick Lee Morton, *Law, Politics, and the Judicial Process in Canada, Third Edition* (Calgary, AB: University of Calgary Press), 438.

¹²⁵ Morton, 438.

aggravating the social conservative reverence of law-abiding citizens. Though it has been argued that the Charter has actually further democratized the legal process by allowing juries, judges, and higher courts to consider non-traditional voices and opinions which had previously been excluded,¹²⁶ such as the acquisition by homosexuals of the rights to equality and freedom from discrimination, social conservatives following the 1990s sought a strengthening of criminal law, rather than its liberalization. Due to its periodization, the revival of shaming techniques and Canadian vigilantism are fully discussed within the Epilogue.

Of the fifty-two recommendations offered by the Report over nine distinct categories, fifteen dealt with reformation of the sexual offences. The Badgley Commission steadfastly believed that an increase in the age of consent from 14 to 16 would maximize the protection of children from sexual offences, especially for females. Section 147 of the CCC would be repealed, removing a limited immunity clause that was enacted with the intention of shielding the youthful sexual exploration of males from prosecution of certain sexual offences when the age of consent rose to 14 in 1892.¹²⁷ In fact, the limited right to consent to certain sexual acts at this age was to be completely precluded, since youth were just as likely as members of age groups to force, threaten, or coerce sexual activity.¹²⁸ They nullified similarly existing protections by recommending the absolute protection from any form of sexual touching of children under the age of 14,¹²⁹ creating a window of legal culpability for both males and females exploring sexuality between the ages of 12 and 14 in order to deter young adult and adult predation. Since the Committee also recommended a prohibition of vaginal intercourse until age 16,¹³⁰ any youthful sexual exploration that could occur would legally be limited to acts of exposure or

¹²⁶ Morton, 303.

¹²⁷ Ibid., 17.

¹²⁸ Ibid., 24-25.

¹²⁹ Ibid., 20.

¹³⁰ Ibid.

intimate touching. Although the Committee recommended a lowering of age of culpability for buggery from 21 to 18, following the decriminalization of adult homosexuality via the *Criminal Law Amendment Act* (1968-1969), they maintained the necessity of prosecuting any acts of sodomy with imprisonment of up to 14 years.

In addition, seven of the recommendations either created new CCC offences or amended existing ones in a punitive manner. Canadian courts had ruled that cases in which a child was invited to sexually touch a person without the use of force or coercion did not constitute a sexual assault, but nevertheless, the Committee suggested the development of an invitation to sexual touching offence punishable by indictable conviction and imprisonment of up to five years.¹³¹ Based on the belief that the reporting of sexual victimization was so infrequent due to the closeness of the victim-offender relationship in the majority of cases, the Committee developed the abuse of position of trust offence, punishable by indictable conviction and imprisonment of up to ten years.¹³² This position of trust, then, carried the moral and ethical expectations of protecting children from the standard of a social more to that of a duty of law-abiding citizenship. Indecent exposure, by far the largest category of sexual offences committed against children, was to be amended to protect youth up to 16 years in age, punishable by summary conviction.¹³³ The Committee recommended the prohibition of loitering or “wandering within” a public park, playground, or bathing area for persons previously convicted of a sexual offence¹³⁴, which could necessitate the relocation of residence, work, or schooling upon release.¹³⁵ The Committee also recommended that the CCC provisions for dangerous sex offenders be amended so that physical

¹³¹ Ibid., 21.

¹³² Ibid.

¹³³ Ibid., 23.

¹³⁴ Ibid.

¹³⁵ The modern extent to which similar, if not identical, probation and parole conditions facilitate child sexual victimization and general recidivism are discussed in the Epilogue.

and mental harm were no longer requirements for offences to be considered acts of child sexual victimization.

The prohibition of sex offenders from entering places where children congregate is perhaps a preventative measure intended to prevent recidivism, however, it echoes a long-standing tradition of using the law to deter public expressions of sexuality. Consensual acts between homosexual men remained illegal in Canada until 1969, when private anal intercourse between two adults became decriminalized. Anal intercourse involving more than two persons was legally maintained as a public act, liable as its own criminal offence as well as one subject to prosecution as an act of public indecency.¹³⁶ Women were subjected to a longer history of sexual regulation, with vagrancy and truancy provisions often used to prevent the possibility of extramarital sex and/or prostitution, and gender-specific facilities and treatments used to reform prostitutes into chaste womanhood.¹³⁷ As was discussed in the introduction of this chapter, several gender-specific provisions of the *CCC* offered women protection from the sexual predation of immoral men, although said protection was often steeped in classist, racist, and paternalistic undertones.¹³⁸ These provisions collectively reinforced the idea that sexuality was solely a matter for the private sphere, a continuous throughout the century.

Conclusion

In 1938, the Archambault Commission boldly exclaimed that criminal insanity was non-existent and that such offenders were better served with therapeutic treatment. In 1956, the Fauteux Commission recognized that the punitive aims of incarceration ran contrarily against the

¹³⁶ *CCC*, R.S.C. 1985, c C-46, s 745, s 159.

¹³⁷ See Constance Backhouse, "Nineteenth-Century Canadian Prostitution Law: Reflection of a Discriminatory Society", *Social History*, 18(36), November 1985: 387-423 for a complete discussion of the criminalization of prostitution in Canada.

¹³⁸ Sangster, 1, 48, 124.

hopes of successful rehabilitation and reintegration into society. In 1958, the McRuer Commission concurred with psychiatric professionals, stating that no satisfactory form of treatment was possible within the carceral system. In 1969, the Ouimet Commission revealed that as a system, prison was much more likely to produce criminals than it was to reform them. Why then has the medico-legal corroboration of more than half a century come to be ignored? Through its adoption of the primacy of societal protection, the Department of Justice and its related arms seem convinced that the immediacy of segregation and incarceration outweigh the prolonged, and sometimes indefinite, process of reformation and rehabilitation of offenders. If all offenders are taken to remain as members of society even while incarcerated, then it is likewise arguable that the judicial process is itself reflective of the general public. In such a case, it is clear why the Fauteux Commission declared that no real understanding of the manifold problems of correctional process has ever occurred.

Chapter Two – The Death of Wellness – “Better Sick Than Criminal”¹

The *Diagnostic and Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association (APA) is the primary referential tool used by psychiatrists and psychologists in both public and private practice. Albeit an American publication, its usefulness as a fond of legal and medical legitimacy extends to Canada, recognized by both the Medical Council of Canada – the authoritative body responsible for the examination of medical students and for verifying physician credentials² – and by the Canadian Mental Health Association – a volunteer-based organization which promotes mental health “advocacy, education, research, and service” to people experiencing mental illness and their families.³ The typical form of a *DSM* entry breaks down a disorder by listed criteria, from which psychiatrists can compare, match, and assess generalized symptoms, syndromes, and behavioural patterns to individual patient case files, and to which they can amend based on the experiences of diagnostic practice. However, this format was first introduced to American psychiatry with the publication of the *DSM-III* in 1980, prior to which the *DSM* primarily served as a statistical tool for and by psychiatric professionals with little to no explanatory depth. For this reason, most nations – Canada included – relied heavily on the World Health Organization’s *International Statistical Classification of Diseases and Health Related Issues* (ICD)⁴ as their dictionary of both physical and mental illness. The *DSM* is analyzed in this chapter, rather than the *ICD*, as it is the most prominent publication

¹ Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis* (Princeton, NJ: Princeton UP, 1981), 9.

² “About Us”, *Medical Council of Canada*, accessed 8 February 2016, at <http://mcc.ca/about/>

³ “About CMHA”, *Canadian Mental Health Association*, accessed 8 February 2016, at <http://www.cmha.ca/about-cmha/>.

⁴ This is the modern name for the ICD. From its first edition to its fifth revision, it was known as the *Bertillon Classification of Causes of Death*, after French doctor Jacques Bertillon. In its sixth revision, it was titled the *International Statistical Classification of Diseases, Injuries, and Causes of Death*. With the ninth revision, it became most often referred to simply as the ICD, due to the development of a series of complementary guides such as the *International Classification of Procedures of Medicine* (ICPM). See <http://www.who.int/classifications/icd/en/HistoryOfICD.pdf> for a history of the ICD system.

of the APA and because its revised publications traditionally coincide with reflections of the broader WHO manual.

In relation to criminal law, the shift from codified number-name diagnoses of *DSM-I* and *DSM-II* [such as 302.2 pedophilia] to the multi-axial codification scheme of *DSM-III* was equally revolutionary, since it provided for the proper clarification and categorization necessary to distinguish between individual mentally ill offenders and their treatment requirements. Yet, as seen in Chapter 1, the departure from the socio-medical model of justice was a foil to the biological positivist shift in psychiatric medicine. That is, psychiatric and medical experts increasingly searched for physical causes of cures – often presumed to be brain abnormalities – in order to medicalize aberrant and deviant behaviours. As Canadian legal experts reiterated the necessity of mental health treatment for criminal offenders amidst an ever-increasing prison population, North American psychiatry began an unprecedented process of deinstitutionalization, favouring home and community based therapeutic options. Meanwhile, the factional divide between psychoanalysts and ‘neo-Kraepelinians’⁵ became increasingly divisive over the diminished professional reputation of psychiatry as a discipline: the former believing that mental illness was a product of failed personal relationships or of ‘social ills’ such as racism and poverty; the latter, students of the quantitative biological paradigm of German fame. Neo-Kraepelinians took their name from Emil Kraepelin, the forefather of psychiatric time-measurement studies, which remain a central diagnostic tool of psychological and psychiatric assessment.⁶

This chapter considers professional psychiatry from the 1930s until 2000,⁷ concluding with the publication of *DSM-IV-TR*. This periodization encapsulates the emergence and

⁵ This term will be fully defined and discussed on pages 5 and 6.

⁶ Richard Noll, *American Madness: The Rise and Fall of Dementia Praecox* (Cambridge, MA: Harvard University Press, 2011), 56-58.

⁷ For contextual and biographical reasons, this periodization very briefly extends back to 1880.

development of the *DSM* as a distinctly American counterpart to the *ICD*, its transformation from a statistical manual to a comprehensive diagnostic tool for mental health professionals, and the professionalization of North American psychiatry as well as queer activism against psychiatric ideas of homosexuality.

Concurrently, queer activism targeted the APA for its perceived insistence that homosexuality was itself the cause of the pathologies experienced by gay Americans: depression, suicidal ideation, anti-social behaviour, and general maladjustment. Although the forefathers of psychoanalysis – Sigmund Freud and Havelock Ellis – had suggested that homosexuality was inborn and not itself pathological⁸, neo-Freudians sourced failed socio-familial relationships as the cause of homosexuality. Between 1940 and 1970, neo-Freudians argued that non-procreative sexualities were the result of trauma, meaning that homosexuals were excellent candidates for therapy; similarly, they argued that homosexuals were subservient to strength, with an unconscious able only to understand brute force.⁹ In contrast, interdisciplinary empiricists like Alfred Kinsey, Evelyn Hooker, and Allan Bérubé¹⁰ mounted an attack on the notion that homosexuals were disordered simply because they were not heterosexual. During the 1970s, the selection of the APA as a target of queer activism was a cogent decision to symbolically attack the psychiatric profession as a whole and the orthodoxy of psychoanalytic thought.¹¹

This chapter begins with a discussion of the state of psychiatry as a discipline following

⁸ Gregory M. Herek, "Facts about Homosexuality and Mental Health – Historical Background", *University of California, Davis*, accessed 14 February, 2016 at http://psc.dss.ucdavis.edu/rainbow/HTML/facts_mental_health.html

⁹ Jack Drescher, "Homosexuality and its Vicissitudes: The 'Homosexual Others' in Psychoanalytic Theory and Praxis", *Embodied Psyches/Life Politics Seminar Series, Centre for Invention and Social Process, Goldsmiths College, 15 October 2004*.

¹⁰ Although Bérubé published his findings in 1990, his research was conducted during World War II.

¹¹ Ronald Bayer, "Politics, Science, and Psychiatric Nomenclature: A Case Study of the American Psychiatric Association Referendum on Homosexuality", in H. Tristram Engelhardt, Jr. and Arthur L. Caplan (Eds.), *Scientific Controversies: Case Studies in the Resolution and Closure of Disputes in Science and Technology* (New York: Cambridge University Press, 1987), 388-389.

the Second World War, a necessary consideration which foregrounds activism both within and outside of the profession. The influx of soldiers returning from the home front and experiencing mental distress and trauma disorders provided psychiatrists and psychologists with a number of patients to study, but the aforementioned divide between psychoanalysts and biological positivists threatened to dismantle the credibility of the psychiatric profession itself. Next, a review of the historical context in which the elimination of homosexuality *per se* as a mental illness occurred foregrounds an analysis of the diagnostic criteria provided for pedophilia in each edition of the *DSM*. The precedence of the linkage between homosexuality, the APA, and the *DSM* is meant to historically track how psychiatrists have conceptualized mental health in relation to sexual attraction, behaviour, and function, rather than to parallel homosexuality and pedophilia. In contrast to the legal narrative of Chapter 1, which demonstrated how Canadian criminal law came to increasingly rely on the legitimacy of psychiatry to incarcerate the mentally ill, this chapter demonstrates how psychiatrists progressively distanced themselves as the arbiters of sanity, stressing that mental illness classifications were for the sole purpose of psychiatric professionals.¹² It concludes with a summary of research critiques of the codification of pedophilia and with an overview of specific public responses to *DSM-V* revisions of pedophilia and pedophilic disorder.

The theme of wellness permeates this chapter despite its almost total preclusion from the *DSM*. Diagnoses, classification, and codification of human psychology, or more specifically of sexuality, are all made in relevance to a baseline normal – heterosexuality. The presence of pedophilia from *DSM-I* through *DSM-V* implies the death of wellness for these individuals, in that their interests are decisively defined in contrast to normal human sexuality. Sexual acts

¹² Taken from the APA's "Cautions" and "Cautionary Statement" included in *DSM-III* onward.

involving or against children have been used throughout most editions of the *DSM* as diagnostic criteria of pedophilia, despite the minority existence of chaste pedophiles who have not – or may never – offend against a child; such a group necessitates a reevaluation of what is considered to be unhealthy and/or pathological sexual thought.¹³ Though the APA cautioned against the use of the clinical definition of pedophile in non-clinical settings, the inclusion of perpetrating sexual acts against children within diagnostic criteria from *DSM-II* onward eroded the ability to recognize individuals who will never do so. The willingness to conflate all pedophiles as child sex offenders is thus the product of a false assumption that clinical definitions must reciprocally inform legal ones.

Parts of this chapter focus more or less explicitly on the history of psychiatry in the American context. Partly, this is because the context is necessary to situate the importance of the *DSM* and its relevance to the pathologization, classification, and treatment of pedophilia and pedophilic disorder is grounded in this history of the American Psychiatric Association. This is not to presume that the Canadian Psychiatric Association mirrored its American counterpart, but to situate the focus on the importance of the revision processes of the *DSM* and *ICD*. Canadian psychiatrists participated in annual meetings amidst the mid-1950s paradigm shift – from psychoanalysis to biological models of mental illness – which transformed the *DSM* to a nosological giant.¹⁴ During this shift, LSD researchers from Saskatchewan tactfully balanced their therapy ethos between the two models of mental illness, as they analyzed the neuroscience of LSD but emphasized the empathetic bedside manner that psychoanalysis could bring to the therapeutic relationship.¹⁵ The continued concurrent use of the *DSM* and *ICD* in Canada likewise

¹³ One such group is *Virtuous Pedophiles*, which will be fully discussed in the Epilogue.

¹⁴ Erika Dyck, *Psychedelic Psychiatry: LSD from Clinic to Campus* (Baltimore, MD: The Johns Hopkins University Press, 2008), 45.

¹⁵ Dyck, 45.

demonstrates a unique trend of professional compromise, rather than the pendular adoption of popular research within the States.

Instability in the Psychiatric Profession

It is somewhat startling that by 1960 more than 500,000 people – 1 in every 300 Americans – had been involuntarily confined to an asylum.¹⁶ Similarly in Canada, the number of patient beds in psychiatric hospitals per capita reached 3.5 per 1000 with an average stay of 207.5 days in 1965.¹⁷ This critique came both from within and outside of the profession, challenging the conditions institutionalized persons endured, the dependency they fostered, and the rates at which certain individuals cyclically returned to asylums – much the way legal experts criticized imprisonment.¹⁸ The neo-Krapelinians, with a sense of optimism, believed that the prevention of mental illness was achievable vis-à-vis the reformation of social relationships and environments. Meanwhile, biological positivists and other researchers who believed that the true etiology of mental illness was organically based became revitalized by the mainstreaming of clinical trials, which became the expectation for treatment programs given their ability to demonstrate validity, efficacy, and to eliminate outside factors strengthened the scientific basis of all evaluations based on control groups.¹⁹ Unfortunately for psychoanalysts, this precluded their therapeutic strategies from evaluation, as their one-on-one model was offered only to

¹⁶ Hannah S. Decker, *The Making of DSM-III: A Diagnostic Manual's Conquest of American Psychiatry* (Oxford, NY: Oxford University Press, 2013), 7.

¹⁷ Patricia Sealy and Paul C Whitehead, "Forty Years of Deinstitutionalization of Psychiatric Services in Canada: An Empirical Assessment", *Canadian Journal of Psychiatry*, 49(4)(April 2004): 250-251.

¹⁸ See Ken Kesey, *One Flew Over the Cuckoo's Nest* (New York: Viking Press, 1962), Alfred Deutsch, *The Shame of the States* (New York: Arno Press, 1973), Albert Q. Maisel, "Bedlam 1946", *Life Magazine*, 6 May 1946, accessed 17 February 2016 at <http://www.pbs.org/wgbh/americanexperience/features/primary-resources/lobotomist-bedlam-1946/>, Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (New York: Anchor Books, 1961), Thomas Szasz, *The Myth of Mental Illness: Foundations of a Theory of Personal Conduct* (New York: Hoeber-Harper, 1961) and "The Myth of Mental Illness: 50 Years Later", *The Psychiatrist*, 35, 2011: 179-182, Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (Milton Park, UK: Psychology Press, 2001), and D.L. Rosenhan, "On Being Sane in Insane Places", *Science*, 179(250), 19 January 1973:379-399.

¹⁹ Decker, 9.

persons who had come forward as mentally ill, and because they focused little on diagnosis – the basis for control group classification.²⁰

This was not the first time biological psychiatry had emerged as a dominant voice within the profession. For most of the nineteenth century, German scholars theorized about the linkage between genetics and neuroscience, especially in relation to degeneration – the idea that mental illness progressed exponentially through genetic inheritance.²¹ Although true in certain cases (such as fragile X syndrome and Huntington’s disease),²² degeneration was also amenable to scientific racism, as evidenced by the Holocaust and the North American sterilization programmes of the early twentieth century. Toward the end of the nineteenth century, Emil Kraepelin sought to investigate the lifelong trajectories of mental illness, following up with institutionalized and hospitalized patients after their successful discharge. By proposing a nosological classification of mental diseases, Kraepelin attempted to organize disorders – insofar as what psychiatrists knew of their totality – by their cause and course, rather than estimations of their etiology.²³

In short, swings between physical, biologically-rooted and environmental, experiential explanations occurred throughout the history of the psychiatric profession. In its earliest stages, psychiatry tackled the religious and dogmatic explanations of mental illnesses as manifested sin, yet had little tangible proof that its explanations were reasonable alternatives.²⁴ Freudian psychoanalysis came to prevail over empirical psychotherapy when the latter stagnated in terms of research and treatment finds, and offered a refreshing attempt at revealing the etiology of

²⁰ Ibid.

²¹ Edward Shorter, *A History of Psychiatry: From the Era of the Asylum to the Age of Prozac* (Toronto: John Wiley & Sons, Inc., 1997), 93-95.

²² Shorter, 94.

²³ Shorter, 106.

²⁴ Decker, xix.

mental illness. In 1896, American psychiatrist Adolf Meyer brought the Kraepelinian system to Massachusetts, and brought nosological psychiatry to the professional consciousness. Psychoanalysts such as Karl Menninger argued that the nosologies and diagnostic classification systems of mental illness restricted the ability for psychologists and psychiatrists to individualize treatment, and missed an overarching point – that the only type of mental illness was mental illness.²⁵ If the understanding and treatment of mental illness was reliant on a fuller understanding of the patient's social and personal relationships, past and present, then psychoanalysts offered professional involvement in activist movements, since the Civil Rights Movement could theoretically help a vast number of individuals suffering from mental illnesses and stresses due to racism, poverty, or both.²⁶

These swings likewise characterized psychiatry throughout the twentieth century. Psychoanalysis took place in the asylum and in private practice,²⁷ as did drug regimens.²⁸ Electroconvulsive and insulin coma therapies flourished alongside lobotomies²⁹ before social and community psychotherapy gained popularity.³⁰ However, concurrent advancements in genetic and pharmaceutical research also strengthened new searches for the biological causes of mental illnesses, which fostered the growth of a subgroup of psychiatrists known as the neo-Kraepelinians. As with Kraepelin before them, these psychiatrists found themselves dismayed by the lack of a unified language with which professionals could discuss, describe, and diagnose; further, that two or more psychiatrists seeing the same patient could disagree on diagnoses purely based on the different lexica they individually employed. Neo-Kraepelinians believed that

²⁵ Ibid., 4.

²⁶ Ibid., 5.

²⁷ Shorter, 145.

²⁸ Shorter, 196-200.

²⁹ Ibid., 208-228.

³⁰ Ibid., 234-238.

nosological classification would provide a way of vastly reducing these challenges while also standardizing the profession – as other medical professions had also done.³¹

The neo-Kraepelinians were American psychiatrists who perceived the hegemony of psychoanalytic and psychodynamic thinking during the Forties and Fifties as the most significant source of the unscientific character that permeated the profession.³² In 1954 came the publication of a psychiatric textbook titled *Clinical Psychiatry*, authored by three European psychiatrists trained in the Kraepelinian tradition of diagnostic criteria. These authors blasted psychoanalysis for its core tenets: patient individualism contributed nothing to the study of the generalities of mental illnesses, from which comprehensive therapies could be developed; the reliance on unproven or unreliable interventions, they believed, was tantamount to faith-healing; mental illness was not the product of untestable sociological and relational forces but, at least in the majority of cases, was “constitutional and physiopathological”.³³ In 1970, neo-Kraepelinian physician Samuel Guze argued for the striking of a balance between the humaneness of psychoanalysis and the coldness of the scientific method, stressing philanthropy over data collection.³⁴ Together with senior author John Feighner and Washington University of St. Louis colleagues Eli Robins and George Winokur (later involving faculty junior Robert Woodruff and resident Rodrigo Munoz), the neo-Kraepelinians published a system of diagnostic criteria in the *Archives of General Psychiatry* in 1972, which advocated for a five-step method for developing valid classifications: 1) description of signs and symptoms; 2) laboratory studies (as able); 3) exclusion criteria to eliminate other illnesses; 4) follow-up, a hallmark of Kraepelinian psychiatry; and, 5) family studies; the paper would become “the most cited article ever published in a

³¹ Decker, 44-50.

³² Ibid., 54.

³³ Ibid.

³⁴ Ibid., 55.

psychiatric journal”.³⁵ It was this foundational work that would enable the minority of biologically- and etiologically-focused psychiatrists to challenge psychoanalytic supremacy preceding the creation of the *DSM-III*.

The *DSM-I* to *DSM-III* – From Revision to Reform

As Kraepelin had argued in the late nineteenth century, turn of the century American medical professionals began to recognize that the myriad of locally-developed nomenclature systems blocked effective communication and hampered statistical collection.³⁶ In 1932, as a result of the National Conference on Nomenclature of Disease facilitated by the New York Academy of Medicine in 1928, the *Standard Classified Nomenclature of Disease* was released to hospitals as a trial run, the success of which led to its full publication in 1933.³⁷ Although a similar manual had been developed by psychiatrists – then medico-psychologists – in 1917, its use was almost wholly statistical (as its titular *Statistical Manual* suggested); in response to the publication of the Standard, the eighth revision of the *Statistical Manual* adopted the new system of nomenclature.³⁸ Following the advent of World War Two, however, weaknesses within the nomenclature became readily noticeable, both because the manual was unable to identify, classify, or describe the majority of conditions faced by soldiers in reaction to combat stresses, and because those that could be identified were only considered pathological within normal circumstances. To clarify, the manual could not contextually differentiate between a bout of insomnia or hypersensitivity to sharp sounds during peacetime normalcy or following a return from wartime combat.³⁹ By 1948, the Standard was competing with nomenclature systems

³⁵ Ibid., 56.

³⁶ APA, *DSM-I*, v.

³⁷ Ibid.

³⁸ Ibid., v-vii.

³⁹ Ibid.

developed by the Armed Forces and by Veterans Administration, and locally-based revisions to the Standard had once again become commonplace.⁴⁰

In 1950, ten percent of the APA's total membership received copies of a proposed revision and accompanying questionnaire, including members of other professional organizations, to the staffs of state departments of mental health, and Canadian colleagues.⁴¹ Of the 241 questionnaires returned in time for consideration to the Committee on Nomenclature and Statistics of the APA, 224 (93%) expressed general approval; as many included feedback from staff meetings, professional discussion, and dialogue between public asylums and private clinical practices, the APA sent its revisions to the Editor of the *Standard Manual* for comment and consideration. As the Biometrics Branch of the National Institute of Mental Health had recently taken over responsibility for the collection, maintenance, and publication of medical statistics in 1946,⁴² the decision was made to include only the general principles of statistical information in the revised manual in order to highlight its contributions to nomenclature. In 1952, the APA published the *DSM-I*.

The *DSM* was not published in competition with the *ICD-6* but was intended to be a complementary profession-specific volume. Psychiatrists found that though the *ICD* coded for mental disorders in relation to morbidity, it did not enable relating brain syndromes with “neurotic or behavioural reactions”, nor did it take into account the transient disorders – so prevalent to the formation of the *DSM-I* – witnessed primarily by soldiers.⁴³ These shortcomings remained in place with the publication of the *ICD-7* in 1955, which made essential changes and

⁴⁰ Ibid., vi-viii.

⁴¹ Ibid., viii-ix,

⁴² Ibid., x.

⁴³ APA, *DSM-II*, xi.

error amendments based on the recommendations of the WHO Expert Committee⁴⁴ but did not revise the section on mental disorders. In 1959, research demonstrated general dissatisfaction with the *ICD-7* in relation to mental health classifications, prompting the WHO to urge a collaborative effort amongst member states to produce a uniform and internationally accepted codification of mental disorders.⁴⁵ By 1965, the psychiatrists from the United States and the United Kingdom met with those from Australia, Czechoslovakia, Germany, France, Norway, Poland, and the Soviet Union, collectively discussed their independently submitted proposals,⁴⁶ and eventually readied the *ICD-8* for publication. The section on mental disorders now included a comprehensive classification system, a section relating organic and physical factors to other ICD diseases and disorders, physical disorders of a “presumably psychogenic origin”, transient mental disturbances, and a highly refined classification of mental retardation.⁴⁷ More significantly, the APA had collaborated with international professionals and enshrined psychoanalytically-diagnosed disorders in the most modern of classification manuals, and simultaneously synthesized the work necessary to publish the *DSM-II* in 1968.

