

**Stranger in Our Midst: Male Sexual “Deviance” in Postwar Ontario**

by

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A thesis submitted to the Department of History

in conformity with the requirements for

the degree of Doctor of Philosophy

Queen’s University  
Kingston, Ontario, Canada  
September 2001

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0-612-63412-4

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## **Abstract**

In the years following World War II, sex offenders came to be seen as more mentally disturbed than criminally responsible, and sex crime was widely regarded as a major mental health problem waiting to be solved. "Stranger in Our Midst: Male Sexual 'Deviance' in Postwar Ontario" examines the genealogy and diffusion of psychiatric ideas about sexuality, the modern construction of the male sex offender, and the introduction and implementation of treatment programs for sex offenders from 1945 to 1973. It charts the range of ideas, the key participants, and the multiple effects of the entrenchment of forensic sexology in legal, medical, criminological and mainstream cultural thought in postwar Canada. How is it, this thesis asks, that sex criminals came to be thought of as psychologically ill rather than morally evil and how did these new conceptions shape institutional practices?

The "criminal sexual psychopath," a medico-legal construct popularized in the postwar era, is the central focus of this study. An offspring of a marriage between the justice system and medicine, between social reformers and psychiatrists, sexual psychopath laws were in part the product of an almost century long effort to implement the principles of positivist criminology, spurred on by a moral panic over sex crime, and inspired by new advances in the sexual sciences. Supported by the middle-class parents of the baby-boom generation who were themselves immersed in child psychology studies, experimental medical and psychiatric 'treatment' programs ranging from group therapy to aversion therapy were launched in a variety of prisons, reformatories and penitentiaries.

The history of sexuality began as a political project aimed at countering and correcting the false perceptions medical science had created by lumping homosexuals with pedophiles and other sex "deviants"; it was, and remains, a fundamental part of an ongoing effort to liberate homosexuality from myth and superstition, and to take its rightful place in life's rich pageant. This project documents how the conflation of homosexuality with other sexual 'deviations' occurred. Rather than simply extricate homosexuals and other sex 'deviants' from the criminological grip of forensic sexology, "Stranger in Our Midst" project casts a critical gaze on the entire system of sexual classification.

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## **Acknowledgements**

Projects such as these are a long time in the making, but this one would have taken even longer, and would have been much less rewarding, were it not for the unfailing love and support of my family. The person who has been closest to this venture from the very beginning is my inimitable daughter, Natasha Chenier. Of all the people in my life, she has made the greatest sacrifices ( I like to think that, in return, she also has the most to gain). Her daily queries about my progress, and her regular inducements to keep going kept me buoyant in the roughest waters. We are made better people by each other. Perhaps some of Natasha's best qualities were learned from our family, who generously gave me their unwavering support every step of the way. I am indebted to my mother Marie, to my sisters Yvette Chenier and Laura Tilley, my brother-in-law Keith, and my niece Nicole and nephews Sheldon Rye and Derek.

Halfway into this project I had the tremendous fortune of meeting someone who quickly became my best friend, my confidant, my sounding board, my occasional editor, my greatest advocate and most of all, my partner in life's adventures, both great and small. Lynn Farrell's sharp wit, critical mind and unbridled enthusiasm for this project has been the even keel that sustained me through the vicissitudes of archival research and writing. Every day she delivers platters of love.

During the course of my research I made some truly wonderful friends. Mary MacDonald has been the closest to this project. We clocked countless hours together in the Ontario Archives (and the adjoining sandwich bar) comparing notes, sharing

our intermittent discoveries, and mostly making each other laugh. A lot. I am not sure if I should thank her more for her humour or her intellect, but both deserve special mention. Mary and I were two of four participants in the mostly monthly “Diss’n’Dine” group. I grew, and my dissertation benefited immeasurably due to the trenchant criticism and intellectual scrutiny Mary, Sheila McManus and Amanda Glasbeek brought to some of these chapters. Each has mastered the art of generously offering critical advice with affection and enthusiasm. Other friends who are big in my eyes are Helen Harrison and Patrizia Gentile, both of whom have shared the Queen’s graduate experience with me from beginning to end. We have, I think, inspired each other to finish what we started. The project may be done, but our friendships will, I hope, endure.

I have been lucky to have met people who supported my intellectual endeavours since I first began conducting research into the history of sexuality in Canada. The first among these are Maureen Fitzgerald and her partner Amy Gottlieb. Other scholars whose unflagging enthusiasm have made me feel right at home among historians are Kathryn McPherson, Craig Heron, Gary Kinsman, Margaret Little, Steven Maynard, Becki Ross, Franca Iacovetta and Geoffrey Smith. Rob Champagne also championed this project, sharing with me research he had undertaken himself on this subject. Barbara Godard and the late Kathleen Martindale gave me a brilliant introduction to feminist and postmodern theory. I had many memorable teachers who couldn’t keep me in school, but who inspired me to return. That I even took up history to begin with is due entirely to the enthusiasm and passion of Mr. Biernat who

taught me grade twelve Canadian history at George Vanier Secondary School in North York.

I used to think that my poor essay writing skills had something to do with the high school I attended, but given that the newest crisis in education touts the inability to compose a complete sentence as evidence of how 'the system' is failing, perhaps the essay is simply a difficult form to master. The people who helped me accomplish this feat include Penny Bryden, Kathryn McPherson and Karen Dubinsky. Susan Swann, and Lola Tostevin as well as my fellow students in various creative writing classes I thrived on at York University taught me to love language, be economical, and spin a good yarn at the same time. It is no accident that all of these people helped me become a better thinker, too.

Sheelagh Norman taught me how to keep my head and heart together when the world appeared to be coming apart at the seams, and David Drum and Judith Adler gave me expert chiropractic care when my body refused to submit to yet another day in front of the computer. My aunt, Lorraine Chenier, and my uncle, Edward Chenier, always showed an encouraging interest in my progress. Unfortunately their mother, my grandmother, Rose, succumbed to cancer in the second year of my doctoral programme. Although after attending my (and her) first convocation in 1992 she was never quite clear on why I was *still* in school, she would doubtless have been second only to my mother in a shameless display of familial pride.

I live on a wonderful street where the neighbours actually know each other

and love to stop for a chat, a passing gesture which quickly becomes a critical link to the human world during the long winter and spring I spent writing. Keeping me sane when I brought out my garbage, picked up the paper and made my way to and from the grocery store are Cathy Lyall and Jim MacDougall and their daughters/my playmates Tyama and Asenia, Karen Brockmann, Matt Caruna & Martin, Angela and Angelo Ricci, Sean, Maria and Katie, Steve and Claire, Audrey and Mary, Angela, Larry, Anna and Kiara, Helouise, Zoey, Bill, Marion, Nikita and Christopher, Paula and John, and Vigali, Kaliroy and Angela.

Some of the people about whom I write were exceptionally generous with their time, granting me in-person interviews, sharing copies of books and articles and pointing me toward material I likely would not have discovered on my own. Ed Turner and Hans Mohr of the Toronto Psychiatric Clinic's Forensic Out-Patient Clinic were particularly forthcoming. William Marshall of Queen's University, Harold Barbaree of the Clarke Institute and Karl Hanson, currently of the offices of the Solicitor General of Canada, also provided me with useful information as did Richard Steffy who ran the Mimico Pedophile treatment program. Dr. Steffy surprised me with a copy of a wonderfully rich but unpublished book-length study of the work he did there, and allowed me to pepper him with a range of questions to which he gave thoughtful and patient answers. Cyril Greenland and the staff and volunteers at the Queen Street Mental Health Archives are a vital resource to anyone working in the field of the history of psychiatry in English Canada; their annual Research-in-Progress seminars as well as the Madness Film Festival bring together and foster new scholars



and interesting scholarship. My thanks to the many people who have contributed to the programs there. At the Ontario Archives I am grateful for the assistance provided me by Stormie Stewart, Dan Bryant, Leon Rabinowitz, Majabeen, Tim, and the friendly staff on the retrieval desk, Anna Casanova and Nella Smith.

One of the most marvellous opportunities that came my way was my nine-month tenure as a Visiting Research Fellow at the Kinsey Institute for Research in Sex, Gender and Reproduction. It was a research opportunity made possible by a Canada-US Fulbright Scholarship, an honour for which I am deeply grateful, and a testament to the remarkable support my doctoral supervisor Karen Dubinsky, as well as Kathryn McPherson, Margaret Little, and Ian McKay have shown by standing behind my scholarship. Many people at the Kinsey Institute made my social and work life a tremendously pleasurable and productive experience, and they include Jennie Bass, Michael Hamburger, and their children Lara and Julia, librarian-cum-archivist Jennifer Corbin, the indispensable Ruth Beasley, Tom Albright, Lori Carnes, Debbie Herbenick, Dani Rozenman and family, Eric Janssen, Sandra Ham, Stephanie Saunders, John Bancroft, and Paul Gebhard. The purpose of this particular award is to support scholarship that furthers our understanding of the relationship between the two nations. That the Fulbright Foundation saw fit to support a project in the history of sexuality bodes well for the future of this field. I hope that my dissertation lives up to the ideals of the award.

Other important sources of funding came from the Social Sciences and Humanities Research Council, Hannah Institute for the History of Medicine, the

Canadian Federation of University Women, and Queen's University. I would never have been able to receive these awards had university not been made accessible through provincial social assistance and student grant programmes in place in the late 1980s. Sadly, these no longer exist. In its stead, middle-income tax-paying residents of Ontario receive a government rebate cheque.

This project is of the internet generation and it shows perhaps most obviously in the wide range of primary sources I was able to locate using a variety of library and other database search engines. Less obvious are the more personal connections made on academic discussion lists which have proven to be a rich resource for all sorts of scholarly pursuits. I am especially indebted to the members of H-WOMEN and Lesley Hall's British-based "histsex" list. From both forums I received helpful responses to a number of academic queries that enabled me to pin down some important historical details as well as develop my thinking around some of the issues I address. Two people who shared with me their own scholarly work via email are historians Simon Cole and Stephen Robertson.

The staff and my peers in the Department of History at Queen's University made me feel at home even though I lived in another city during much of my tenure. Yvonne Place kept me connected, administratively and otherwise, Norma St. John, Judy Vanhoosen, Cindy Fehr, and Debbie Stirton were always a site for sore eyes after the long commute in. Paul Christianson was another friendly face. Though I never studied under him, he stood out as the Department Head by taking an interest in my academic work and experience. Ian McKay supported this project while I was a

student in his class, and was the first to take an interest in some of the material under consideration here. Though my home was in Toronto, I stayed on at Queen's after finishing my master's thesis because I was convinced that Karen Dubinsky was the best person to help me develop my thinking around issues of sexuality, and to turn those thoughts into a readable dissertation. I was right. She has guided me in making this a much better piece of historical scholarship than it otherwise would have been.

Last but not least, I could not have undertaken any kind of post-secondary training without top quality, affordable day care. My daughter benefited from the many kindnesses, thoughtful skill, and expertise of a number of caregivers beginning from the time I began my undergraduate degree when she was just ten months old until she outgrew the need for it eleven years later. Many thanks and much gratitude are due to the dedicated staff of the York University Co-operative Daycare (1988-1993), the Palmerston Public School Daycare (1993-1997) and the Rawlinson After School Program (1997-1999).

*To my parents,  
Marie and Raymond Chenier (1941-1977)*

“... if they hold the psychosexual development theory I am doomed.... as a member of non-conforming [groups?] in several other aspects – Jewish, intellectual, artistic and of course, homosexual– I think a pattern will necessarily reveal itself of ‘constitutional inability to adjust to social demands and restraints’ and ‘rejection of authority’, etc... I am naturally concerned about the possibility that my future will depend on whatever one of such widely differing interpretations the authorities here should happen to favor. I therefore intend to take seriously your advice to ‘conform to the situation’ here. But exactly how does one go about it? Play the innocent? Or ‘confess all’ and claim repentance? or accept, against intellectual conviction, any theory insisted upon by them?  
...Do you happen to know any of the administrative personnel here?”

Letter from a man charged with having had sex with a sixteen year-old and under observation as a sex psychopath, to Alfred Kinsey, 2 April 1955.

## Introduction

There is no shortage of reasons why a history of sex offender treatment programs is both timely and important: sexual assault is a serious and unremitting social problem, sex offenders are reputed to be at high risk for re-offending, and few mental health experts are optimistic about their ability to treat them successfully. Current demands for community notification programs and sex offender registries in Canada and the United States as well as in Britain have led to a rise of local vigilantism and, some would argue, serious and unreasonable infringements on the rights of ex-convicts. What to do about sex offenders appears to have reached a new crisis point at the beginning of the twenty-first century.

But it was none of these things that led me to spend the better part of a decade undertaking a study of the introduction and implementation of treatment programs for sex offenders in the post-WWII era. While working on an earlier project I found myself reading American psychiatrist Frank Caprio's 1956 monograph on lesbianism, one of the first full-length studies of the topic. Caprio's description of the lesbian sounded like most women I knew and admired. They were strong-minded and strong-willed; interested in the arts, intellectually stimulating amusements and sexual pleasure; unconvinced that marriage and the family were the pinnacles of personal fulfillment, and, in some cases, fed-up with getting the run around from men. More poignantly, they looked to women for an alternative to a history of physical or heterosexual abuse. These women, whose stories Caprio revealed in the classic case study form, were clearly trying to make the world work

for them according to their own needs and desires. Yet for Caprio and other medical experts like him, their desire for intimate sexual relationships with women was incontrovertible evidence of their pathological condition, and served as a warning to other women tempted to seek out an alternative to the drudgery of heterosexual domesticity.

How is it, I wondered, that these remarkably conservative and highly subjective social values came to be passed off as legitimate scientific fact? When and by what process did the scientific study of sexuality evolve from a narrow field of study and practice into mainstream cultural ideology? Whose interests and what purposes did these ideas serve? *Stranger in Our Midst* examines the genealogy and maps the diffusion of psychiatric ideas about sexuality in Canada. It is not a history of sex offenders nor is it a history of victims of sexual assault, though both of these historical subjects haunt the pages of this project. Instead, this study focuses on uncovering the historical roots of the modern construction of the male sex offender. Although female sexual deviancy was defined and subsequently pathologized by “experts” like Caprio, it was the sexually “deviant” male that generated intense medical scrutiny and public anxiety. Through him, psychiatric and psychological ideas about sexuality gained cultural currency. I argue that prevailing criminal sexual stereotypes, particularly that of the pedophile, as mentally disordered and unable to exercise control over his sexual impulses, is a product of a specific set of social concerns, conditions, and values which shaped Canada’s middle class in the years following World War II.

The 1940s are widely regarded as a period of dramatic change in Canada and the United States. The absence of men from the family home, the expansion of women’s

economic independence through paid employment, and the growth of gay and lesbian communities in and outside of the military barracks during the first half of the decade all combined to ensure that at war's end formal and informal rules governing sexual behaviour would be challenged from all sides. After 1945 reconstruction brought increased immigration, the building of the suburbs, a dramatic increase in the number of young adults taking marital vows and the subsequent appearance of hundreds of thousands of babies.<sup>1</sup> Meanwhile, Cold War anxieties about national security were expressed through moral panics that swept North America in the late 1940s and early 1950s. Increasing demands for new laws to both regulate and liberate sexual behaviour were articulated in a plethora of academic and legal studies, state commissions and public debates. But perhaps most importantly, people in the western world began to think about sexuality differently. In the decade following WWII, the laws of science usurped the laws of morality as the basis upon which sexual behaviour would be regulated through the law, and increasingly, by everyday citizens.