Opposition witnessed during the collaborative process revealed growing dissent between psychoanalysts and psychiatrists of an etiological and/or biological positivist mindset. Theoretical discontent had been revealed early when, in 1962, a conference between the American and Canadian Psychiatric Associations urged for a strengthened etiological-biological approach; this suggestion went largely unrecognized until 1975.⁴⁸ Although international response to the U.S.-U.K. joint submission to the *ICD-8* was overwhelmingly favourable,

⁴⁴ World Health Organization, *History of the Development of the ICD*, accessed 21 February 2016 at <http://www.who.int/classifications/icd/en/HistoryOfICD.pdf>.

⁴⁵ APA, *DSM-II*, xii.

⁴⁶ The US-UK proposal was submitted as a joint effort.

⁴⁷ APA, *DSM-II*, xiv-xv.

⁴⁸ Decker, 27.

disagreement about the status of affective, personality disorders, and of “mental retardation with psychosocial deprivation”,⁴⁹ demonstrated a not-so-subtle factional divide. Despite exclusion from the *ICD-8*, the APA included the above psycho-affective disorders in its own publication, suggesting that the *DSM-II* recognized etiological knowledge in an attempt to provide a satisfactory middle ground between “different schools of theoretical orientation”.⁵⁰

The continued push to recognize the importance of diagnosis was at the crux of *DSM* reform after the WHO announced that the *ICD-9*, including a fully revised section on mental disorders, would be completed in 1979. However, during the 1960s, the state of the psychiatric profession had once again become fragile due to criticism regarding the utility of asylums. In Canada, advancements in pharmaceutical treatments for mental illnesses (also known as pharmapsychology) in conjunction with mid-century human rights activism brought about a rapid process of deinstitutionalization.⁵¹ In 1961, the Liberal government published the results of a Royal Commission on psychiatric hospitals in Canada, which advocated for the relocation of the treatment of mentally ill patients “close to their residences to avoid social uprooting”, a reduction in the size of psychiatric hospitals, the establishment of small-scale mental hospitals to be attached to regional general hospitals to improve access to health services, and the development of outpatient clinics to reduce the number of institutional beds.⁵² Overall, the Commission was convinced that too many mental patients lived in hospitals when their treatment no longer required it.⁵³

⁴⁹ Ibid., 21-46.

⁵⁰ Ibid., xv.

⁵¹ History of Madness, “L’Institut Universitaire en Santé Mentale De Québec – Deinstitutionalization”, accessed 13 August 2016 at http://historyofmadness.ca/index.php?option=com_content&view=article&id=62&Itemid=43&lang=en&limitstart=7

⁵² Ibid.

⁵³ Ibid.

Social movements, activism, and counterculture animated the 1960s. As the factionalism between psychoanalysts and positivists brewed, a movement of anti-psychiatrists attacked the profession from numerous fronts. Composed of former patients, intellectuals, and writers, the anti-psychiatry movement advocated for "more humane treatment of the mentally ill" and questioned "the very concept of mental madness" itself.⁵⁴ Canadians also recognized the need to increase the humanity and dignity of mental healthcare, but frontline workers cautioned that deinstitutionalization could worsen the quality of life of their patients since "they were not adequately prepared to blend into the wider community, and the community was not adequately prepared to accept them".⁵⁵ In 1961, Thomas Szasz famously published *The Myth of Mental Illness: Foundations of a Theory of Personal Conduct*, in which he posited that anatomical and mental diseases were dichotomous, and that mental illness was more representative of ethical and legal deviance. Szasz's book posed problems for the psychiatrists that opposed deinstitutionalization, or at least those who sought to approach it more cautiously, because if mental illness was truly a myth, so too was the justification for segregating the mentally ill.⁵⁶ In 1966, Thomas Scheff linked the sociological labelling theory – which proposed that the actions and behaviours of a person are partially determined by the label(s) used to identify them – to mental illness, suggesting that mental illness was actually just social deviance in *Being Mentally Ill: A Sociology Theory*.⁵⁷ Amidst this growing sense of unrest, the voices of former mental patients were overshadowed but present. Author Joanne Greenberg criticized the idealization of mental illness, charging that "creativity and mental illness are *opposites*, not compliments...

⁵⁴ Heather Murray, "'My Place Was Set at the Terrible Feast': The 'Anti-Psychiatry' Movement and Responses in the United States, 1970s-1990s", *Journal of American Culture*, 37(1), March 2014: 37.

⁵⁵ Chris Dooley, "Working Between Mental Health Worlds: Practitioner Voices on Deinstitutionalization", *After the Asylum*, accessed 15 August 2016 at <http://aftertheasylum.apps01.yorku.ca/en/workingBetweenMentalHealthWorlds>.

⁵⁶ Shorter, 274.

⁵⁷ See Chapter 1 of Thomas J. Scheff, *Being Mentally Ill: A Sociological Theory* (London: AldineTransaction, 2009).

craziness is the opposite [of imagination]: it's a fort that's a prison".⁵⁸

Gay liberation activists also criticized the psychiatric profession, but did so beyond the lens of deinstitutionalization. Reflecting on the 1957 findings of Evelyn Hooker – that heterosexual and homosexual men were essentially indistinguishable to experienced psychiatrists studying blind casefiles⁵⁹ – empowered gay opposition to strike back against the profession, rejecting the longstanding classification of homosexuality as a mental disorder in and of itself. In *DSM-I*, homosexuality was classified as a “sociopathic personality disturbance” due to an inability to conform to prevailing culture, which signified other underlying psychoses.⁶⁰ In *DSM-II*, homosexuality was reclassified as a sexual deviation and homosexuals cast by the APA as “unable to substitute normal sexual behaviour” even when acknowledging societal distaste.⁶¹ Despite such negative implications embedded into the disease classification system, early homophiles argued that medical professionals could at least be expected to offer humane treatment, something which could not be expected of religious opposition;⁶² gay activist and homophile groups had therefore seemed to adopt the medical view of homosexuality as a matter of pragmatism.⁶³

In the year that followed the publication of the *DSM-II*, the Stonewall Riots occurred in New York City, drawing police and media attention to gay rights activism in the US. It is possible that Stonewall did not similarly galvanize Canadian gay liberation because homosexuality had been decriminalized earlier that year alongside anal intercourse between two

⁵⁸ Shorter, 277.

⁵⁹ Group for the Advancement of Psychiatry (GAP), *LGBT Mental Health Syllabus*, last edited 2012 at http://www.aglp.org/gap/1_history/.

⁶⁰ APA, *DSM-I*, 38.

⁶¹ APA, *DSM-2*, 44.

⁶² Benjamin Pasamancik, “Special Comment – Action for Mental Health: Final Report of the Joint Committee on Mental Illness and Health”, *American Journal of Orthopsychiatry* 32(3), April 1962: 545.

⁶³ *Ibid.*

adults of 21 years or older.⁶⁴ However, it certainly resonated as a conflict between repressed non-heterosexual minorities and law enforcement, a grievance extensively discussed in Canadian gay liberation circles.⁶⁵ This is not to suggest that Stonewall was a mythological watershed moment for gay liberation, since similar events acts as ‘calls to arms’ in Compton, Washington, DC, Philadelphia, Chicago,⁶⁶ and – in Canada – Toronto.⁶⁷ Although conflict with police and opposition to the oppression of law enforcement officials was a unifying thread in Canada and the US, one which significantly contributed to the memorability of Stonewall,⁶⁸ gay liberation activists also focused on another perceived enemy during the 1960s and 1970s: psychiatric professionals.

Gay advocates recognized that being classified as mentally ill neither reduced the stigma that came with such a diagnosis, nor did it mitigate issues of physical and economic insecurity. Gay aversion therapy offered to homosexuals prosecuted by the law did little to raise the confidence in the profession, and less still with police who considered them a taxing drain of resources.⁶⁹ If the *DSM* was held to be responsible for the codification of homosexuality as an illness, then it was American psychiatry at large that was to be considered an enemy of homosexual advancement. After the 1970s, the Gay Liberation Front – a radical activist group formed during the late 1960s that incorporated the Civil Rights Movement and anti-Vietnam War strategies into its own demonstrations – organized the first pride events. In 1970, the APA hosted

⁶⁴ *Criminal Law Amendment Act, 1968-1969*, S.C. 1968-69, c. 38.

⁶⁵ Police discrimination against gay and lesbian Canadians, and the coverage in periodicals such as *The Body Politic* are discussed in Chapter 3.

⁶⁶ Elizabeth A. Armstrong and Suzanna M. Crage, “Movements and Memory: The Making of the Stonewall Myth”, *American Sociological Review*, 71(5)(2006): 728.

⁶⁷ Some activists have referred to Operation Soap – also known as the Toronto Bathhouse Raids of 1981 – as the Canadian Stonewall. See Graham Slaughter, “‘The Canadian Stonewall’: Toronto Police ‘Expresses Its Regret’ for Gay Bathhouse Raids”, *CTV News*, last updated 23 June 2016 at <http://www.ctvnews.ca/canada/the-canadian-stonewall-toronto-police-expresses-its-regret-for-gay-bathhouse-raids-1.2956225>.

⁶⁸ Armstrong and Crage, 728-729.

⁶⁹ John Chalmers McRuer (Chairman), *Report of the Royal Commission on Criminal Law Relating to Criminal Sexual Psychopaths* (Ottawa: Queen’s Printer, 1958), 27.

its annual conference in San Francisco, and the Gay Liberation Front joined anti-psychiatry protestors in blockading the entry of members to the building using a human chain.⁷⁰ Irving Bieber, a psychoanalyst expert on homosexuality, was scheduled to speak on the subject as an illness and about relevant therapies, but his talk and a later panel on transsexuality were disrupted by calls to include gay activist voices and research; an uproar ensued and the conference was adjourned. During the Convocation of Fellows of the APA in May of 1971, noted gay activist Frank Kameny challenged the right for psychiatrists to question and examine homosexuals, derided psychiatry as “the enemy incarnate”, and boldly declared war against the profession.⁷¹

Then, in October of 1972, gay activists encountered Robert L. Spitzer, a member of the Committee on Nomenclature which oversaw the *DSM*, when they arrived to disrupt a series of talks on gay aversion therapy. In an unprecedented move, Spitzer arranged for the activists to present their research and arguments to the committee regarding the status of homosexuality as a mental illness, and subsequently sponsored a panel to be held at the following annual conference.⁷² By 1973, Spitzer himself had become convinced that there were some homosexuals who functioned normally across all levels of society, and questioned the diagnostic status of homosexuality as an illness in and of itself. At the panel he had sponsored, Spitzer pitted psychoanalysts, who perceived homosexuality to be a product of dysfunctional upbringing, against those who recognized the mounting empirical evidence that challenged its status as an illness. Ronald Gold, a gay activist who spoke at the panel, later invited Spitzer to a secretive meeting featuring closeted gay psychiatrists within the APA, including president elect John

⁷⁰ Decker, 31.

⁷¹ Bayer, 105-106.

⁷² Decker, 32.

Spiegel. The capacity for homosexuals to function normally, if not highly, was undeniable.⁷³

After careful deliberation of the research presented to them by gay activists and during Spitzer's panel, the Committee on Nomenclature, submitted a recommendation to declassify homosexuality as a mental illness in and of itself.⁷⁴ Approved by the APA Council on Research and Development, the recommendation was submitted to the APA Board of Directors – a group of fifteen psychiatrists in charge of settling matters of dispute and of approving amendments and recommendations to guide the professional organization. When the issue put to a vote, the Board decisively deleted homosexuality from the *DSM-II*, replacing the entry with 'sexual orientation disturbance' – a disorder characterized by inherent distress or maladjustment about one's homosexuality and/or a desire to change their orientation.⁷⁵ Though the American Psychological Association quickly concurred,⁷⁶ advocating for the subsequent elimination of discrimination in employment, housing, civil rights protections, and criminal prosecution, psychoanalysts, including Bieber, retorted by forming the Ad Hoc Committee Against the Deletion of Homosexuality, suggesting that a democratic vote on a question of science was unacceptable.⁷⁷ Ironically, they promptly moved to a vote of the entirety of APA membership; by a slim but clear majority, the nomenclature change was upheld. The press response announced that the APA had declared homosexuality as normal, despite direct correspondence and comment from Spitzer and APA President Albert Freedman clarifying that this was not anything but nor was it a capitulation of the supremacy of heterosexuality.

⁷³ Ibid.

⁷⁴ Spitzer's original submission is digitized and available at www.torahdec.com/downloads/dsm-ii_homosexuality_revision.pdf

⁷⁵ APA, *DSM-II* [7th Printing Onward], 44.

⁷⁶ American Psychological Association, *Discrimination Against Homosexuals*, accessed 26 February 2016 at <http://www.apa.org/about/policy/discrimination.aspx>

⁷⁷ Bayer, 393-394.

With the scientific reputation of psychiatry potentially at risk, Spitzer continued his neo-Krapelinian push for the *DSM-III*. His obvious success is clear given that the revision processes of *DSM-III-R* through *DSM-V* remained grounded in analytical, biological, and etiological schools of thought. Though shifts in the conception of specific illness, advances in medical knowledge, and subsequent activism toward ego-dystonic homosexuality and gender-identity disorder continued, the main purposes of this section were to highlight the immense shift from *DSM-I* to *DSM-III* and to reveal the linkages between gay liberation activism and professional psychiatry. Unlike homosexuals, pedophiles did not yet have unifying organizations to advocate and represent them against psychiatrists. Robert Spitzer, in response to the criticisms of Irving Bieber on the deletion of homosexuality from the *DSM*, recognized the importance of such representation, saying that it would be possible for other sexual deviations to be classified if they, too, could present their causes to the APA as homosexuals had.⁷⁸ Therefore, the history of Spitzer, the *DSM-III*, and of twentieth century psychiatry are necessary foregrounds to the relationship between pedophilia and the *DSM*. The following section analyzes how pedophilia was conceptualized within each edition of the *DSM*, and how these given diagnostic criteria can be understood as snapshots of the social and scientific contexts in which they were produced.

Pedophilia – Sociopath, Sexual Deviant, or Sexual Orientation?

As was noted previously, the *DSM-I* was explicitly produced to assist in the standardized collection of statistical data, and as such, its diagnostic criteria were substantively lacking. Pedophilia was classified under the sweeping subcategory of sexual deviations – sharing statistical classification 320.6 with the *ICD-6* – which was broadly defined as “deviant sexuality

⁷⁸ Bayer, 397.

which is not symptomatic of more extensive syndromes, such as schizophrenia”.⁷⁹ Psychiatrists were to denote the specific type of deviance with their diagnoses, including “homosexuality, transvestism, pedophilia, fetishism, and sexual sadism (including rape, sexual assault, and mutilation)”.⁸⁰ Sexual deviance was merely a subclass of several sociopathic personality disturbances perceived as illnesses in relation to societal non-conformity and in conflict with the “prevailing cultural milieu”.⁸¹ In essence, pedophilia was classified as a mental illness not because it could cause personal distress and suicidal ideation, and not because of predisposition to physically and mentally harm oneself and others, but because it caused conflict with the dominant expectation of adult heterosexual monogamy.

The APA recast sociopathic personality disturbances simply as personality disorders within the *DSM-II*. This category featured “deeply ingrained patterns of maladaptive patterns of behaviour... perceptibly different from psychotic and neurotic symptoms”.⁸² This definition further distinguished sexually deviant behaviour from illnesses related to brain functioning, which were to be classified separately as “non-psychotic organic brain syndromes”.⁸³ The hegemony of heterosexuality was reaffirmed, as sexual deviations – once again matching the 302.0 codification of *ICD-8* – were diagnosed as sexual interests “directed primarily towards objects other than people of the opposite sex, toward sexual acts not usually associated with coitus” (furthered by the status of sodomy as a criminal offence even when consensual while instilling that sex was for the purposes of procreation,) “or toward coitus performed in bizarre circumstances, such as necrophilia, pedophilia, sexual sadism, and fetishism”.⁸⁴ By noting that

⁷⁹ APA, *DSM-I*, 38-39.

⁸⁰ *Ibid.*, 39.

⁸¹ *Ibid.*, 38.

⁸² *Ibid.*, 41.

⁸³ *Ibid.*, 42.

⁸⁴ *Ibid.*, 44.

sexual deviants remained “unable to substitute **normal** sexual behaviour” (emphasis mine) despite social distaste for their practices, the APA harked back to the nonconformity clause of *DSM-I*. I speculate that the pathologization of non-heterosexuality, then, remained problematically and irrationally steered by the emotion of disgust, rather than a categorical analysis of mental aberrance.⁸⁵ Homosexuality, pedophilia, transvestism, and fetishism were now distinct subclasses of sexual deviancy with their own unique diagnostic codes, suggesting that psychiatrists recognized that the inherent sexual motivations also differed. During the deliberation process over deleting homosexuality from the *DSM-II*, Irving Bieber criticized the actions of Robert Spitzer and asked him publicly if he would then consider removing other sexual deviations, too; Spitzer retorted he had not yet considered those problems because said groups had not forced a reconsideration of evidence and of the psychiatric professional position the way that gay activists had.⁸⁶

Unsurprisingly, the classification system of *DSM-III* held no resemblance to its predecessors. All appendices included, *DSM-II* was a mere 119 pages; the first printing of the *DSM-III* had more than quadrupled it at 494. Spitzer and the APA had enshrined a multiaxial diagnostic system within the new *DSM* format, which assessed cases with specific types of information based on the classification of illness to be observed, analyzed, and treated: Axis I represented Clinical Syndromes and Other Conditions “Not Attributable to a Mental Disorder” that were a focus of attention or for treatment; Axis II consisted of the Personality Disorders and Specific Developmental Disorders; Axis III described Physical Disorders and Conditions; and Axes IV and V were designed for special clinical and research use pertaining to “Severity of

⁸⁵ Martha Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton, NJ: Princeton University Press, 2009), 125.

⁸⁶ Bayer, 397.

Psychosocial Stressors” and the “Highest Level of Adaptive Functioning Past Year” respectively.⁸⁷ The manual contained a code system used to describe the level of certainty with which a psychiatrist was making a diagnosis⁸⁸ and increased specificity further by including multilevel codes for use with Axes IV and V. In an important step to distinguish between classifying the mentally ill and classifying mental illnesses, the APA encouraged the use of personhood, such as “an individual with alcohol dependence” rather than “an alcoholic”.⁸⁹ This personification is reminiscent of David Rosenhan's revelation of the persistent and perpetual depersonalization and powerlessness fostered by institutionalization. Physical abuse, the deprivation of liberty, freedom of association, and even freedom of movement reduced patients to fixed objects of their institutions.⁹⁰ Both Rosenhan⁹¹ and Nausbaum⁹² note that distrust, fear, and disgust have been weaponized against minority populations in order to justify their subjugation and inferiority. By placing the individual before their disorder, it is possible that the APA was attempting to alleviate the objectification and denigration that was often correlated with categorization and pathologization. However, sexual disorders were still cast as problematically abnormal, perhaps showing that the APA was not ready to abdicate the status of heterosexuality.

In the *DSM-III*, psychosexual disorders became the umbrella grouping of four types of disorders: gender-identity disorders, paraphilias, psychosexual dysfunctions, and a residual class of ‘Other Sexual Disorders’ which existed for those diagnoses which could not be effectively grouped in the remaining categories. *Para-* is in reference to the sexual deviance and *-philia* is in

⁸⁷ APA, *DSM-III*, 23.

⁸⁸ *Ibid.*, 25-26.

⁸⁹ *Ibid.*, 6.

⁹⁰ Rosenhan, 255-256.

⁹¹ *Ibid.*, 257.

⁹² Nussbaum, 107.

reference to the sexual object or preference. They involved “bizarre or unusual imagery or acts necessary for sexual excitement” and often featured “non-human objects for sexual arousal... repeated sexual activity with humans involving real or simulated suffering... or with nonconsenting partners”.⁹³ Regarding the latter feature, cases such as exhibitionism, pedophilia, and voyeurism involving non-consenting partners were noted to have the potential to be both legally and socially significant, with mentally ill individuals remaining undiagnosed or untreated until a conflict with society or the law occurred.⁹⁴ Noted associated features of those diagnosed with paraphilias included assertions that the conditions were pathological only in relation to societal norms, though a minority of patients admitted shame, distress, and or guilt after engaging in their relevant sexual behaviours.⁹⁵ For any diagnostic category, the *DSM-III* newly allowed for the collection of information regarding the impairment faced by a patient (such as marital complications extant from the revelation of a paraphilic interest), complications caused by their condition(s) (such as the incarceration of pedophiles), predisposing factors, prevalence, and established familial patterns; however, the APA noted that the latter three categories were scarcely understood, or that no information existed at all, with regard to paraphilias.

Pedophilia, classification 302.2⁹⁶ in *DSM-III*, *ICD-9*, and *ICD-9-CM* (a clinically-based version tailored to American-based psychiatric research), was defined by its essential feature: “the act or fantasy of engaging in sexual activity with prepubertal children as a repeatedly preferred or exclusive method of achieving sexual excitement”.⁹⁷ Self-admittedly, the APA set an “arbitrary” age difference between the adult and child at ten years, although the age gap was

⁹³ APA, *DSM-III*, 266-267.

⁹⁴ *Ibid.*, 267.

⁹⁵ *Ibid.*

⁹⁶ 302.2 remains the codification for pedophilia in both the *DSM* and *ICD* hereafter.

⁹⁷ *Ibid.*, 270-271

to be left to clinical discretion when diagnosing late adolescent patients.⁹⁸ Pedophiles were further dichotomized into heterosexual and homosexual orientation groups, noting that homosexuals often preferred slightly older children than did heterosexuals, that they often knew the child of interest, and that they were less likely to have been married.⁹⁹ Pedophiles were differentiated from those committing isolated sexual acts with children, which could be socially induced by marital discord, intense loss, or loneliness, or mentally induced by mental retardation, extreme alcohol intoxication, or schizophrenia. Exhibitionists who exposed to a child but not as a prelude to sexual intercourse were likewise excluded.¹⁰⁰ This definition reaffirms the suggestion that the use of *DSM-III* for non-clinical means, such as that of establishing culpability, was to be critically examined in each instance by external institutions¹⁰¹ and resonated with later-established research which established that “not all child molesters were pedophiles, and not all pedophiles were child molesters”.¹⁰²

Although the *DSM-III* had just been published three years earlier, the APA moved quickly to release a revised publication in 1983. New research had revealed that some of the operating diagnostic criteria were inconsistent with empirical data, were unclear or contradictory, or were incongruent with other criteria within the manual itself. The WHO had also asked the APA to contribute to the full revision and development of the *ICD-10* chapter on mental disorders, then expected to go into effect for 1992. Further, the APA began to receive international feedback after the *DSM-III* was localized and translated into Italian, French, Japanese, and German, and an edited volume was published to discuss scholarly and clinical

⁹⁸ Ibid., 271.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid., 12.

¹⁰² Ray Blanchard, “The DSM Criteria for Pedophilia”, *Archives of Sexual Behaviour* 39 (2010): 309.

critiques.¹⁰³ Though the original intention was to produce the *DSM-IV* as a companion release to the *ICD-10*, the rapid development of new literature and multifaceted feedback catalyzed the creation of the *DSM-III-R*.

Published in 1987, the text revision transformed the “Cautions” subparagraph of the *DSM-III* into a full-page “Cautionary Statement” which prefaced the full chapters of the manual. This change clarified that clinical classifications and terms for clinical diagnostics were intended for the use of clinical professionals and that inclusion of certain categories – namely pathological gambling and pedophilia – did not imply that they met non-medical (legal) definitions of mental illness. In fact, psychiatrists distanced themselves as expert witnesses by suggesting that the terms used by the *DSM* may not even be wholly relevant to legal judgments regarding responsibility, disability, and competency.¹⁰⁴ Sexual disorders were now primarily dichotomized as either paraphilias or sexual dysfunctions, though the residual ‘Other Sexual Disorders’ designation was maintained. The use of paraphilia was greatly clarified, now defined as patterns of sexual arousal “in response to sexual objects or situations that are not part of normative arousal-activity patterns” which could “interfere with the capacity for reciprocal, affectionate sexual activity”.¹⁰⁵ These disorders were distinguishable by “recurrent intense sexual urges” for non-human objects, humiliation of the self or another, or children or nonconsenting partners but were only to be diagnosed if the person had acted on them or if they were markedly distressed by them.¹⁰⁶ This, of course, relied on an understanding of celibacy as a lack of sexuality and sexual expression, rather than as a person expression of resistance or even as a separate sexual

¹⁰³ See Robert L. Spitzer, Janet B.W. Williams, and Andrew E. Skodol (Eds.), *International Perspectives on DSM-III* (Washington, DC: American Psychiatric Press, Inc., 1983).

¹⁰⁴ APA, *DSM-III-R*,

¹⁰⁵ *Ibid.*, 279.

¹⁰⁶ *Ibid.*

orientation in and of itself.¹⁰⁷ By extension, pedophilia was both a breach of heterosexual norms and mores and a failure to remain celibate and non-deviant. Unlike previous classifications, sexual preferences for or attraction to these objections did not need to be exclusive, allowing for the diagnosis of persons who were otherwise ‘normal’ in their sexual private lives.¹⁰⁸ Associated behavioural features had also been bolstered, enabling an analysis of the “specific paraphilic imagery” – the objects of sexual attraction sought out by individuals with a paraphilia – on a case-by-case basis; for example, clinicians treating pedophiles often noted that hobbies or occupations of choice often involved interactions with children.¹⁰⁹

The revised age range of prepubescence was now considered to be thirteen or younger,¹¹⁰ which muddled the diagnostic status of adults who were primarily attracted to pubescents or young adolescents. At the same time, infantophilia was recognized, albeit not by name, contrary to the goals of revising for clarity and consistency. Arbitrariness remained codified into the manual, as the APA set the diagnostic age of patients at sixteen years with a child-adult age difference of at least five years, though discretion was again encouraged when treating late adolescents.¹¹¹ Distinctions were drawn between various actions against children: non-contact offences such as exposing, watching, or masturbation in the presence of a child; light contact offences such as rubbing or gentle touching; violent offences such as all types of penetration, forced fellatio or cunnilingus, and forced intercourse. The limits set as to the children violated – stranger, adopted, fostered, extended or immediate family – were also taken into consideration during diagnosis. Potentially, this could mean that the myth of stranger danger also permeated

¹⁰⁷ Benjamin Kahan, *Celibacies: American Modernism and Sexual Life* (Durham, NC: Duke University Press, 2013), 20.