Forensic sexology has its roots in the nineteenth century, but the science of sexuality remained a relatively marginal field of study until the post-WWII era, when popular and state support for the mental health movement, changing sexual mores, and the

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<sup>1</sup> In 1951, children under 19 years of age accounted for 38.5 of the Canadian population. K. Phyllis Burns, "What's Happening to Canada's Children?" Richard Laskin, ed., *Social Problems: A Canadian Profile* (New York: McGraw-Hill Co. of Canada, 1964), 316. See also Doug Owram, *Born at the Right Time: A History of the Baby Boom Generation* (Toronto: University of Toronto Press, 1996); Veronica Strong-Boag, "Home Dreams: Women and the Suburban Experiment in Canada, 1945-60," *Canadian Historical Review* 4 (1991): 471-504; Peter S. Li *The Making of Postwar Canada* (Toronto: Oxford University Press, 1996).



demographic spike in the number of parents raising young children converged to lend widespread support for criminal sexual psychopath legislation. Described as an uneasy marriage of incompatible parts, sexual psychopath laws marked a shift in the way the criminal justice system viewed sex offenders. No longer were they just criminals deserving punishment for their evil deeds. Those who committed crimes of a sexual nature were viewed as pathological victims of a mental aberration for which traditional forms of punishment were neither a cure nor a deterrent. In Canada, as in the 29 American states that also adopted sex psychopath legislation, men determined by the courts to be sexual psychopaths were subjected to indeterminate sentences as well as psychiatric and other forms of reformatory and rehabilitative 'treatment.'

Critiques of sex psychopath laws were penned from the moment they were passed up until their final repeal.<sup>2</sup> Probably the most comprehensive of these was the American Psychiatric Association's 1977 Group for the Advancement of Psychiatry report on sex psychopath laws, which called for their immediate repeal.<sup>3</sup> In 1984, Cyril Greenland published critical assessments of dangerous sexual offender legislation in Canada, the

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<sup>2</sup>Two of the earliest critical responses were Edwin H. Sutherland "The Diffusion of Sex Psychopath Laws," *American Journal of Sociology* 56 (1950): 142-148, and Paul Tappan, *The Habitual Sex Offender: Report and Recommendations of the Commission on the Habitual Sex Offender* (Trenton: New Jersey Commission on the Habitual Sex Offender, 1950).

<sup>3</sup>Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation: The 30s to the 80s Volume IX* (New York: Group for the Advancement of Psychiatry, April 1977).

progeny of criminal sexual psychopath laws.<sup>4</sup> Nicholas Kittrie's 1971 *The Right to Be Different* still stands as an incisive critique of all forms of psychiatric intervention in the criminal justice system in the United States.<sup>5</sup> The first to examine criminal sexual psychopath laws as part of the history of sexuality was American historian Estelle Freedman, whose contribution remains as critically engaging and soundly argued today as it was when it was first published in 1987.<sup>6</sup> Two Canadian scholars have also explored how Canada's adoption of sex psychopath laws shaped the regulation of sexuality, though with an emphasis on its impact on gay men. Rob Champagne published preliminary research results in 1986 and sociologist Gary Kinsman examined the law in more detail in his path breaking 1986 overview of the history of sexuality of Canada.<sup>7</sup>

Criminal sexual psychopath legislation represents just one of the ways in which sexuality was subjected to the medical gaze, a topic which has itself become the subject of

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<sup>4</sup>Cyril Greenland, "Dangerous Sexual Offender Legislation in Canada, 1948-1977: An Experiment That Failed," *Canadian Journal of Criminology* 26 no.1 (January 1984): 1-12, and "Dangerous Sexual Offenders in Canada," *Studies on Imprisonment* (Ottawa: Supply and Services Canada, 1976), 247-281.

<sup>5</sup>Nicholas N. Kittrie, *The Right to Be Different: Deviance and Enforced Therapy* (Baltimore: The Johns Hopkins University Press, 1971).

<sup>6</sup>Estelle Freedman, "'Uncontrolled Desires': The Response to the Sexual Psychopath, 1920-1960," *Journal of American History* 74 no1 (1987): 83-106.

<sup>7</sup>Rob Champagne, "Psychopaths and Perverts: The Canadian Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths, 1954-1958," *Canadian Lesbian and Gay History Network Newsletter* 2 (September 1986): 7-9; Gary Kinsman, *The Regulation of Desire: Homo and Heterosexualities* 2<sup>nd</sup> ed. (Montreal: Black Rose Books, 1996). See also Kinsman's "'Inverts,' 'psychopaths' and 'normal' men: historical sociological perspectives on gay and heterosexual masculinities" *Men and Masculinities: a critical anthology* ed. Tony Haddad (Toronto: Canadian Scholars Press, 1993), 3-35.

historical scrutiny over the past decade. Elizabeth Lunbeck's *The Psychiatric Persuasion* draws our attention to the way syphilis transformed psychiatry into a discipline that expanded its realm of expertise from the constraints of the asylum into everyday life.<sup>8</sup> Jennifer Terry's *An American Obsession* documents how sexological expertise gained through institutional work was put to use in shaping political policy and the law as a means to regulate and contain aberrant sexual behaviour deemed a threat to social and political stability.<sup>9</sup> Historians have also undertaken in depth studies of the work of individual sexologists: Harry Oosterhuis recently published a monograph on one of the European founders of forensic sexology, Richard von Krafft-Ebing, and Chris Waters is currently working toward a similar book-length examination of Britain's preeminent twentieth century sexologist, Edward Glover.<sup>10</sup>

*Stranger in our Midst* builds on these scholarly works to show how modern sexological ideas were put into action. By tracing how psychiatric treatment for sex offenders was – and was not – put into practice, this project documents the growth and expansion of forensic sexology during a period of unprecedented public and state support. By going beyond the theories and the ideas sexology produced to look at how they were applied in carceral and clinical settings, this study reexamines psychiatric intervention in

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<sup>8</sup>Elizabeth Lundbeck, *The Psychiatric Persuasion: Knowledge, Gender, and Power in Modern America* (New Jersey: Princeton University Press, 1994).

<sup>9</sup>Jennifer Terry, *An American Obsession: Science, Medicine and Homosexuality in Modern Society* (Chicago: University of Chicago Press, 1999).

<sup>10</sup>Harry Oosterhuis, *Stepchildren of Nature: Krafft-Ebing, Psychiatry and the Making of Sexual Identity* (Chicago: University of Chicago Press, 2000).

prisons through the theoretical lens cut by historians of sexuality. For example, recent studies of ‘deviant sexuality’ are peppered with references to treatment methods now widely considered cruel and unusual, but precisely what treatments were used and why medical practitioners employed them, where, how often, and in what contexts has yet to be systematically documented or fully explained. Some of the more sensational treatment methods such as electro-convulsive therapy and lobotomy have become emblematic of the injustices endured by sex deviants and other marginalized and medicalized constituencies, yet they were at one time seen as promising tools in the effort to bring aberrant sexualities in line with normative standards. Viewing sex offender treatment programs from this vantage point, I track the internal logic that informed forensic sexology. My task is to locate, document and critically engage with the epistemology of sex offender treatment. While I pay attention to the ways that these programs were absorbed by the prison’s punitive system of control and regulation, my primary goal is to uncover why and how psychiatric treatment came to be seen as the best way to address the problem of sex crime, and to examine how mental health experts attempted to meet the demand.

The experiment in treatment for sex offenders is not over, and residue of the postwar diffusion of the forensic sexological construction of sexuality remains, but the history of Canada’s ‘treatment’ era has a well-defined beginning and ending.<sup>11</sup> Though I draw on some pre-WWII material, the history of the criminal sexual psychopath formally

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<sup>11</sup>In an historical overview of sex offender treatment in Canada, Michael Petrunik defines this period as the “clinical era”. See Michael Petrunik, “Models of Dangerousness: A Cross Jurisdictional Review of Dangerousness Legislation and Practice,” Policy Branch, Ministry of the Solicitor General of Canada, 1994.

begins in 1947 when the British Columbia Provincial Organization of Parent-Teacher Associations (PTAs) decided that the most modern and effective response to a man who had sexually assaulted a Vancouver child was not imprisonment, but medical treatment. Inspired by American sex psychopath laws, still new even to that country, the BC PTA won over the Vancouver-South Member of Parliament, who brought its demands to the House of Commons. The following year, a Canadian version of criminal sexual psychopath legislation was unanimously passed through Parliament and into law.

Sex offenders were not the only group deemed to be more mentally aberrated than criminally motivated. In a high profile campaign opposing the execution of convicted murderer Caryl Chessman, one protester succinctly captured the tenor of the times with a placard that read "Love not Hate, Justice not Revenge, Psychotherapy not Cyanide".<sup>12</sup> Throughout the 1950s and 1960s in English-speaking Canada and the United States, public support for mental health treatment was at its peak. The belief that providing therapy rather than administering punishment was compassionate and humanitarian bolstered support for alternatives to traditional forms of incarceration and punishment from the middle classes who were also busy reading the latest child-rearing manuals written by mental health experts. In Canada, an uneven patchwork of government funding flowed into programs of various types, and among middle class parents, sex offender treatment programs was one of the most vigorously supported.

The anti-psychiatry and prisoners rights movements of the 1960s brought a quick

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<sup>12</sup>*Time Magazine* (21 March 1960): 18. See also Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford, California: Stanford University Press, 1994), 18.

end to the 'illusion' that psychiatric treatment was more humane than old fashioned incarceration. The assault on psychiatry came from a number of corners, including gay rights organizations, women's liberation groups, ex-psychiatric patients and even members of the profession itself, including Thomas Szasz, who denounced his discipline in an arm-load of best-selling books and feature articles. Singled out for special attention were electro-convulsive and aversion therapies, both of which were employed in the treatment of sex deviation. Immortalized in Stanley Kubrick's 1971 film *A Clockwork Orange*, aversion therapy fell into disrepute.<sup>13</sup> Century-old images of the psychiatrist as evil and deranged asylum keepers were quickly revived, invasive treatments were vociferously denounced as mind control, and the profession was scandalized. Facing such criticism, the director of one of Canada's leading treatment programs, which employed aversion therapy similar to that used in Kubrick's film, abandoned his treatment project for other, less controversial work.<sup>14</sup> In the 1970s, support for therapeutic confinement rapidly declined. Prisoners rights advocates denounced treatment for prisoners as a sham, and even worse, an extension of the prison's oppressive regime. Though treatment teams continue to work with certain groups of inmates, including sex offenders, the idea that one day prisons will be abolished and replaced by hospitals would today be met with ridicule. However, in the period under study, it enjoyed enthusiastic support by everyday citizens who shared a

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<sup>13</sup>*A Clockwork Orange*, prod. and dir. Stanley Kubrick, 1971. Film.

<sup>14</sup>Richard Steffy, telephone interview by author, Waterloo, ON, 18 March 2001.

profound faith in the ability of modern medicine to solve complex social problems.<sup>15</sup>

Anxieties about sexual psychopathy converged with America's Cold War concerns over national security. Like sex perverts, those who harboured deviant or aberrant political and social views were difficult to isolate.<sup>16</sup> Geoffrey Smith's explication of the Cold War "triad of Communism, disease, and sexual perversion" draws attention to the parallel between the depiction of Russians as slaves to Marxist-Leninist ideology, as "automatons, enslaved in the secret service of a higher evil", and the psychiatric and state depiction of gays and lesbians – and I would add, all other sex 'deviants' – as "slaves to their own overheated sexual appetites."<sup>17</sup> For Canadian and American civil servants, the state-supported construction of the category of sex deviants translated into the massive dismissal of 'suspected' and 'confirmed' homosexuals, but the construct played itself out in more ordinary and mundane ways. For example, in 1956 a 29-year-old Hamilton, Ontario man made an "indecent suggestion" to a 13-year-old female on a downtown street. "What are you, a sex maniac?" she asked. "Yes, I am," he replied, "but I can't help it."<sup>18</sup> Shortly thereafter he was arrested.

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<sup>15</sup>Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven: Yale University Press, 1998): 217.

<sup>16</sup>Geoffrey S Smith, "National Security and Personal Isolation: Sex, Gender, and Disease in the Cold War United States," *International History Review* 14 (2 May 1992): 307-337.

<sup>17</sup>Smith, "National Security," 314. See also Daniel Robinson and David Kimmel, "The Queer Career of Homosexual Security Vetting in Cold War Canada," *Canadian Historical Review* 75 no.3 (1994): 319-345.

<sup>18</sup>*Toronto Telegram*, 9 February 1956.

As much as ideas about and public support for sex psychopath laws were a product of the unique cultural, social, and political conditions in post-WWII Canada and the United States, the notion that prisons should not just be a place of punishment but also a place of improvement is grounded in much older ideas about reformation. Making prisons more educational than punitive was a pet project of nineteenth century moral reformers, and in many respects the postwar ideal of making prisons more like hospitals, abandoning incarceration for “therapeutic confinement,” was an expansion of that earlier effort. But the twentieth century conception of reform is rooted in an even older ideological garden. The goal of making prisoners better citizens by improving their ‘character’ was premised on fundamental Enlightenment precepts about ‘the nature of man’ and the ability of science to reveal even the most intractable and obscure of ‘his’ hidden secrets. The tools the prison would use were those of the psychiatrist, psychologist and social worker, all of whom were trained in the various scientific modes of discovery, classification and counselling, their methods a “technological expansion” of John Locke’s project to cure vice and produce virtue.<sup>19</sup>

Curing vice and producing virtue was the goal of psychotherapy; the means were a combination of education and confession. Through positive reinforcement and habituation, the Lockean tradition “sought to influence and manage others in the name of the moral good or improvement.”<sup>20</sup> “Progressive” prison administrators and treatment experts

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<sup>19</sup>Stuart Justman, *The Psychological Mystique* (Evanston, Ill.: Northwestern University Press, 1998), 10.

<sup>20</sup>Ibid.



endeavoured to reach these goals through role modelling and informal counselling and by providing a basic education in (hetero)social skills, including sex education. Individual therapy, however, was the centerpiece of sex offender treatment. According to Michel Foucault, the confession “was, and still remains, the general standard governing the true discourse on sex.”<sup>21</sup> “From the Christian penance to the present day, sex was a privileged theme of confession,” he argues. The confession, he reminds us, “is a ritual that unfolds within a power relationship.” One cannot confess without an “authority who requires the confession, prescribes and appreciates it, and intervenes in order to judge, punish, forgive, console, and reconcile.” The confession also has the potential to “exonerate, redeem and purif[y]” the confessor; it “unburdens him of his wrongs, liberates him, and promises him salvation.”<sup>22</sup> Essential to this process was the willingness of the object of therapeutic concern to not only confess his vices, but to “reconstruct, in and around the act, the thoughts that recapitulated it, the obsessions that accompanied it, the images, desires, modulations and the quality of the pleasure that animated it.”<sup>23</sup> However, as we shall see, treatment experts complained that most inmates lacked the necessary insight into their own inner truths, and, not everyone wanted exoneration, redemption or purification.

As an alternative to traditional imprisonment where there was plenty of opportunity for ‘moral’ corruption and almost no chance of improvement, it is easy to see

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<sup>21</sup>Michel Foucault, *The History of Sexuality: Volume I: An Introduction* (New York: Vintage Books, 1990), 56, 63.

<sup>22</sup>Ibid., 61.

<sup>23</sup>Ibid., 63

why many championed psychiatric treatment programs for sex offenders as a humane measure.<sup>24</sup> But in his classic study of the medicalization of discipline and punishment, Foucault warns against seeing this approach as a kind of leniency. Instead, he argues, the medicalization of criminality was merely a new technology of power-knowledge which *may or may not* have produced a more lenient form of punishment. This is most certainly the case with the period under study here. Between 1957 and 1967, homosexual men, exhibitionists and other perpetrators of minor sex offences could, if convicted, serve sentences as out-patients of the Toronto Psychiatric Hospital's Forensic Clinic, where they would attend weekly group therapy sessions. But they might just as likely serve sentences in Ontario's only maximum security prison, where they would spend the majority of the day in an eight by six foot cell, eat all of their meals alone, and have few privileges and limited contact with family. Whatever the intentions of mental health treatment experts and their lay supporters, programs were implemented in a piecemeal fashion and their effects ranged widely.

Philip Jenkins' study of the changing construction of the child molester over the course of the twentieth century argues that the mid-century sex crime panic had "bleak implications" for homosexuals.<sup>25</sup> Indeed, it is precisely because the lives of homosexual men were so profoundly affected by forensic sexology that contemporary historians have examined sex psychopath laws and the sex crime panics that bolstered them as part of the

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<sup>24</sup>Justman argues that psychological conditioning is not new to the twentieth century, but its use by the state was.