¹⁰⁸ *Ibid.*, 280.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*, 284

¹¹¹ *Ibid.*

the thoughts of professional psychiatrists.

With regards to pedophilia, the *DSM-III-R* also contained a series of firsts. It was the first to challenge the master status of pedophiles as sexual predators, suggesting they were often otherwise genuinely and wholly attentive to the needs and wants of their children, primarily for self-protection, although sometimes for other nefarious reasons.¹¹² The APA now recognized that pedophiles were often the victims of childhood sexual abuse, which would come to be a cornerstone of pedophile and child sex offender therapy programs. Behavioural rationalizations were now included, suggesting that some patients attempted to justify their sexual acts against children stating that they were educational, equitably pleasurable for both parties, and/or that the child was sexually provocative or wanting; these were noted as common themes in child pornographic imagery.¹¹³ A clear time frame had been worked into Criterion A (the signs and symptoms of an illness), which explained recurrent intense sexual urges as those “over a period of at least six months” including “sexual arousing fantasies involving sexual activity with a prepubescent child (generally age 13 or younger)”. Criterion B (distress or impairment caused) concerned marked distress about or acting upon the urges (the impairment clause for sexual disorders). Informally, Criterion C was used to affirm that the patient was indeed 16 years of age or older and at least five years older than the children in Criterion A. In terms of specificity, clinicians could now note three additional details: if the attraction was same sex, opposite sex, or both; if the acts were limited to incest; and if the attraction was exclusive to children or non-exclusive.¹¹⁴

As mentioned previously, the *DSM-IV* coincided with the release of the *ICD-10*. The

¹¹² Ibid., 285.

¹¹³ Ibid.

¹¹⁴ Ibid.

introduction clarifies how the Task Force was instructed to perform the revision process given the short duration between *DSM-III*, *DSM-III-R*, and the manual they were to produce. Each specialist work group followed a three-point mandate for strengthening their respective classification sections: a comprehensive and systematic literature review; thorough reanalyses of collected data sets; and extensive field trials.¹¹⁵ Literature reviews specified the aspects or issues related to the criteria being reviewed – especially in relation to *DSM-IV* (and likewise *ICD-10*), how the issue was reviewed, including the type and number of studies consolidated, and an explanation of how research was included or excluded.¹¹⁶ Data reanalyses were used when literature reviews revealed either conflicting data or a general lack of evidence.¹¹⁷ Twelve field trials were used to evaluate proposed modifications before publication was finalized and helped close the divide between clinical research and practice.¹¹⁸ The criteria for change produced by this process were further scrutinized as clarity, validity, and significance were of paramount concern for the *DSM-IV* team.

The *DSM-IV* was published in 1994 and included the definition of mental disorder provided by the *DSM-III-R* as an unfortunate reality of being unable to locate an appropriate substitute.¹¹⁹ This definition was foregrounded by a critique of mind/body dualism, which the Task Force criticized as a “reductionist anachronism,” stating “there is much ‘physical’ in mental disorders and much ‘mental’ in physical disorders”.¹²⁰ Sexual and gender identity orders were now grouped together, though not to parallel sex and gender; rather, since the APA defined

¹¹⁵ APA, *DSM-IV*, xiii.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, xix.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*, xxx.

¹²⁰ *Ibid.*

gender identity disorders by “persistent discomfort with one’s assigned sex”,¹²¹ the grouping was an effort to promote consistency with regards to diagnostic criteria. Additionally, the categorization of sexual disorder not otherwise specified noted the importance of remaining cognizant that “notions of deviance, standards of sexual performance, and concepts of appropriate gender role can vary from culture to culture.”¹²² Paraphilias were again clarified and simplified, defined as conditions characterized by “recurrent, intense sexual urges, fantasies, or behaviours that involve unusual objects, activities, or situations and cause clinically significant distress or impairment in social, occupational, or other important areas of functioning”.¹²³ At face value, the complete absence of normative judgment was a logical continuance of the argument that psychological distress needed to be more than just the result of social discrimination, present in its simplest form following the deletion of homosexuality from *DSM-II*. More deeply, it suggested that even though sexuality and sexual expressed culturally varied, some forms of sexual action were still abnormal enough to be deemed disordered.

The emergence of what is clinically referred to as *ego-syntonic pedophilia* – individuals who feel no personal shame or distress regarding their sexual urges and whose only noted dysfunction is related to societal reactions to the disorder – was also novel. This subcategory of pedophiles disrupted *DSM* classification because the criteria provided by the manual necessitated the existence of distress as a part of diagnosis. This was overcome by suggesting that distress and impairment be grouped, and that sexual acts against children or the acquisition of child pornography evidenced impairment regardless of the presence or absence of personal distress.¹²⁴ Further, the “associated laboratory findings” section of paraphilias included recent results of

¹²¹ Ibid., 493.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Blanchard, 307.

studies assessing penile plethysmography, a medico-psychiatric measurement of changes in the volume of blood flow used to determine levels of sexual arousal. Developed by Kurt Freund during the 1950s to replace unreliable psychoanalytic evaluations of homosexual patients, plethysmography (henceforth phallometry) had proven to be reliable in determining sex and age preferences; Freund himself had begun to use it to evaluate pedophilia when he escaped Communist Czechoslovakia for Canada.¹²⁵ At the time of *DSM-IV* publication, the clinical¹²⁶ reliability and validity of phallometric studies had yet to be established, and the inclusion of this fact suggested that the APA expected psychiatrists to exercise caution when using them. Phallometry would later be noted as the most reliable clinical indicator of numerous paraphilic disorders.¹²⁷

The only substantive changes made to the explanatory section on pedophilia were to the diagnostic criteria. Criterion A once again included "recurrent, intense sexually arousing sexual fantasies, sexual urges, or behaviours involving sexual activity with a prepubescent child or children (generally age 13 years or younger)", giving primacy to sexual acts over cognitive distress.¹²⁸ Criterion B necessitated that the factors considered in A caused "clinically significant distress or impairment in social, occupational, or other important areas of functioning"¹²⁹, vaguely defined despite its intention to act as a threshold between cases of symptomatic presentation too minor to be qualified as a mental disorder.¹³⁰ Criterion C, which pertained to the age gap between the individual and child(ren) in question, remained unrevised.

¹²⁵ Kurt Freund, "Reflections on the Development of the Phallometric Method of Assessing Sexual Preference", *Annals of Sex Research* 4(1991): 223-224.

¹²⁶ Clinical is noted here as Canadian courts have rejected the use of phallometric studies insofar as determining the guilt of an accused against particular victims. However, they are still used in medicine and in law to establish offender's as responsive to certain types of pornography, whether it be violent or underaged. See

¹²⁷ Blanchard, 306.

¹²⁸ APA, *DSM-IV*, 528.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*, 7.

As revision work on the *ICD-10* continued following its original publication in 1994, with the WHO receiving feedback from member states following localizations, the APA acted to release a text revision of the *DSM-IV*. This version was more similar to the print changes of *DSM-II*, which contained the revised sexual orientation disturbance diagnosis subsequent to the deletion of homosexuality *per se* as an illness, than to the *DSM-III-R*, which represented a holistic update of the manual. In contrast, the *DSM-IV-TR* made minor revisions to the textual description of mental illness categories, such as the addition of elaboration and revisionism with regard to paraphilic imagery for the course subsection of paraphilias,¹³¹ and only edited the diagnostic criteria of 9 of 297 mental disorders,¹³² including pedophilia. This definition reaffirmed the ego-syntonic nature of pedophilia and suggested that personal distress need not be felt by individuals in order to qualify for a diagnosis;¹³³ rephrased, the *DSM-IV-TR* qualified all individuals who acted on fantasies or urges as pedophiles despite previous recognition that child sexual victimization may be related to spurious episodes of distress. Criterion B was edited to read “the person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty”,¹³⁴ further emphasizing actions over thoughts. Potentially, this represented that members of the APA believed that child sex offending was an inevitable course of pedophilic disorder.

Stepping Back – Deinstitutionalization Revisited

This chapter has established the necessity and purpose of the *DSM* and its place in American, and likewise Canadian, psychiatry. The codification of pedophilia has been an

¹³¹ APA, *DSM-IV-TR*, 568.

¹³² BehaveNet, “DSM-IV Replaced by DSM-IV-TR: Changes in Diagnostic Criteria”, accessed 27 February 2016 at <http://behavenet.com/dsm-iv-replaced-dsm-iv-tr-changes-diagnostic-criteria>

¹³³ APA, *DSM-IV-TR*, 571.

¹³⁴ *Ibid.*, 572.

ongoing process since the production of the *Standard Manual*, one that continues to be refined and reevaluated. The conflation of all pedophiles as child sex offenders echoes the earliest considerations of the *DSM-I* which castigated pedophiles as sociopathic whilst depowering the psychiatric profession to proffer social change.

Earlier in this chapter, the rapid deinstitutionalization processes in Canada and the US were discussed. The closure of asylums and the return of patients to community care was, in all likelihood, a well-intentioned attempt to cease the inhumane conditions revealed by anti-psychiatrists and the exposés such as Alfred Deustch's *The Shame of the States* and the Rosenhan experiment. Simultaneously, it was an understandable progression of the reform process agitated by Robert Spitzer and, as Hannah Decker echoed, the making of *DSM-III*. The closure of asylums outpaced the establishment of mental health centres,¹³⁵ potentially leaving former patients without any form of treatment whatsoever.¹³⁶ Some patients took this opportunity to form care groups and activist networks to provide the support that was no longer available.¹³⁷ Others became various wards of the state, often as incarcerated criminals.¹³⁸ This reflection is made in connection with a recurrent principle of this thesis: that well-intentioned programs and policies can be implemented without proper, comprehensive processes of evaluation. In relation to pedophiles, the intended goal of reducing child sexual victimization is certainly an appreciable, as is the protection of children and youth from harm, but the extent to which these goals have been and are being reached is far less substantive. Deinstitutionalization is but one of many examples which emphasizes the necessity of caution.

¹³⁵ Braun et al, 736.

¹³⁶ Dooley.

¹³⁷ Erika Dyck, "Doreen Befus: Creating a Life After the Asylum", *After the Asylum*, accessed 15 August 2016 at <http://aftertheasylum.apps01.yorku.ca/en/craftingALifeAfterTheAsylum>.

¹³⁸ Statistics Canada, "Overview of Issues – Mental Health and the Criminal Justice System", accessed 15 August 2016 at <http://www.statcan.gc.ca/pub/85-561-m/2009016/section-a-eng.htm>.

Chapter 3 – The Death of Identity – Invisibility, and Getting Used to It

In 1978, psychologist Alan P. Bell and sociologist Martin S. Weinberg conducted what they referred to as ‘the San Francisco study’ – an evaluation of the lives of homosexual men and women living in the Bay Area in 1969 and 1970. Building on the foundation set by Alfred Kinsey’s work on sexual behaviour and human males and females, Bell and Weinberg developed a research interview schedule after collaboration with a wide spectrum of experts, including but not limited to Evelyn Hooker, Judd Marmor, and Irving Bieber. Of primary focus, Bell and Weinberg posed questions to participants regarding their happiness and how it was connected with socio-relational patterns: were they in open relationships or monogamous? How many sexual partners had they had? Had they considered or attempted suicide? If they were parents, or were to be parents, would they be upset if they produced similarly homosexual children? And, of keen interest, would they take a magic pill that, if it existed, would effectively transform them into heterosexuals? Or, would they have wanted to have been given this pill at birth, rewriting their experiences as homosexuals?¹ An overwhelming majority declined, but those who would have accepted noted societal rejection as their primary reasoning.

Yet if a fifth of the survey participants noted suicidal ideation, if not attempted suicide,² while others noted they would be somewhat or greatly upset by producing homosexual children,³ what explains the source of this rejection? If any freely available option would essentially erase the hardships faced by current homosexuals, or the totality of hardships to be faced in life as

¹ Several monographs discuss the ‘magic pill’ aspect of the Bell and Weinberg study but provide no particular reference other than (1978). As no further follow-up questioning or analysis was conducted on that particular question of the interview, secondary citations are presumed to be sufficient solely insofar as their analysis of the ‘magic pill’. See Timothy F. Murphy, *Ethics, Sexual Orientation, and Choices About Children* (Cambridge, MA: MIT Press, 2012), 1-12.

² Richard F. Ramsay, “Bell and Weinberg (1978) Study, Homosexualities, “Attempted Suicide Study Results”, accessed 16 March 2016 at <http://people.ucalgary.ca/~ramsay/homosexual-suicide-bell-weinberg.htm>.

³ Murphy, 2.

children growing up as homosexuals in a heterosexual society, surely the ‘magic pill’ should seem attractive. In that sense, then, it is perhaps the homosexual *identity* that is desired to be maintained; this identity was practically desirable for any adult posed to completely rewrite the ways in which they form social, romantic, and sexual bonds with others, and desirable as a potential source of what would come to be known as gay pride. Of course, not all individuals identifying as homosexual necessarily became activists, but those who did tapped into gay pride to assist others in developing their own positive identification with homosexuality.

The purpose of this chapter is to revisit the concepts of identity, visibility, and normativity as they developed in Canadian gay liberation discourses following the legalization of consensual adult homosexuality in 1969. Using articles published in *The Body Politic*, a Toronto-based gay liberation newspaper, I analyze how queer issues were presented, featured, and discussed, and questioned how and when – if at all – pedophiles were given consideration as sexual minorities. If pedophiles were implicitly or explicitly excluded, I question whether or not pedophiles *could* have been included, whether as subjects of discussion or as minorities within a minority group. However, it is important to note that *The Body Politic* predominantly focused on gay liberation in the sense of consensual adult intercourse, and that discussions of pedophilia were of a minority voice. Identity as a concept is a predominant focal point of this chapter because social groups cannot achieve visibility or normative acceptance without a foundational identity; a group first needs to *be* in order to be recognized or accepted, or rejected. I suggest that the gradual expulsion of the abolition of age of consent from gay liberation narratives could be intrinsically linked with the conflation of all pedophiles as child sex offenders. Subsequently, I argue that the aforementioned conflation of homosexuality and child sexual exploitation shifted wholly to pedophiles as a by-product of gay liberation activism. To conclude, I reflect upon the

interrelations between personal identity and therapy and, specifically, how therapeutic programs identify pedophilia and vice versa.

It may seem antithetical to consult North American Man/Boy Love Association (NAMBLA) articles, newsletters, and literature in this chapter, since this thesis argues for a strict distinction between pedophiles and child sex offenders. Despite being a pro-contact organization, NAMBLA represents the best attempt at establishing a visible ‘pedophile liberation movement’ during the North American gay liberation era. Gerald Hannon noted in “Men Loving Boys Loving Men” that a Canadian pedophile movement was non-existent, and that it would be plagued with “more perils and pitfalls than almost anything I can think of” even if it did.⁴ NAMBLA provided an opportunity for North American pedophiles to connect with one another to discuss issues of health, discrimination, and coping skills, but likewise allowed pro-contact pedophiles to engage in potentially criminogenic⁵ discussions and exchanges. Although problematic, NAMBLA provides a useful contextual background for pedophile liberation that can better clarify pedophilia in relation to gay liberation narratives.

Ensuring Inclusivity

Given that a central premise of this chapter is to challenge issues of exclusivity during gay liberation activism, it is necessary to conceptualize terms in a manner which maximizes the inclusivity and visibility of various minority groups. Although the acronyms LGBTQ+ (lesbian, gay, bisexual, trans*, and queer, though questioning, intersex, asexual, ally, and pansexual are sometimes also represented) and GSM (gender and sexual minorities) are both commonly used to refer to ‘the gay community’, this chapter instead uses the term queer due to its inherent

⁴ Gerald Hannon, *The Body Politic*, No. 39 December 1977-January 1978, 29-33. Digitized at <http://www.clga.ca/Material/Records/docs/hannon/ox/mbm.htm>.

⁵ Having the potential to promote or cause criminal offences, such as sharing child pornography images.

semantic flexibility. As a noun, queer relates ideas of otherness, strangeness, deviation, and abnormality to larger populations or hegemonies – a queer male is different from the general white heterosexual male, whether it be in relation to masculinity, sexuality, or physicality.⁶ As an adjective, queer challenges simplistic ideas of identity and draws from its etymological roots (Indo-European, German, Latin, and English) meaning *traverse*, in the sense that to be queer is to exist amongst categories rather than within them.⁷ As a verb, it means to challenge or shift pre-existing knowledge or ideas, in that you can queer the history of sexuality so as to include pedophilia as a sexual minority.⁸ Using queer serves to promote the fluidity of sexual identity and orientation.⁹ However, the use of queer is solely limited to describing individual participants within the movement in order to avoid the risk of being anachronistic; gay liberation most appropriately describes the movement between 1950 until 1990,¹⁰ when the retaking of queer changed its term of reference.

Dealing with queer subjects, then, this thesis is duly mindful of factors of exclusivity. Unfortunately, just as with legal and psychiatric sources, the paucity of discourse on female pedophilia leaves the issue barely recognized.¹¹ Pedophile activist groups or discussions, when they did exist, were tailored to male individuals and male audiences, such as the North American Man/Boy Love Association (NAMBLA), the Australian Pedophile Support Group (perceived to

⁶ Donald E. Hall, *Queer Theories* (New York: Palgrave Macmillan, 2003), 13-14.

⁷ Hall, 12-13.

⁸ Hall, 14-15.

⁹ Dana Frei, *Challenging Heterosexism from the Other Point of View: Representations of Homosexuality in Queer as Folk and The L Word* (New York: Peter Lang, 2012), 43.

¹⁰ Marc Stein, *Rethinking the Gay and Lesbian Movement*, E-Book Edition (New York: Routledge, 2010), Introduction, 7-8.

¹¹ Female and lesbian activism in gay liberation movements appeared frequently throughout *The Body Politic* but very rarely in relation to female pedophilia.

be a satellite of NAMBLA)¹², or Gerald Hannon’s article “Men Loving Boys Loving Men” in the December 1977 issue of *The Body Politic*. Further, sodomy legalization or decriminalization movements were often opposed during the 1980s by conservative rhetoric and imagery which linked pedophilia and male homosexuality, in that both were presumed to involve predatory stalking, recruitment, and corruption.¹³

This chapter discusses gay liberation movements and queer communities in the plural sense. Albeit more conservative in nature, the homophile movements which preceded the Stonewall riots similarly argued for an end to discrimination, advocated for co-existence and equality, and existed in multiplicity. As well, the specific needs of homosexual men, lesbian women, bisexual men and women, and of transpersons tend to be quite disparate outside of the broadest issues of socio-legal equality and the right to self-identify without victimization.¹⁴ The focus on the attainment of rights is but one avenue of many, as queer communities sought better total recognition, representation in media, and total inclusivity. In essence, gay liberation in the singular better describes an ideology and ethos of gay activism provoked by Stonewall,¹⁵ while the plural encapsulates all activist groups pushing toward queer equality regardless of their geographical location. Put differently, gay liberation captures the idea that queer communities should not be discriminated against or disenfranchised, one with which several social movements engaged. Since the relevance of identity, visibility, and normativity varied from group to group – the use of the singular gay liberation movement would unduly risk further erasure of sexual

¹² Steven Angelides, “The Homosexualization of Pedophilia: The Case of Alison Thorne and the Australian Pedophile Support Group” (pp. 64-81), in David. A.B. Murray, *Homophobias: Lust and Loathing Across Time and Space* (Durham, NC: Duke University Press, 2012), 65

¹³ Dustin Bradley Goltz, *Queer Temporalities in Gay Male Representation: Tragedy, Normativity, and Futility* (New York: Routledge, 2010), 33.

¹⁴ As an issue of equality, the greatest push and most substantive gains for marital equality occur outside of the periodization of this chapter.

¹⁵ Tom Warner, *Never Going Back: A History of Queer Activism in Canada* (Toronto: University of Toronto Press, 2002), 4.

minorities.¹⁶

The Body Politic

Published from 1971 to 1985 by the Pink Triangle Press,¹⁷ *The Body Politic*'s articles cover gay liberation movements from immediately after the Stonewall Riots to mid-stage HIV/AIDS research (in terms of successes, failures, and funding), at which time the periodical transitioned to tabloid form under the name *Xtra!*. As a self-titled 'gay liberation newspaper', authorship and contributions were heavily vested in period-appropriate activist causes: early issues were driven by an equal rights manifesto¹⁸ while criminal and civil court cases were covered until the early Eighties, at which point human rights legislation and HIV/AIDS took precedence. Throughout its run, a significant number of articles discussed international gay movements, essentially serving to map the gay world.¹⁹ More important, Canadian readership became better educated on queer history, on the struggles of rural and urban gay life, and became fully informed on governmental decisions which affected queer communities. In keeping with its namesake, *The Body Politic* connected more than 3,000 subscribers inside and outside of Canada to the gay liberation ethos,²⁰ and represented the first real forum for national queer dialogue. It provided a window into the homosexual world for hetero- and homosexual Canadians alike. Lastly, in relation to this thesis, it serves as a useful contrast to the strategies and conversations

¹⁶ As was mentioned, I use queer to describe LGBT+ groups and individuals. However, when referring to *The Body Politic* and its related authors, readers, and subjects, I use 'gay liberation' to avoid presentism and anachronism.

¹⁷ Though Pink Triangle Press was formally incorporated in 1978, the executive board consists of members of the Collective responsible for *The Body Politic*. Prior to 1974, the paper was printed by Newsweb Enterprise. The Canadian Gay and Lesbian archives were also created by Pink Triangle Press.

¹⁸ A number of articles and sections published in *The Body Politic* were authored by the editorial board of the periodical. In these cases, citations will list "The Collective" as the responsible author, as with the following: The Collective, "We Demand Manifesto", *The Body Politic*, No. 1 Nov-Dec 1971, 4-7.

¹⁹ Drawn from Alan O'Connor, "Mapping the Gay World", *The Body Politic*, No. 115 June 1985, 26-27.

²⁰ Barbara Frum, "Homosexuality in Canada: Introducing the Body Politic", *As It Happens*, 11 February 1972, accessed through CBC Digital Archives at <http://www.cbc.ca/archives/entry/homosexuality-in-canada-introducing-the-body-politic>.

utilized by NAMBLA to bring visibility to the causes of pedophile liberation.

In order to review the entirety of the newspaper's run in a manageable way, I consulted a digitized index of articles in order to create a representative list of articles covering the concepts of identity, visibility, and normativity.²¹ I then analyzed these articles in order to ascertain how *The Body Politic* was actively challenging queer oppression and discrimination, as well as how it may have also been, perhaps unwittingly, reproducing stereotypes; for example, the publication of cruising maps and bathhouse ads provided ammunition for the conservative-religious who frequently charged homosexuals with sinful promiscuity, so much so that even Metropolitan Toronto Police newsletters contained religious moralism.²² Particular attention was focused on articles discussing pedophilia – in relation to homosexuality or otherwise. Although quite rare,²³ *The Body Politic* did provide direct representation of the subject, prompting further discussion as letters submitted to the editor were published. The absence of these letters from the digitized index obscured the nature of the newspaper as a forum hosting valuable conversations between 'the Collective'²⁴ and its diverse audience. Gerald Hannon's article, "Men Loving Boys Loving Men",²⁵ published in the December 1977-January 1978 issue of *The Body Politic*, challenged the notion that child-adult sexual relations were inherently abusive and unethical, sparking a legal case against the newspaper for obscenity which lasted nearly six years.²⁶ Despite an eventual victory, the article served to indelibly link pedophilia with child sexual offending.

²¹ Robin Nadjiwan, Christina Zhu, Kirsten Moffatt, and Rebecca Dechert, "The Body Politic ~ Index", available at <http://www.uwo.ca/pridelib/body politic/bpindex/indexmainpg.htm>.

²² Jamie Bradburn, "Historicist: Raiding the Bathhouses", *Torontoist*, 26 June 2011, accessed 10 July 2016 at http://torontoist.com/2011/06/historicist_raiding_the_bathhouses/

²³ Excluding letters to the editors, *The Body Politic* published four articles explicitly dealing with pedophile, three of which were written by Gerald Hannon. The fourth, by Christine Donald, discusses the even rarer matters of female pedophilia and female (child) sex offending.

²⁴ The Collective refers to the editorial board members of *The Body Politic*.

²⁵ *The Body Politic*, No. 39 December 1977-January 1978, 29-33. Digitized at <http://www.clga.ca/Material/Records/docs/hannon/ox/mbm.htm>.

²⁶ Canadian Gay and Lesbian Archives, "Gerald Hannon: A Chronology of Events", last revised 14 December 1995, at <http://www.clga.ca/Material/Records/docs/hannon/ox/chronos.htm>

It is unsurprising that *The Body Politic* came under fire for salacious and obscene material, rather than other sexual offences or for the promotion of prostitution, anal intercourse, or indecent acts,²⁷ given the activist and parliamentary history of censoring pornography. As with the conservative derision of objectionable printed materials during the 1940s and 1950s, the visible nature of pornography pulled sexuality from the private sphere and thrust it into public visibility.²⁸ In 1952, the Senate Committee on Salacious and Indecent Literature held public hearings on how to deal criminal law should deal with the material, suggesting that the law was reflective of public morals and values, should they be Christian;²⁹ in 1958, the Diefenbaker government first codified *obscene*, broadly criminalizing any publication which featured, as “a dominant characteristic... the undue exploitation of sex, or of sex and... crime, horror, cruelty, and violence” as a corruption of morals offence.³⁰ In response, progressives challenged the underpinning notion that an interest in sex was inherently immoral and wrong, while conservatives advocated for stronger censorship and stricter, more reliable enforcement of the prohibition of offending articles.³¹ Though the rejection of the sexuality and sexualisation of children was a facet of Christianity in general,³² and of Canadian criminal law and social conservatism throughout the nineteenth and twentieth centuries, Gerald Hannon ignited a powder keg of anti-gay and anti-pedophile fervour that had steadily grown over the course of the 1970s. It was not, however, the first time Hannon drew attention to *The Body Politic*: the periodical published “Of Men... and Little Boys” in issue No. 5, July-August 1972, and “Children and Sex”

²⁷ In that *The Body Politic* openly advertised men’s video booths, bathhouses, and saunas, known to be popular places for cruising, anonymous sex, and intercourse involving more than two persons.

²⁸ Tom Warner, *Losing Control: Canada’s Social Conservatives in the Age of Rights* (Toronto: Between the Lines, 2010), 68.

²⁹ Warner, 68.

³⁰ *Ibid.*, 68-69.

³¹ *Ibid.*, 69.