<sup>25</sup>Jenkins, 61.

history of homosexuality.<sup>26</sup> Even for those who were not forcibly or voluntarily subjected to medical and psychotherapeutic treatment, self-defined homosexuals as well as other sexual 'outsiders' such as transvestites, transsexuals and bisexuals were medically and culturally defined as mentally ill and were widely perceived to be a serious threat to the safety of others, including children. The consequences have been well described by other historians, and include the loss of employment, family and friends. Some passed as heterosexual, others committed suicide.<sup>27</sup> Those who were able to resist such determinations were still subject to police and other, more insidious forms of state regulation through agencies such as Children's Aid, family courts, and school systems.<sup>28</sup>

Part of my aim is to place the medical construction of homosexuality within the broader context of the history of sex deviation, a goal which may appear to be a step

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<sup>26</sup>See, for example, Fred Fejes, "Murder, Perversion, and Moral Panic: The 1954 Media Campaign Against Miami's Homosexuals and the Discourse of Civic Betterment," *Journal of the History of Sexuality* 9 no. 3 (Jul 2000): 305-347. Two important exceptions are Jenkins' *Moral Panic* and Simon A. Cole, "From the Sexual Psychopath Statute to 'Megan's Law': Psychiatric Knowledge in the Diagnosis, Treatment, and Adjudication of Sex Criminals in New Jersey, 1949-1999," *Journal of the History of Medicine* 55 (Jul 2000): 292-314.

<sup>27</sup>The historical literature in this area is vast. In Canada, see especially Gary Kinsman and Patrizia Gentile, "'In the Interests of the State': The Anti-gay, Anti-lesbian National Security Campaign in Canada, A Preliminary Research Report" (Sudbury: Laurentian University 1998); Robinson and Kimmel, "The Queer Career"; for the United States see especially Allen Berube, *Coming Out Under Fire*; Martin Duberman, *Cures: a gay man's odyssey* (New York, Dutton, 1991); Elizabeth Kennedy and Madeline Davis, *Boots of Leather, Slippers of Gold: The History of a Lesbian Community* (New York: Routledge, 1993).

<sup>28</sup>Mary Lousie Adams, *The Trouble with Normal: Postwar Youth and the Making of Heterosexuality* (Toronto: University of Toronto Press, 1997); Elise Chenier, *Tough Ladies and Trouble Makers: Toronto's Public Lesbian Community, 1950-1970*, Master's thesis, Queen's University, 1995.

backward in the evolution of the history of sexuality. In Canada, the United States as well as Europe, the history of sexual minorities began as a political project aimed at countering and correcting the myths and misconceptions medical science created by lumping homosexuals with pedophiles and other criminal sex offenders; it was, and remains, a fundamental part of the political project to liberate homosexuality from myth and superstition, and allow it to take its rightful place in life's rich pageant. Rather than reprove the incisive criticisms of my predecessors, this project documents how the conflation of homosexuality with other sexual 'deviations' occurred. Rather than simply extricate homosexuals and other sex 'deviants' from the criminological grip of forensic sexology, this project casts a critical gaze on the entire system of sexual classification.

Yet despite my effort to avoid paying too much attention to homosexuality, I found it at almost every turn. Medical doctors, psychiatrists, psychologists, lawyers, judges, police officers, prison administrators and even inmates kept leading me back to it for two key reasons. First, homosexuality was what medical scientists knew the most about, or so they thought. Second, discipline took precedence over psychotherapy in prison, and homosexuality was considered a much more pressing problem than pedophilia or other deviations. However, despite the persistent pull toward a homosexual center, a broader lens which takes in the whole of the 'sex deviant' population helps to deepen our understanding of the popularization and impact of the medicalization of sexuality. For example, it has been shown that homosexuals were unfairly targeted by the postwar sex

crime panic over assaults against children.<sup>29</sup> However, upon closer examination it is clear that the thousands of parents who demanded sex psychopath laws did not intend for homosexuals to be the targets, and that the assault on gay male culture and communities was the result of local police forces' eagerness to appear to be doing something about the problem of sex crime. Similarly, in the annals of homosexual history, the successful campaign to remove homosexuality from the *Diagnostic Statistical Manual* of the American Psychiatric Association is considered a victory of homosexual rights organizations, but it is perhaps better understood within the wider context of the anti-psychiatry movement.<sup>30</sup> It was not just that homosexuality was 'liberated' but that psychiatry as a field was denounced.

This is a work of Canadian history which draws heavily on US primary and secondary sources. In this respect I am following the lead of my subjects, for whom cross-border research was a common fact of life. The primary differences concern the distribution of judicial and carceral power: in Canada the criminal law is a federal matter, whereas in the United States each state decided whether or not to adopt sexual psychopath legislation. In Canada, the federal government was responsible for prisoners sentenced to two years or longer, and all of the men who were found to be criminal sexual psychopaths were the responsibility of the federal penitentiary service. However, prisoners

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<sup>29</sup>Most historians who have written about the sex crime panic in this era have addressed the way homosexuals were caught up in the panic over pedophilia. For a Canadian example, see Gary Kinsman, *Regulation of Desire*, 148-287. For a recent American example see Fred Fejes, "Murder, Perversion, and Moral Panic," 2000.

<sup>30</sup>Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis* (New York: Basic Books, 1981).

sentenced to anything less than two years were the responsibility of the provinces. The provinces were also responsible for the provision of health care and medical services. One of the major obstacles to implementing treatment programs was the division of power between the two levels of government. Provinces were unwilling to foot the bill for medical services mandated federally or delivered to prisoners who were a federal responsibility. For their part, the federal government did not provide the provinces with any funding to meet the need for sex offender treatment services. Moreover, though the federal government provided funds for mental health research, it was the provinces that administered the distribution of grants, and the provinces were much more likely to approve research projects that were of benefit to provincial, not federal, departments, meaning that sex offender treatment programs did not get much of a piece of the research pie. By contrast, in the United States each individual state was responsible for its own laws with respect to sex crime, and they were also responsible for financing any treatment services such laws required. California was by far the most advanced in terms of creating a parallel system of punishment and regulation that employed mental health services. In most other American states that adopted criminal sexual psychopath laws, psychiatrists and other mental health professionals did little more than classify accused or convicted sex criminals according to their type of deviation and assess their likelihood of re-offending. Some states could not even boast of those meagre services.

Concern among Canadian parents about sexual assault against children may have been influenced by some of the same cultural concerns that existed in the United States, because of the demographic, professional, economic and to some extent political

similarities between the two countries. But Canada's adoption of sex psychopath legislation cannot be described as a copy-cat response.<sup>31</sup> White middle-class parents on both sides of the border had much more in common with each other than did, for example, Canadian Protestant parents and First Nations parents living in Northern Ontario or African-American or Mexican parents living in American urban slums. All parents may have hoped for similar things, but the middle-class majority was much more likely to acquire them, and as a political constituency, it was even more likely to influence and shape the way state institutions delivered services to its citizens. As we will see, middle class support for mental health services was instrumental in their diffusion.

English-speaking Canadian psychiatrists were intimately linked to their colleagues in the United States, particularly after WWII. First and perhaps most importantly, Canadian psychiatrists and other mental health professionals faced similar health problems as their American counterparts, who worried about rural isolation, urban slums, immigration and race 'purity'. Canadian doctors could and did travel to either Britain or the United States for post-graduate training. Many remained in those countries, where an abundance of opportunities and comparatively generous salaries were a big draw. Those who returned to Canada might join the professional organizations of both countries, but they were much more likely to participate actively in the American Psychiatric

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<sup>31</sup>On the shared cultural history of Cold War North America, see Karen Dubinsky, *The Second Greatest Disappointment: Honeymooning and Tourism at Niagara Falls* (Toronto: Between the Lines, 1999); Doug Owsram, *Born at the Right Time*, 1996; Veronica Strong-Boag, "Home Dreams," 1991.

Association.<sup>32</sup> In fact, Canadian psychiatrists did not even form their own national association until the 1950s, when the need to lobby for federal funds became a priority.<sup>33</sup> The shared cultural roots of Canadian and American psychiatry were strengthened after WWII when Canadians found their concerns with reconstruction much more closely aligned with those of America than of Britain.

Cultural changes were also instrumental in making Canadian citizens' interest and support of treatment programs for sex offenders almost indistinguishable from the interest and support that existed in the United States. Many 'old time' Canadians revealed their social, cultural and political allegiance to England during the fervent protests against the adoption of a Canadian flag in 1965, but Canada was developing its own national character both as a player on the world stage and as a country with its own unique needs and composition.<sup>34</sup> Yet while the postwar period saw the growth and development of Canada's own cultural industries, including the creation of the Canadian Broadcasting Corporation and the National Film Board, Canadian culture were readily supplemented by US media, including magazines, and television, and of course movies. Through these and

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<sup>32</sup>Canadian psychiatrists participated in the American Psychiatric Association in a variety of capacities. On their involvement with the *American Journal of Psychiatry*, for example, see Peter Faux, "Farrar and the American Journal of Psychiatry," in *TPH: History and Memories of the Toronto Psychiatric Hospital, 1925-1966*, Edward Shorter, ed. (Toronto: Wall & Emerson Inc, 1996): 155-170.

<sup>33</sup>See "Report," *Canadian Psychiatric Association Journal*, 1 no 4 (19 ): 184-5. For an overview of the development of psychiatry in Canada, see James Stewart Tyhurst, *More for the Mind: A Study of Psychiatric Services in Canada* (Toronto: Canadian Mental Health Association, 1963).

<sup>34</sup>JM Bumstead. "Canadian and American Culture in the 1950s" in J.M. Bumstead, ed. *Interpreting Canada's Past* (Toronto: Oxford University Press, 1986).



other media, American cultural and political concerns in many ways became the concern of Canadians as well.

The same cannot be said of French Quebec. Separated by language, politics, and culture, social problems and medicine's answers to them evolved along different lines. For example, D. Ewen Cameron of Montreal's English-language McGill University was not only a leader of psychiatry in English Canada but also served as the president of the American Psychiatric Association, but his lesser-known colleague Bruno Cormier approached the field from a significantly different angle. As a student in the 1940s, Cormier was influenced by the *Refus global*, "a movement spearheaded by artists concerned with social and cultural as well as political conditions" which maintained that "[p]ower relations had to be made conscious" in order that we can "become *maitres chez nous*."<sup>35</sup> The different ideological roots were evident in the way Cormier and his colleagues approached the treatment of prisoners. They believed that in order for a prisoner to be psychologically liberated, he needed to examine the system and the history of the society in which he lived. Quebec judges appear to also have had a different approach to the criminal law. Though criminal sexual psychopath legislation was little used in Canada, in the period under study it was not used at all in Quebec.

*Stranger in Our Midst* charts the range of ideas, the key participants and the multiple effects of the entrenchment of forensic sexology in legal, medical, criminological

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<sup>35</sup>Hans Mohr, "A la Recherche," in *Breaking the Chains: Bruno M. Cormier and the McGill Clinic in Forensic Psychiatry* (Westmount: Robert Davies Multimedia Publishing, 1998): 137-161.

and mainstream cultural thought in postwar Canada. Chapter I examines the genealogy of the criminal sexual psychopath, tracking its progress through late nineteenth and early twentieth century psychiatric thought up to its enshrinement in the Criminal Code of Canada in 1948. Thus far most historians have situated the sex psychopath within the history of pre- and post-WWII cultural anxieties about contemporary gender and sexual mores. This chapter examines this unique medico-legal construct as part of a longer history of legal and criminological reform that began in the early part of the twentieth century and was revived in the post-WWII era. The diffusion of criminal sexual psychopath laws throughout the United States and Canada was the product of the elevated position mental health enjoyed in this era, a position earned through psychiatry's contribution to medical services during WWII and through its role as the main source of modern parenting advice for the mothers and fathers of the baby boom generation. The popularization of psychiatric ideas about sex offenders began with the public's willingness to see sex deviation as the result of bad childhood experiences, and to regard sex criminals as emotionally deviated and in need of treatment, not punishment.

When, six years after the passage of criminal sexual psychopath legislation, critics noted that the law was little used, demands for an inquiry led to the federal government's establishment of the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath. Chapter II examines the testimony offered to the Commission by medical and legal experts, social services workers, and concerned citizens across the country. The witnesses who provided the Commission with testimony show the different interest groups participating in this debate and their testimony reveals the ideas they held

about sex and the law. A reading of the hearing of the Royal Commission and its final report allows a close examination of the intellectual and ideological foundations of the sex offender treatment programs which the state would later introduce.

One of the more notable features of the postwar sex crime panic was the way everyday citizens responded. Chapter III fills an important gap in the current literature by documenting the role of Toronto's Parents Action League, a group of mostly mothers who became national heroes and models of responsible female citizenship. This chapter identifies some of the shortcomings of the 'moral panic' model, a tool first introduced by sociologist Stanley Cohen but later embraced by historians of sexuality.<sup>36</sup> I argue that a model which assumes that some responses to social and economic ruptures are 'irrational' plays into sexist stereotypes of women as hysterical. This chapter also argues that the sex psychopath laws were an expression of the values of the middle-class parents of the baby boom generation who believed that the tenets of child psychology – especially positive socialization – could be extended into the field of criminology. Parents sought to help, not punish, pedophiles.

Chapter IV examines the history of treatment programs for sex offenders in Ontario prisons from 1947 until 1973. Without a successful treatment model to build on, and with only limited knowledge about sex crime, treatment experts attempted a range of programs for sex offenders, while at the same time working toward creating a meaningful system of classification. Separating the dangerous from the non-dangerous, the pedophile from the rapist and the exhibitionist from the sadist was the foundation upon which

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<sup>36</sup>See Jeffrey Weeks, *Sex, Politics and Society* (London: Longmans, 1981).

different treatment modalities were attempted. This chapter puts the history of invasive treatment methods such as aversion therapy in historical perspective, exploring just what types of experiments were attempted, with whom, and why.

In sharp contrast to the enthusiastic *public* support mental health experts enjoyed, most prison administrators were adamantly opposed to ‘softening’ the traditional military-style approach to running prisons. The implementation of treatment programs was fatally undermined by conflict between those who ran the prisons and those who attempted to ‘help’ inmates. Moreover, as critics pointed out, mental health professionals were in danger of becoming part of the disciplinary regime, their expertise put into the service of the administrative demand for total control over every aspect of inmates’ lives, including their sexuality. Chapter V explores how these tensions played out. Although support for psychiatric treatment for “sex deviated” prisoners grew out of concerns over sexual offences against children, many treatment experts found themselves caught up in the institutional push to control “the sex problem.” Chapter V explores how prisoners, their keepers and those assigned to treat them encountered, regulated and participated in the sexual culture that flourished in most every Canadian and American prison, reformatory and penitentiary.<sup>37</sup> The first part of the chapter examines the history of regulating the sex problem in prison. The second half looks at prison culture itself. By examining the ways in which sex and gender functioned to organize and reinforce social relations of power – specifically by studying the culture of coercion and affection among inmates – this chapter

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<sup>37</sup>This study is concerned with state and provincially-run prisons and reformatories, and with federally operated prisons and penitentiaries. It does not include jails, which are municipally-operated institutions.

aims to further our understanding of the intimate relationship between sex, gender and power.

Writers of fiction often say that their characters, once created, write the story themselves. In many ways this thesis has the same quality. An earlier project led me to examine the media coverage of sexual assault and murder cases involving women and children in postwar Toronto. In a separate but complementary study I examined the papers of the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath. On the basis of these two sources it seemed that the answer to my question – how and when did psychiatric and psychological ideas about mental health enter mainstream culture – was to be found in the sex crime ‘panic’ of the 1950s and the subsequent demand for treatment programs for sex offenders. This led me to the Archives of Ontario, where I undertook a review of the records of the Department of Reform Institutions from 1946 up until 1972. I also perused the records of the provincial as well as the national Departments of Health and the Attorney-General offices, where I discovered many letters and petitions penned by everyday citizens. Using these records I was also able to determine the shape and extent of the relationship between Canada and the United States on issues of mental health as well as on the development of sex psychopath legislation and treatment programs for sex offenders. In order to track public interest in the issue, I also drew on a variety of Canadian magazine and newspaper articles.