³² Merry Wiesner-Hanks, *Christianity and Sex in the Early Modern World: Regulating Desire, Reforming Practice*, Second Edition (New York: Routledge, 2010), 1-8.

in the subsequent issue.

"Boy-Love"³³

In "Men Loving Boys Loving Men", Hannon begins his article with conjecture on an oil painting of C.J. Atkison³⁴ located in the foyer of his local YMCA. Atkison is noted as a "Leader in Boys' Work", a man who cared for young boys with such a passion that he established the building as a sanctuary at which they could be themselves and realize their dreams.³⁵ If you are what you do, Hannon argues, then Atkison was a pedophile – a lover of boys.³⁶ Simon, one of the self-identified pedophiles interviewed by Hannon, suggests that the use of the clinical word paints pedophiles as diseased individuals,³⁷ which as discussed in Chapter 2, conveyed elements of disgust and shame for the purposes of depersonalization. Hannon claims that boy-love is not child molestation, but that the coupling of pedophiles and child sex offenders is reliant on the three stereotypes perpetuated by mass media: the malevolent psychopath who murders only after months of rape; the pathetic man incapable of sexual relationships with adults; and, the wealthiest men who recruit runaways and waifs for the selling of their sexual favours.³⁸ The reality, however, supposedly rests with men like Simon, Peter, Don, Barry, and C.J. Atkison – true and honest lovers of boys.

In terms of objectivity, Hannon did not deny that, sometimes, the stereotypes did apply. For instance, the case of serial rapist-killer Dean Corll (also known as 'the Candy Man' or 'Pied

³³ Hannon(a), paragraph 11.

³⁴ For more biographical information on C.J. Atkison and his work with YMCA camps, see <http://www.campincrestalumni.com/ng/index.cfm/a72246a/regPages/pages/?p=aal2e62e>

³⁵ Hannon(a), paragraphs 1-2.

³⁶ Ibid., paragraph 5.

³⁷ Ibid., paragraph 6.

³⁸ Ibid., paragraph 10.

Piper'), who killed at least 28 boys aged 13 to 20 in Houston, Texas between 1970 and 1973³⁹ painted pedophiles as cruel and conniving. However, as with many issues popularized by mass media, such events were misrepresentative, and paled in comparison to the likelihood of “wife-beating, or the battering of babies”.⁴⁰ By extension, Hannon defines child molestation as physical or psychological coercion into a sexual act, which he derides as “almost exclusively a heterosexual preoccupation”,⁴¹ citing an unsourced American study on the difference between hetero- and homosexual child molesters.⁴²

If Hannon had limited the piece to a criticism of how pedophilia was cast in media, it is likely that the public and legal backlash against *The Body Politic* would have been significantly smaller in scope. However, Hannon introduces the featured men via their relationships with children, conveying the justifications they themselves have used and internalized in order to argue that consent had not been violated, and that adult-child romance is both possible and real. For example, Simon is introduced as a teacher, a member of Big Brothers, and explains that David, the student he is involved with, is a hapless romantic who writes him poetry.⁴³ Further, Simon explains that he is uniquely empowered to teach the practical and physical elements of sexual education to his students, with one boy retrospectively considering him a sexual liberator.⁴⁴ Simon admits that he has had anal intercourse with two young boys, thinking of it little more than a sexual experiment that they did not end up liking;⁴⁵ though he worries about being caught, Simon neither reflects on his powerful position as an authority figure over these

³⁹ For a full monograph on Dean Corll, see Jack Olson, *The Man With the Candy: the Story of the Houston Mass Murders* (New York: Simon & Schuster, 1974).

⁴⁰ Hannon(a), paragraph 10.

⁴¹ Ibid.

⁴² Searches for the quotes used by Hannon return no exact matches, although clinical data discussed in the Epilogue question the scientific validity of categorizing child sexual offences by sexuality altogether.

⁴³ Hannon(a), paragraph 15.

⁴⁴ Ibid., paragraph 21.

⁴⁵ Ibid., paragraph 27.

children, nor does he think of himself as anything other than a loving educator. In fact, he claims that to “help them realize their sexuality is nothing to be ashamed of”,⁴⁶ a rejection of the inherent shame and disgust some believed to be part and parcel of non-heterosexuality.

Peter, the next man to be interviewed by Hannon, shared a similar opinion to that of Robert Spitzer with regard to pedophile liberation. Rather than using his “new money” to “change the way society and law view boy-love”, Peter admits he would rather visit Morocco for his sexual needs than participate in a non-existent pedophile advocacy group.⁴⁷ While Peter describes impressing boys with his wealth, his driving abilities, and slowly developing a relationship with them over movies at the theatre and sharing hamburgers, he paints himself as a man of courtship rather than that of the luring predator.⁴⁸ Similarly, he views his tendency to approach boys lacking father figures or stable homes as a way of giving them a positive influence,⁴⁹ rather than reflecting on their increased vulnerability. When probed by Hannon to comment on the ability for a child to actually consent to sex with someone possessing “all the power and privilege that comes from simply being an adult”, Peter laments the treatment of sex as entirely distinct mode of behaviour, criticizing that no one chastises “an adult buying an ice cream cone for a child... thereby potentially turning him into an obese creature”.⁵⁰ Further, when asked if there “had ever been a time when [he’d] wished he hadn’t been a boy-lover”, Peter asks why anyone would wish “not to like something one likes?”⁵¹ As mentioned earlier, it seems both homosexual and pedophilic men had developed a sense of identity related to their sexual interests and behaviours which they had no desire to change.

⁴⁶ Ibid., paragraph 28.

⁴⁷ Ibid., paragraph 30.

⁴⁸ Ibid., paragraph 32.

⁴⁹ Ibid., paragraph 36.

⁵⁰ Ibid., paragraphs 38-40.

⁵¹ Ibid., paragraphs 42-43.

Hannon next introduces Don, a friend and past sexual partner of Peter's. Self-identifying as heterosexual, Don suggests that Peter helped him understand homosexuality, and sexuality in general, and saved him from being truly homophobic – knowing the falsehood of the “typical homosexual waiting in a dark alley with candy to tempt some kid in the dark to fuck him”.⁵² While offering a critical decoupling of homosexuality and pedophilia, and of boy-love and predatory molestation, Don does not reflect on the inherent adult-child power differential. Nor does Barry, the final man introduced by Hannon, despite his sexual relationship with Billy, a child of less than fourteen.⁵³ By the conclusion of article, it is clear that this omission was intentional, as Hannon explains that Simon, Peter, and C.J. Atkison were criminals the way we (homosexual men) were before 1969.⁵⁴ The article shifts from a narrative piece on boy-love relationships to a denunciation of the moralization and criminalization of sexualities, revealing its truer intention – a critique of those who oppose non-heterosexuals, namely Anita Bryant.⁵⁵ Hannon spins the derision of homosexuals as recruiters – “because homosexuals can't reproduce, they must recruit”⁵⁶ – as immensely positive, in that the boys of boy-love relationships have been recruited to no longer see sexual acts as disgusting, and free of that shame they are more likely to champion for homosexual rights, publicly or privately. In this sense, Hannon did not appeal for the abolition of age of consent in Canada, but viewed pedophilia as a potential ally group for homosexuals as well as a minority still discriminated against by society and the law.⁵⁷

Nevertheless, the fallout of the publication of “Men Loving Boys Loving Men” proved a major threat to its continuation, and provided social conservatives with the ammunition

⁵² Ibid., paragraph 47.

⁵³ Billy is introduced in comparison to the age of his older brothers of fifteen and sixteen, whom Barry had also had sex with.

⁵⁴ A reflection on omnibus C-150 discussed in Chapter 1. Hannon(a), paragraphs 58-59.

⁵⁵ Bryant is discussed further later in this chapter.

⁵⁶ Hannon(a), paragraph 62.

⁵⁷ Ibid, paragraphs 63-68.

necessary to maintain that homosexuality and child sexual abuse were indelibly linked. Even though the Collective weighed the date of publication carefully, they could not foresee the overlapping of the defeat of the Dade County Florida gay rights ordinance, the visit of anti-gay activist Anita Bryant (pivotal in said defeat), the impending trial of the slayers of Emanuel Jaques (an abducted shoeshine boy, aged twelve, murdered by three male gang members in Toronto in 1977),⁵⁸ and the submission of a sexual orientation amendment to the Ontario Human Rights Code due to be discussed by parliament.⁵⁹ On December 30th, 1977, the offices of *The Body Politic* were raided, with the significant majority of all files seized – subscription lists, advertiser information, articles yet to be published, writer contact information, etc. However, the reaction from the newspaper’s article was almost as instantaneous: some offered words of love and encouragement, some offered financial assistance, while others offered to volunteer to get the periodical back on track.⁶⁰ The resounding showing of support from readership prevented the collapse of the magazine and the *Pink Triangle Press*, and so the Collective vowed to confront the danger that the gay liberation movement in Canada now faced.⁶¹ It was now seemingly possible to visualize identifying with a gay community and to commit to its causes.

Identity – “These Recalcitrant Few”⁶²

Returning to the homosexual identity, the concept of identity itself is difficult to define. As a concept, Erik Erikson noted that identity was almost so self-evident that to provide a

⁵⁸ Helen Bullock, “Homosexual ‘Chicken-Hawk’ Went to Hell from Life of Love and Luxury, Says Sister”, *Montreal Gazette*, 13 March 1978, available at <https://news.google.com/newspapers?nid=1946&dat=19780313&id=3JIuAAAIBAJ&sjid=UqEFAAAAIBAJ&pg=1214,3321989&hl=en>

⁵⁹ Chris Bearhell, Rick Bebout, and Alexander Wilson, “Another Look”, *The Body Politic No. 51 March-April 1979*, digitized at <http://www.clga.ca/Material/Records/docs/hannon/ox/another.htm>.

⁶⁰ The Collective, “This Issue”, *The Body Politic No. 40 February 1978*, accessed 20 July 2016, available at <https://ia600704.us.archive.org/32/items/bodypolitic40toro/bodypolitic40toro.pdf>

⁶¹ *Ibid.*

⁶² Gerald Hannon(b), “Of Men... and Little Boys”, *The Body Politic No. 5 July-August 1972*, 3.

definition would be petty,⁶³ though scholars are often forced to as matters of clarity and pragmatism. Erikson criticized academic investigations of identity for their focus on “social roles, personal traits, or conscious self-image” to the neglect of the “less manageable and more sinister... implications of the term”.⁶⁴ Given that this chapter, and this thesis more broadly, is intended to establish a historical understanding of how pedophilia became estranged from normative socio-sexual identity, I define identity as the sum of characteristics and experiences which cumulate and serve to uniquely identify a person, whether they be physical, social, economic, or sexual in nature. Although these characteristics may exist in commonality with other individuals – any number of tall, white, middle-class homosexual men may exist – each individual identity is uniquely formed in relation to one’s experiences. Simply, identity can represent the best way to describe a person,⁶⁵ although this description can be multifaceted and limitlessly complex and may contextually vary.

Notably, however, this definition blurs the ability to distinguish between the identity and the self, in addition to how an individual might self-identify. The self is best understood as a central foundation from which identities are constructed, deconstructed, or reconstructed dependent on contextual requirements. This is not to suggest that the self is immutable or rigid, but that it is less fluid than the variety of identities individuals use to respond to situations; the sense of self exists aside from other points of reference, partially as an aspect of memory.⁶⁶ An individual may reflect upon themselves holistically as an honest or caring person and develop identities congruent with that self, such as the best friend, significant other, or loving parent.

⁶³ Erik H. Erikson, *Identity: Youth and Crisis* (New York: W.W. Norton & Company, 1968), 15.

⁶⁴ Erikson, 16.

⁶⁵ Peter Weinreich and Wendy Saunderson, *Analyzing Identity: Cross-Cultural, Societal, and Clinical Contexts* (New York: Routledge, 2003), xi.

⁶⁶ Mark R. Leary and June Price Tangney (Eds.), *Handbook of Self and Identity, Second Edition* (New York: Guilford Press, 2012), 70.

Identities, then, act as contextual selves. These identities can be subcategorized as social (or presented), role, or personal identities: social identity referring to one's sense of belonging to a group, feelings about group membership, and knowledge of status in relation to other groups;⁶⁷ role identity referring to reciprocal relationships, such as student-supervisor or child-parent;⁶⁸ and personal identity referring to traits one perceives to be separate from either social or role identities.⁶⁹ Identities are most fully realized when the self and social identity align.⁷⁰

The right to identify and to be proud of the self are hallmarks of gay liberation activism, both historically and in the contemporary moment. The adage “We’re here! We’re queer! Get used to it!”, popularized by Queer Nation in the early Nineties, proclaims a queer identity in contextual reference to heterosexual opposition. Movements aiming to decriminalize or legalize sodomy and/or adult same-sex relationships echoed the Foucaultian argument that “[it] is through sex... that each individual has to pass in order to have access to his own intelligibility... to the whole of his body... and to his identity”.⁷¹ Kinsey et. al corroborated this point, noting that homosexual experiences equally helped individuals determine whether they were hetero- or homosexual.⁷² In relation to gay liberation movements, author Edgar Z. Friedenberg poignantly asked, “What are you being liberated from?” in a 1974 interview with Greg Lehne.⁷³ Though the newspaper tended to rely on gay liberation in the singular, even titling itself as a gay liberation newspaper, there was at least a subtle recognition that different queer subgroups sought liberation from different things. For instance, queer people of colour might seek liberation

⁶⁷ Leary and Tangney, 74.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Richard R. Troiden, “The Formation of Homosexual Identities”, *Journal of Homosexuality*, 17(1-2), 1989, 46.

⁷¹ Michel Foucault, *The History of Sexuality, Volume 1: An Introduction* (New York: Random House, Inc., 1978), 156.

⁷² *Sexual Behaviour in the Human Male* (1948) and *Sexual Behaviour in the Human Female* (1953).

⁷³ Greg Lehne, “An Interview: Edgar Z. Friedenberg”, *The Body Politic*, No. 11, January-February 1974, 18.

from racist subjugation alongside gay oppression, whereas white lesbian might seek to address invisibility and erasure in male-dominated periodicals.

This variance in the needs, wants, and desires of different groups was invariably entrenched in politics, whether it be in challenging public opinion or rallying queers and allies for political change. Canadian gay liberation emerged with a similar purpose to that of the United States: the socio-legal equality of queer persons, but in a significantly different context. Unlike the judicial federalism of the United States and its empowerment of state governments, the federal decriminalization of anal intercourse – a significant victory for homosexual adults – in 1969 allowed for an earlier focus on rights-based queer activism.⁷⁴ That is, rather than continuing the decades-long battle against the criminalization of sodomy practices, queer Canadians could advocate for the inclusion of sexual minorities in Human Rights Codes. Unfortunately, this centralized authority afforded to Canadian political institutions also offered protection from the large scale influence of outside movements and lobbying groups; since the nomination of party representatives is top-down, and given its Westminster parliamentary tradition, gay liberation and Christian right movements alike could not threaten election outcomes and the makeup of the federal legislature as they could elsewhere.⁷⁵

This is not to suggest that American and Canadian conservatism were wholly different. During the 1970s and 1980s, Canadian conservatism was similarly correlated with a de facto prohibition on homosexual identity formation, given that openly gay men were targeted with violence, lost their jobs, and risked incarceration and public humiliation if caught during

⁷⁴ Miriam Smith, *Political Institutions and Lesbian and Gay Rights in the United States and Canada* (New York: Taylor & Francis, 2008), E-book edition, Preface 3.

⁷⁵ Smith, *Cross-National Institutional Differences* 3.

bathroom or bar raids.⁷⁶ Canadian social conservatives opposed increasing secularism in public institutions and within the family, the core of the private sphere.⁷⁷ The prohibitions on abortion, extramarital sex, the luring of females, and of anal intercourse all spoke to a greater religious presence within the constitution, criminal code, and state powers. Religious activism heightened in tandem with these ‘new’ social movements (namely queer liberation, feminism, secularism and secular humanism) because they threatened the traditional bonds between church and state.⁷⁸ In Quebec, as well as within households of Irish heritage, the Catholic Civil Rights League, formed in 1985, declared the traditional family to be “the only secure basis on which society can be built”,⁷⁹ inherently suggesting that alternative family structures were necessarily ruinous. Simultaneously, in English-speaking Canada, Protestant Evangelists like David Mainse (host of *100 Huntley Street*, a program offering religious commentary on social issues for more than four decades) and Ken Campbell (founder of Renaissance Canada, then the Halton Renaissance Association) decried the growing acceptance and plausibility of gay rights protection as disastrous.⁸⁰

If marital procreative intercourse was held to be the only permissible form of sexual activity, via divine law, then the social and legal persecution of queers was a necessary reinforcement of the expectation that individuals self-regulate as Christian-Canadian citizens.⁸¹ The negative effects of being ostracized, shamed, and abused were pitiable, but could be construed by social conservatives as self-inflicted. Gay activism coalesced in opposition to this sentiment in Ottawa in 1975 when Warren Zufelt, a civil servant charged with counts of gross

⁷⁶ The Collective, “Toronto Morality Squad Crackdown”, *The Body Politic* No. 19 July-August 1975, 1, 12.

⁷⁷ Warner (b), 5-7.

⁷⁸ Warner (b), 17-18.

⁷⁹ *Ibid.*, 7-11.

⁸⁰ *Ibid.*, 11-13.

⁸¹ *Ibid.*, 66-67.

indecent, committed suicide by jumping thirteen stories from the rooftop of his apartment building.⁸² Zufelt was stigmatized and publicly labeled as a homosexual, and though his specific offence (gross indecency) likely refers to having sexual relations with males between the ages of 16 and 21, he was caught during a broader string of eighteen arrests in March tied to a “homosexual vice ring” involving boys “as young as eleven”, the existence of whom was never proven.⁸³ Thus, the conflation of homosexuality and pedophilia in Canada was not merely socio-cultural but was deeply entrenched in criminal law. This was especially true even with the decriminalization of homosexual acts via Omnibus Bill C-150 in 1969, which set a legal age of consent at 21 for same-sex partners. With a heterosexual age of consent of 14, Canadian law had unequally prohibited a central aspect of the ability to develop a homosexual identity before adulthood while simultaneously overlooking the apparent acceptance of heterosexual pedophilia. That is, homosexuals were unable to legally experience sexuality before adulthood, whereas heterosexuals could sexually experiment during early to mid-pubescence.

In order to discuss the potential for one to develop an identity as a pedophile, it is pertinent to review existing literature delineating homosexual identity development.⁸⁴ Sexual identity has been generally defined as a composition of “biological gender, gender identity, gender role, and sexual orientation”.⁸⁵ Therefore, there is no inherent contradiction in using homosexual identity literature to contextualize pedophile identities, even though this thesis has reiterated the theme of decoupling homosexuals and pedophiles. The visibility of this identity, as

⁸² Ron Dayman, “Ottawa: Police and Press Lies End in Death”, *The Body Politic*, No. 18, May-June 1975, digitized at http://www.walnet.org/csis/news/ottawa_75/tbp-7505.html.

⁸³ Ibid.

⁸⁴ The usage of homosexual over queer in this section is a reflection of the available literature and includes gay men and lesbian women. Since bisexuals form identities in ways which collaborate hetero- and homosexual patterns, and since trans* individuals exist amongst all sexual orientations, the replacement of homosexual with ‘queer’ would be unsuitable.

⁸⁵ Lon G. Nungesser, *Homosexual Acts, Actors, and Identities* (New York: Praeger, 1983), 33.

well as the right to make this identity visible, are fully considered in later sections of this chapter, but it is sufficient to say that the development of a homosexual *identity* is a process of becoming ready to *identify* as a homosexual in certain social circumstances. It is likely that *The Body Politic* assisted in the development of homosexual identities across its readership, just as it is possible that pedophile readers refined a sense of identity in comparison to the broader gay liberation movement.

Notwithstanding the foundation established by Freud, Jung, and Kinsey, scholars produced multiple general models which grouped various experiences, crises, and transitive periods in order to conceptualize how individuals came to personally and socially identify as homosexuals. By extension, this chapter utilizes the four-step model proposed by Richard R. Troiden, both because he synthesized several models developed between 1975 and 1984,⁸⁶ and because it was reflective of the impact of the HIV/AIDS epidemic on queer communities. As a primary source, it is a useful model for conceptualizing how pedophile identities could also develop, and for contextualizing how NAMBLA attempted to foster pedophile liberation as a subset of the gay liberation ethos. Subcategorized into four stages – sensitization, identity confusion, identity assumption, and commitment⁸⁷ – the model also clarifies how non-heterosexual identities were duly reflective of heterosexual norms, values, and societal dominance.

According to this model, sensitization occurs before puberty, characterized by general feelings of difference from one's peers.⁸⁸ Lesbians and gay men noted that they failed to identify with traditional gendered expectations and interests, which correlated heavily with their feelings

⁸⁶ Troiden, 48-49.

⁸⁷ Troiden, 47.

⁸⁸ Troiden, 50.

of marginality.⁸⁹ If and when children experimented sexually, they were unlikely to attach these experiences to hetero- or homosexuality; meaning was attached as they became older, most often at puberty.⁹⁰ Though little research has been done regarding the general childhood of pedophiles, as well as child sex offenders with pedophilic disorder, general trends of social introversion and emotional immaturity may have marginalized individuals as children.⁹¹ Additionally, pedophiles experienced greater incidences of childhood head trauma,⁹² of accidents leading to unconsciousness,⁹³ and of childhood sexual trauma⁹⁴ were noted, possibly further differentiating young pedophiles from their peers. Of the articles dealing with child sexuality in *The Body Politic*, none dealt with an exploration of ‘boy lovers’ in their youth, except in recollections of their early sexual encounters. Though it is pertinent to remember the desire to decouple homosexuality and pedophilia during this era.

The second stage of homosexual identity development is identity confusion, wherein individuals find that they can no longer assume strictly heterosexual identities despite not being ready to assume homosexual ones.⁹⁵ The four most prevalent factors of identity confusion are altered self-perception, sexual experience(s), the stigma around homosexuality, and ignorance or misinformation about what homosexuality is or means.⁹⁶ The feeling of being different from one’s peers is transferred to a sense of sexual difference with adolescence and a heightened recognition of objects of sexual attraction. Based on evidence drawn from interviews with self-

⁸⁹ Ibid., 50-51.

⁹⁰ Ibid., 52.

⁹¹ John B. Murray, “Psychological Profile of Pedophiles and Child Molesters”, *Journal of Psychology*, 134(2)(2000): 214.

⁹² Ray Blanchard et al, “Self-Reported Head Injuries Before and After Age 13 in Pedophilic and Non-Pedophilic Men Referred for Clinical Assessment”, *Archives of Sexual Behaviour*, 32(6)(2003): 573-381.

⁹³ Ray Blanchard et al, “Retrospective Self-Reports of Childhood Accidents Causing Unconsciousness in Phallometrically Diagnosed Pedophiles”, *Archives of Sexual Behaviour*, 31(6)(2002): 511-526.

⁹⁴ Kurt Freund, Robin Watson, and Robert Dickey, “Does Sexual Abuse in Childhood Cause Pedophilia: An Exploratory Study”, *Archives of Sexual Behaviour*, 19(6)(1990): 557-568.

⁹⁵ Troiden, 53.

⁹⁶ Ibid., 53-55.

identifying pedophiles, many individuals realized they were attracted to children “when they themselves [were] between 11 and 16” years of age,⁹⁷ perhaps a dimension of identity confusion unique to the pedophilic coming of age. If opponents of boy lovers believed that pedophilia represented “a large and pathological segment of the homosexual population”,⁹⁸ it is likely that pedophiles felt unable to wholly identify with either hetero- or homosexuality. As Hannon affirmed just months before NAMBLA was founded, there was no dedicated pedophile movement in Canada.⁹⁹

Assumption involves the alignment of self-identity and presented identity as homosexual, but only insofar as one’s homosexual peers.¹⁰⁰ Identity assumption begins the general process of coming out and involves the acquisition of more (homo)sexual experiences, exploration of homosexual culture, and regular association with other homosexuals.¹⁰¹ Though *The Body Politic* may have helped homosexuals in this regard, pedophiles were more likely assisted by NAMBLA, which openly advocated for the abolition of age of consent laws – a goal they cast as the “liberation of persons of all ages from sexual prejudice and oppression”.¹⁰² Formed in response to the publication of the indictment of 24 men under charges of intercourse with boys under the age of consent, the Boston-Boise Committee organized as a countermeasure to the “Boston witchhunt,” and – potentially in response to the police raid of *The Body Politic* in late 1977 – became NAMBLA shortly thereafter.¹⁰³ Given the immediate submission of letters of opposition in response to “Of Men... and Little Boys” and to “Men Loving Boys Loving Men”, alongside

⁹⁷ Luke Malone, “You’re 16. You’re a Pedophile. You Don’t Want to Hurt Anyone. What Do You Do Now?”, *Medium*, last updated 10 August 2014, available at <https://medium.com/matter/youre-16-youre-a-pedophile-you-dont-want-to-hurt-anyone-what-do-you-do-now-e11ce4b88bdb#.dbbcilcn7>

⁹⁸ Hannon(b), 3.

⁹⁹ Hannon(a), paragraph 31.

¹⁰⁰ *Ibid.*, 59.

¹⁰¹ *Ibid.*

¹⁰² NAMBLA, “Who We Are”, accessed 8 August 2016 at <http://nambla.org/welcome.html>

¹⁰³ Library of Northeastern University, “Gay & Lesbian Pride & Politics – Gay Community Fights Back (1978)”, accessed 6 August 2016, at http://www.lib.neu.edu/archives/voices/gl_sexual2.htm

accusations that Hannon himself was a pedophile,¹⁰⁴ it is possible that the NAMBLA newsletter attracted more pedophile readership than *The Body Politic*. At the same time, it is fair to say that given the categorization of man/boy love by law enforcement as heinous sexual victimization, and the supposed infiltration of NAMBLA conferences by police, that *The Body Politic* offered pedophiles a safer way of learning about gay liberation activism.¹⁰⁵

The immediate need for NAMBLA is also evident in contrast to general anti-homosexual opposition and homophobia, since some opponents of homosexual liberation portrayed pedophiles, as well as serial molesters, rapists, and child killers, as wholly representative of homosexuality. It is likely that some homosexuals sought to avoid being guilty by association as a method of social, reputational, and/or physical self-preservation¹⁰⁶ This occurred notwithstanding that pedophiles did not necessarily identify as hetero- or homosexual, nor did they necessarily feel represented by gay liberation movements.¹⁰⁷ NAMBLA soon became the most visible proponent of liberation from age of consent legislation, with pedophiles only visibly represented in the republication of “Men Loving Boys Loving Men” in 1979 – a celebration of the Collective’s victory in court. The slow decoupling of homosexuality and child sexual exploitation began as activists continued to condemn sexual coercion and as the abolition of age of consent became further removed from mainstream homophile activism;¹⁰⁸ in other words, the exclusion of pedophilia from gay liberation narratives became an eventual necessity in order to avoid discrediting the ideology as a whole.

As was revealed by *The Body Politic* coverage of Big Brothers of Canada, the decoupling

¹⁰⁴ M.J. McReavy, “Pedophilia is Dangerous”, *The Body Politic* No. 16 November-December 1974, 3.

¹⁰⁵ Hannon(a); Hannon(b), 3; Jim Monk, “NAMBLA: Plagued by the Police”, *The Body Politic* No. 89 December 1982, 12.

¹⁰⁶ The Collective, “The Year of Children”, *The Body Politic* No. 39 December 1977-January 1978, 29.

¹⁰⁷ Hannon(a).

¹⁰⁸ Gerald Hannon(d), “Seven Years to Go: The Plight of Gay Youth”, *The Body Politic* No. 26 September 1976, 1.

of homosexuality and pedophilia was a way of achieving respectability and of combating the charity group's exclusion of homosexual men. Given the centrality of forming an emotionally intimate bond with a young child, Big Brothers were required to pass a stringent screening process, one which concluded with an interview with a social worker who probed men on their personal and relationship history, their habits and hobbies, warmth, and ability to relate to children.¹⁰⁹ In essence, Big Brothers were expected to foster a partnership founded on boy-love, with the exclusion of homosexuals intended to preserve the asexuality of such relationships. In 1977, after a series of child-adult sex controversies, Metro Toronto Big Brothers hosted a national conference at the Clarke Institute of Psychiatry detailing how social service groups could more effectively screen out "individuals with predominantly homosexual and pedophilic tendencies".¹¹⁰ Although grouped together, Big Brothers officials confirmed that the true intent was to eliminate pedophiles rather than homosexuals, but that the policy was implemented because the charity had "no system to separate the two".¹¹¹ Taken to be a representative case among many, Tomilson argued that it was likely that human rights victories in provincial and federal courts would be the most likely way for many organizations to accept homosexual (and thereby pedophile) volunteers.¹¹² The predominance of court victories, as a source of social conservative outrage, will be discussed in the Epilogue.

Visibility – "Together, We Are Strong"¹¹³

The ability to achieve a committed homosexual identity is predicated on visibility, a quality indicative of societal tolerance, rejection, or ambivalence. If homosexual identity

¹⁰⁹ Ken Tomilson, "Big Brothers – Pedo Panic and Role-Model Rigidity", *The Body Politic* No. 94 June 1983, 15

¹¹⁰ Tomilson, 15.

¹¹¹ Ibid.

¹¹² Ibid., 16.

¹¹³ Ken Popert, "Gay Rights Now!", *The Body Politic* No. 19 July-August 1975, 16.

development involves the discovery of and interaction with homosexual peers and subcultures, then it is arguable that the ability to locate them is of the utmost importance, if not a prerequisite. In relation to visibility, *The Body Politic* served as a compass for queer minorities during its run, as they became informed about gay-relevant news and “to prose, poetry, book and film reviews, and graphics relevant to gay liberation”.¹¹⁴ Visibility likewise pertains to the societal perceptions of a given group, shared characteristics, or behaviour. For example, the presence of stereotypes in mass media perpetuates false understandings of queer identities, in that to be homosexual, one is expected to be visibly non-conformist, flamboyant, and extroverted;¹¹⁵ similarly, pedophiles today are visibly cast as middle-aged men,¹¹⁶ as predatory stalkers,¹¹⁷ and as societal refuse. It is more difficult to differentiate between stereotypical images from the 1970s and 1980s, since homosexuality and pedophilia had not yet been decoupled. Though pedophiles achieved minor visibility throughout the publication of *The Body Politic*, even members of the Collective recognized that a true pedophile movement (one which explicitly advocated for the rights of pedophiles) in Canada was non-existent.¹¹⁸ Even after the formation of NAMBLA, this recognition was also a direct implication that gay liberation was distinct from pedophile activism.¹¹⁹ Without a movement, then, how were pedophiles expected to rise to the challenge of differentiating themselves from the child sex offender population?

¹¹⁴ The Collective, “The Purpose of *The Body Politic*”, *No. 1 November-December 1971*, 2.

¹¹⁵ Goltz, 33.

¹¹⁶ Although female sex offenders, especially when teacher-student relationships are violated, have received a growing share of media coverage and recognition, the standard presumption of pedophile as ‘male’ holds true in terms of imagery.

¹¹⁷ For example, the photograph in Jennifer O’Brien, “Police Warn Pedophile Plans to Move to London”, *The London Free Press*, 27 March 2013, <http://www.lfpress.com/2013/03/27/police-warn-pedophile-plans-to-move-to-london>, is explicitly selected to highlight the offender’s heinousness and ‘evil’ look. For an extensive discussion of child murderers (some of a sexual nature) and the use of photography in crime reporting, see Claire Wardle, “Monsters and Angels: Visual Press Coverage of Child Murderers in the USA and UK, 1930—2000,” *Journalism*, 8(3): 263-284.

¹¹⁸ Hannon(a), paragraph 31.

¹¹⁹ *Ibid.*

NAMBLA was more successful insofar as increasing the visibility of pedophiles, as they brought attention to pedophiles and sought to “correct the record on man/boy lovers”.¹²⁰ However, this attention was primarily negative, even though one of NAMBLA’s founding goals was to cooperate with “lesbian, gay, feminist, and other liberation movements”.¹²¹ NAMBLA members claimed that their organization was “spawned by the gay community and [had] been in every major gay and lesbian march”,¹²² perhaps an effort to challenge the expulsion of pedophiles from gay liberation narratives. This claim was backed by the visibility of NAMBLA banners in the Lesbian and Gay March on Washington in 1979,¹²³ suggesting that – at least early – pedophiles did have a place within gay liberation activism. Just as *The Body Politic* was facing media backlash due to the legal case against “Men Loving Boys Loving Men”, NAMBLA became falsely associated with the disappearance of Etan Patz, a six year-old boy from Manhattan thought to have been kidnapped by a previously convicted sex offender.¹²⁴ A calendar featuring children was found during the raid of a suspected pedophile’s home that resembled Etan, igniting a media frenzy which painted NAMBLA as an organization of “child kidnappers and rapists”¹²⁵, although the photograph was soon proven to predate Etan’s birth.¹²⁶ For *The Body Politic* and NAMBLA, the coupling of pedophiles and child sex offenders proved disastrous.

As mentioned previously, the Collective rightly assumed that the publication of “Men Loving Boys Loving Men” was going to cause problems. Anita Bryant, an American singer and

¹²⁰ NAMBLA, “Social Issues and Activism”, accessed 7 August 2016 at <http://www.nambla.org/social.html>

¹²¹ NAMBLA, “Who We Are”, accessed 8 August 2016 at <http://nambla.org/welcome.html>

¹²² Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven, CT: Yale University Press, 1998), 157-158.

¹²³ Jenkins, 158.

¹²⁴ Jenkins, 158-159.

¹²⁵ *Ibid.*, 159.

¹²⁶ NAMBLA, “Disappearance of Etan Patz”, accessed 8 August 2016, at http://www.nambla.org/etan_patz.html

anti-homosexual activist, had campaigned feverishly against a Floridian county ordinance which prohibited discrimination on the grounds of sexual orientation and declared 1977 to be the “Year of Our Children”.¹²⁷ Anti-homosexual discourse in Canadian politics adopted similar strategies, justifying homophobic positions through the use of child protection rhetoric, heightening the sensitivity of social conservatives who failed to differentiate between consensual sexual acts between adults and child predation. NAMBLA urged gay liberation organizations attempting to decouple homosexuality from pedophilia as a strategy of respectability to not “limit [their] demands to those thought acceptable to a frightened status quo”.¹²⁸ However, lesbian activism by the Lesbian Feminist Liberation group argued that the revision or rejection of age of consent laws was a distraction and that the opposition to the sexual abuse of children – by hetero- or homosexual persons – was an essential part of maintaining their membership in the larger New York Coalition for Lesbian and Gay Rights.¹²⁹ By October of 1980, leading gay liberation group NOW had adopted a resolution condemning “pederasty, pornography, sadomasochism, and public sex”, arguing that they were “not lesbian and gay civil rights issues” and had been used to fuel the prejudices of legislators and the public.¹³⁰

By the mid-1980s, NAMBLA was essentially left alone in its advocacy. In “Children and Sex”, Hannon argued that child protectionism is rooted in the capitalist desire to protect property and possessions and in the “purity=innocence and innocence=chastity equation” of religious tradition.¹³¹ However, the article was not intended to be a defense of adult-child sexual relations,

¹²⁷ The Collective mocked Byrant by using the moniker as the title of the disclaimer preceding Hannon’s article. See United Press International, “1977 Year in Review – Miami Demonstrations, Audio Archive” at <http://www.upi.com/Archives/Audio/Events-of-1977/Miami-Demonstrations>

¹²⁸ David Thorstad, “Man/Boy Love and the American Gay Movement”, *Journal of Homosexuality*, 20(1-2)(1991): 255.

¹²⁹ Thorstad, 258-259.

¹³⁰ Thorstad, 260-261.

¹³¹ Gerald Hannon (e), “Children and Sex”, *The Body Politic No. 6 Autumn 1972*, 3.

but a thorough reflection on the results of Alfred Kinsey's research on child sexuality. For example, Hannon notes Kinsey's findings that the modal age of homosexual experience – age nine – was plausible, given that gay men had told him they were sexually active on Toronto streets as young as eleven or twelve.¹³² This information is not offered with any praise, but as a reminder that some children might naturally seek out older sexual partners, and that protecting their sexual freedom was a necessity for healthy development.¹³³ The latter, “Of Men... and Little Boys”, was significantly more politically charged, as Hannon decried the persistence of the coupling of homosexuality and child sexual predation. While still grounded in the notion that “most people are incapable of accepting the fact that children are sexual beings”,¹³⁴ Hannon charged that homosexual men who would “apologize” for the presence of men primarily interested in adolescents (‘chicken hawks’) were doing themselves a disservice, since those men were still working toward gay liberation.¹³⁵ Further, he suggested that the straight world was right to consider gay liberation a danger to their children, insofar as it would free them from the imprisonment of the traditional family structure which stifled outward (that is, outside of the safety of the family) sexual exploration.¹³⁶ Regardless, both articles received little substantive outcry in comparison to the publication of “Men Loving Boys Loving Men”, though this difference could partly be due to the infancy of *The Body Politic* itself.

As was mentioned previously, the offices of *The Body Politic* were raided and mailing lists seized, alongside a total of twelve boxes of newspaper material.¹³⁷ In January of 1978, the publishing officers of the Pink Triangle Press, including Hannon, stood trial against charges laid

¹³² Hannon (e), 3.

¹³³ Hannon (e), 22.

¹³⁴ Gerald Hannon (b), “Of Men... and Little Boys”, *The Body Politic* No. 5 July-August 1972, 3.

¹³⁵ Hannon (b), 3.

¹³⁶ Ibid.

¹³⁷ Canadian Gay and Lesbian Archives, “Gerald Hannon: A Chronology of Events”, last revised 14 December 1995, at <http://www.clga.ca/Material/Records/docs/hannon/ox/chronos.htm>.

under then Section 168 of the Canadian Criminal Code – use of the mails to distribute immoral, indecent, or scurrilous material.¹³⁸ The following issue of the periodical discussed the raid in depth but also published several letters, positive and negative, received in reference to Hannon’s article. In relation to visibility, the Collective criticized the submission of several anonymous letters, claiming that it was clear individuals were not sure enough of their convictions to actually make a statement.¹³⁹ One letter praised the article overall but questioned the relevancy of pedophilia to gay liberation movements, suggesting that “if 85 to 90% of our population is heterosexual, then 85 to 90% of pedophiles are likewise heterosexual”.¹⁴⁰ This defensiveness was not unprecedented, as gay liberation advocates rejected the association with pederasty in 1977, saying that child molestation was mostly “by heterosexual men against little girls”.¹⁴¹ The rejection of a pedophile subgrouping within gay liberation movements, then, seemed to be rooted in its rejection as a mainly heterosexual phenomenon. Another letter received by the Collective stressed that the article represented an opportunity to inform and educate queer readers about pedophilia, seeking to “remind others of how they felt when young”.¹⁴² This was not necessarily a defense of intergenerational sexual activity but a recognition that the age of consent for anal intercourse (21) inevitably forced early sexual experimentation to be law-breaking. The anonymous oppositional letter claimed that by providing visibility for the cause of pedophiles, the Collective had “set us back several years”.¹⁴³ Again, the rejection of pedophilia was painted as an important stratagem of achieving respectability, even if the minority of homosexual men known as boy-lovers would benefit from liberation advocacy.

¹³⁸ Now Section 168. See <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-38.html#docCont> for the full section text.

¹³⁹ The Collective, “Letters”, *The Body Politic* No. 40 February 1978, 2.

¹⁴⁰ Johnson, 2.

¹⁴¹ Thorstad, 253.

¹⁴² Keith Sherwood Stuart, (Untitled Letter), *The Body Politic* No. 40 1978, 2.

¹⁴³ Anonymous, (Untitled Letter), *The Body Politic* No. 40 1978, 2.

Hannon was quick to defend his article, turning some of the negative rhetoric on its head. Anti-homosexual conservatism often paralleled homosexuality and pedophilia, suggesting that the inability to naturally reproduce forced homosexuals to convert existing otherwise morally upstanding children and youth.¹⁴⁴ Further, the acceptance of homosexuality was presumed to be a slippery slope which would eventually lead to the proliferation of adult-child sexual relationships.¹⁴⁵ For some, the exclusion of pedophiles from gay liberation discourses was a readily apparent solution to this problem, one which emphasized that consensual adult intercourse was also the homosexual norm. Instead, Hannon suggested that the inclusion of pedophiles in the general homosexual liberation movement could be used to provide them with visibility as a minority group within queer communities, distinctly different from those fighting for adult sexual equality yet still connected through the denial of their right to exist.¹⁴⁶ Following the eventual victory over all criminal charges in 1979, Hannon again challenged the assumption that all sexual acts involving children were of predatory molestation, stating that “every homosexual’s sexuality has been interfered with, impeded, strangled, diverted, ‘cured’, pitied, and punished. That is molestation.”¹⁴⁷ This was not to denigrate cases wherein child sexual exploitation actually occurred but to give a critique of the supposed unique and narrow definition attributed to sexual interference.

Hannon also argued that the inclusion of pedophiles in gay liberation discourses was a pragmatic recognition of the realities of youthful sexual experimentation. In “Men Loving Boys Loving Men”, Hannon interviewed three men, all of whom reported that they were not necessarily the predators that society and mass media portrayed them to be. Though it is

¹⁴⁴ The actual quote from Bryant appears in a number of sources, which primarily source her and Bob Green’s book, *At Any Cost* (1978), as an original source.

¹⁴⁵ Angelides, 73.

¹⁴⁶ Gerald Hannon(f), “Why?”, *The Body Politic* No. 40 February 1978, 9.

¹⁴⁷ Hannon(c), 25.

important to be mindful of the justifications often proffered by pedophiles who have sexually engaged with children – namely that they were fully aware of the child’s other needs and that the acts were consensual—¹⁴⁸ it remains valid to suggest that some adolescents willfully sexually engage with adults, especially in societies with stringent age of consent thresholds. Hannon sought to capture this subpopulation and challenge the perception that adults were the sole perpetrators of sexual advances. The responsibility, legal or otherwise, to decline these sexual advances was likely omitted from discussion because Hannon subscribed to the abolition of prohibitions against any form of consensual sexual activity.

Although the predominant author on pedophilia, indeed perhaps the journalistic authority of the era in Canada, Hannon was not alone in his convictions. Christine Donald, a Canadian lesbian, gay liberation activist, and coordinator of the Coalition for Lesbian and Gay Rights Ontario (CLGRO), analyzed pedophilia from a feminist perspective in her 1982 contribution to *The Body Politic*. Donald argued that the word pedophile itself invoked a specific directional power relationship of adult to child, one which erased children who love adults from existence.¹⁴⁹ The absence of a word able to describe children or adolescents exclusively attracted to adults further helped perpetuate the belief that youth remain asexual until legal adulthood, a punishing threshold for homosexuals. It was this belief that Donald found most problematic, since any sexual acts involving youth, even amongst peers, were cast as moral, ethical, and legal violations.¹⁵⁰ Like Donald, lifelong lesbian activist Beth Kelly argued that intergenerational relations also existed for women, but her account was rejected by the notion that “lesbians don’t do that” – a scathing rebuttal of her article’s title (“On Woman/Girl Love – Or, Lesbians Do ‘Do

¹⁴⁸ American Psychiatric Association, *DSM-III-R* (Washington, DC: American Psychiatric Association, 1987), 285.

¹⁴⁹ Christine Donald, “Going Back to Growing Up Gay”, *The Body Politic* No. 84 June 1982, 30.

¹⁵⁰ *Ibid.*, 31.

It’).¹⁵¹ In essence, queer youth were either expected to remain chaste or were victims of the sexual desires of adult predation, reinforcing the conflation of homosexuality and pedophilia as sex involving persons under the age of 21.

As with the indecency charges which burdened the Collective for more than half a decade, the majority of visible publicity for pedophile causes was overtly negative. Despite acceptance as a member organization into CLGRO, NAMBLA continued to be criticized by gay liberation activists and by law enforcement agencies. Gay Fathers of Ontario cut ties with CLGRO in 1982, citing the admission of NAMBLA in a list of reasons for their departure, though primarily it was due to their separation into city groups – Gay Fathers of Toronto, of Ottawa, and so forth.¹⁵² As parents, it is likely that the inclusion of advocates for the abolition of age of consent, and those who would argue for the right to accept sexual advances from children, was unacceptable for the immediate guardians of such children. Strategically, these opinions could obstruct the ability to remain as father figures via a loss of custody in cases of divorce, or to achieve adoption rights for would-be gay fathers in the future. Queer readers cautioned writing about the organization, suggesting that *The Body Politic* could face the same fate as the British *Paedophile Information Exchange*, a liberation activist group which faced publication bans and seizures, threats, violence, and criminal charges,¹⁵³ in reference to the suggestion of a law enforcement agent that NAMBLA was merely a front for a child prostitute ordering service, in possession of “a catalogue of over 600 pages” of obscenity, which “accepted most major credit cards... before dumping children in shallow graves”.¹⁵⁴ In keeping with the laments of Hannon, the coupling of homosexuality and pedophilia, and of pedophiles and child killers, seemed to remain virtually

¹⁵¹ Thorstad, 255-256.

¹⁵² Monk, 12.

¹⁵³ Donald, 30.

¹⁵⁴ Monk, 12.

untouched.

Normativity – “[Living] in a Heterosexual Society”¹⁵⁵

Similar to identity, the prevalence of norms makes providing a definition almost unnecessary. To be deemed normative is to be considered conformist, in the sense that one fits into a given model, template, or expectation. Normativity, the means through which norms are held, maintained, and perpetuated, is a central facet of liberation activism, primarily because the ability to achieve socio-legal reform and the abolition of oppression is largely determined by the strength of a given norm or value. If norms are taken to be indicators of which actions and behaviours are socially approved or disapproved of,¹⁵⁶ then queer communities often found themselves quite queer, if not abnormal; a society that functions via heteronormativity presumes that all individuals are heterosexual, and uses moral, value, and legal judgments to punish deviations. Likewise, heteronormativity serves to obscure queer identity and visibility. This was somewhat to be expected, given the religious tradition of Canadian criminal and constitutional law throughout the nineteenth and twentieth centuries.

Normativity, and heteronormativity, are discursively useful for establishing a deeper understanding of the social rejection of pedophilia. However, it is important to be mindful that gay liberation movements should not merely be considered in opposition to heterosexual society. This would suggest that queer activism and communities, as well as gay liberation movements, exist solely in contrast to ‘normal’ straight society, rather than coexisting parts of a whole.¹⁵⁷ At the same time, opposition within gay and lesbian movements has shaped and reshaped discourses

¹⁵⁵ Tomilson, 15.

¹⁵⁶ Robert B. Cialdini, “Crafting Normative Messages to Protect the Environment”, *Current Directions in Psychological Science*, 12(4), 105.

¹⁵⁷ Joshua J. Weiner and Damon Young, “Introduction: Queer Bonds”, *GLQ: A Journal of Lesbian and Gay Studies*, 17(2-3)(2011): 224.

over time – for example, lesbian opposition to NAMBLA excluded pedophiles from liberation narratives, and opposition to NAMBLA’s membership in CLGRO was cited as a reason for the departure of Gay Fathers of Ontario from the organization. In this sense, homonormativity – though the formal coining of the term occurs outside of this period – demonstrates that queer bonds are also forged, or destroyed, in relation to the expected norms and values of a broader group. Essentially, just as the gay and liberation movements were achieving certain rights and protections, other queer minorities were “subjected to ever-increasing surveillance, scrutiny, harassment and violence”.¹⁵⁸ The exclusion of pedophilia from gay liberation movements is better cast as a balanced strategy of respectability and an opposition to the heterosexual, homophobic coupling of homosexuality and child sexual victimization.

As was previously noted in this chapter, and earlier in Chapter 1, the Canadian legal age of consent aligned with the modal age of pedophilic offending – 14 – until its very recent increase in 2008. Yet, social understandings of pedophilia remained largely anti-homosexual in nature, ignoring the practical reality that most pedophiles were likely heterosexual.¹⁵⁹ Though anal intercourse between two adults of age 21 became legal in 1969, little changed for adolescent and young adult homosexuals who were excluded from normative teenage sexual exploration amongst age-appropriate peers. The Collective rejected the supremacy of heterosexuality, stating that “in a democratic society, if one minority is denied freedom, all citizens are oppressed”.¹⁶⁰ Further, they recognized that laws against gross indecency and buggery, and the branding of homosexuality as criminal sexual psychopaths and dangerous sex offenders, perpetuated

¹⁵⁸ Weiner and Young, 229.

¹⁵⁹ Warner, 66-67.

¹⁶⁰ The Collective, “We Demand Manifesto”, *The Body Politic* No. 1 November-December 1971, 4.

homophobic attitudes and heteronormativity.¹⁶¹

It is arguable that social norms are the foundation of governance and legislation, as anthropological evidence suggests that, since before the advent of modern law, tribal deviants have been ostracized, stigmatized, and varyingly punished.¹⁶² Though the law and social norms often enjoy a symbiotic and reciprocal relationship, for instance, the gradual growth in acceptance of homosexuality led first to its removal as an ‘undesirable’ class from the *Immigration Act* in 1978, to inclusion in the Canadian Bill of Rights in 1996, then to the full legal recognition of gay marriage in 2005.¹⁶³ Still, norms can be used to coerce conformity in extrajudicial ways, in which case laws are devised to prevent negative behaviours.¹⁶⁴ Heteronormativity prescribes a perception of queer deviation, including that of pedophilia, as an attack on collective socio-moral health, in which case prohibitions against human activity (anal intercourse, marriage), socialization (bathhouses, bars, nightclubs), and a rejection of civil rights (anti-discrimination, anti-violence, marital equality) become justified.

Such prohibitions were witnessed in Canada: anal intercourse was strictly illegal until 1969, when it was decriminalized between two persons aged 21 or older; heterosexual marriage was the only legally recognized union until 2005; the Toronto bathhouse raids sparked the largest mass arrest in Canada since the October crisis of 1970, and the public protests that followed

¹⁶¹ Though heteronormativity is more rightly a term made popular by Michael Warner, *Fear of a Queer Planet: Queer Politics and Social Theory* (Durham, NC: Duke University Press, 1991), it encapsulates the same sentiments of the normalcy of heterosexuality and of how social norms, values, and laws are predominantly enforced for the benefit and maintenance of a heterosexual majority. Ibid.

¹⁶² Eric A. Posner, *Law and Social Norms* (Cambridge, MA: Harvard University Press, 2000), 3.

¹⁶³ Although articles and briefs discussed these victories within *The Body Politic*, a unified timeline simplifies this specific citation. CBC News, “Timeline: Same-Sex Rights in Canada”, last updated 25 May 2015, at <http://www.cbc.ca/news/canada/timeline-same-sex-rights-in-canada-1.1147516>

¹⁶⁴ Posner, 4-5.

eventually evolved into Toronto Pride;¹⁶⁵ the push for inclusion in human rights codes was an early victory in some provinces (Quebec, 1977) but a lengthy battle in most, concluding with the inclusion of sexual orientation in the *Canadian Charter of Rights and Freedoms* as a result of *Egan v. Canada*.¹⁶⁶ Gay liberation movements necessarily struggled with choosing how to best evoke social change, since the legalization of anal intercourse between two adults did not seem to combat anti-homosexual stigma, nor did growing social acceptance of equal access to public services and employment¹⁶⁷ seem to expedite legal reform. The utility of education in prompting socio-legal reform was recognized relatively early, since changing the perception of or stigma surrounding a given action or behaviour was more likely to result in a change in its normative acceptance or rejection and to lessen the extent to which legal and non-legal recourses would resist such a change. CLGRO, for instance, adopted educational strategies to combat homophobia as early as 1977,¹⁶⁸ while charity organizations like the Big Brothers Association of Ontario rejected queer applications due to their acceptance of learned homosexuality behavioural models.¹⁶⁹

Canadian censorship legislation was similarly rooted in heteronormative presumptions, rejecting queer periodicals, manuals, and sexually graphic publications that were otherwise identical to heterosexual publications. At the beginning of its run, The Collective sought to advertise in the *Toronto Star*, noting that it already advertised adult entertainment stores, video booths – generally, coin-operated screens which played a user-selected pornographic film for the purposes of masturbation or oral sex (when vandalized to be conjoined by a ‘glory hole’), and

¹⁶⁵ Terence McKenna, “Homosexuality in Canada: The Toronto Bathhouse Raids”, *Sunday Morning*, originally aired 15 February 1981, available at <http://www.cbc.ca/archives/entry/the-toronto-bathhouse-raids>

¹⁶⁶ CBC News.

¹⁶⁷ The Collective, “Majority Endorse Gay Rights”, *The Body Politic* No. 36 September 1977, 4.

¹⁶⁸ Tom Warner, “Coalition Adopts Education Strategies”, *The Body Politic* No. 31 March 1977, 5.