A year long research trip to the Kinsey Institute Archives yielded a treasure trove of obscure and unpublished articles, papers, books, interviews and other items related to

sexual psychopathy, treatment programs, and sex and love in men's prisons. Many of these documents would have been destroyed were it not for American sex researcher Alfred Kinsey's long standing interest in sexual adjustment in prison and his extraordinarily open mind with respect to identifying "research" materials. Driven by an intellectual curiosity about prisoners' sexual experience while incarcerated, Kinsey developed contacts with a number of American prison superintendents, all of whom were happy to contribute to his research efforts by donating sex-related material confiscated from prisoners. Stored in the Kinsey Institute Archives is a substantial collection of letters and notes prisoners exchanged with each other.<sup>38</sup> At tremendous personal risk – communicating with other prisoners by letter was strictly prohibited – inmates flew "kites": tightly folded and rolled paper passed from prisoner to prisoner until it reached its intended recipient or was intercepted by a prison official. Many were deeply intimate letters expressing profound feelings of love and affection, some playfully seductive, others gossipy debates about who had the best sexual equipment, and alerting newcomers to staff members known to indulge in sex with inmates. Normal procedure was for prisons to destroy all confiscated material, but upon Kinsey's request, a handful of prison wardens and treatment professionals forwarded to the Institute a variety of material which captures this little known aspect of prisoner's intimate experiences.

Sex from a prisoner's point of view also appears in inmates' published

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<sup>38</sup>I am deeply indebted to Jennifer Corbin for helping me locate this material. Confidentiality restrictions prevent me from providing any detail about the source of these letters except to indicate the date the Kinsey Institute received them. I cannot identify the name or locations of the prisons from which these materials were collected.

autobiographical accounts of their experiences behind bars; most are peppered with references to the sexual goings-on around them. However, these scant references pale in comparison to the rich documentation contained in personal and scholarly essays, articles and plays about prison life and culture. Encouraged to record their thoughts and ideas in popular “bibliotherapy” programs established in the 1950s and 60s, prisoners once denied the privilege of pen and paper made good use of these tools and generated lavishly detailed records about inmate culture.<sup>39</sup> These accounts reveal a complex social structure that was both assiduously policed and brutally enforced by prisoners and prison staff alike. Sexual relationships in prison were organized according to gender attributes, age, race, and social class either earned, adopted or bestowed upon inmates almost from the moment they walked into an institution.

To my great disappointment, the files of individual prisoners in Ontario Reformatories contained very little detailed information about the kind of treatment they may have received. I examined sex offender case files culled from 30 boxes of individual prisoner files, 22 of which were from the Millbrook Reformatory and eight from Guelph’s Neuro-Psychiatric Clinic. With respect to treatment there was little information to be gleaned from them for reasons that became apparent in the administrative records of the Department of Reform Institutions. Staff psychologists were notoriously lax with record-keeping, arguing that they had no time to fill in detailed reports and that they lacked the administrative staff they needed to assist them. For their part, psychiatrists tended to see

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<sup>39</sup>On bibliotherapy, see Eric Cummins, *The Rise and Fall of the Radical Prison Movement*, 12.

patient records as belonging to them, not the institution.<sup>40</sup> They likely kept whatever notes they made in their own personal clinical files.<sup>41</sup> Finally, the level of actual treatment services offered was minimal at best. When there was psychological staff at an institution, most of their time was spent writing classification reports on inmates just coming in or assessment reports on those just getting ready to leave. As such, the files that contain relevant material usually simply describe the crime and the circumstances surrounding it and attempt to answer the Parole Board's penultimate question: what is the likelihood he will re-offend? Annual reports, conference proceedings, letters from ex-convicts and the occasional scandal give a much better picture of what psychiatrists and psychologists were up to.

I was able to supplement this research with interviews with some of the people about whom I have written. The most important of these were two separate interviews with the co-founder and first president of the Parents Action League (PAL), Bertha Shvemar, who not only described in detail her involvement with the sex offender issue, but who also shared with me personal files, including records of the League, and her own daily journal. Without these, I would have not been able to develop a critique of the moral panic model as I do in chapter three. Also helpful in providing important detail was Ron Kenyon, the journalist who covered the PAL story, and two of the key staff members at

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<sup>40</sup>For a discussion regarding the separation of clinical files from an inmates institutional file, see RG 20-16-2-0-229.6 "Millbrook – Inmates, 61-62" 7 Nov 61 Minutes of the Monthly Treatment Meeting. Archives of Ontario. At the following meeting staff discussed the need to spend even less time on reports and more time in therapy. See Minutes, 7 December 1961.

<sup>41</sup>R.E. Turner, interview with author, 1998.



the Forensic Clinic in Toronto, R.E. Turner and Hans Mohr.

In my writing, I strive to be as precise and as unambiguous as possible. However some preliminary comments with respect to language might be helpful. I often use 'mental health expert' rather than medical doctor, sexologist, psychiatrist, or psychologist. The reasons are partly for economy of language, but more importantly, because these areas of medical specialty and training were neither easily divisible nor were many of the qualified experts technically or formally psychiatrists. The 1950s was a period in which standards in the profession were formalized; for the first time in Canadian history doctors were required to pass an exam in order to declare themselves specialists in psychiatry. Thus, for example, Dr. Robert Buckner, the first Director of the Neuro-Psychiatric Clinic at the Guelph Reformatory, earned his medical licence in England. Though he had never taken a psychiatric exam, at the time of his hiring he was employed at the Whitby hospital as a psychiatrist. The Department of Reform Institutions requested that Buckner write the exam to bring his qualifications up to date but his position was not contingent upon its successful completion, which was a good thing for Buckner because he failed each of his three attempts.

Also, in pre-WWII Canada psychologists were, by and large, experts in devising and administering psychometric tests and were not deemed qualified to provide the counseling or other services associated with their profession today. But in the 1950s psychologists managed to expand their role in the provision of mental health services considerably, and by the end of the decade were therapists in their own right. Before WWII Canadian psychiatry was still a very small field and in English Canada was

dominated by men like C.K. Clarke who abjured Sigmund Freud and psychoanalysis in general, and exerted considerable control over the university curriculum. The 1950s was also a time when the discipline of psychiatry became more formally regulated: in mid-decade, medical doctors wanting to specialize in psychiatry were required to fulfill certain training and testing regulations. Previously one had only to do post-graduate training in a mental hospital to be considered a psychiatrist. The two groups overlapped when they became interested in psychoanalysis. Moreover, as we shall see in the case of psychiatrists, many combined older biological ideas about criminal and sex etiology with more modern Freudian ideas, thus making the distinctions less meaningful by profession and more meaningful by the ideas they professed. I use “mental health expert” to capture all of those who possessed a graduate degree and an interest in the topic. At the time, that was all that was required to be an ‘expert’ on sex deviation.

As the public began to be more and more familiar with the language of mental health experts, so too did the public discourse evolve. The sex pervert became the sex deviate, the sex deviant, and finally the sex offender, and though he was not always a sex criminal, it was often assumed that he was, meaning that psychiatrists constantly reminded the public that many things considered to be sexually deviant, such as fetishism, were not in fact against the law. Each of these terms is a construction of a similar type, suggestive of a developmental or biological abnormality that marks the subject as fundamentally and essentially different, dangerous, and as the 1950s evolved, probably incurable. I use these terms as they appeared in the records under study. I have avoided using quotes around these terms by way of reducing visual noise, but readers might take note that language,

like ideas, is an artifact of its age, and should be viewed with caution.

Finally, I avoid using North America unless I intend to include Mexico; otherwise I have chosen accuracy over simplicity when addressing events that occurred in Canada and the United States.

## I

### **“As the Twig is Bent”: The Historical Pedigree of the Criminal Sexual Psychopath**

In the spring of 1947 Mrs. Geraldine M. had had enough. During a Saturday shopping excursion in downtown Toronto, a man had exposed himself just as she and her daughter boarded the bus home. Two days later, her daughter came home in “a hysterical condition. One of those indecently exposed male creatures had approached her.” Mrs. M. related these events in a letter to Ontario’s Minister of Health, Russell Kelly. She wrote the Minister not only to express anger and fear, but to share some very specific ideas about what the Ontario government should do with sex perverts. “We have raised our children with a chaste and modest upbringing in a Christian home,” she argued, “and we feel that this class of men’s childhood may have been sadly neglected, thus causing them to be what they are... Any right thinking person is forced to believe there must be... some brain disease to cause them to act in such a manner.” For this reason, “such men needed treatment [because] jail meant nothing to this type.”<sup>1</sup>

Mrs. M. was not alone in her thinking. As Canada set out to rebuild itself after the exhaustive effort to win World War II, sex crimes against children emerged as one of the most urgent social problems. The sexual deviant, a pathological character popularized in the United States prior to WWII and revived almost as soon as the dust over Europe and Asia began to settle, emerged as the new sexual villain, casting a long and dark shadow over a frightened citizenry.

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<sup>1</sup>RG 10-107-0-224, Letter to the Minister of Health, 17 April 1947. Archives of Ontario [hereafter (AO)],

Like most sex crime panics, the post-WWII frenzy was fuelled by sensational media coverage of sexual assaults and, in rare instances, the disappearance and murders of children. In Toronto, physically disabled Arlene Anderson was one of the earliest Canadian victims; in Winnipeg, the murder of two small boys roused the ire of local citizens; and in Vancouver, at least one child molestation made media headlines.<sup>2</sup> Perceiving a dangerous threat out of control, people across the country looked to the government for quick and meaningful responses. While the call for action was predictable, what was unique to this era was the construction of the problem. Curiously, Mrs. M. did not, as one might have expected, send her letter to either the Minister of Justice or the Attorney-General. Instead, she directed her comments to the Minister of Health. That she did so places her at the forefront of an epistemological shift in the way Canadians thought about sexual conflict. In the years following WWII, sex offenders came to be seen as more mentally disturbed than criminally responsible, and sex crime was regarded as a major mental health problem waiting to be solved.

This chapter explores the evolution of the deepening relationship between judicial, criminological and psychiatric approaches to the regulation of socio-sexual activity. Described variously as socialized justice, judicial divestment, and therapeutic confinement, criminal sexual psychopath legislation represents the apex of the twentieth century

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<sup>2</sup>The Arlene Anderson and Winnipeg stories were reported in the Committee on the Sex Offender *Interim Report* (Toronto: Canadian Penal Association, 1948) in RG 20-16-2-59.9 "John Howard Society, 1951-52" (AO); the Vancouver story received national coverage after the Member of Parliament from Vancouver-South Howard C. Green raised it during a parliamentary debate. Canada. Parliament. *House of Commons Debates*. Volume VI (1947) 3 July 1947, 5031.

marriage of psychiatry and law, the apogee of a century-long movement away from retribution and toward reformation, from classical to positivist criminology.<sup>3</sup> Most historians have assessed sexual psychopath legislation within the context of pre- and post-WWII anxiety over the Great Depression's and the war's unhinging of masculinity from the taming influence of the domestic realm. This chapter builds on these works by situating the same laws within the wider acceptance of the principles of mental health. Decades of advocacy work by the National Mental Hygiene Committee in Canada and the United States finally led to widespread acceptance of and support for more and better mental health programs and care, a victory that psychiatrists helped secure through hard work and tenacity in the wartime trenches abroad and the political trenches at home. After WWII, support for such programs received a tremendous boost from the voting and letter writing public, which embraced the promise that a 'design for living' could help eliminate uncertainty and ease the stresses of everyday life. As early post-WWII Canadian National Film Board production explained, "Today, psychiatrists believe that many of the world's ills will only be solved by mature, emotionally stable citizens... Working hand-in-hand with

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<sup>3</sup> Socialized justice whereby non-experts become involved in the administration of justice is a term coined by Dorothy Chunn, cited in Tina Loo and Carolyn Strange, *Making Good: Law and Moral Regulation in Canada, 1867-1939* (Toronto: University of Toronto Press, 1997), 95; on judicial divestment, see Kittrie, who regards criminal sexual psychopath and similar legislation as part of the rising therapeutic state, which he distinguishes from the public welfare state, the former being coercive and the latter voluntary. Nicholas N. Kittrie, *The Right to be Different: Deviance and Enforced Therapy* (Baltimore: The Johns Hopkins University Press, 1971), 40-41. On therapeutic confinement in Canada, see Simon N. Verdun-Jones and Russell Smandych, "Catch-22 in the Nineteenth Century: The Evolution of Therapeutic Confinement for the Criminally Insane in Canada, 1840-1900," in *Criminal Justice History 2* (New York: Crime and Justice History Group and John Gay Press, 1981): 85-108.

enlightened parents, psychiatrists hope for a new generation, free from hidden fears and resentments. A generation able to face life realistically, and handle it unafraid.”<sup>4</sup>

Psychiatrists and their parent-advocates on both sides of the border shared the same vision of the postwar future. Throughout the twentieth century the two nations exchanged ideas and programs, strategies and theories, as well as research and conference proceedings. For example, the mental health movement in Canada was inspired by US advocate, Clifford Beers. The American Psychiatric Association regularly rotated their annual meetings to Toronto. And Canadian psychiatrists and policy makers relied on generously-funded postwar American studies in Canadian postwar planning.<sup>5</sup>

At least part of the success of the mental health movement can be attributed to the way it latched on to western reconstruction and inserted itself into Cold War concerns over political and national stability.<sup>6</sup> In the late 1940s and 50s, mental health was

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<sup>4</sup>RG 29 v.121, File 190-3-8, “Commentary”, Canada Carries On Series, “What’s On Your Mind”, 3. National Archives of Canada [hereafter (NAC)]

<sup>5</sup>One of the most important postwar Canadian studies was undertaken by the Canadian Mental Health Association with partial funding from the Commonwealth Fund of New York. Known as the Tyhurst Report, it was conducted in order to fill the vacuum left by a federal government that refused to commission its own study. James Stewart Tyhurst, *More for the Mind: A Study of Psychiatric Services in Canada* (Toronto: Canadian Mental Health Association, 1963). For some, Canada’s relationship with the US was less co-operative and more dependent. See the letter to the Department of National Health and Welfare from Associate Professor of Psychiatry John W Lovett Doust who described Canada’s approach to cultural and social policy as marred by “timidity, conformity, parsimony, bureaucracy and the depressing attitude that someone-else-must-try-it-first”. Lovett Doust to Morgan Martin, 13 Sept 61, RG 10-107-0-859 “Advisory Committee on Mental Health” (AO).

<sup>6</sup>James H. Capshew, *Psychologists on the March: Science, Practice and Professional Identity in America, 1929-1969* (New York: Cambridge University Press, 1999), 3.

trumpeted as an essential tool for reshaping the postwar world according to the ideals of post-colonial humanitarianism. In her 1955 Christmas address, for example, newly-coronated Queen Elizabeth II proclaimed “the great explorations of our day are the uncharted regions of the mind.”<sup>7</sup> Psychiatry played a major contributing role in the organization of the World Health Organization and in the United Nations, ensuring that the mental health message was global, not local. In the Cold War context, the international significance - and the political application - of mental health ideas became readily apparent at the Fifth International Congress on Mental Health, held in Toronto in 1954. Speaking to participants from 30 countries, Federal Minister of Health Paul Martin declared, “The tragedy of our time is that the world has become a neighbourhood but men and women have not yet learned to live as neighbours”:

The real gulf between the free world and the totalitarian systems lies not in economic theory but in the wide divergence of opinion as to the rightful place of the individual human being. In a democratic society the individual is not regarded as the personification of categories – economic or otherwise – but as a free and sacred human personality. And so I believe that the mental health movement which centers itself on the individual and which has human personality as its first concern, can make a vital contribution to sanity and order in these tremendous times.

Mental health was not only necessary for world peace; it was the free world’s advantage over communism and fascism. Mental health rhetoric such as that mastered by Canada’s post-WWII Minister of Health Paul Martin made psychiatry appear something akin to the new state religion.<sup>8</sup>

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<sup>7</sup>*Peterborough Examiner* 12 Jan 1956.

<sup>8</sup>Though this might seem an overstatement, at the same conference the Minister mused that it would be wrong for psychiatry to see man as strictly a physical being and to overlook his spiritual life, indicating some concern that psychiatry stood to displace or at



Mental health experts' belief that war was the product of men's minds, and that it was fought based on the implantation of fear, prompted the American Psychiatric Association (APA) to issue a formal statement when international tensions flared in early 1949. Composed by the Committee on International Relationships under the chairmanship of Canadian psychiatrist George H. Stevenson, the press release urged national leaders around the globe to strive for friendly cooperation rather than aggressive antagonisms. Claiming that as well-travelled citizens of the world politicians were in a position to "guide the feeling, thinking and behavior of the general public," the APA urged all world leaders to impress upon their citizenry not the differences between peoples, but the similarities. Ordinary people everywhere shared the same virtues and values, including the desire to work for the common good, a love of children and home, and diligence and self-sacrifice. "But if the common man begins to fear," warned the APA,

he may lose these necessary values to the good life, either by actual or threatened aggression from without, or by unfair propaganda from within by unprincipled leaders, the masses of the people may easily be induced to take a position of antagonism. They may develop anxiety and fears and even incorrect beliefs about the common people in other countries. In the unsuccessful efforts to overcome these fears and sense of insecurity, actual war may result.