¹⁶⁹ Tomilson, 15.

stripper shows such as ‘Pussy Galore’.¹⁷⁰ Fully aware of the societal view of homosexuality, and of the legal risks of openly operating a queer-focused mailing list, the Collective submitted a plain-text ad featuring the title of the paper and the descriptor “a gay liberation journal”; the *Star* refused to publish the advertisement, stating they could incur liability from the identification of subscribers or for printing ads related to sexual activity,¹⁷¹ not-so-subtly implying that the audience of *The Body Politic* must be wholly homosexual and promiscuous. The Collective successfully filed a charge of discrimination against the *Star* to the Ontario Press Council; corporate ownership retaliated by cancelling the printing contract between Newsweb Enterprise, a company of which the *Star* owned 80%, and *The Body Politic*.¹⁷² Shortly thereafter, an editorial appeared in the *Star* explaining their position as in opposition to “the aggressive recruitment propaganda in which certain homosexual groups are engaged” and those who would “legitimize homosexual relations between adults and children”.¹⁷³ Apparently, heterosexual pedophilia was a non-issue. The Canadian Border Services Agency, acting on behalf of Canadian Customs, perpetuated similar censorship into the 1990s: books detailing homosexual sex positions were stopped at the border, whereas heterosexual equivalents entered the mass market with little to no controversy.¹⁷⁴

Despite Hannon’s aforementioned belief that inclusion of all queer sexual minorities would provide the strongest rebuttal of homosexual and pedophile equivalency, the Collective responded directly to the *Star* editorial. Child seduction, conversion, and molestation were decried as red herrings against homosexual equality movements, since the Collective soundly

¹⁷⁰ The Collective, “Why 8’s Late”, *The Body Politic* No. 8 Spring 1973, 5.

¹⁷¹ Ibid.

¹⁷² Jamie Bradburn, “Historicist: I Sing *The Body Politic*”, *Torontoist* 14 February 2015, accessed at <http://torontoist.com/2015/02/historicist-i-sing-the-body-politic/>

¹⁷³ Bradburn.

¹⁷⁴ Alan Orr, “Sex Okay – If It’s Not Gay”, *The Body Politic* No. 130 September 1986, 11.

rejected any coercive sexual relations.¹⁷⁵ However, this is not to suggest that they fully excluded pedophile liberation aims; advocacy for the extension of sexual rights to youth not yet 21, phrased as “the right to consensual sexual relations with either sex or of any age”,¹⁷⁶ offered full support for intergenerational relationships. In the subsequent issue of *The Body Politic*, a published letter concurred with the *Star*’s position, stating that the pedophile was necessarily predatory since childhood sexual experience were linked with fear and trauma and that Gerald Hannon’s “projected sexual desires” were obvious.¹⁷⁷ The suggestion that authorship or expertise on the subject of pedophilia is necessarily for self-gain remains a pertinent obstacle to academic and scientific research; that is, to write, research, or empathize with a pedophile, one must also be a pedophile.

The Morality Squad of the Toronto Metropolitan Police, a division of the Special Investigative Service, became an enforcement arm of anti-homosexual censorship. Tasked with ensuring that publications, films, plays, and social gathering spaces did not promote obscenity or immorality,¹⁷⁸ the Squad first encountered the gay liberation journal after an issue featured a “Harold Hedd” comic depicting two men engaged in oral sex.¹⁷⁹ Police ordered that all copies be removed from newsstands to avoid the risk of further legal interjection. Following the publication of “Men Loving Boys Loving Men”, the Squad took more immediate action and performed the large scale content seizure of *The Body Politic*’s downtown office.¹⁸⁰ Claire Hoy, a journalist working for the *Toronto Sun*, urged for the Ontario Arts Council and Ontario Press Council to rescind all funding grants, lest taxpayers be held responsible for the financing of child

¹⁷⁵ The Collective, “The Star Sells Hate”, *The Body Politic Special Free Edition October 1974*, 2.

¹⁷⁶ Ibid.

¹⁷⁷ M.J. McReavy, “Pedophilia is Dangerous”, *The Body Politic No. 16 November-December 1974*, 3.

¹⁷⁸ The Collective, “Toronto Morality Squad Crackdown”, *The Body Politic No. 19 July-August 1975*, 1, 12.

¹⁷⁹ *The Body Politic No. 18 May-June 1975*.

¹⁸⁰ Canadian Gay and Lesbian Archives, “Gerald Hannon: A Chronology of Events”, last revised 14 December 1995, at <http://www.clga.ca/Material/Records/docs/hannon/ox/chronos.htm>

molestation, while then Mayor John Sewell and Robert Nielsen of the *Star* suggested that though a specific instance of censorship was warranted, the death of *The Body Politic* was an unnecessary strike against gay liberation movements.¹⁸¹ The editors forming the Collective – Hannon, Jackson, and Popert – were cleared of all charges, with Judge Sydney Harris defending “free discussion and dissemination of ideas unless there be a clear indictment to illegal action”.¹⁸²

Following the 1981 Bathhouse Raids in Toronto, the Morality Squad struck again in response to an article on fisting, which discussed the proper etiquette of the practice amongst those seeking anonymous sexual encounters. The Collective editors were again each charged with a count of publishing obscene material, and were again acquitted after a lengthy court battle. Ironically, the second trial – and looming threat of an appeal leading to a third – resulted in a conservative defence of the periodical and its editorial board. The retrial was seen as a costly waste of time and inevitable loss for taxpayers, who would fit the bill on behalf of Ontario attorney-general Roy McMurtry. Though an unlikely ally, the judicial ordeal prompted *The Globe and Mail* to publish the first public defence of a gay cause in Canada – a full-page advertisement signed by more than 800 individuals in groups urging McMurtry to drop his appeal, suggesting it was “an attack on the freedom of a minority to express its views. It will drain the energy and financial resources of the gay community’s principal newspaper and weaken [its] capacity to make its views known. Moreover, the effect of this appeal, whatever the intention, will be to punish people who have been found *not guilty* in the courts”.¹⁸³ The recognition of homosexuality as a minority worthy of disseminating its views marked progress

¹⁸¹ Bradburn.

¹⁸² Ibid.

¹⁸³ No Author, “We Urge the Attorney-General of Ontario to drop the Appeal Against The Body Politic”, *The Globe and Mail*, 6 February 1980, 11.

toward normative representation.

Therapy – “An Exercise in Normativity”¹⁸⁴

This chapter concludes with therapy as a point of focus because it highlights the intersectionality of the key concepts of this chapter – identity, visibility, and normativity – as well as the themes of this thesis – law, psychiatry, and activism. The topic of therapy was a semi-frequent feature of *The Body Politic*, mainly discussing the psychiatric classification of sexual deviance as pathological. Between 1920 and 1970, aversion therapy techniques were investigated and applied to a range of sexual deviations, from homosexuality to foot fetishism to transvestism, in the hopes of locating cures.¹⁸⁵ Shock therapy, the most common aversion technique applied to homosexual deviation, involved showing test subjects same-sex pornographic images and administering electrical pulses to the body – sometimes, directly to the genitals.¹⁸⁶ Relying on principles of classical conditioning, psychologists hoped to negatively link positive homosexual response to pain and distress for the purposes of reforming one’s heterosexuality – presumably, to restore one’s normative status. Although early results were varyingly positive, few therapists had accounted for the existence of bisexuality (or of pedophilia) in their own research designs.¹⁸⁷

Therapy and identity are intertwined given that one must either be identified or self-identify as a particular type of patient in order to qualify for and acquire access to therapy. In cases of voluntary admission into a program or group, individuals must see the value of the therapeutic process or strategy in question in order to recover, to rehabilitate, or to cope in cases where symptoms and conditions are chronic, lifelong, or terminal. In cases of involuntary

¹⁸⁴ Herbert Spiers(b), “Psychiatric Neutrality: An Autopsy”, *The Body Politic* No. 7 Winter 1973, 14-17, 24.

¹⁸⁵ M.P. Feldman, “Aversion Therapy for Sexual Deviations: A Critical Review”, *Psychological Bulletin*, 65(2), 1966, 68-69.

¹⁸⁶ Feldman, 70.

¹⁸⁷ Martin E.P. Seigman, *What You Can Change... and What You Can't: The Complete Guide to Successful Self-Improvement* (New York: Knopf Doubleday, 2009), “Homosexuality and Therapy” [e-book].

admission, the law, psychiatry, and activism intersect in a myriad of ways: legislation prescribes the constitutional means of non-consensually admitting an individual, whether they represent an immediate harm to themselves or others, or their history suggests that the same, or because they are incapable of consenting of their own volition;¹⁸⁸ psychiatric experts dichotomize behaviours, actions, and responses as normal and abnormal, as healthy or pathological, and as acute or chronic, even in cases of deviance from socio-sexual norms; gay and pedophile liberation discourses attempted to combat the stigma attached to legal and psychiatric classification, arguing that criminal prosecution, segregation, social isolation, and the perception of instability were the true sources of the negative symptoms of sexual deviation, such as depression, increased risk of suicide, and anti-social behaviour. Queer communities came to denounce the mandated use of therapy in prison, especially with a growing recognition that aversion therapy was generally ineffective even when it was chosen voluntarily.¹⁸⁹

At the same time, gay liberation movements also came to recognize the importance of seeking help from sympathetic professionals. Police brutality and violence against queer minorities throughout most of the century prevented victims from seeking legal aid and justice, instead promoting a culture of fear and hatred of law enforcement that culminated in the Stonewall Riots of 1969, and again in the Toronto Bathhouse Riots of 1981. This is not to suggest that either event was a watershed moment for gay liberation activism, since early homophile organizations existed in the US and Canada long before either riot occurred.¹⁹⁰ Undercover agents posed as recipient anonymous sex partners in order to entrap 'active' homosexuals and pedophiles (in the sense of prosecuting men seeking sex with other men under

¹⁸⁸ Centre for Addiction and Mental Health, "Understanding Your Rights", available at http://www.camh.ca/en/hospital/visiting_camh/rights_and_policies/Pages/Understanding-your-rights.aspx

¹⁸⁹ The Collective, "Pedophile Indefinitely Jailed Suffers Aversion Therapy", *The Body Politic* No. 15 September-October 1974, 7.

¹⁹⁰ Stein, Introduction, 2-3.

the age of 21),¹⁹¹ raided bars, nightclubs, and bathhouses to enforce morality laws,¹⁹² and infiltrated press conferences regarding NAMBLA in order to create a watch-list of prospective child sex offenders.¹⁹³ In terms of mental health, advocacy groups assisted queer minorities in locating psychologists and psychiatrists departing from aversion therapy techniques, who did not necessarily believe that sexual deviation was abnormal, and listed the common techniques used and results one could expect when entering therapeutic programs.¹⁹⁴ Recognizing the legal and medical hurdles queer communities needed to overcome in order to obtain civil rights, socio-legal equality, and access to public services, queer activism quickly became an interdisciplinary and intersectional dialogue, rather than a discussion for and by homosexuals alone.¹⁹⁵

Although the epilogue which follows this chapter discusses the modern state of therapeutic intervention, it is pertinent to conclude with a reflection on how activism likewise contributed to legal and medical narratives. Even after the decriminalization of monogamous and consensual adult homosexuality from the Canadian Criminal Code in 1969, and even after declassification as a mental illness *per se* from the *DSM* in 1973, homosexuals continued to be discriminated against in employment, housing, adoption and marriage rights, and in access to public services. Factoring in the influence and extra-legal nature of social norms, the resistance to same-sex and queer representation seemed rooted in cultural rejection, driven by tradition, religion, and puritanical understandings of procreation as life's purpose. Over the course of three decades of activism, male and female homosexuality gradually entered normative status from

¹⁹¹ John Towndrow, "Entrapped: How One Gay Teacher Discovered the Frightening Power of the Police & The Courts", *The Body Politic* No. 25 August 1976, 9-10.

¹⁹² The Collective, "Police Raid Clubs; Seeking Clues to Montreal's Rising Murder Rate", *The Body Politic* No. 22 February 1976, 4; The Collective, "Toronto Morality Squad Crackdown", *The Body Politic* No. 19 July-August 1975, 1, 12.

¹⁹³ Monk, 12.

¹⁹⁴ Erin Shoemaker, "Shrink Shopping: The New Therapies, Homophobia, & You", *The Body Politic* No. 22 February 1976, 12-13.

¹⁹⁵ Spiers(b), 17.

legal and psychiatric perspectives, with activism mainly shifting to combating social and institutional homophobia. Why, then, was the American Psychiatric Association's suggestion to differentiate between individuals identifying as pedophiles and individuals with pedophilic disorder¹⁹⁶ – those who had directly or indirectly acted upon their sexual urges – so roundly rejected?

The answer lies in part with how the majority of gay liberation discourses separated homosexuality from the mythos of predatory child recruitment and sexual exploitation. Those who were unwilling to exclude pedophiles from the movement were implicated as pedophiles themselves, as pedophile sympathizers, or as the facilitators of childhood sexual assault, abuse, and trauma. This mythos shifted wholly onto pedophiles as a class of persons, obstructing their own liberation movement from forming and making it extremely difficult to acknowledge the existence of pedophilic individuals who remained opposed to ever acting sexually with a child or adolescent. Similarly, the ability to develop open therapy groups for pedophiles was problematized by the same rationale offered by the *Toronto Star* – the risk of outing participants as pedophiles, or the risk of doctors, nurses, and clinical staff being labeled as child abuse sympathizers became an increasingly heavy socio-legal burden. This fostered the almost exclusive redirection of funding and program development to the carceral context, wherein individuals had already been classified and 'outed' as child sex offenders, inevitably prioritizing the prevention of reoffending rather than offending.¹⁹⁷ In essence, law, psychiatry, and activism reciprocally corroborated the conflation of pedophilia and child sexual offending, both past and present.

¹⁹⁶ APA, *DSM-V* (Digital Edition), Pedophilic Disorder. Accessed 1 March 2016 at <http://dsm.psychiatryonline.org.proxy.bib.uottawa.ca/doi/full/10.1176/appi.books.9780890425596.dsm19>.

¹⁹⁷ Thomas K. Hubbard and Beert Verstraete (Eds.), *Censoring Sex Research: The Debate Over Male Intergenerational Relations* (Walnut Creek, CA: Left Coast Publishers, 2013), viii.

Epilogue – Making Child Sex Offending History

A variety of images shared across social media platforms questioned why a society which euthanizes aggressive animals, often in relation to breed bans, does not do the same for pedophiles, rapists, and murderers. From 2004 to 2007, Chris Hanson and his investigative team starred in *To Catch A Predator*, a series which televised sting operations of adults seeking to engage in sexual activity with children; after being contacted by a decoy profile set up by Perverted Justice, an American organization established to combat the problem of child sex offending,¹ perpetrators were ambushed by Hanson and filmed, the footage of which was later broadcasted on national television. In Canada, chapters of ‘Creep Catchers’ have sprung up in Calgary, Winnipeg, and Edmonton – another group utilizing sting operations and public shaming to reveal the identities of “sick adult fucks” – touting a mantra of “Yer Done Bud”². Meanwhile, a Dutch charity devised a fake profile of an idealized Filipina child named ‘Sweetie’ to similarly capture online sexual offenders.³ Most recently, the Canadian Centre for Child Protection Inc. launched *CyberTip*, a website tool which allows Canadians to anonymously report adults thought or known to be sexually exploiting children online. In summary, a modern trend of quasi-extrajudicial vigilantism has emerged internationally, one which is heavily reliant on the conflation of pedophiles as child sexual offenders.

It is perhaps seemingly odd to begin the epilogue of this historical thesis with such modern reflections. However, this research project is grounded in questions of how and when pedophiles became essentially synonymous with child sex offenders, and how the main arbiters

¹ For a mission statement, a list of the ‘top 10 most slimy’, and a collection of 600+ celebrated convictions, see <http://www.perverted-justice.com/>.

² “Why?”, *Creep Catcher Calgary*, accessed 24 April 2016 at <http://creepcatcher.ca>

³ Jamie Bartlett, “Why Sweetie, the Fake 10 Year-Old Girl, is the Perfect Trap to Catch a Pedophile”, *The Telegraph*, last revised 21 October 2014, at <http://www.telegraph.co.uk/comment/11177401/Why-Sweetie-the-fake-10-year-old-girl-is-the-perfect-trap-to-catch-a-paedophile.html>

of human conduct – law, medicine, and social norms and mores – contributed to such a conflation. Chapter 1 established the growth of legal interventions enacted with the intention to protect children from sexual victimization. Chapter 2 reflected on how the psychiatric profession distinguished between normative sexual orientations and problematic, or symptomatic, orientations, behaviours, and actions, ones which often overlapped with criminalized sexual offences. Chapter 3 analyzed the inclusion and exclusion of pedophiles as sexual minorities within Canadian gay liberation discourses, tracking the movement to abolish age of consent as well as criticisms against consensual inequality between hetero- and homosexual citizens. At the intersection of law, psychiatry, and activism, leading experts advocated for a clear distinction between pedophiles and child sexual offenders, yet past and present, the two remain deeply intertwined.

This chapter reviews the modern extensions of the previous three chapters in order to argue that law, psychiatry, and social activism continue to underperform when it comes to tackling the problem of child sex offending. Conservative reform of criminal statutes and sanctions, the development of provincial and national sex offender registries, and the increased usage of emotionally-loaded legislative acts⁴ have fused modern Canadian law with unprecedented levels of emotional language. Professional psychiatry, embodied within the *Diagnostic and Statistical Manual of Mental Disorders V* (DSM-V), outlined the necessity of separating pedophiles from individuals with pedophilic disorder – those individuals who had acted on their sexual urges,⁵ while two main research groups were founded to research pedophilia as a manageable medical issue: Dr. James Cantor’s group in Canada, and Prevention

⁴ The use of eponymous legislative acts, a term explained in the legal section of this chapter, has also made the reform or redaction of laws significantly difficult.

⁵ American Psychiatric Association, *DSM-V* (Digital Edition), Pedophilic Disorder. Accessed 1 March 2016 at <http://dsm.psychiatryonline.org.proxy.bib.uottawa.ca/doi/full/10.1176/appi.books.9780890425596.dsm19>.

Project Dunkelfeld (Darkfield) in Germany. The momentum of the North American Man/Boy Love Association (NAMBLA) steadily decreased after its association with the disappearance of Etan Patz, with Virtuous Pedophiles and similar anonymous forums taking its place.⁶ Social activism shifted far from the belief that pedophiles could be represented as a minority group with gay liberation discourses, and instead took two forms: supportive rehabilitative and reintegration therapy, as with Circles of Support and Accountability (CoSA); and extrajudicial vigilantism, as with Creep Catchers. Collectively, the myriad of strategies used to manage the issues of pedophilia and child sex offending removed any possibility of pursuing clear and consistent solutions.

In this epilogue, I argue that the conflation of pedophiles and child sex offenders is the result of a series of historical legal and medical failings. Legal and psychiatric interventions remain overwhelmingly reactionary in nature, perpetuating an image of all pedophiles as active or eventual sexual predators. The tendency to fund therapeutic interventions to prevent *reoffending*, rather than offending, prevents any significant psychiatric or psychological separation of pedophiles and child sex offenders. Additionally, the restriction of therapy programmes to carceral institutions has made it “practically impossible”⁷ for pedophiles to seek out a therapist, whether for solo or group therapy or for pharmaceutical treatment, without first victimizing a child. The eventual elimination of abolition of age of consent advocacy and of proponents of boy-love – admittedly, a minority voice in the seventies and eighties – from gay liberation movements, primarily for the legitimacy of said movements, has prescribed a sense that certain individuals are undeserving of equality, rights, and recognition. Conflated with child

⁶ Mike Pearl, “Whatever Happened to NAMBLA?”, *Vice*, originally posted 24 March 2016, accessed 13 August 2016 at http://www.vice.com/en_ca/read/whatever-happened-to-nambla

⁷ James Cantor, quoted 9:52 in *I, Pedophile*, directed by Matthew Campea, (Ottawa: CBC Firsthand Documentary Series) televised 10 March 2016, available at <http://www.cbc.ca/firsthand/episodes/i-pedophile>

sex offenders, pedophiles are presumed to be violators and victimizers rather than disenfranchised victims unable to seek help. Further, fury with child sexual victimization rates in Canada – and high rates of recidivism for child sex offenders⁸ – has both fostered and bolstered societal support for vigilante justice. Dawson Raymond, the leader of Creep Catchers, retorted “[if] I’m breaking the law and I saved a child’s life, lock me up right now” when condemned by Albertan law enforcement officials for enacting and encouraging vigilantism.⁹ He remains a popular presence on social media.

“Proper Protection to Everyone”¹⁰

Following the publication of the *Report of the Committee on Sexual Offences Against Children and Youths* (1986), hereafter the Badgley Report, Canadian corrections took an increasingly punitive turn against child sexual exploitation. The Badgley Commission revealed that law enforcement and medical services had essentially failed to prevent child sexual abuse from occurring, and when it did occur, failed to respond in ways which did not revictimize.¹¹ Given the recent enactment of the *Charter of Rights and Freedoms*, opposition to the infringement of security of the person and of equality of protection under the law was present in the social consciousness of Canadians. In addition, several advocacy groups ensured steady news coverage of violence against women and of sexual crimes, beginning in the early 1980s;¹² this heightened awareness, combined with the publication of the Badgley Report, geared Canadians

⁸ Andrew J.R. Harris and R. Karl Hanson, “Sex Offender Recidivism: A Simple Question”, Public Safety and Emergency Preparedness Canada, accessed 4 May 2016 at <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/sx-ffindr-crdvsm/index-en.aspx>

⁹ Mack Lamoureux, “Online Pedophile Hunter Group ‘Creep Catchers’ Opens Edmonton Chapter,” CBC News Online, accessed 28 April 2016 at <http://www.cbc.ca/beta/news/canada/edmonton/online-pedophile-hunter-group-creep-catchers-opens-edmonton-chapter-1.3533080>

¹⁰ H.T. Coffey, “The Real Molesters”, *The Body Politic* No. 52 May 1979, 5.

¹¹ Robin Badgley (Chairman), *Report of the Committee on Sexual Offences Against Children and Youths* (Ottawa: Supply and Service Canada, 1984), 15, 25-40.

¹² Julian V. Roberts, Michelle G. Grossman, and Robert J. Gebotys, “Rape Reform in Canada: Public Knowledge and Opinion”, *Journal of Family Violence*, 11(2)(1996): 142.

toward preventative legal and social reforms. Although reforms which toughen criminal punishments and enact new criminal offences are sometimes viewed as conservative in nature, the recommendations of the Badgley Report necessitated bipartisan cooperation to ensure that the protection of children was given due primacy. However, these recommendations were made mindful of the fact that “merely amending the law” alone was not an “adequate or realistic response”.¹³

This is not to suggest that Canadian criminal law was in any way lenient toward child sexual offences before the eighties. Rather, the recognition of just how common and pervasive childhood sexual exploitation really shocked legal experts, who began to question the safety of Canadian social institutions both public and private.¹⁴ The recommendations contained within the Badgley Report clarified the failings of the justice system to successfully deal with the intricacies of sexual victimization and the needs of sexual victimizers. The knowledge that sexual crimes were underreported in Canada had already been established during the Commission, with a reporting rate for rape, attempted rape, and indecent assault (which was previously codified as two distinct gendered offences), ranging from 15%¹⁵ to 25%.¹⁶ In 1983, rape statutes were reformed, and the aforementioned offences became amalgamated under the three-tiered offence of sexual assault: type I being a base level of sexual assault; type II representing the threat or use of a weapon, threat to a third party, or caused bodily harm; and type III representing aggravated sexual assault.¹⁷ This reform improved public perceptions of

¹³ Badgley, 53.

¹⁴ Badgley, 13.

¹⁵ Yves Brillion, Christane Louis-Guerin, and Marie C. Lamarche, *Attitudes of the Canadian Public Towards Crime Policies* (Ottawa: Ministry of the Solicitor General of Canada, 1984).

¹⁶ Solicitor General Canada, “Female Victims of Crime”. *Canadian Urban Victimization Survey, Number 4* (Ottawa: Supply and Services Canada, 1985).

¹⁷ Julian V. Roberts and Robert J. Gebotys, “Reforming Rape Laws: Effects of Legislative Change in Canada”, *Law and Human Behaviour*, 16(5), 1992: 556.

both police and judicial response to sexual crimes, spurred partially by the widespread information campaigns conducted by the federal government.¹⁸ While the reporting of sexual assaults increased following the rape statute amendment, researchers were unsure of whether or not it was due to the increased representation of male victims, the increased accuracy of statistical collection, the increased number of offences captured by sexual assault (left undefined primarily so that courts could decide what constituted a violation on a discretionary basis), or a heightened likelihood of young victims to report offences.¹⁹

Since then, the prioritization of retribution has been made clear by Canadian Criminal Code (CCC) amendments and legislative initiatives. Between 1985 and 2009, nine separate *Acts to Amend the Criminal Code* were enacted which dealt directly with child sexual victimization, or with sexual offences more generally. More so, between 2004 and 2014, five legislative acts targeted child sex offenders specifically or directly impacted the prosecution, sentencing, and surveillance of said offenders. In both cases, the use of eponymous legislation – often bearing the name of a victim – to deal with issues of child victimization increased: AMBER Alerts reference Amber Hagerman, the nine year-old rape-murder victim whose death spurred the creation of the modern missing child alert network,²⁰ via a backronym;²¹ Christopher’s Law created the Ontario sex offender registry, the first of its kind both provincially and nationally, and is named in memory of rape-murder victim Christopher Stephenson. In fact, the preamble of the Ontario *Sex Offender Registry Act* (2000) effectively serves as an epitaph – “[an] Act, in memory of Christopher Stephenson, to establish and maintain a registry of sex offenders to protect children

¹⁸ Roberts, Grossman, and Gebotys, 136-142.

¹⁹ Roberts and Gebotys, 565-7.

²⁰ Ontario Provincial Police, “AMBER Alert”, accessed 10 May 2016 at <http://www.opp.ca/ecms/index.php?id=188>

²¹ An acronym created retroactively to fit an existing word or name.

and communities".²² Criticisms of these systems and laws, however grounded in evidence they may be, become problematic in relation to memorialization. Put differently, a criticism of the successes or reach of Christopher's Law becomes a criticism of his victimization, and an attempt to repeal it becomes an exhumation of his spirit from the Canadian justice system.

Non-eponymous laws likewise began to utilize emotive language in titles and within the preambles of bills, often emphasizing safety, protection, and victimhood. The *Sex Offender Information Registration Act* (2004), enacted as a measure to protect society from sexual victimization, created a national sex offender registry with mandatory compliance conditions and ensured that police powers were extended to ensure its accuracy was maintained.²³ The *Tackling Violent Crime Act* (2008) raised the age of consent to 16 while introducing mandatory minimum sentencing and improved the monitoring conditions of dangerous and long-term offenders.²⁴ The *Protecting Victims from Sex Offenders Act* (2010) enacted punitive reforms in a multifaceted way: it amended the CCC, the *Sex Offender Information Registration Act* (2004), and the *National Defence Act* (1985) to further extend police powers of investigation, allowing for a "proactive" use of the national sex offender database to prevent the occurrence of sexual crimes; it amended the CCC and *International Transfer of Offenders Act* (2004) to require emigrating sex offenders to comply with the Canadian national registry; mandated the submission of a DNA sample to a forensic database; and amended the *National Defence Act* (1985) to be reflective of all CCC amendments.²⁵ The *Safe Streets and Communities Act* (2012) increased existing and created new mandatory minimum sentences for certain sexual offences against children, to enact a new offence of making sexually explicit material available to them, and created new

²² Christopher's Law (*Sex Offender Registry Act*), S.O., 2000, c.1.

²³ *Sex Offender Information Registration Act*, S.C., 2004, c. 10.

²⁴ *Tackling Violent Crime Act*, S.C., 2008, c. 6.

²⁵ *Protecting Victims from Sex Offenders Act*, S.C. 2010, c.17.

conditional release impositions which prohibited contact with any person under the age of 16 and which prohibited the use of the Internet altogether. Notwithstanding these new restrictions, the Act also increased the number of offences subjected to surveillance conditions while simultaneously restricting access to conditional sentencing for sex offenders.²⁶ Lastly, the *Protection of Communities and Exploited Persons Act* (2014) created a new offence to prosecute the commission of sexual solicitation near a school, playground, daycare, or place where children may otherwise congregate.²⁷ The vagueness of the locations wherein children might congregate can potentially pose legal problems to previously convicted offenders, considering that young persons in Canada often frequent malls, recreation centres, and community centres, which may offer goods and services, both desirable and essential.

Although all of the aforementioned acts affect sexual offenders in a variety of ways, both *Christopher's Law* and the *Sex Offender Information Registration Act* deal specifically with child sex offenders. Sex offender registries in Canada have developed, as with their American counterparts, in response to “particularly intense concern... about the risk of serious and lasting physical, psychological, and moral harm that sex offenders pose to children”.²⁸ In contrast to the general criminal record – one which is applicable to petty thieves, embezzlers, arsonists, and murderers alike, the sex offender registry profile signifies an exceptional status solely afforded to perpetrators of sexual victimization. This legitimizes the existence of sex offender registries by self-reaffirming that any limitation of the rights and freedoms is in keeping with the greater protection of society at large, a sentiment echoed by the Supreme Court of Canada: dangerous offender legislation has withstood several constitutional challenges, most notably *R v Lyons*

²⁶ *Safe Streets and Communities Act*, S.C., 2012, c. 1.

²⁷ *Protection of Communities and Exploited Persons Act*, S.C., 2014, c. 25.

²⁸ Michael Petrunik, Lisa Murphy, and J. Paul Federoff, “American and Canadian Approaches to Sex Offenders: A Study of the Politics of Dangerousness”, *Federal Sentencing Reporter*, Vol 21(2), December 2008, 112.

(1987), which charged that the legislation violated deprivation of liberty, arbitrary detention, and cruel and unusual punishment provisions within the Canadian Charter of Rights and Freedoms.²⁹ In keeping with the punitive nature of the Badgley Report, the reach of dangerous offender legislation has increased consistently since its publication: the average number of offenders classified as dangerous between 1978 and 1992 was seven per year, an average which more than tripled to twenty-four per year between 1997 and 2002.³⁰

The *Charter of Rights and Freedoms* has uniquely allowed provincial and federal governments to cautiously approach the issue of sex offender management. The murder of Christopher Stephenson reignited the anti-pedophile fervour that followed the publication of the Badgley Report, with a populist surge in support for the development of provincial and federal sex offender registries. The national sex offender registry was, in fact, reluctantly enacted by the Liberal government that was fully knowledgeable of the strength of fundamental human rights protections afforded to all Canadians by the Charter, regardless of their criminality.³¹ In 1994, the Canadian Criminal Code was amended to include Section 810, which set restrictions on the persons a registered sex offender could affiliate with, the places in which they could reside, and the places where they can simply be, provided children could reasonably be presumed to be present.³² Since the majority of offenders served 810 supervisory orders are held in custody until warrant expiry – meaning that they serve the full length of their judicial sentence, they do not benefit from the gradual reintegration strategies of conditional release. Essentially, provincial and federal governments have increasingly stressed the risks of sex offender release since 1986 while simultaneously enacting preventative measures which, in reality, aggravate recidivism.

²⁹ Petrunik, Murphy, and Federoff, 116.

³⁰ Ibid., 116.

³¹ Ibid.

³² Ibid., 117.

For example, any Canadian is now empowered to begin the proceedings of an ‘810 order’ – namesake drawn from the *Canadian Criminal Code* sanction to which it refers – against an offender who has committed a sexual offence against children under age 16 or a serious personal injury offence.³³ If approved by the provincial Attorney General, an order of recognizance will be placed upon that person, one that functions near identically to parole or probation conditions (oftentimes, in addition to). The conditions placed upon a person are often dependent upon their original offences and criminal record, and can impose residency and occupational limits (such as a required minimum distance from a public park or school, or the inability to work for a daycare or summer camp). They may prohibit access to firearms, possession or consumption of alcohol or drugs, or possession of videos or photographs of children or avenues in which to obtain them (including the prohibition of accessing a computer or using the Internet from any advice for the duration of the order)³⁴. This can include previous possessions, such as family photos albums, books, album covers, movie covers, and even photos of oneself as a child.³⁵ Any intentional or accidental breach of an 810 order represents a separate criminal conviction liable of up to two additional years of imprisonment and, potentially, additional terms of probation.³⁶

More recently, there has been populist pressure to make registry database information publicly available to all Canadians, as it is within the United States. This is perhaps a continuation of a broader trend of populist politics beginning in the early 1990s, with a heavy emphasis on “direct democracy” via public referenda and polling initiatives.³⁷ The populism I describe differs slightly from the populism of strict political theory – defined as “an appeal to

³³ Prisoners’ Legal Services, “Section 810”, accessed 23 July 2016 at <https://prisonjusticedotorg.files.wordpress.com/2012/11/section-810.pdf>, 2

³⁴ Prisoner’s Legal Services, 8-9.

³⁵ Personal communication with Susan Love, Program Coordinator of CoSA Ottawa – a program discussed in this epilogue.

³⁶ Prisoners’ Legal Services, 10.

³⁷ Margaret Canovan, “Trust the People! Populism and the Two Faces of Democracy”, *Political Studies*, 47(1999): 3.

‘the people’ against both the established structure of power and the dominant ideas and values of the society”.³⁸ In post-2000 Canada, I argue that while populist efforts did target ‘the establishment,’ they did so in conservative reaction to a perceived departure from dominant ideas and values, especially those rooted in Christianity and in child protectionism. For example, in Ontario, a statistical aggregate map which displayed the concentration of convicted sex offenders per capita in a regional breakdown of the province dismayed concerned parents.³⁹ Previously, the Department of Corrections of Ontario had refused to release the map publicly, suggesting that knowing the concentration of sex offenders in a particular area could lead to community unease, and perhaps to extrajudicial action by extension. However, with no identifiable information contained within the data set, Ontario’s information minister, the Superior Court of Ontario, and the Ontario Court of Appeal all unanimously rejected this as a grounds for keeping the information private unless it could be proven that the identification of individual persons was a factual possibility.⁴⁰ Though the information that would do almost nothing to prevent future incidences of child sexual assault, populist support for the measure was an argument that the provincial government was prioritizing the privacy of child sex offenders over the general safety of families and communities.

Interestingly, the rise of populist politics mirrors the discussion in Chapter 3 about the tendency for queer activism to be considered in opposition to normativity. If gay liberation activism solely targeted heterosexual society as an opponent, then there would be no true space for gay-straight alliances. Therefore, though gay liberation movements aimed to address various sources of homophobia and systemic discrimination, they also sought to change the image of

³⁸ Canovan, 3.

³⁹ Patrick Cain, “Updated: Here’s the Sex Offender Map the Ontario Government Didn’t Want You to See”, *Global News*. Available at <http://globalnews.ca/news/1313399/heres-the-sex-offender-map-ontario-didnt-want-you-to-see/>

⁴⁰ Cain.

non-heterosexual minorities as equal parts of a social whole which heterosexuals likewise occupied. Populists similarly challenged the actions of particular political parties but, at least in Canada, did not attempt to oppose democracy overall. In fact, populism relied on democracy as an ideal to bring normally apolitical people into politics, and to take a stand against perceived departures from social norms and values.⁴¹ In this sense, populists could portray themselves as being interested in *real* democracy and call for reforms reflective of the *real* populace. Populist politics, then, is a contrast between ideal and real – or pragmatic, for Canovan⁴² – democracy.

In relation to sex offender registries, the aforementioned Ontario case is just one example of populist support for publicizing registry information in Canada. Nonetheless, an increasingly voluminous body of research has demonstrated that the collateral consequences greatly outnumber the benefits presupposed by advocates of publicly accessible registries.⁴³ The exceptional treatment of sex offenders despite demonstrably lower rates of recidivism than those convicted of armed robbery and general assault continues to uniquely punish those convicted for periods determined by the nature of their supervisory orders.⁴⁴ A substantial decrease in the commission of sexual offences has been demonstrated over the last thirty years, a period aligned with the publication of the Badgley Report through to the majority re-election of the Conservative Party of Canada, despite an increase in the number of statutes which criminalize them.⁴⁵ This is perhaps to be expected, given the demonstrable decline in crimes of all types in Canada since 1991, though legal professionals and academics “have not reached a consensus”

⁴¹ Canovan, 7.

⁴² Canovan, 8-9.

⁴³ Alexandria Organ, Lisa Murphy, J.P. Federoff, and R. Gregg Dwyer, “Inside Out: Are Publicly Accessible Sex Offender Registries a Good Idea?”, *American Academy of Psychiatry and the Law Newsletter*, April 2014, 14.

⁴⁴ Organ et. al, 15.

⁴⁵ Ibid.

with regards to the strongest causes and correlations of such a multifaceted decline.⁴⁶ Though amendments to the prosecution of sexual assaults, as discussed in Chapter 1, and the introduction of the *Young Offenders Act* likely impact the decline, it is reasonable to suggest that the trend is not specifically the result of any given domestic policy change given that similar trends appear internationally.⁴⁷

Unique to sexual offences, the possibility of victim identification by proxy of the extensive logging of information, such as the dates, locations, and details pertaining to individual offences, can perhaps lead to unfair attention to victims and their families, and is a demonstrable deterrent to the actual reporting of sexual victimization.⁴⁸ The lack of a meaningful way of distinguishing between the risk levels of various offenders has led to vigilantism, as with the twenty year-old man from New Brunswick who killed two registered sex offenders residing in Maine before committing suicide in 1996; one of the murder victims was registered for having had consensual sex with his girlfriend, a legal minor at the time despite a marginal age difference.⁴⁹ Fear of vigilantism has the potential to lead to registry noncompliance, losing access to personal and professional support networks and substantially increasing their risk of recidivism.⁵⁰ Finally, the duration of registration is a chiral opposite to that of the risk of recidivism upon release: offence levels determine whether one registers for 10 years, 25 years, or life, but even for high-risk offenders, the risk of reoffending of a sexual nature decreases immensely after a decade of community reintegration.⁵¹ Collectively, sex offender registries present a holistically false sense of security even when private, with the potential to be a socially

⁴⁶ Statistics Canada, “Canada’s Crime Rate: Two Decades of Decline”, accessed 23 July 2016 at <http://www.statcan.gc.ca/pub/11-630-x/11-630-x2015001-eng.htm>

⁴⁷ Ibid.

⁴⁸ Ibid., 16.

⁴⁹ Petrunik, Murphy, and Federoff, 120.

⁵⁰ Organ et. al, 23.

⁵¹ Ibid., 24.

destructive force if the information contained is made public knowledge.

It would be inaccurate to suggest that the vigilantism witnessed in modern Canada is a wholly novel phenomenon. Classical vigilantism dealt with areas wherein frontier settlement had preceded the establishment of sufficient law enforcement, but also included groups of citizens uniting against a perceived laxity where policing was possible;⁵² neo-classical vigilantism alternatively dealt with areas wherein the criminal justice system was firmly established, and dealt with alien and outsider members perceived to be threatening to a community, rather than strictly with criminals.⁵³ As an example of the former, the Bytown Association for the Preservation of Peace Bytown of 1875 formed as a reaction to the surge in vagrancy following the completion of the Rideau Canal, largely because canal builders lacked the skills necessary to transition to farming.⁵⁴ As an example of the latter, five teenaged boys gathered in the High Park neighbourhood of Toronto – known as a public location for anonymous homosexual encounters – in order to “beat up a fag”, resulting in the victim’s death.⁵⁵ In this sense, modern vigilantism appears to be a fusion of the two former cases, in that average citizens united to deal with a perceived laxity on behalf of the criminal justice system, but also to prevent the potentially disastrous outcomes of leaving said laxity morally unchecked.

Notably, this upswing in modern vigilantism occurred in tandem with the enactment of ‘tough on crime legislation’ under Prime Minister Stephen Harper. As social conservatives witnessed the losses of the inclusion of sexual orientation in human rights codes and the Charter, the legal recognition of same-sex marriages, and the extension of adoption rights to same-sex couples, dissatisfaction with the power of judges and courts within the Canadian justice system

⁵² Roland A. Boisjoli, “Vigilantism in Canada”, (Master’s Thesis, University of Ottawa, 1987), 58-59.

⁵³ Boisjoli, 89-90.

⁵⁴ *Ibid.*, 58.

⁵⁵ *Ibid.*, 101.

grew immensely. Dissatisfaction, in some cases, grew to anger and even to hatred, such as when the Supreme Court of Canada declared Marc Nadon ineligible for his appointment to the bench – an act which sparked a public dispute between the Prime Minister and Chief Justice Beverly McLachlin.⁵⁶ Nadon was appointed by the Harper government to fill one of Quebec’s vacant seats, but because he was not currently a member of the Quebec bar, of the Supreme Court of Quebec, or a judge of the Quebec Court of Appeals, he was constitutionally ineligible for the position.⁵⁷ This was not the only time the federal government attempted to sway the authority of the Canadian judiciary in a partisan way. In their 2005 monograph, *Rescuing Canada’s Right: Blueprint for a Conservative Revolution*, conservative thinkers Tasha Kheiriddin and Adam Daifallah likewise identified “[m]aking friends with the Charter of Rights and Freedoms by using it to defend conservative ideals instead of undermining them [and s]tarting legal defence funds to promote conservatives’ interest through the courts and changing the way judges are appointed” as part of a seven-point action plan to “not only make it cool to be conservative” but to “make it uncool *not* to be conservative”.⁵⁸ Thus in order to challenge the lengthy battle of who ultimately defines Canadian values, Parliament or the courts, Harper opted to take control of the lower courts, and made appointments to “about 600 of the 840 full-time” positions at his discretion.⁵⁹ The end result was hoped to be an eventual conservative victory over the judiciary.

Until that time comes to pass, however, Canadian conservatives are left between the newfound Liberal majority government and a still left-leaning Supreme Court. Without the

⁵⁶ Sean Fine, “Stephen Harper’s Courts: How the Judiciary Has Been Remade”, *The Globe and Mail*, 24 July 2016, available at <http://www.theglobeandmail.com/news/politics/stephen-harpers-courts-how-the-judiciary-has-been-remade/article25661306/>

⁵⁷ Jordan Press, “Harper Government ‘Genuinely Surprised’ by Supreme Court’s Decision to Reject Marc Nadon”, *National Post*, last updated 25 January 2015 at <http://news.nationalpost.com/news/canada/canadian-politics/marc-nadon-not-allowed-to-sit-on-supreme-court-of-canada-top-court-rules>

⁵⁸ Tasha Kheiriddin and Adam Daifallah, *Rescuing Canada’s Right: Blueprint for a Conservative Revolution* (Toronto: John Wiley & Sons, 2005, 253-257.

⁵⁹ Fine.

voting power to reshape crime prevention and enforcement democratically, and without an upper court system overruling liberal and Liberal inadequacy (from the social conservative perspective), vigilantism is a seemingly positive alternative, especially if vigilante leaders like Dawson Raymond can manage to keep eager followers aligned with existing Canadian laws. It is for this reason that *Creep Catchers* overwhelmingly believes in its hallmark name and shame campaign, suggesting that supporters “share the videos, share the posts, mock, namecall, point them out in public” before adding a discretionary “(make sure 100% it’s them though please)” [sic].⁶⁰

Complementary to sex offender registries, community notification legislation – which is enacted on a provincial and territorial basis, rather than federal – sets the limits for the information distributed upon the release of convicted sex offenders, most often dependent on the perceived risk one poses to a community. A high risk offender may have his or her information distributed to a community, whereas only law enforcement officials will be made aware of low-risk releases.⁶¹ Notification represents an ideal belief that community knowledge will serve as a three-fold preventative and protective measure against sexual recidivism: children properly warned about a sexual offender are more knowledgeable about the necessity of being cautious; communities are better informed about sex offenders nearby and are more capable of reporting suspicious or non-compliant behaviour; and, for offenders, notification may serve as a reflexive deterrent against “seeking new victims”.⁶² Community notification remains legally separate from sex offender registration in Canada, in that registered information will not log whether or not a

⁶⁰ Creep Catcher Calgary, “Home”, accessed 23 July 2016 at <http://creepcatcher.ca/>.

⁶¹ *Ibid.*, 15.

⁶² Lisa Murphy et. al, “Community-Based Management of Sex Offenders: An Examination of Sex Offender Registries and Community Notification in the United States and Canada” (pp. 410-422), in Fabian M. Saleh, Albert J. Grudzinskas, John M. Bedford, and Daniel J. Brodsky, *Sex Offenders: Identification, Risk Assessment, Treatment, and Legal Issues* (New York: Oxford University Press, 2009), 412.

notification was released for any particular person.⁶³ Populist support for public registries often includes the desire for more active and visible notification for communities, so that people can more properly prepare for (or object to) the release of offenders within their communities.⁶⁴ Although notification systems have preceded with significantly more caution and restraint than the publicly available information released in the United States, fear of identification within communities – even when offenders have relocated or have changed names – remains a significant concern of reintegrating sexual offenders.⁶⁵ Nonetheless, social media platforms have been and continue to be used to quickly disseminate official community notification releases, as well as unofficial shaming identifications such as with *Creep Catchers*.

This public shaming is reminiscent of the historical transition to granting the state a monopoly over the use of force and over punishment, an intentional break from the public spectacle of capital punishment that preceded mass incarceration. The development of the prison system, though retributive insofar as societal segregation, was intended to be rehabilitative – in the sense that the ‘Pennsylvania System’ (or penitentiary) gave a convict time for personal reflection, reformation, a penance in hopes that they would prepare for law-abiding reintegration.⁶⁶ With the abolition of capital punishment in Canada in 1976, lifelong incarceration became the limit of state-sanctioned punishment, with the first consideration for parole available after serving 25 years.⁶⁷ This clause for mandatory parole consideration is the major source of discontent for social conservatives in the current moment – as well as for liberals

⁶³ Murphy et. al, 412.

⁶⁴ Kim Iverson, quoted 2:20 in *I, Pedophile*, directed by Matthew Campea, (Ottawa: CBC Firsthand Documentary Series) televised 10 March 2016, available at <http://www.cbc.ca/firsthand/episodes/i-pedophile>.

⁶⁵ Personal experience from volunteering with CoSA Ottawa, discussed later in this chapter.

⁶⁶ O.M. Biggar, W.F. Nickle, and P.M. Draper, *Report of the Committee Appointed by Rt. Hon. C.J. Doherty, Minister of Justice, to Advise Upon the Revision of the Penitentiary Regulations and the Amendment of the Penitentiary Act* (Ottawa: Queen’s Printer, 1921), 11.

⁶⁷ Parole Board of Canada, “Parole Decision-Making: Myths and Realities”, last updated 9 December 2015 at http://pbc-clcc.gc.ca/infoentr/myths_reality-eng.shtml#mythten

active in the combatting of rape and sexual assault culture – for a number of reasons. First, it fails to differentiate between premediated and aggressive murders and murder-sexual assaults, providing an identical opportunity for release for, as an example, the murder of a police officer during an escape attempt and the planned hostage taking and murder of a bank employee.⁶⁸ Second, because lifelong imprisonment ‘should’ be presumed to keep its namesake, but often does not due to measures enacted to reduce overcrowding and prison spending.⁶⁹ Third, it theoretically offers a more permanent protection for Canadian citizens through permanent segregation⁷⁰ (that is, if one ignores prison violence committed against inmates serving shorter terms, the continued existence of drug commerce inside and outside of prison, and the existence of carceral escapees). Though the Harper government promised to make “Life Means Life” its “top justice priority” upon re-election in 2015,⁷¹ the Liberal majority forestalled such changes from taking place. In this sense, the reprisal of shaming techniques and the resurrection of vigilantism is a way to ensure that sex offenders receive the stringent justice they are perceived to deserve, whether judicially or extrajudicially.

The Disorderly *DSM*

As was discussed in Chapter Two, the development of the *DSM-V* provided the professional psychiatric backing of distinguishing between individuals with pedophilic tendencies and acting child sex offenders. The manual used the codes of both *ICD-9* and *ICD-10* to assist in the collection of statistics and production of information to be distributed to the WHO

⁶⁸ Benjamin Perrin, “Why Life in Prison Rarely Works Out That Way”, *The Globe and Mail*, last updated 7 May 2015 at <http://www.theglobeandmail.com/opinion/why-life-in-prison-rarely-works-out-that-way-in-canada/article24301991/>.

⁶⁹ Perrin.

⁷⁰ Ibid.

⁷¹ Conservative Party of Canada, “Harper Announces ‘Life Means Life’ As His Government’s Top Justice Priority”, last updated 18 August 2015 at <http://www.conservative.ca/harper-announces-life-means-life-as-his-governments-top-justice-priority/>.

in its own revision process of *ICD-11*, which was to be completed in 2015.⁷² As a result of consultation with a range of psychiatric and non-psychiatric professionals, including clinical staff, psychiatrists, pharmacists, consultants, social workers, forensic workers, and rehabilitation therapists, the American Psychiatric Association (APA) reordered its classification of mental disorders to better match with modern clinical realities and theoretical frameworks.⁷³ A number of academic, medical, and social activist perspectives were factored into this restructure, including better understandings of developmental psychology and psychiatry, diversifying recognition of autism spectrum disorder, the clarification of issues related to substance abuse and dependence (since persons medicated for mental disorders would be normally expected to be dependent on medication for normative functioning), alongside full online integration to strengthen its utility for diagnostics and scientific research.⁷⁴ The lack of sympathy attributed to individuals with pedophilic tendencies is potentially rooted in their potential outcomes, especially that of the sexual victimization of children, which tend to be more hazardous than other incidences of relapse.

Paraphilic disorders were now isolated and described within a distinct chapter. This chapter contained a dichotomous structure of disorders, categorizing disorders as either *anomalous activity preferences* or *anomalous target preferences*, with each category further dichotomously subcategorized – the former into *courtship disorders* and *algolagnic disorders*, the latter referring to *human target* and *elsewhere target*. Under this categorical system,

⁷² APA, *DSM-V* (Digital Edition), Preface. Accessed 1 March 2016 at <http://dsm.psychiatryonline.org.proxy.bib.uottawa.ca/doi/full/10.1176/appi.books.9780890425596.x00preface>. The *ICD-11* is now expected to be released in 2018.

⁷³ Ibid.

⁷⁴ Ibid.

pedophilia was categorized as an *anomalous target preference, human target* mental disorder.⁷⁵ The APA made a significant departure from predecessor manuals with the *DSM-V*, defining paraphilia as “any intense and persistent sexual interest other than interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners” while clarifying that certain subtypes of paraphilias were better defined by “*preferential* sexual interests” (emphasis original).⁷⁶ The essential non-inclusion of normative sexual behaviour suggested that as long as consent was maintained, the APA had moved away from pathologizing intimate sexual kinks and exploration. Of utmost significance, however, was the distinction that a paraphilia by itself did not necessarily justify clinical intervention; rather, the *DSM-V* prescribed for the diagnoses of paraphilic disorders, defined as paraphilias “causing distress or impairment to the individual or... whose satisfaction has entailed personal harm, or risk of harm, to others”.⁷⁷ Essentially, the APA had finally unlocked the potential to differentiate between pedophiles and child sex offenders.

The diagnostic criteria of paraphilic disorders were now standardized, with Criterion A qualifying its nature (sexual interest in children) and Criterion B specifying the negative consequences thereof (personal distress or potential harm to others). Individuals who satisfied only Criterion A were considered to have a paraphilia, while those who satisfied both would meet the requirements to be diagnosed with a paraphilic disorder. The *DSM-V* also advocated for the use of self-report evaluations to ascertain how individuals perceived the intensity of their paraphilia with regards to ‘normophilic’ sexual interests (physically mature, consenting adults),

⁷⁵ APA, *DSM-V* (Digital Edition), Paraphilic Disorders. Accessed 1 March, 2016, at <http://dsm.psychiatryonline.org.proxy.bib.uottawa.ca/doi/full/10.1176/appi.books.9780890425596.dsm19>.

⁷⁶ Ibid.

⁷⁷ Ibid.

in conjunction with medico-clinical measures such as phallometric study.⁷⁸ Digital editions of the diagnostic criteria also included a brief literature overview with which clinicians or generally interested parties could learn more about specific mental disorders, paraphilic or otherwise.

The explanatory sections of each paraphilic disorder were now much more in-depth and highlighted diagnostic features, associated features, prevalence, development and course, risk and prognostic factors (including temperament, environment, and genetics), gender relevance, differential diagnoses, and comorbidity information. Previously, this information was contained in the general explanation of paraphilias preceding the subcategorization of related disorders. Pedophilic disorder was still distinguished by sexual attraction to prepubertal children (generally age 13 or younger) but applied equally to those who freely disclosed their attraction and those who denied it.⁷⁹ However, a concession was made that individuals who remained unashamed or otherwise remained functionally uninhibited by their fantasies or urges, and whose self-reported absence of offending was congruent with their criminal record, would be most accurately classified as having a pedophilic sexual interest rather than a pedophilic disorder.⁸⁰ The temporal requirement of six-month recurrence was also justified as a means of ensuring that sexual interest in children was not transient.⁸¹

Associated features assisting in the diagnosis of pedophilic disorder included the extensive use or possession of child pornography, a valid clinical indicator of pedophilia given that self-selection of pornography often corresponds with an individual's sexual interests.⁸² The prevalence of pedophilic disorder remained uncertain but was estimated, at its highest, to be 3-5%

⁷⁸ Ibid.