Given the devastating physical and mental health consequences of war, members of the APA considered it a plague best prevented through careful emotional control: "emotions of fear and greed, cultivated to unhealthy degrees, can lead only to delusions of persecution, to hostile aggression (defensive and offensive) and ultimately to World War

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least rival religious dominance over our understanding of human nature, ethics and behaviour.

III.”<sup>9</sup> The APA’s stance toward international relations and mental health was widely accepted by the reigning world leaders. As the preamble to the newly-formed United Nations Educational, Scientific and Cultural Organization (UNESCO) Charter declared, “Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed.”

If better mental health could put an end to warfare, then surely it could end sex crime. This chapter tracks the genealogy of criminal sexual psychopath legislation within the context of the evolving relationship between the law and psychiatry and the rise of mental health programs as a palliative to a variety of post-WWII political and social problems. First, I present a brief overview of the conjoining of psychiatry and the law in Britain, Canada and the United States, tracing the medicalization of insanity and the introduction of psychopathy and ‘therapeutic confinement.’ Next I examine how Canadian and American social reformers pushed for changes to the administration of justice by advocating the adoption of positivist criminological concepts, including the idea that criminal behaviour was the product of a mental disturbance or disorder. Acceptance of this notion was dependent on psychiatry’s ability to treat or cure these disorders, and the success of the social reformers meant the success of psychiatrists in penetrating the evolving nation state and becoming part of the “state apparatus.” As this chapter shows, psychiatrists were reluctant to claim curative abilities, but were eager to embrace the expansion of opportunities that the sex crime panic afforded them.

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<sup>9</sup>RG 29 Volume 109, File 180-18-1 “Press Release” American Psychiatric Association, 12 January 1949: 2. (NAC).

Psychiatry's explanations for human behaviour, including sexual behaviour, gained credence first through its participatory role in the administration of the insanity plea in courts of law, and later via its convergence with the interests of turn-of-the-century progressive social and moral reform movements. Seen across this extended historical trajectory, criminal sexual psychopath legislation, a legal and medical phenomenon that blanketed North America in the second half of the twentieth century, appears a logical response to the 'problem' of sex crime.

I say 'problem' because, as a great deal of scholarly work in the history of sexuality has consistently shown, actual crime rates, including sex crimes, tend to remain stable across time, increasing proportionate to the population growth rate. When fluctuations in the rate of sex crime do occur, they are usually explained by stepped-up police efforts to 'clean up' a certain city district, resulting in mass arrests. At other times, increases in sex crime arrests bare no relation to public concern about them. For example, Philip Jenkins' study of twentieth century moral panics in America shows that there were three very distinct periods during which sex crime peaked as a substantive social and political issue. The second of these occurred at mid-century, from 1937 until the United States joined the Allied forces in 1941, reviving in 1947, and lasting well into the 1950s.<sup>10</sup> Yet Estelle Freedman's study of this period shows that actual crime rates were inversely related to the sex crime panics: the number of reported sex crimes remained steady during the 1930s, increased during the war when there was no 'panic', and fell back to 1930 levels after

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<sup>10</sup>Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven: Yale University Press, 1998), 49-74.

1945 when the panic resumed.<sup>11</sup> As we shall see, the situation was no different in Canada.

### **Sexual Psychopathy**

The legal concept of criminal sexual psychopathy was a long time in the making, its roots stretching back into the mid-nineteenth century. Until the mid-1800s, insanity functioned as an exculpatory legal defence, offering absolution to adjudged lunatics for their illegal acts and relieving them of criminal responsibility. A wide range of people including friends, family, community members and even the jailer who held the prisoner for trial were considered by the court qualified to testify as to the sanity of the accused.<sup>12</sup> In England, that changed with the controversial 1843 decision to acquit Daniel M’Naghten for the murder of Sir Robert Peel’s private secretary. Public and political outrage resulted in a demand for the clarification of the insanity defence, and the Law Lords were asked to draw up new guidelines. By this time, psychiatrists had elaborated considerably on the subject of lunacy; years of observing and studying both asylum inmates and incarcerated criminals afforded them the opportunity to catalogue and quantify a wide range of symptoms and manifestations of madness.

Partial insanity was one of the conceptual inventions that psychiatrists, including

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<sup>11</sup>Estelle Freedman, “‘Uncontrolled Desires’: The Response to the Sexual Psychopath, 1920-1960” in *Passion and Power: Sexuality in History*, ed. Kathy Peiss and Christina Simmons, (Philadelphia: Temple University Press, 1989): 200, 218 n.3.

<sup>12</sup>*Corpus Juris*, v. 32 (New York: American Law Book Co., 1923), 600-601. Verdun-Jones and Smandych, “Catch-22”; James E. Moran, *Committed to the State Asylum: Insanity and Society in Nineteenth Century Quebec and Ontario* (Montreal: McGill-Queen’s University Press, 2001).

those who advised the Law Lords, thought worthy of the courts' consideration. As a medical term, partial insanity posited that one could comprehend both good and bad, but could suffer a disorder of emotion and volition, or an "irresistible impulse". Observations of both asylum inmates and criminal populations showed that punishment did not always act as a deterrent. If the purpose of incarceration was to effect reformation, it was unconscionable to send to prison someone for whom it would have absolutely no useful effect. Indeed, through the eyes of a medical practitioner, interested in the health and well being of an individual, a sentence of confinement defied the laws of science if the convicted criminal's actions were driven by an impulse that was stronger than his (or her) own free will.

The M'Naughten rules, as they came to be known, enhanced the status of psychiatrists as scientific and medical experts on human behaviour by "open[ing] the door for practitioners of the emerging profession of psychiatry to participate fully in the criminal trial process."<sup>13</sup> However, the Law Lords rejected the concept of partial insanity as a legal defence on the grounds that it undermined *mens rea*, the foundation upon which the law rested.<sup>14</sup> The M'Naghten rules determined that unless it could be proved that accused criminals were unable to discern right from wrong, they would be held legally, if not medically, responsible for their actions. Canada immediately adopted the M'Naghten

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<sup>13</sup>Verdun-Jones and Smandych, "Catch-22," 85.

<sup>14</sup>On *mens rea*, see Kittrie, *The Right to be Different*, 34; on the rejection of partial insanity by the British courts, see Roy Porter, *The Greatest Benefit to Mankind: A Medical History of Humanity* (New York: Norton, 1997), 501.

rules as its own as did the majority of the U.S. states.<sup>15</sup> However, the District of Columbia and 17 states also accepted partial insanity, or 'irresistible impulse', as a legitimate legal defence.<sup>16</sup>

The primary concern of the courts was to determine who did it. It remained up to psychiatrists to try to understand why. They were not alone in their quest. As the nineteenth century drew to an end, social and moral reform movements in Canada and the United States gained popular and political momentum. Though most concerned themselves with problems associated with urban neighbourhoods, some looked further down the road that many of their charity and good works recipients travelled, to insane asylums and prisons. Of the few who dared investigate, all were horrified by what they discovered. Prisons and asylums shared many of the same devastating qualities: men, women and often children were housed together in buildings that were invariably run-down, unsanitary, cold, damp, overcrowded, and dangerous. For even the least attentive observer, it was immediately clear that no one could possibly leave such a place

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<sup>15</sup>Canada's criminal law was borrowed wholesale from English Statutes and the English Draft Code of 1892. Alex. K. Gigeroff, *Sexual Deviations in the Criminal Law: Homosexual, Exhibitionistic and Pedophilic Offences in Canada* (Toronto: University of Toronto, 1968), vii.

<sup>16</sup>Kenneth Gray, "Hospital Examination of Adult Offenders" *American Journal of Psychiatry*, (1952) 108: 625; Jennifer Terry argues that late nineteenth century American physicians resisted their European colleagues' call to decriminalize homosexuality on the grounds that it was a disease and not a crime partly because of the "dominant ethos of American individualism, with its privileging of will-power and self-improvement." Obviously by the 1910s doctors and the law were able to reconcile the two positions and accept the disease/pathology model without adopting Krafft-Ebing's "sympathetic position". Jennifer Terry, *An American Obsession: Science, Medicine and Homosexuality in Modern Society* (Chicago: University of Chicago Press, 1999), 79.

improved.<sup>17</sup>

If the social reform movement was about anything, it was about 'improvement', and its advocates rejected the tenets of classical criminology, which held that criminals deserved punishment. Instead, social progressives and moral reformers championed the ideas of theorists like Enrico Ferri, a vigorous advocate for the application of anthropology and criminal sociology in the justice system. Criminologists saw the 'dangerous classes' not as a single homogenous mass but as a heterogeneous collection of a wide variety of criminal 'types'. For Ferri and others, progress in criminal justice rested on the proper classification of prisoners. By sorting the young from the old, the experienced from the inexperienced, the violent from the non-violent, prisoners would not cross-contaminate, and appropriate programs of reform could be tailored to the needs of different groups of offenders. Ferri argued that delinquents should be regarded in the same manner as hospital patients and the insane, and that prisoners should be held only as long as it took to effect a cure.<sup>18</sup> Tailoring programs for reform demanded a more flexible approach to sentencing. Thus positivist penology introduced what was to become the cornerstone of therapeutic confinement: the indeterminate sentence.<sup>19</sup>

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<sup>17</sup>On social and moral reform in Canada, see Mariana Valverde, *The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925* (Toronto, 1991); Carolyn Strange, *Toronto's Girl Problem: The Perils and Pleasures of the City* (Toronto: University of Toronto Press, 1995); Gary Kinsman, *The Regulation of Desire: Homo and Hetero Sexualities* 2<sup>nd</sup> ed. (Montreal: Black Rose, 1996), 114-120.

<sup>18</sup>Enrico Ferri, *Criminal Sociology*, no 152 (1917), cited in Kittrie, *The Right to be Different*, 173-4.

<sup>19</sup>Kittrie, *The Right to be Different*, 173-4.

Social progressives and moral reformers in Canada, the United States and Britain embraced positive penology. Of particular concern to psychiatrists, legal experts and social reformers was the 'discovery' of a class of criminal who, by persistent refusal to conform to the bounds of society, regularly and repeatedly found him or herself in city, state and provincial jails, prisons and reformatories.<sup>20</sup> For reform-minded citizens, widespread recidivism provided incontrovertible evidence that prison did not always have the desired rehabilitative effect, and that new approaches to solving the problems related to delinquency were required.

English legal experts responded to the issue with habitual criminal legislation. Based on the premise that it was the criminal who failed to reform in prison rather than the prison that failed to reform the criminal, indeterminate sentencing for habitual criminals in Britain remained wedded to classical criminology, which privileged the protection of society over concerns for the individual. The indeterminate sentence in this case was imposed not to allow for the flexible sentencing deemed necessary to implement a mental health treatment program, but rather to allow the state to hold a criminal beyond the expiration of the original sentence. Though it required the testimony of a psychiatrist to determine if an offender should be adjudged to be habitual - thereby expanding the role of psychiatrists in the judicial system - it did so without offering any services intended to effect reformation.

In contrast, many northern and western U.S. states showed greater willingness to

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<sup>20</sup>Mary Poovey, *The History of the Modern Fact* (Chicago: University of Chicago Press, 1998). Chapter Four describes how the organization of facts was essential to the rise of liberal governmentality.



integrate positivist criminology with the existing criminal justice system. In 1911, the medico-legal invention of 'defective delinquent', a name conferred on those deemed by the court as likely recidivists, was first enshrined into law. Adopted initially by the Massachusetts legislature under the Briggs Act, the first generation of psychopathy legislation did not distinguish between types of criminal offences: virtually anyone deemed likely to re-offend was considered a psychopath or 'defective delinquent'. To earn such a dubious distinction, the concurring testimony of two psychiatrists was required. The main quality or feature of the 'defective delinquent' was not a mental disorder but an inability to conduct oneself within the proscribed bounds of society, a concept that came to be more commonly known as psychopathy. The law was quickly adopted by other states.<sup>21</sup>

Psychopathy as a mental condition has proved to be both highly controversial and remarkably resilient. It can be traced back to the early nineteenth century English psychiatrist, J. C. Prichard.<sup>22</sup> The first to define "moral insanity", one of the five categories of insanity elaborated upon by Canadian psychiatrist Joseph Workman, it was a label applied to those who were intellectually unimpaired, but who were "incapable of conducting themselves with decency and propriety in the business of life."<sup>23</sup> Initially psychopathy was as likely to be applied to women as it was to men, especially as it came

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<sup>21</sup>Kittrie, *The Right to be Different*, 178-9.

<sup>22</sup>Paul Gebhard, et.al. *Sex Offenders: An Analysis of Types* (New York: Harper and Row, 1965), 845.

<sup>23</sup>James Cowles Prichard, cited in Gebhard, et al., *Sex Offenders*, p. 845; see also Elizabeth Lunbeck, *The Psychiatric Persuasion: Knowledge, Gender, and Power in Modern America* (Princeton, New Jersey: Princeton University Press, 1994), 65-71.

to be associated with sexuality. Henry Howard, medical attendant to the Longue Point Lunatic Asylum, described that dreaded female condition, hysteria, as producing moral insanity “which develops itself in strong sexual desire,” eventually spreading to the cerebrum and inducing violent mania.<sup>24</sup> When sexuality and psychopathy were first linked in criminal law in the 1920s, women, not men, were the likely subjects.<sup>25</sup>

As eugenics came into vogue in the latter half of the 19<sup>th</sup> century, moral insanity was recast as “constitutional psychopathic inferiority”, indicating that an inability to comply with the demands and expectations of the prevailing social order was, to use modern terminology, genetically encoded. By the 1930s, eugenic approaches to understanding and interpreting human behaviour began to wane in the United States, and these fell completely out of favour across North America after WWII, but still the category of psychopathy remained. Apparently psychiatry’s advances had not yet eliminated the need for a classification that captured those who simply misbehaved. Most psychiatric assessments tended to attribute criminality to low mental scores on a battery of tests administered during assessment and classification phases in the processing of delinquents. Psychopathic personality was most commonly applied to those who did not

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<sup>24</sup>Wendy Mitchinson, *The Nature of Their Bodies: Women and Their Doctors in Victorian Canada* (Toronto: University of Toronto Press, 1991), 289. As a clinical entity, hysteria was similar to psychopathy in that it accounted for a remarkably wide range of otherwise inexplicable symptoms and behaviours.

<sup>25</sup> Freedman, “Uncontrolled Desires” 203; Jenkins, *Moral Panic*, 39; see also Anne Meis Knupfer “‘To Become Good, Self-Supporting Women’: The State Industrial School for Delinquent Girls at Geneva, Illinois, 1900-1935” *Journal of the History of Sexuality* 9(4): 420-446.

fall into that category. Consequently, one of the more unsettling features of the psychopath was that his propensity toward criminal acts was accompanied by an above average intellect. His ability to appear normal to the untrained eye made him an even more menacing character. Of course, all of this served to make psychiatrists that much more essential to the criminal justice system. Without them, psychopaths were free to roam the streets and commit their heinous crimes undetected.

When a sex crime panic began to take shape in early 1930s New York City, Mayor Fiorello La Guardia turned to mental health experts for help. Though the police continued to serve a key function by conducting occasional “sweeps” of known homosexual hang-outs, it was the psychiatrist and the psychologist who would shed light on how the problem could best be addressed. La Guardia’s initiative built on existing advances in forensic psychiatry and the therapeutic ideal, but two other forces converged to help sculpt the sexual psychopath. First, disruptions to the traditional family during the Depression triggered concerns about masculinity. Hoboes, groups of unemployed men riding the rails, and women left alone to provide for their children both served to arouse public anxiety about the dangers of “men adrift” from the taming rewards of bread-winner masculinity and the feminizing influences of the nuclear family.<sup>26</sup> Second, the 1930s was also a period of tremendous growth in the social scientific study of sexuality. New American research in the sexual practices of everyday people, of the sexual behaviour of deviants and perverts, and of various treatment programs employed in European and

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<sup>26</sup>‘Men adrift’ is a play on Joanne Meyerowitz’s *Women Adrift: Independent Wage Earners in Chicago, 1880-1930* (Chicago: University of Chicago Press, 1988).

Scandinavian countries all combined to shape a new scientific discourse about sex that would underwrite the sex crime panic of that decade.<sup>27</sup>

If there was one notable feature of psychopathology, it was its ability to account for a wide range of non-conformist behaviour. Often referred to as a “wastebasket” category, it was easily moulded to accommodate Depression-era concern over violent and dangerous sex offences. The sexual psychopath shared all of the features of its predecessor, the defective delinquent: able to distinguish right from wrong but persistently socially non-compliant due to an “irresistible impulse”; of normal or even above average intelligence; unable to profit from experience; a recidivist. What made him different was that he was always male, and “appeared to be a sex pervert or degenerate or to suffer from a mental disorder with marked sex deviation and tendencies dangerous to the public safety.”<sup>28</sup> Though sex psychopath laws varied from state to state, and Canada ultimately made its own revisions to suit the particular needs of its criminal code, all defined its subjects as needing treatment, and, once deemed a sex psychopath, a convicted sex criminal was incarcerated in either a prison or a psychiatric hospital, until he was assessed as no longer a threat to the community. Because of the way sex psychopath legislation drew a link between sexual acts, uncontrolled behaviour, dangerousness, and recidivism,

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<sup>27</sup>Freedman, “Uncontrolled Desires,” 202-205; for a complete historical account and analysis of American studies in sexuality in the 1930s, see Terry, *An American Obsession*, 120-267.

<sup>28</sup>Kittrie, *The Right to be Different*, 179.

sex offenders came to be viewed as a much greater threat than other types of criminals.<sup>29</sup> With this profile, public support for the special programs and institutions psychiatrists requested to treat these offenders was easily inspired, and psychiatrists not only saw the expansion of their role in determining which offenders were to go to jail and which were to be sent to a medical facility for treatment, but they also enjoyed the expansion of their domain of expertise.

Few psychiatrists ever accepted 'sex psychopathy' as a proper medical term, but that seemed to have no effect on the successful spread of criminal sexual psychopath legislation. The World Health Organization's manual of *International Statistical Classification of Diseases, Injuries, Causes of Death* recognized 'psychopathic personality', but when the American Psychiatric Association issued its own Diagnostic Statistics Manual, "sexual deviation" was the official designation for disorders of a sexual nature. "Sociopathic personality" was the diagnosis closest to psychopathy.<sup>30</sup> Sexual psychopath was, from the beginning, a legal designation absent of any real clinical meaning, and even if there were such a thing, a considerable number of mental health experts argued that it was so rare that it seemed inappropriate to invest precious resources

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<sup>29</sup>Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation: The 30s to the 80s*, Volume IX (New York: Group for the Advancement of Psychiatry, April 1977), 862.

<sup>30</sup>Kenneth G. Gray and Harry Hutchinson, "The Psychopathic Personality: A Survey of Canadian Psychiatrist's Opinions," *Canadian Psychiatric Association Journal*, 9(6): 452-461. In 1949 the Advisory Committee on Mental Health adopted the World Health Organization's Statistical Manual as the guide for Canadian psychiatry. RG 29 v. 315, File 435-6 part 2, "Minutes of the Fourth Meeting of the Advisory Committee on Mental Health, October 3-4, 1949": 5. NAC.

into legislation that would demand the psychiatric review of all sex offenders and special treatment programs for those few who would fall within its parameters. For example, the 1939 New York Commission's report to the Mayor revealed that less than 5% of convicted sex offenders suffered from a mental disorder. Nevertheless, by the time the United States entered WWII, five states had passed sexual psychopath laws, and at war's end, the sex crime panic resumed unabated: in 1947 Massachusetts and Washington passed their own versions of the legislation, and six more states followed in 1949. By the end of the 1950s, a total of 29 states had sex psychopath laws.<sup>31</sup>

Given that the application of the law was dependent upon the testimony of psychiatrists confirming the accused to be a criminal sexual psychopath, the fact that there was no such clinical designation presented a rather troublesome problem: how to define the terms of the law, and how to apply it in a courtroom trial. Not surprisingly, each psychiatrist tended to develop his or her own idea of sexual psychopathy, though most had difficulty providing a clear definition of its attributes. A 1964 survey of over 600 Canadian psychiatrists' views were on psychopathy illustrates this point. Of those who accepted it as a credible clinical category, many were unable to provide a precise definition of the disorder, stating instead, "I know one when I see one."<sup>32</sup> Psychiatrists were the primary architects of the sex psychopath laws, and this confusion is well reflected by the wide variation among the individual state statutes that were passed into state law. As Kittrie

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<sup>31</sup>Simon A. Cole, "From the Sexual Psychopath Statute to 'Megan's Law': Psychiatric Knowledge in the Diagnosis, Treatment, and Adjudication of Sex Criminals in New Jersey, 1949-1999," *Journal of the History of Medicine* 55 (Jul 2000): 292-314.

<sup>32</sup>Gray and Hutchinson, "The Psychopathic Personality," 452.

observes, “fewer than half agree on the nomenclature for the individual subject to these special programs.”<sup>33</sup> This was particularly disturbing given that what most psychiatrists were required to do was predict whether or not the accused, or in some cases the convicted, was likely to reoffend. With no single test to determine “sexual psychopathic” personality, each finding tended to be based on a haphazard combination of that particular state’s statute plus the individual psychiatrist’s own ideas about what constituted sexual psychopathy.

Remarkably, psychiatrists did not deny that the sexual psychopath was a medical conceit and legal concession. And of the minority of sex offenders who could be assessed as victims of a mental disorder, they readily admitted to having no effective methods of treatment at their disposal. As Estelle Freedman has argued, all of the evidence points away from a “conspiratorial interpretation in which power-hungry psychiatrists manipulated the public and politicians to create a sex crime panic and psychiatric solutions to it.”<sup>34</sup> When the news media turned to psychiatrists to interpret and explain sex and other violent crimes, most used the spotlight to provide informative, not incendiary commentary. But all it seemed to take were the few who chose the less measured path to supply the match the media needed to light a fire of panic in local, state, and national communities. And despite the refusal of most experts to legitimize the hysterics of the sex crime panics of the pre- and post-WWII years, there never seemed to be a shortage of professionals willing to participate in the examination and prosecution of criminally charged sex

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<sup>33</sup>Kittrie, *The Right to be Different*, 181.

<sup>34</sup>Freedman, “Uncontrolled Desires”, 200.

offenders, and they gladly accepted posts in the new hospital wards and special clinics established to accommodate new treatment programs.

### **Sex and the Law in Canada**

When Canada adopted its own criminal code in 1893, it was decided that Parliament, not the courts, would be the principal source of change in the criminal law.<sup>35</sup> Consequently, sex crime has long been vulnerable to the politics of pandering to voters' anxieties and fears with limited recourse to reason. Such was the case with the passage of criminal sexual psychopath legislation in Canada. Launched in the House of Commons by a Conservative Member with a history of inflaming social anxieties for political gain, Howard C. Green introduced to the House of Parliament a resolution from the British Columbia Provincial Convention of Parent-Teacher Associations. "Resolved," Green read,

that representations be made to the federal government recommending that necessary legislation be enacted to provide for sentencing offenders against public morals where those offences are due to a psychopathic condition, to preventative treatment and detention in a separate institution provided for that purpose.<sup>36</sup>

When, an indignant Green demanded to know, will the Liberal government respond to the "alarming increase in Canada in moral offences against children?"

British Columbia's Parent-Teacher Associations viewed the sex crime problem in

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<sup>35</sup>James Snell, "The White Life for Two: The Defence of Marriage and Sexual Morality in Canada, 1890-1914," *Canadian Family History: Selected Readings*, ed. Bettina Bradbury (Toronto: Copp Clarke Pittman, 1992), 386.

<sup>36</sup>Canada. Parliament. *House of Commons Debates*. Volume VI (1947) 3 July 1947, 5031.



the same light as had Mrs. Geraldine M. Sex offenders were mentally disturbed people in need of psychiatric treatment, and it was incumbent upon the government to ensure that they received it. Thinking about sex offenders as sick and mentally deranged did not demand a radical change in the way people viewed psychiatrists and their patients. What it did show was a greater public willingness to accept the idea that psychiatrists knew something about sex, and that sex was an area of human activity that could be explained and understood in medical and scientific terms. This section provides a brief overview of the evolution of sex, psychiatry and criminal sexual psychopath legislation in Canada. A close examination of the debates and studies sheds light on how it was that the Canadian federal government came to pass criminal sexual psychopath legislation in the absence of any medical evidence to support it.

Canada's close connection with American psychiatry is apparent from its first foray into the world of sexual abnormality. Ontario psychiatrists Joseph Workman, and his successor Daniel Clarke, and later C.K. Clarke and Richard Maurice Bucke were all instrumental in launching the masturbation insanity scare in nineteenth and early twentieth century Canada.<sup>37</sup> Swiss physician Samuel Tissot's *Avis au peuple sur la sante* (1761), which in its English translation was titled *Onanism or a Treatment Upon the Disorders Produced by Masturbation* (1766), described masturbation as a disease of modern civilization brought on by idleness and meretricious novels, and linked its practice to

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<sup>37</sup>Cyril Greenland, "Is there a future of human sexuality?" *Sexual Behaviour in Canada: Patterns and Problems*, ed. Benjamin Schlesinger (Toronto: University of Toronto Press, 1977), 279-290; Michael Bliss, "Pure Books on Avoided Subjects': Pre-Freudian Sexual Ideas in Canada", *Historical Papers* (1970), 99. Workman's report was subsequently reprinted in two American texts; see Bliss, n. 33.

declining birth rates and poor health. Half a century later American physician Benjamin Rush, widely considered the father of American medicine and psychiatry, expanded the list of health effects to include, among other things, insanity.<sup>38</sup>

Asylum psychiatrists were well situated to make a study of such behaviour. Genital manipulation was one of the few ways an inmate - of the asylum and the prison - could combat boredom and generate feelings of pleasure and joy in an otherwise unstimulating and even repressive environment, and inmates persisted in practising their vice. Caretakers introduced a number of different measures to discourage it, including the use of restraints and, in rare cases, clitorrectomy and castration. Most asylum superintendents tried to remedy the problem by keeping wards busy with other tasks. Though not all American or Canadian physicians agreed with Rush's claim, most agreed that the 'secret vice' had deleterious health effects.<sup>39</sup>

What psychiatrists did not learn in the asylum they picked up in the courtroom. The first encyclopaedic text on sexology was Richard von Krafft-Ebings's *Psychopathia Sexualis: A Medico-Forensic Study*.<sup>40</sup> Written as a court-room guide, *Psychopathis-*

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<sup>38</sup>Porter, *The Greatest Benefit*, 266; Greenland, "“Is there a future of human sexuality?” 282; John D’Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America*, 2<sup>nd</sup> edition (Chicago: University of Chicago Press, 1998), 68.

<sup>39</sup>Elizabeth Lunbeck presents another view in *The Psychiatric Persuasion: Knowledge, Gender, and Power in Modern America* (New Jersey: Princeton University Press, 1994), 398, n.15.

<sup>40</sup>Originally published in German as *Psychopathia Sexualis, mit besonderer Beru:cksichtigung der kontra:ren Sexualempfindung: Eine klinisch-forenisische Studie*. Stuttgart: Enke 1886. For a detailed study of Krafft-Ebing, see Harry Oosterhuis, *Stepchildren of Nature: Krafft-Ebing, Psychiatry and the Making of Sexual Identity* (Chicago: University of Chicago Press, 2000).

*Sexualis* was the foundation upon which future sex researchers would sort, quantify, and organize a wide spectrum of sexual behaviours into 'types'. For criminologists, Krafft-Ebing's text was a tremendous advance. Sexual and moral regulations in the modern British, American and Canadian criminal codes were viewed by some as artifacts of an earlier age, many rooted in medieval ecclesiastical law.<sup>41</sup> Up until the late nineteenth century, for example, the Criminal Code of Canada made no distinction between different types of moral offences that most sexologists regarded as categorically exclusive. For example, buggery between two male adults and fornication between a human and an animal were the same crime. Similarly, the law drew clear distinctions between heterosexual intercourse with a female under 14, with a female between 14 and 16 and with a female over 16, but homosexual sex between two consenting adult males was punishable under the same sections as were homosexual sexual assaults on a child or young adult.<sup>42</sup>

Inconsistencies such as these drove many early sexologists, Krafft-Ebing included, to become law reform advocates.<sup>43</sup> Some simply sought a clarification of existing laws, but

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<sup>41</sup>Gigeroff, *Sexual Deviations*, 3-36; Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation*, 848-9.

<sup>42</sup>Alex. Gigeroff, "The Evolution of Canadian Law with Respect to Exhibitionism, homosexuality and pedophilia," Research Conference on Delinquency and Criminology. *Proceedings / 4e Colloque de Recherche sur la Delinquance et la Criminalite*, Montreal 1964. (Ottawa: Societe de Criminologie du Quebec, avec la collaboration de l'Institute Philippe Pinel, 1965): 299-308; Gigeroff, *Sexual Deviations in the Criminal Law*, 8-9; Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation*, 848-9.

<sup>43</sup>Harry Oosterhuis, "Richard van Krafft-Ebing's 'Step-Children of Nature': Psychiatry and the Making of Homosexual Identity" in *Science and Homosexualities*, ed.

others struggled to have certain laws repealed, particularly those relating to consensual homosexual acts. Most raised questions about the state's role in regulating morality. Perhaps the most well-known in this respect were England's Havelock Ellis and Germany's Magnus Hirschfeld. Though there were no Canadian experts of similar international stature, there were modest efforts to move in a similar direction. In 1935, the Toronto Psychiatric Hospital's senior assistant physician A.J. Kilgour noted with relief that while the law allowed for harsh sentences for sex offences, "the magistrate, of his own accord or acting on advice, frequently refrains from carrying it out to the letter."<sup>44</sup> We can imagine that magistrates might have gotten advice from medical experts like Kilgour himself. Historian Steven Maynard has uncovered evidence demonstrating that at least one other Ontario doctor took a dim view of incarcerating homosexuals, advocating instead that they be provided with out-patient treatment.<sup>45</sup> Medical experts advocating a more lenient view of non-coercive, non-violent sexual encounters sometimes found support in other leading figures. During an 1890 House debate surrounding the introduction of gross indecency as a criminal offence, member Mr. Mills protested against using the prison system to incarcerate homosexuals. Arguing that homosexuality was an offence against

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Vernon A Rosario (New York: Routledge, 1997): 80.

<sup>44</sup>A.J. Kilgour, "Sex Delinquency - A Review of 100 Court Cases Referred to the Toronto Psychiatric Hospital," *Ontario Journal of Neuro-Psychiatry* September 1933 (34-50): 35.

<sup>45</sup>Steven Maynard, "On the Case of the Case: The Emergence of the Homosexual as a Case History in Early Twentieth Century Canada," eds. Franca Iacovetta and Wendy Mitchinson, *On the Case: Explorations in Social History* (Toronto: University of Toronto Press, 1998), 77-78.

neither property nor life, whipping, he suggested, seemed sufficient.<sup>46</sup>

Mr. Mills views may have been uncommon among Canada's Parliamentarians at the end of the nineteenth century, but voicing his opinion on such matters in the House of Commons was not out of line. Using the law to regulate public morals was a process most politicians lauded.<sup>47</sup> For example, in his 1893 introduction of a bill prohibiting contraceptives and procurement of abortions, member Mr. Charlton proclaimed, "No higher functions rest upon the Government of a nation or of a people than to guard the morals and to promote the public welfare of the people in every way that it is possible to do so by legislation."<sup>48</sup> And so they did. Responding in part to the demands of their constituents, including women's groups, labour unions and religious organizations, Parliament introduced revisions in 1886, 1892, 1906 and 1927.<sup>49</sup> Changes to laws regulating morality and physical harm (for they were not organized into a single group of "sex laws" until the revisions of the mid-1950s), reflected changing ideas about women and homosexuality. With the introduction of attempted rape and indecent assault categories for example, assaults on women that did not include vaginal-penile penetration were recognized as a category unto themselves. Anti-seduction laws, the result of the

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<sup>46</sup>Cited in Kinsman, *Regulation of Desire*, 131; see also Gigeroff, *Sexual Deviations*, 48.