⁷⁹ APA, *DSM-V* (Digital Edition), Pedophilic Disorder. Accessed 1 March 2016 at <http://dsm.psychiatryonline.org.proxy.bib.uottawa.ca/doi/full/10.1176/appi.books.9780890425596.dsm19>.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

of all males.⁸³ The use of Criterion C, which quantified the age gap between adult and child, was explained as a means of differentiating between age-appropriate and developmental sexual interest, given that pedophiles often became aware of their sexual interests during puberty.⁸⁴ Though pedophilia *per se* was presumed to be a lifelong condition, individuals with pedophilic disorder noticeably fluctuated with age in terms of propensity to act on urges and the level of stressors and impairment felt.⁸⁵ As a logical extension, the general propensity and capability to act against children matched sexual ability, peaking in late adolescence into adulthood and decreasing with age. Rudimentary indicators of genetic influence on pedophilia were noted, though childhood sexual victimization remained the strongest correlative factor in developing pedophilic disorder.⁸⁶ Lastly, the differential diagnoses noted for pedophilic disorder paralleled its comorbid disorders: antisocial personality disorder, alcohol and substance abuse disorder, and obsessive-compulsive disorder, all of which could lead typically normophilic persons to perform sexual acts against children.

Though the *DSM-V* inarguably established the existence of pedophiles distinct from individuals with a pedophilic disorder, many of whom only come to be diagnosed after perpetrating child sexual offences, it is by no means flawless. In an early reprinting, the APA redacted the use of sexual orientation in the text discussion section of pedophilia, which originally highlighted the difference between pedophiles and those to be diagnosed with pedophilic disorder. In response to public criticism of the use of the term, the APA argued that the use of sexual orientation was a mistake, intended to read sexual interest, and that the organization “stands firmly behind efforts to criminally prosecute those who sexually abuse and

⁸³ Ibid. The female ratio is even less uncertain given its lack of representation in clinical study.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

exploit children and adolescents”.⁸⁷ Essentially, perhaps in reaction to public fervour, the APA neglected the chance as a professional organization to decouple pedophiles from child sex offenders and conceded to political pressure. This is not to suggest that the news release should be taken as a totally representative acceptance that pedophilia was distinguished from normophilic sexual orientations, since at least one APA member decried the redaction as a mistake.⁸⁸

Criticisms of *DSM* codifications of pedophilia were almost always made in reference to their lack of clarity or utility for research and clinical practice. Between the *DSM-III* and *DSM-V*, Task Forces seemed unable to agree or ascertain whether or not sexual acts were to be used as demonstrable evidence of pedophilia or if sexual interest in children, theoretical or tangible, should be given diagnostic primacy.⁸⁹ Similarly, the presence or absence of distress was questioned as a requirement of diagnosis: should an individual with pedophilic sexual interests be considered a pedophile if he is not stressed about his interests?⁹⁰ If so, the sexual interest in children itself, with or without action, was inherently pathological; if not, a distinct minority of individuals were in need of distinction and recognition by the APA, one initially provided for by the *DSM-V*. An evident critique of the manual yet to be addressed regarded the use of prepubescent, or conversely, the lack of development of a typology of pedophilic disorders. Clinical research and meta-analyses concluded that the modal age of child sexual victimization

⁸⁷ APA, “Statement on DSM-V Text Error: Pedophilic Disorder Text to be Corrected” (Press Release). Arlington, VA: APA Press, 31 October 2013). Accessed 1 March 2015 at <http://www.dsm5.org/Documents/13-67-DSM-Correction-103113.pdf>.

⁸⁸ Fred S. Berlin, “Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder”, *Journal of the American Academy of Psychiatry and the Law* 42(4)(December 2014), accessed 1 March 2016 at <http://www.jaapl.org/content/42/4/404.full>.

⁸⁹ Ray Blanchard, “The DSM Criteria for Pedophilia”, *Archives of Sexual Behaviour* 39 (2010): 305-306.

⁹⁰ *Ibid.*, 307.

by adults was 14, often early or midway through puberty.⁹¹ More accurately, these individuals would be classified as hebephiles, a categorical type coined in 1955 just after the publication of *DSM-I*. If the *DSM-III*, *DSM-III-R*, *DSM-IV* and *DSM-V* Task Forces were especially guided to be inclusive of literature reviews and updated research, why has prepubescence remained consistently defined at the age of thirteen given the knowledge that the average age of onset for puberty precedes this for both sexes?⁹²

Beyond lacking specificity in terms of the age of targeted children, the inclusion of acting on sexual urges or fantasies inevitably grouped individuals masturbating to pedophilic fantasies with those acquiring child pornography and with those committing the most heinous of sexual violations. The diagnostic criteria themselves, then, were partially capable of reinforcing the conflation of all pedophiles as child sexual offenders. In his criticism of the ‘correction’ of sexual orientation in the *DSM-V*, Fred Berlin suggested that its inclusion was analogous with what is known about orientation more generally: heterosexual orientation refers to adult attraction to the opposite sex, homosexual orientation refers to adult attraction to the same sex.⁹³ Though this definition is partially problematic as it erases sexual orientation before adulthood – an adolescent male attracted to adolescent males or adult males is also homosexually oriented-- the intent was to suggest that a sexual interest in children is representative of an orientation archetype, one deserving of distinction from perpetrators of child molestation.⁹⁴

A final critique deals with the incompatibility of this supposed misuse of sexual orientation in relation to legal culpability. From *DSM-III* onward, the APA maintained the need

⁹¹ Ibid., 311.

⁹² Robert V. Kail and John C. Cavanaugh, *Human Development: A Lifespan View, Fifth Edition* (Boston: Wadsworth Cengage Learning, 2010), 296.

⁹³ Berlin.

⁹⁴ Ibid.

for non-psychiatric professionals to duly consider the use of the *DSM* for their own professional pursuits, specifically with regard to establishing legal culpability. Though the *DSM-V* suggested differentiating individuals with pedophilic sexual interest from those with a pedophilic disorder in cases wherein self-reported abstinence – at least in relation to sexual behaviour with a child – matched individual legal histories, this remained in direct conflict with numerous studies that demonstrated the insufficiency of self-report in terms of child sex offenders, some of whom denied pedophilic interests even with extensive criminal records.⁹⁵ Further, this included no reflection on the dark figure of crime – the realistic depiction of crime rates which accounts for unreported victimization or victimization dealt with without the direct involvement of the criminal justice system. If the consolidated sexual assault reporting rate of six percent is held to be valid,⁹⁶ then only a significant minority of persons would be effectively diagnosed as having a pedophilic disorder given this diagnostic criterion.

“Nobody Wants to Know”⁹⁷

The ad hoc nature of interventions for child sex offenders are not limited to criminal law. As the criminalization of sexual interactions with children increased – in scope, with the extension of age of consent to 16 via the *Tackling Violent Crime Act* (2008), and in number, as was described in the legal section of this chapter, so too did the funding of carceral solutions to child sexual exploitation. Problematically, this likewise relocated the vast majority of therapeutic psychiatric programs and groups within prisons, fusing the previously distinct categories of governance, surveillance, and health, into one industrialized process. In order to seek the best

⁹⁵ Blanchard, 306.

⁹⁶ SexAssault, “Sexual Assault Statistics in Canada”, accessed 1 March 2016 at <http://www.sexassault.ca/statistics.htm>

⁹⁷ Edward Chambers, quoted 9:15 in *I, Pedophile*, directed by Matthew Campea, (Ottawa: CBC Firsthand Documentary Series) televised 10 March 2016, available at <http://www.cbc.ca/firsthand/episodes/i-pedophile>

possible solution for child sex offender management, legal and medical experts, alongside populist advocacy groups, were inadvertently facilitating the development of a prison-medical industrial complex incapable of proactively dealing with child sexual abuse. Sex offender management stratagems focused on how to prevent sexual exploitation from recurring, rather than a holistic effort to prevent its occurrence, in effect reiterating the need for therapeutic incarceration.

Researchers and academics faced similar issues. In 1998, principal author Bruce Rind and his colleagues submitted a meta-analysis of the self-reported harms of child sexual assault, one which analyzed how the terms child and child sexual assault were operationalized, how research subjects were selected, and whether or not research samples could reliably be considered representative of the general populations from which they were drawn. Subsequent to peer-review, the authors received resounding criticism from American legal experts, as well as from gender studies scholars, for suggesting that the level of harm produced by child sexual assault was more strongly correlated with the extent to which consent, coercion, and force were involved in individual cases of sexual assault.⁹⁸ The authors explicitly stated that their findings “[did] not imply that moral or legal definitions of or views on behaviours currently classified as CSA should be abandoned or even altered” and were relevant “to moral and legal positions only to the extent that these positions are based on the presumption of psychological harm”.⁹⁹ Nevertheless, the study was misconstrued to be in advocacy for the reform, or abolition, of age of consent legislation, aided by the hasty appraisal of the study by NAMBLA.¹⁰⁰

⁹⁸ Bruce Rind, Philip Tromovitch, and Robert Bauserman, “A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples”, *Psychological Bulletin*, 124 (1), 1998: 31.

⁹⁹ Rind, Tromovitch, and Bauserman, 47.

¹⁰⁰ Steven J. Ondersma et al., “Sex With Children Is Abuse: Comment on Rind, Tromovitch, and Bauserman (1998)”, *Psychological Bulletin*, 127 (6), 2001: 707.

The negative press attracted the attention of two American Republican congressmen, Matt Salmon of Arizona and Tom DeLay of Texas, both of whom sought to bring action against the American Psychological Association – mistakenly, since it was the American Psychiatric Association which oversaw the peer review process.¹⁰¹ Regardless, the correct APA’s then executive vice-president, Raymond Fowler, responded to the congressional concerns, instituting a new policy to allow APA journal editors to pre-emptively flag research publications likely to cause controversy and conflict. Additionally, Fowler suggested that he had requested an independent expert review of the Rind et al. article, an unprecedented scholarly challenge within the association.¹⁰² Opponents of the Rind article charged that because persons below the age of consent were involved in the study, the operationalized definitions used for consent were legally and ethically meaningless,¹⁰³ despite the intentional departure from legal-moral grounding for the meta-analysis. Though the Congressional response is distinctly American, the evaluation of the controversial nature of individual research projects, and possibility of a specifically-guided peer review process for such research, could also affect Canadian psychiatric scholarship.

The Rind et al. (1998) controversy, and the release of a subsequent meta-analysis of male intergenerational sexual relations – an evaluative study ranging from pederasty in Ancient Greece and Rome to 33 contemporary cultural practices,¹⁰⁴ sparked the release of *Censoring Sex Research: The Debate Over Male Intergenerational Relations*. Editors Thomas K. Hubbard and Beert Verstraete collected nine articles, arguing in favour or against Rind’s conclusions, in an

¹⁰¹ Scott O. Lilienfield, “When Worlds Collide: Social Science, Politics, and the Rind et al. (1998) Child Sexual Abuse Meta-Analysis”, *American Psychologist*, 57(3), March 2002: 180.

¹⁰² Sara Martin, “APA Defends Stance Against the Sexual Abuse of Children”, *APA Monitor Online* 30(7), July/August 1999, archived at <https://web.archive.org/web/20081007013210/http://www.apa.org:80/monitor/julaug99/as4.html>.

¹⁰³ Lilienfield, 179.

¹⁰⁴ Thomas K. Hubbard and Beert Verstraete (Eds.), *Censoring Sex Research: The Debate Over Male Intergenerational Relations* (Walnut Creek, CA: Left Coast Press, Inc., 2014), Back Cover.

effort to promote a dialogue on the censorship of scientific research by political and populist activism. In a less academic way, these authors echoed the sentiments offered by Gerald Hannon's *Men Loving Boys Loving Men*, insofar that the existence of child-adult sexual relationships were demonstrably provable. The notion that all child sexuality is adult-borne, heinous, and traumatic remains a prevalent barrier to social scientific and scientific research, especially since authors are forced to consistently repeat that their results are not a legitimization of adult-child sexual intercourse. For example, religious opponents of Kinsey challenged his methods so fervently that he lost funding both from the Committee for Research in Problems of Sex, a body within the National Research Council, and from the Rockefeller Foundation.¹⁰⁵ Attacks on Kinsey's research continued until today, from the failed Indiana House of Representatives Resolution No. 16, which proposed a limit on research "[furthering] the claims made by Alfred Kinsey" to Judith Reisman's *Sexual Sabotage: How One Mad Scientist Unleashed a Plague of Corruption and Contagion on America* (2010).¹⁰⁶ Further, research findings which are eventually published are often reliant on the muddling of all acts as pedophilic, rather than hebephilic or ephebophilic (adolescent or late adolescent, respectively); even though a landmark study of sexual abuse within the United States Catholic Church concluded that only 5% of cases were pedophilic by definition¹⁰⁷ – that is, involving prepubescents – public outrage over Catholic pedophiles persists today.¹⁰⁸

The carceral therapy industry is an enigmatic enterprise. In terms of preventing child

¹⁰⁵ Kinsey was attacked as a homosexual, as a pedophile, as an enabler of criminal victimization, and – appropriately for Chapter 1 of this thesis, as a “sexual psychopath” by Judith Reisman. See Daniel C. Tsang, “Foreword: Taboo Sex Research”, in Hubbard and Verstaete (Eds.), viii-ix and Dina Spector, “Why Kinsey’s Research Was Even More Controversial than Master’s of Sex”, *Business Insider*, 18 October 2013 at <http://www.businessinsider.com/why-alfred-kinsey-was-controversial-2013-10>.

¹⁰⁶ Tsang, ix.

¹⁰⁷ Tsang, xi.

¹⁰⁸ Laurie Goodstein, “Sex Abuse and the Catholic Church: Why Is It Still a Story?”, *The New York Times*, 20 April 2016, available at http://www.nytimes.com/2016/04/20/insider/sex-abuse-and-the-catholic-church-why-is-it-still-a-story.html?_r=0

sexual offending, the fears of being outed or held accountable by legislative restrictions imposed on doctor-patient confidentiality turn pedophiles and child sex offenders away from seeking therapeutic options.¹⁰⁹ Although such legislation varies by provincial jurisdiction, the intent of protecting children from sexual exploitation remains the same. Unfortunately, child sexual victimization by pedophiles is often enacted out of desperation,¹¹⁰ especially given that the most heavily funded options for psychiatric and/or psychological intervention have relocated inside carceral institutions. If therapy is viewed as a vector for being identified as a potential or actual offender, then pedophiles and child sex offenders will simply prolong their avoidance of psychological and/or psychiatric help,¹¹¹ even if that help could prevent victimization.

The near-universal lack of pre-offence programming exacerbates this problem. Save for Prevention Project Dunkelfeld (Darkfield) in Germany, the vast majority of therapeutic options in Canada have been developed for persons already convicted of at least one offence. Few books and articles focused on preventing child sexual offending distinguish between pedophiles and criminal sexual offenders, and fewer still differentiate between pedophilic and non-pedophilic child sexual abuse; that is, as was discussed in Chapter 2, not all child sexual abuse is perpetuated by pedophiles, and not all pedophiles commit child sexual abuse. Michael C. Seto, Director of Forensic Rehabilitation at the Royal Ottawa Mental Hospital, suggested that the “interchangeable use within public, political, and media accounts” of pedophilia and child sex offending erodes the scientifically-demonstrable difference in risk between pedophilic and

¹⁰⁹ Amber Hildebrandt, “Virtuous Pedophiles Group Gives Support Therapy Cannot”, *CBC News*, last updated 21 July 2014, available at <http://www.cbc.ca/news/canada/virtuous-pedophiles-group-gives-support-therapy-cannot-1.2710160>.

¹¹⁰ James Cantor, quoted in Hildebrandt.

¹¹¹ Hildebrandt.

nonpedophilic sex offender recidivism.¹¹² He also reaffirmed the need to reassess legal and psychiatric definitions for pedophilia, given the semantic centrality of puberty; if the modal age of child sexual victimization is 14,¹¹³ then quite frequently secondary sexual characteristics such as breast development, pubic hair, and penile growth are expected to be present, characteristics incompatible with the desires of actual pedophiles.¹¹⁴ In essence, the conflation of pedophilia and child sex offending is wrong, semantically, legally, and biologically.

From Invisibility to Anonymity

In a way, the highly limited availability of pre-offence and pre-capture (meaning that some offenders seek help before they reoffend or escalate in terms of severity and/or harm) therapy programs has also fused psychiatric research, therapy, and activism. Sexual behaviourist James Cantor successfully demonstrated a ‘cross-wiring’ within the brain, one which functions almost identically to normative sexual behaviour in adults heterosexual males; when shown photographs or videos of naked persons to whom one is attracted to, the same parts of the brain experience activity in pedophiles and normative heterosexuals.¹¹⁵ Further, a clinical trial revealed a significantly strong correlation with left-handedness and pedophilia, one which is also demonstrable for people living with schizophrenia and people with disorders on the autism spectrum,¹¹⁶ furthering the case that pedophilia is rooted in neurology. As the *DSM-V* moved to diminish the stigma for those living with disordered or diseased tendencies, and to differentiate them from persons who criminally act because of them, Cantor was revealing scientific evidence

¹¹² Michael C. Seto, *Pedophilia and Sexual Offending Against Children: Theory, Assessment, and Intervention* (Washington, DC: American Psychological Association, 2008), 4.

¹¹³ Blanchard, 306.

¹¹⁴ Seto, 5.

¹¹⁵ James Cantor, quoted 12:30 in *I, Pedophile*, directed by Matthew Campea, (Ottawa: CBC Firsthand Documentary Series) televised 10 March 2016, available at <http://www.cbc.ca/firsthand/episodes/i-pedophile>

¹¹⁶ James Cantor, quoted 11:20 in *I, Pedophile*, directed by Matthew Campea, (Ottawa: CBC Firsthand Documentary Series) televised 10 March 2016, available at <http://www.cbc.ca/firsthand/episodes/i-pedophile>

for the need to decouple pedophiles and child sex offenders. That is, Cantor was substantiating the evidence necessary to distinguish between individuals with a mental disposition and those who have committed disorderly acts. Seto echoed these sentiments, suggesting that there is “a major gap between scientific understanding of [pedophilia] and the practices and policies that have been developed in response to the problem of child sexual abuse”.¹¹⁷

If scientific discovery is viewed as a form of gaining visibility, then Cantor’s neuroscientific studies could potentially be drawn from to advocate for pedophile liberation. However, since the 1990s, NAMBLA has all but dissolved. Some pedophile activists still believe it will be “decades before this society can have an honest, non-hysterical conversation about kids and sex”,¹¹⁸ but it is unlikely that such a conversation would involve NAMBLA. This is most likely because the Internet and anonymous forums have developed which allow pedophiles, and perhaps child sex offenders who have yet to be charged, to indirectly and discretely connect with one another. By contrast, in-person NAMBLA conferences, the payment of dues, and the real address requirement to receive a newsletter made the organization much more fallible to criminal investigation. Through the use of anonymous forums, avoiding detection and identification has become much easier for activist pedophiles, as well as non-activist pedophiles seeking conversation.

Two dichotomies have emerged in virtual pedophile spaces: boy love and girl love communities connect pedophiles by their interest group, and pro-contact and anti-contact designations separate groups by their goals and strategies.¹¹⁹ Anti-contact groups, such as the forum *Virtuous Pedophiles*, advocate in similar ways to the APA with *DSM-V* and to this thesis,

¹¹⁷ Seto, xii.

¹¹⁸ Pearl, supra note 6.

¹¹⁹ Pearl.

decoupling pedophilia from child sex offending. NAMBLA is understood to be a pro-contact group because its advocacy has been, primarily, around the rights to sexual intercourse and for children to consent – at any age – of their own accord. In 1993, the International Lesbian and Gay Association (ILGA) was granted the opportunity to speak on behalf of lesbian and gay liberation worldwide, but conservative groups attacked the group for allowing NAMBLA as a member; to avoid revisiting the coupling of homosexuality and child victimization, ILGA cut ties with NAMBLA.¹²⁰ After a survivor of child rape – American comedian Barry Crimmins – mocked how articles in the *NAMBLA Bulletin* provided various stories and tips for using online chat rooms, active membership in the organization all but ended. The remaining members are presumed to be pedophiles interested in maintaining an archive of what NAMBLA is, was, and what they fought for.¹²¹

Other activist-support groups have emerged which connect previously convicted sex offenders with anti-contact volunteer groups in order to assist in reintegration, and to facilitate a social group which does not tolerate pro-contact thoughts or actions. In 1994, Charlie Taylor was released from the Correctional Services of Canada (CSC) to the greater community of Hamilton, Ontario, after serving his fourth prison sentence, arriving with a lengthy history of more than twenty separate sexual offences.¹²² As with many sex offenders, Taylor was released at warrant expiry, meaning that since he had served the full duration of his carceral sentence, he would not be bound by the conditional monitoring afforded by parole. More simply, a high-risk offender was released with essentially no support or accountability from CSC. A Mennonite pastor and a group of his parishioners formed Circles of Support and Accountability (CoSA) and the first

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² CoSA Canada, “Who We Are”, last updated 2015, available at <http://cosacanada.com/>

‘circle’ around Taylor, befriending him as volunteers, supporting him in locating community resources and in avoiding risk, all while holding him accountable for risky behaviours and actions; Taylor died in 2005 after eleven years of non-offending.¹²³ Since his death, CoSA circles have formed in sixteen Canadian cities, and internationally within the United Kingdom, the United States, Brazil, and South Korea.¹²⁴

In 2014, CSC considered cutting all funding allocated to CoSA, primarily because after warrant expiry, released convicts were no longer considered to be the responsibility of the organization.¹²⁵ Although given a temporary reprieve at the behest of Steven Blaney, then the Minister of Public Safety and Emergency Preparedness, CoSA was officially defunded at the federal level the following year.¹²⁶ Such defunding is perhaps best understood as truly representative of a central argument of this thesis, namely the disjuncture between empirical evidence and the decisions made with regards to child sex offenders. A comparative study analyzing the recidivism rates of high risk sex offenders participating in CoSA-Hamilton (referred to as the pilot project), in contrast with high risk offenders not doing so, demonstrated statistically significant reductions in recidivism: CoSA Core Members (participant offenders) were 70% less likely to reoffend sexually, 57% less likely to reoffend violently, and 35% less likely to reoffend overall (non-violent, violent, and sexual recidivism, including violations of release conditions).¹²⁷ A subsequent study, with the goal of replication in mind, analyzed 44 Core Members drawn from CoSA chapters across Canada, but not from the pilot project, in contrast to 44 unaffiliated sex offenders: Core Members were 83% less likely to sexually

¹²³ Susan Clairmont, “Sex Offender Watch Group Gets Funding Reprieve”, *Hamilton Spectator*, 7 March 2014, available at <http://www.thespec.com/news-story/4401670-sex-offender-watch-group-gets-funding-reprieve/>

¹²⁴ CoSA Canada, “Who We Are”.

¹²⁵ Clairmont.

¹²⁶ Clairmont.

¹²⁷ Robin J. Wilson, “Circles of Support and Accountability”, accessed 31 May 2016, at <http://www.robinjwilson.com/circles.shtml>.

recidivate, 73% less likely to violently recidivate, and 71% less likely to recidivate overall.¹²⁸ Defunding, then, was not due to a lack of demonstrable success.

It is worth noting that CoSA chapters often highlight the importance of anonymity in relation to protecting Core Members, a sentiment echoed by the forum-runners of Virtuous Pedophiles.¹²⁹ E-mails, documents, and monthly reports maintained by volunteers make use of initials so that information cannot be drawn from them externally. The outing of a convicted sex offender's identity can happen both innocently and maliciously. For instance, if one were to sign up for a library card but explicitly request a revocation of Internet privileges, a librarian could probe further using the biological information required to register for the card. Inquiries regarding the proximity to schools, playgrounds, or if neighbours have young children can alert the suspicions of realtors, landlords, and prospective roommates, as can looking for phones without Internet access for general use. Although most of Canada enjoys the relaxed and reluctant use of public notifications, the general population is not bound to remain silent if they discover the residence or identity of a convicted sex offender. As was featured in the *I, Pedophile* documentary – albeit as a re-enactment – public demonstrations and boisterous mobs are not altogether uncommon.

Perhaps the lack of any prohibition on such demonstrations, despite the potential to spur vigilantism, has allowed for the rise of *Creep Catchers*. Though protests generally require permits to enable law enforcement and other public services to be prepared for any intervention required of them, the filming and publication of private conversations and revelation of child sex offender identities is much less readily pre-empted. Returning to Dawson Raymond, who claims

¹²⁸ Wilson.

¹²⁹ This paragraph is informed by personal correspondence with CoSA-Ottawa director, Susan Love.

that he has the support of law enforcement when they are ‘off the record’,¹³⁰ it appears that radical anti-pedophile attitudes have reached a point of ignition despite the cautionary recommendations of legal reformers, psychological and psychiatric experts, neuroscientists, and gay liberation activists. Over the period of nearly a century, interdisciplinary experts have waded the turbulent tides of public fervour against sex offenders and underscored the necessity and value of therapeutic intervention. Simultaneously, the lack of sufficient legal intervention has driven punitive criminal code reforms, and has all but eliminated the ability for pre-offence pedophiles to seek a therapist without the fear of identification and/or reprimand, and transformed the opposition of pedophile-inclusion in Canadian gay liberation movements to an exclusion from the deservedness of basic human equality.

This thesis challenges the notion that the denigration of pedophiles and child sex offenders is at all a modern invention. Dawson Raymond is but one of the most recent sprouts of a well-intentioned environment of child protection, rooted and interwoven in the multidisciplinary recommendations of experts at the forefront of their respective fields. Populist ‘tough on crime’ fervour grew around the notion that the sentencing length of child sex offenders was far too lenient¹³¹ without accounting for the need to guarantee the accessibility of and participation in therapeutic interventions to utilize carceral time, and perhaps unknowing that release at warrant expiry is strongly correlated with recidivism due to the lack of correctional supervision. These misconceptions are likewise born of the series of interrelated disjunctions between public opinion and expert data which can be traced back to the publication of *Royal Commission on Penal Reform in Canada* (1938), to the declassification of homosexuality as a

¹³⁰ Sarah Berman, “There’s a Growing Network of Vigilante Pedophile Hunters in Western Canada”, *Vice Online*, 16 March 2016, available at http://www.vice.com/en_ca/read/we-talked-to-the-leader-of-a-growing-network-of-vigilante-pedophile-hunters.

¹³¹ Berman.

mental disorder and the beginnings of *DSM-III* (1973), and to the legal struggles brought onto *The Body Politic* by the publication of Gerald Hannon's "Men Loving Boys Loving Men" (1977). The simultaneous existence of Prevention Project Dunkelfeld and of Creep Catchers suggests that the gap between professional expertise and public opinion is conducive to the perpetuation of the conflation of pedophilia and child sex offending, and that this is historically recurrent, and is at times directly counterintuitive to any meaningful attempt at reducing child victimization. As with the advocacy of gay liberation groups, it is likely that education, rather than hatred and ostracization, is the most holistic solution for preventing child sexual offending.

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