<sup>47</sup>Snell, "The White Life," 386-7.

<sup>48</sup>Greenland, "Is there a future of human sexuality?" 281; on Charlton see Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993), 66-69.

<sup>49</sup>Gigeroff, *Sexual Deviations*, 46-50.

successful lobbying efforts of the Knights of Labour, sought to protect women from dishonest men. The crime of “gross indecency”, passed into law in 1890, aimed to stem the tide of “certain offences which were notorious in another country.” Canada’s Criminal Code was subsequently amended to limit its application to those offences committed between two men.<sup>50</sup>

### **Reform in Ontario**

Under the British North America Act, the criminal code was regulated by the federal government, but responsibility for the courts and prisons was divided between the provinces and the federal government. Thus there were often tremendous differences between federal and provincial prisons, from the conditions of the buildings to the staff-inmate ratio to the services inmates were provided. Throughout the twentieth century, Ontario led the way in innovative prison programs, including steering its criminal justice system along the tracks laid down by mental health experts. Well attuned to developments in the United States, Toronto experts monitored the progress of criminological innovations such as Chicago’s Juvenile Psychopathic Institute with great interest. Founded in 1909 by psychologist William Healy, the Institute provided therapy for children and adolescents and gave advice to the city’s new juvenile court.<sup>51</sup> The Chicago clinic became

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<sup>50</sup>Kinsman, *Regulation of Desire*, 128-132.

<sup>51</sup>National Commission for the Protection of Human Subjects of Biomedical and Behavioural Research – Staff Paper, “Prisoners as Research Subjects,” eds. Sir Leon Radzinowicz and Marvin E. Wolfgang, *Crime and Justice*, v. 3, 2<sup>nd</sup> edition, (New York: Basic Books Inc, 1977): 312-331 [318].

the prototype for similar legal tribunals. By the early 1930s, all but two American states had their own versions of the Chicago clinic.<sup>52</sup> In Canada, Toronto led the way with the first such court clinic opening in 1920 to service the Juvenile Court that had been established in 1912.<sup>53</sup> It was an experiment that combined the insight of the helping professions – psychiatry, psychology and social work – with the regulatory methods of the justice system. Juvenile delinquents were first sent for psychometric testing by a psychologist, a family background check was conducted by a social worker, and finally a psychiatric interview completed the subject’s file. This ‘team’ of experts would then prepare a report with a recommendation to the court.

It was no accident that the Toronto clinic opened so soon after WWI. Up until that time, mental illness was largely considered a hereditary condition, and most psychiatrists plied their trade behind the prison-like walls of the asylum. However, out on the European battlefields psychiatrists had observed soldier after soldier suffering ‘shell shock’, an acute stress disorder caused by the conditions of warfare. Shell shock demonstrated that everyone was susceptible to mental breakdown. Suddenly psychiatrists were no longer limited to the institutionalized insane, but could now speak with greater authority on everyday concerns. Stress, anxiety, worry, exhaustion, listlessness, unemployment, overemployment, and familial relations all became part of the foundation for a new

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<sup>52</sup>Kittrie, *The Right to be Different*, 112.

<sup>53</sup>Lorne Stewart, *The History of the Juvenile and Family Court of Toronto* (Toronto: s.n., 1971): 16-19.

psychiatry.<sup>54</sup> Indeed, there seemed no topic upon which the expert of the human mind and human behaviour could not render an opinion. For the first time psychiatrists were offering counseling and therapy, tests and treatment, to *voluntary* patients who not only stood a much better chance of improvement than the traditional psychiatric patient, but who also offered a whole new set of data upon which the discipline might expand its knowledge base.

Shell shock was not the only major advance psychiatry made during WWI. Since the fifteenth century, syphilis was considered a moral disease, “burdened with the associations of sinfulness that it bears to this day,” striking down those who led a dissipated life.<sup>55</sup> Because it was untreatable and irreversible, many of its North American sufferers found themselves abandoned on the doorstep of the local asylum. For psychiatrists, they were an unwanted burden filling beds and keeping the patient rolls stagnant.<sup>56</sup> Two of the few breakthroughs in turn-of-the-century psychiatric medicine was the development of a method to identify the disease, followed by the 1906 invention of the eponymous Wassermann blood test. Medical experts were, for the first time, able to identify carriers.<sup>57</sup> Though a successful treatment would not be found until development of

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<sup>54</sup>Tyhurst, *More for the Mind*, 3. WWI marks “the beginning of psychiatry as we know it today.”

<sup>55</sup>Lunbeck, *The Psychiatric Persuasion*, 49.

<sup>56</sup>Ian Robert Dowbiggin, *Keeping America Sane: Psychiatry and Eugenics in the US and Canada* (Ithaca, New York: Cornell University Press, 1997), 8-9; Porter, *The Greatest Benefit*, 510.

<sup>57</sup>Porter, *The Greatest Benefit*, 452.



penicillin in the mid-1940s, the ability to test for and trace venereal disease helped to “shed its mythical associations and assume instead the shape of a medical problem.” Moreover, according to Elizabeth Lunbeck, “[s]yphilology brought psychiatry into medicine... [and] gave license to bring sex into psychiatry.”<sup>58</sup> The first major advance in this direction was made during WWI. Soldiers were contracting the disease in such high numbers that it threatened to undermine an Allied victory. Medical experts insisted that in order to win the war, syphilitic patients needed to be treated, and soldiers must be educated in preventative measures. Psychiatrists won the right to provide information about the transmission of the disease, but not without a drawn out battle with military authorities.<sup>59</sup>

The growth and development of Canadian psychiatry occurred along the same trajectory as in Britain and the United States, though on a smaller scale. C.K. Clarke’s long-standing campaign to have a psychiatric hospital separate from the Toronto Asylum finally paid off in 1925 with the opening of the Toronto Psychiatric Hospital (TPH). There, patients could seek out help without having to face commitment to an asylum, and, it was hoped, psychiatrists could shed their image as mere custodians of the irretrievably disturbed. Though the TPH and other hospitals like it did increase the number and type of patients to whom the psychiatrist ministered, the court system continued to supply a large number of patients. Between 1929 and 1933, for example, the TPH admitted 3,622

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<sup>58</sup>Lunbeck, *The Psychiatric Persuasion*, 50; see also Porter, *The Greatest Benefit*, 457, 510.

<sup>59</sup>Alex Comfort, *The Anxiety Makers: Some Curious Preoccupations of the Medical Profession* (New York: Delta, 1969): 139-141.

patients. Of those almost half were court referrals.<sup>60</sup>

Among those sent to the TPH for observation and assessment during this period, 150 were charged with sex offences. Senior Assistant Physician A.J. Kilgour thought the problem of sex offences a significant enough issue to merit study, and his sample large enough to support the venture. In a 1933 article, Kilgour suggested that the problem was greater than most people recognized. For example, although only 150 people were referred to the clinic, they represented a fraction of the total of 1,100 sex-related charges laid in Toronto the same period. Second, he reported that the courts were showing a greater recognition of the psychological aspects of sex offending by increasing the number of referrals to the TPH clinic. Kilgour was among a growing number of medical experts who were inspired by new research into the sexual habits and behaviour of everyday people. As Elizabeth Lunbeck illustrates, early twentieth century psychiatrists imagined themselves harbingers of a value-free scientific future. Casting off the false modesties and repressive tendencies of the Victorian era, the science of sex would liberate the masses from undue shame and stood to increase human happiness by releasing men and women from the restraints of myth and misconception propagated by religious dictum and social convention. Apprehending sex as a straightforward fact, argues Lundbeck, was a defiant strategy meant to align the profession with science and medicine and to “signal psychiatrists’ and social workers’ unflinching modernity.”<sup>61</sup>

Kilgour’s contribution to the growing body of international literature on sexuality

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<sup>60</sup>Kilgour, “Sex Delinquency,” 34.

<sup>61</sup>Lundbeck, *The Psychiatric Persuasion*, 49-54.

was both defiant and self-avowedly modern. He challenged some of the most deeply held beliefs about sexual morality, and also refuted eugenics, a system of scientific thought supported not only by the country's medical elite, but by some of the most prominent social reformers - a decidedly pro-psychiatry constituency - of the day.<sup>62</sup> Many are given to believe, Kilgour argued, "there is but one pattern of normal sex life and any straying from that path was abnormal." New research, however, showed that "there are as many [paths] as there are individuals." Rather than use this as evidence of the erosion of morality and the threat to society, as many moral reformers did, Kilgour drew on historical knowledge to show that sexual and moral norms were in a constant state of change. Using homosexuality as an example, Kilgour made the increasingly common claim that earlier civilizations, upon which western civilization own was built, accepted and even celebrated homosexuality. Embracing sexual diversity, to use a modern term, was "not only a matter of justice to those who may vary from the conventional form in sex conduct, but also because it increases the stability of the whole moral system."<sup>63</sup>

If Kilgour's critics wanted to dismiss his claims, they would have to find a way to discredit him without relying on eugenics. In point-by-point fashion, Kilgour scrutinized his subjects for physical and other social defects, including nationality, place of birth, religion and ancestry. No single feature emerged to explain any of the sexual deviations.

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<sup>62</sup>Angus McLaren, *Our Own Master Race: Eugenics in Canada* (Toronto: McLelland and Stewart, 1990); Terry L. Chapman, "Early Eugenics Movement in Western Canada," *Alberta History*, 1977 25 (4): 9-17; Catherine Annau, "Eager Eugenicists: A Reappraisal of the Birth Control Society of Hamilton," *Social History* 1994 27 (53): 111-133.

<sup>63</sup>Kilgour, "Sex Delinquency," 50.

There were no signs of physical degeneration; on the contrary many of his subjects were “athletic” and “robust”. The sample showed only that sex offenders represent a typical cross-section of society. Most of his subjects first engaged in sexual misconduct by introduction, not inclination, and for at least half of them, Kilgour attributed the crime to an unsatisfactory sex life caused by “(1) exaggerated sexual desire; (2) diminished sexual ability; (3) interference with normal sexual activity because of moral, medical, and social restraint or marital dysharmony [sic].”<sup>64</sup> Kilgour maintained that sexual behaviour was learned, not congenital. Though many likely rejected his conclusions, his assessment, shared by a growing number of his colleagues to the south, would prevail in the second half of the twentieth century and would later inform therapeutic programs intended to re-educate and normalize sex offenders.

If the problem was not sexual practices themselves but society’s narrow definition of normalcy, Kilgour asked his readers to consider the extent to which the law should intervene in matters of sexual misbehaviour. However, Canadians showed that they were more willing than ever to rely on Parliament to keep the country safe from the threat of sexual danger.

### **Canada Adopts the Sexual Psychopath**

It was the perceived threat of danger to the community, rather than the potentially beneficial treatment to offered offenders which MP Howard C. Green emphasized when he forced the issue in the House of Commons in 1947. Green had a track record of

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<sup>64</sup>Ibid., 49.

supporting controversial, sensationalist legislation. Just five years earlier he had insisted that Japanese Canadians posed a national security risk. This was a claim promptly investigated and refuted by the Royal Canadian Mounted Police, but Green, along with BC Cabinet member Ian McKenzie, refused to back down and eventually the federal government 'removed' 100 000 Japanese Canadians from their west coast homes and placed them in concentration camps.<sup>65</sup> The criminal sexual psychopath debates unfolded along strikingly similar lines.

Minister of Justice Ilsley was fully prepared for Green's query. Earlier that spring Charles Stogdill, the Director of the Mental Health Division, and General Gibson, the Commissioner of Penitentiaries, embarked on a study of sex crime and the sexual psychopath statues in the United States. Shortly thereafter, the Penitentiaries Branch of the Federal Department of Justice appointed psychiatrist Dr. Gendreau as Deputy Commissioner, indicating the department's long-awaited move toward applying the principles of reformation through therapeutic intervention. While on a trip to the US to conduct research on narcotic addiction, Gendreau and Stogdill took the opportunity to tour some of the American facilities created to diagnose and treat sexual psychopathy.<sup>66</sup> Gendreau later recounted his conversation about treatment with the superintendent of a medical facility in Springfield, Missouri:

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<sup>65</sup>Canada. Parliament. *House of Commons Debates*. Volume I (1942) 29 January 1942, 156-7.

<sup>66</sup>RG 29, Department of National Health and Welfare, Volume 345, File 436-6-5 "Mental Health. Diagnosis and Treatment of Sex Offenders." Letter from R.E. Curran, Legal Advisor, 19 November 1947.(NAC).

He looked at me and said, "What treatment?" He was a medical man...well versed in that. I was rather discouraged to hear him speak that way because I still felt there was treatment and I said so. He said, "I don't think there is." I said, "If you quit you will never get anywhere. Keep on trying." He said, "I have tried. They are hard bricks." He was attempting some treatment for those who wanted it, but most of them do not want any treatment there.<sup>67</sup>

At the time of Gendreau's trip, there was absolutely no evidence that any treatment methods currently in use could be, or in some cases, should be, applied to successfully treat sexually deviated offenders.

Virtually every study undertaken by individual US states before, during, and in the case of New Jersey, after the passage of some form of sex psychopath legislation showed that the image of the sex offender – urban, recidivist, and prone to committing crimes of increasing violence – was more fiction than fact.<sup>68</sup> Most historians credit its creation to the notorious Director of the Federal Bureau of Investigations, J. Edgar Hoover. An outspoken advocate for increased measures to control sexual deviancy, in the 1930s Hoover declared a "War on Sex Crimes," and the local and national media responded with an increased focus on sex-related social and moral conflicts.<sup>69</sup> However, a study of court activity commissioned by the mayor of New York during that same decade showed no significant rise in sex crime during the 1930s. Moreover, it also found that most convicted sex offenders were first time offenders, not recidivists as was often claimed. These

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<sup>67</sup>RG 33/131 Acc 83-84/253, "Report of the Organization Meeting, Ottawa, March 29 & 30, 1954", 45. (NAC).

<sup>68</sup>Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation*.

<sup>69</sup>Jenkins, *Moral Panic*, 55-56; Freedman, "Uncontrolled Desires," 206; Terry, *American Obsession*, 271-2.

findings undercut the two central premises upon which criminal sexual psychopath legislation rested: sex crime was growing at such a rate that bold new measures were necessary to put an end to it, and the criminal justice system was not effecting reformation.

Minister of Justice Ilsley would have to wait more than a decade for Canada's own statistical confirmation that there had not been a rise in sex crime rates in the years following WWII.<sup>70</sup> In the meantime, rather than challenge the widespread perception that there was an increase in the number of sex crimes committed against children, he argued that introducing sex crime laws similar to those in the US was not the solution. Citing a 1946 article from the British *Journal of Nervous and Mental Diseases*, Ilsley explained in the House of Commons that psychiatrists themselves were highly sceptical of their ability to cure sex deviants.<sup>71</sup>

Ilsley's response contradicted the mental health message vigorously promoted by the newly formed Mental Health Division. At war's end, the federal government made mental health a cornerstone of its reconstruction program. Psychological programs and psychiatric treatment were given top priority, and in 1945 the Mental Health Division was created as part of the newly formed Department of Health.<sup>72</sup> Headed up by Charles

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<sup>70</sup>Canada. *Report of the Royal Commission on the Criminal Law Relating to the Sexual Psychopath* (Ottawa: Queen's Printer, 1958): 75.

<sup>71</sup>Canada. Parliament. *House of Commons Debates*. Volume VI (1947) 3 July 1947, 5033.

<sup>72</sup>RG 29 Volume 314 File 435-6-2 Part 2 "Meetings of the Advisory Committee on Mental Health 1947" from the Minutes First Federal-Provincial Council of Mental Health Directors, October 10-11 1946. (NAC).

“Chick” George Stogdill, professor of psychiatry at the University of Ottawa and ex-Royal Canadian Air Force man, its job was to promote the idea of a ‘design for living’ based on the tenets of the mental health movement.<sup>73</sup> In both the United States and Canada, psychiatrists and psychologists were considerably more influential in the state organization of both the war effort and reconstruction than they had been at any time in the past.<sup>74</sup> Having a mental health division signalled a remarkable victory for both professional groups, which were now assured a permanent place at the funding table, and whose work gained a new-found respect and legitimacy. Over the next ten years millions of dollars were allocated to support the development and maintenance of mental health research and programs across the country. Annual funding for research alone rose from \$25,000 in 1947-48 to \$175,000 in 1949-50.<sup>75</sup> By 1954 the federal and provincial governments combined spent more than \$30 million on mental health.<sup>76</sup>

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<sup>73</sup>“Design for living” was one common phrase. Another equally popular term was “human engineering,” an updated take on the concept “mental engineering” developed by US psychologists Robert Yerkes and Raymond Dodge during WWI. According to James Capshew, the appropriation of the term engineering was to borrow on the “social power and cultural authority of the traditional engineering disciplines.” James H. Capshew, *Psychologists on the March: Science, Practice and Professional Identity in America, 1929-1969* (New York: Cambridge University Press, 1999), 49. On postwar planning in Canada see Mariana Valverde, “Building Anti-Delinquent Communities: Morality, Gender, and Generation in the City,” in ed. Joy Parr, *A Diversity of Women, Ontario, 1945-1980* (Toronto: University of Toronto Press), 19-45.

<sup>74</sup>Capshew, *Psychologists on the March*, chapters seven and eight.

<sup>75</sup>RG 29 Volume 310 File 435-5-27, part I. Charles Stogdill to AD Simmons, 30 June 1950. (NAC).

<sup>76</sup>RG 10-107-0-931, Canadian Psychiatric Association 1954-55. “Canada’s Mental Health: Monthly Roundup of News Items from the Mental Health Division, Department of National Health and Welfare, Ottawa” No. 10 (September 1954). (AO).



Established by resolution of the Dominion Council of Health in May 1945, the purpose of the Mental Health division was to disseminate information and coordinate mental health efforts throughout Canada. Although health is a field of provincial jurisdiction under the British North America Act, it was believed that co-ordination at a national level would greatly enhance service provisions and encourage the sharing of ideas and research.<sup>77</sup> Specifically, the division was to collaborate with the Canadian Broadcasting Company (CBC) and the National Film Board (NFB) to educate the public, to create and distribute literature, to give public addresses to “stimulate interest”, to furnish advice to the provinces, and to provide professional advice to other federal government services including the Department of Justice, Immigration Medical Services, Civil Service Health, and so on.

Obstacles to building a top quality mental health program in Canada were raised during the very first Federal-Provincial Conference of Mental Health Directors in 1946.<sup>78</sup> First there was a serious shortage of trained personnel. Only McGill, Western and the University of Toronto offered diploma courses in psychiatry, and many students continued to seek post-graduate training in Britain and the US. Because of the dearth of research opportunities and the low income potential for psychiatrists in Canada, many never returned. Clarence Hincks blamed the problem on a lack of leadership in first-class psychiatrists, and demanded immediate steps on a national level to alleviate the situation.

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<sup>77</sup>RG 29 Volume 314 File 435-6-2 Part 2. Meetings of the Advisory Committee on Mental Health, 1947. “Minutes. First Federal-Provincial Conference of Mental Health Directors.” 10-11 October 1946. (NAC).

<sup>78</sup>Ibid.

Specifically, he suggested Canada adopt something along the lines of the United States National Neuropsychiatric Act which provided funds for students and grants to the hospitals and clinics that would train them. A national program would eliminate the uneven distribution of training facilities across the country and “keep good men in Canada.”<sup>79</sup> The federal government followed through on Hincks’ suggestion and established a system of mental health grants that were distributed to and administered by each province. The level of funding was to be equitably distributed on a per capita basis.<sup>80</sup>

For leading Canadian psychiatrist D. Ewen Cameron, the grant scheme was not enough to build a robust national mental health program. Cameron dreamed of a national research centre where a steady funding base would provide secure jobs, promote research and enhance the prestige of the profession. Cameron proposed that Allan Memorial Institute, the only psychiatric institute in Canada and an experienced leader in conducting research, was the ideal setting for such a centre. Originally established to train psychiatrists for the armed services, the Allan Memorial continued to work on “matters of national significance.”<sup>81</sup> In his submission to the Department of Health and Welfare, Cameron reminded his readers that mental health was recognized as a major national problem because of “the extraordinary cost to the individual and to the public of caring for

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<sup>79</sup>Ibid.

<sup>80</sup>RG 29-29 “General Departmental, 1950-1974”, Advisory Committee on Mental Health, 1946-1966; vols 1418-1419. (NAC).

<sup>81</sup>Cameron and the Allan Memorial Institute were later incriminated for human rights abuses for conducting mind control experiments. The program was funded by the United States Central Intelligence Agency. See Anne Collins, *In the Sleep Room: the story of the CIA brainwashing experiments in Canada* (Toronto: Lester & Dennys, 1988).

the hospitalized psychiatric patient,” because of the decrease in labour power, and because of its impact on “civilian morale; marriage; delinquency; absenteeism; human motivation; [and] geriatrics.” The centralization of a national research program was sensible, efficient and cost-effective. It also stood a good chance of saving the nation from its worst social problems.

Stogdill thought a national research centre was worth serious consideration and less than three months later a federal government interdepartmental meeting convened in the board room of the Department of National Health and Welfare.<sup>42</sup> In attendance were representatives of National Health and Welfare, the Defence Research Board, the National Research Council, the Department of Citizenship and Immigration, the Department of Labour and the Department of Veterans Affairs.<sup>43</sup> Deputy Commissioner of Penitentiaries in the Department of Justice Dr. Louis Gendreau immediately expressed his support for the idea, pointing out that drug addiction and sexual psychopathy, the two most pressing social problems of the day, would benefit from a national research program. Others noted that a national centre would slow the ‘brain drain’. Only the Defence Board dissented, arguing that it had no need for such a centre. Ultimately the group disbanded with the agreement that the topic demanded further consideration.

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<sup>42</sup>RG 29, Department of National Health and Welfare, Volume 310, File 435-5-28, Mental Health Division: Interdepartmental Committee on Mental Health Research Centre, 1950. “Memo. 29 March 1950. RE: Dr Ewen Cameron’s proposal for a Mental Health Research Centre.” (NAC).

<sup>43</sup>RG 29, Department of National Health and Welfare, Volume 310, File 435-5-28, Mental Health Division: Interdepartmental Committee on Mental Health Research Centre, 1950. “Minutes of an Interdepartmental Meeting on Psychiatric Research - June 7 1950.” (NAC).

How much more consideration the issue was given is difficult to determine, but the need for a centralized and sustained research program remained unmet. The Mental Health Division of National Health and Welfare recommended the federal government establish at least two psychiatric research hospitals – one in the west and another in the east.<sup>84</sup> Saskatchewan contributors scolded the federal government for providing regional research services to the agriculture and fishery industries, dryly noting, “It is odd that it does not do so directly for its greatest resource, which is its population.” Ten years after the establishment of the Mental Health division, the livelihood of many research personnel remained temporary, insecure, and filled with uncertainty.<sup>85</sup>

### **Selling Mental Health**

The federal government might have washed its hands of the issue once the provincial research grant cheques were in the mail, but one thing it had a very firm hold on

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<sup>84</sup>RG 29, Volume 322 File 435-7-12 Part I. “ ‘The Activities of the Mental Health Division Department of National Health and Welfare. Prepared for the Committee on Psychiatric Services of the Scientific Planning Council of the Canadian Mental Health Association.’ (NAC).

<sup>85</sup>One of the other problems Canada faced profound regional disparities in the quality and availability of mental health services. Nova Scotia doctors were still using shock therapies for primary treatment, a practice long abandoned in most other Canadian hospital wards for the mentally ill. Indeed, no psychotherapy of any kind was available. The system of caring for the mentally ill had changed little since the 1800s, noted the authors of a mid-1950s internal report for the federal government. Its ‘asylum’ resembling a nineteenth century prison with no separation of women from men, of adults from children, or of the mildly ill from the severely psychotic and violent. RG 29, Department of National Health and Welfare, Vol 322 File 435-7-12 Part I, Mental Health Division. Canadian Mental Health Association, Committee on Psychiatric Services of Scientific Planning Council, 1954-1957. “Survey of Psychiatric Service in Saskatchewan” n.d. [1954?]. (NAC).

was the promotion of mental health issues to the general public. The architects of the mental health movement in Canada were keenly aware of the need to 'sell' mental health to the public.<sup>86</sup> Not only did they have to convince people that mental health was an important issue that affected them and de-stigmatize the idea of seeking help for personal problems, but they also had to change the image of psychiatry, a field that one news editor complained was loaded with "too many quacks."<sup>87</sup> One of the ways they set out to do this was to solicit the help of the media in refashioning both mental illness and the practice of psychiatry. To help facilitate this shift, the Mental Health Division requested that the CBC and other news services:

slant all reports and stories regarding the mentally ill, mentally defective, epileptic and alcoholic persons so that the reader or listener will not feel that there is any stigma attached to such illness....The following words could well be completely avoided: insane, insanity, insane asylums, or other combinations of the word "insane". The use of the word "asylum", as referred to any form of mental illness is best avoided. Reference to hospital patients as lunatics, looneys, inmates, is undesirable. The use of the work "crazy" is no longer acceptable. The institutions for the care of the mentally ill should be referred to by their proper name or in general, as mental hospitals or hospitals for the mentally ill...<sup>88</sup>

This was not, the author made clear, an attempt to interfere with journalists' ability to remain objective, but rather simply to "create a desirable attitude" toward mental health and psychiatry. Government officials in the federal Mental Health Division knew that

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<sup>86</sup>This was no less true in the United States. See Group for the Advancement of Psychiatry, "The public relations problem of psychiatry," Report No. 5 (April 1948): 6-7.

<sup>87</sup>*Hamilton Spectator*, 30 September 1948.

<sup>88</sup>RG 29, Volume 121 File 190-3-8 Radio Publicity, re: Mental Health, 1946-1952. Chas. A. Roberts, Mental Health Division to Dr. BDB Layton, Assistant to the Director, Health Services. (NAC).

getting the media onside was critical for generating public interest and support. In 1949 the American Psychiatric Association produced its own guide for improving relations between psychiatric societies and the press. Canadian psychiatrist C.W. Gilchrist sent his copy along to Stogdill, the Director of the Mental Health Division. "I think the APA is to be commended on its efforts to break down the barriers of non-accessibility that the profession has built around itself over a period of many years," Gilchrist wrote,

Professional people are chronically suspicious and classically non-cooperative insofar as press relations are concerned, so efforts to get the profession and the press and radio together to discuss common problems in an atmosphere of mutual confidence is a step in the right direction, I am sure. It will assist greatly what we are trying to do in this and other ways to remove the shroud of mystery, the aura of despair surrounding mental illnesses and the practice of psychiatry generally."<sup>89</sup>

Most media outlets were eager to build good relationships with medical professionals. The CBC even sent Neil M Morrison, the director of audience relations, to the Fifth Annual Congress of Mental Health to tell them as much.<sup>90</sup>

By the mid-1950s, all three national media outlets – CBC radio and television as

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<sup>89</sup>RG 29 Vol 109 File 180-18-1 Education and Information, Mental Health Services, 1953-1958. CW Gilchrist to C Stogdill. Re: Proposed Guide for Improving Relations Between Regional Psychiatric Societies and the Press 5 Jan 1949. Advocates of mental health were willing to take more aggressive steps toward regulating their professional image. In 1946, the Manitoba Film Censor Board rejected the twentieth Century Fox movie *Shocked* – starring Vincent Price as a killer psychiatrist – on the grounds that it "prostituted the role of psychiatrists and psychiatry in general." See NA, RG 29, National Health and Welfare, Volume 314, File 435-6-2, Part 2. Meetings of the Advisory Committee on Mental Health, 1947. "Minutes. First Federal-Provincial Conference of Mental Health Directors." (Oct 10 - 11 1946): 4. (NAC).

<sup>90</sup>RG 10-107-0-931, Department of Health, Canadian Psychiatric Association 1954-55. "Canada's Mental Health: Monthly Roundup of News Items from the Mental Health Division, Department of National Health and Welfare, Ottawa" No. 10 September 1954. (AO)

well as the National Film Board (NFB) – featured mental health issues in their programming. The NFB produced educational and professional training films on a variety of psychiatric and psychological issues, including child rearing, group dynamics, and treatment programs for prisoners, and the CBC ran regular features and weekly programs covering the spectrum of mental health issues affecting Canadians, but particularly issues related to child rearing.<sup>91</sup> And the message was getting out. In a 1949 report on public education in mental health, author Philip Perry described how when members of a community health committee were asked to discuss how they might integrate more mental health information into their programs, replied, “If I hear any more about ‘mental health’ I’ll scream.”<sup>92</sup>

But what exactly was the message? Psychiatrists had spent more than a hundred years quantifying and qualifying lunacy in its myriad manifestations, but they were no closer to a ‘cure’ than ever. The evolution of increasingly complex systems of classification and diagnosis, followed by efforts to standardize psychiatric nomenclature into a general nosology, the Diagnostic Statistical Manual, helped to ensure that psychiatrists across Canada and the United States were generally speaking the same

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<sup>91</sup> Prison-related titles include the 1951 *Penitentiary and After Prison What?* and the 1965 film *Types of Inmates*. For more on the NFB’s mental health films, see Helen Harrison, “In the Picture of Health: Portraits of Health, Disease and Citizenship in Canada’s Public Health Information, 1920-1960,” PhD dissertation, Queen’s University, 2001.

<sup>92</sup>RG 29, Volume 190 File 180-18-1. Philip C. Perry, “Public Education in Mental Health” November 7 1949. (NAC). Perry interpreted their actions as part of the generalized negative response to the mental health problem, and as such, as a psychological barrier in need of penetration.

language. But psychiatry did not enjoy any of the late nineteenth century successes general medicine savoured. New discoveries in bacteriology and germ theory dramatically advanced medicine's ability to heal the sick and injured.<sup>93</sup> Apart from advances in the identification of general paresis, psychiatry enjoyed no comparable breakthroughs. Experiments with insulin and electric shock therapies proved to have limited effect, and lobotomy had too high a mortality rate to be used extensively. Psychiatry, in other words, knew quite a lot about all sorts of disorders of the mind and body, but knew not how to cure or even, in most cases, ameliorate the conditions so many patients suffered.

The Advisory Committee to the federal Mental Health Division of the Department of Health and Welfare took a cautious position from the outset.<sup>94</sup> Composed of at least one representative from each of the ten provincial governments and seven psychiatrists from university departments, including D. Ewen Cameron, director of the Allan Memorial Institute at McGill University, and A.B. Stokes, Chairman of the Department of Psychiatry at the University of Toronto, committee members made their professional deficiencies a matter for the record:

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<sup>93</sup> James Stewart Tyhurst, *More for the Mind: a study of psychiatric services in Canada* (Toronto: Canadian Mental Health Association, 1963): 12-13.

<sup>94</sup> Though mental health was an area that employed psychiatrist, psychologists, social workers and nurses, as well as custodians, the Advisory Committee was almost exclusively made up of psychiatrists. And though the National Committee for Mental Hygiene had long played a key role in furthering the mental health agenda, committee members "felt that the primary job of these societies would be to 'sell' the public on the Provincial Mental Health Services, and that this task could be better undertaken by a non-governmental body." RG 29, National Health and Welfare, Volume 315, File 435-6-2 part 2, Meetings of the Advisory Committee on Mental Health, "Minutes of the Fourth Meeting of the Advisory Committee on Mental Health - October 3-4, 1949." (NAC).



Resolved that the Advisory Committee on Mental Health record its belief that there are extensive basic defects in present psychiatric knowledge; that this deficiency applies equally well to our treatment methods as to our basic understanding of the nature of these conditions; that if all persons suffering from the various forms of mental ill-health were fully treated by all available methods at the present time we would still be left with a large number of ill patients.<sup>95</sup>

Why then was the federal government willing to invest millions of dollars into something that amounted to little more than a wing and a prayer?

Given the lack of concrete solutions mental health and medical experts offered, Minister Justice Ilsley's reservations about adopting criminal sexual psychopath legislation appear well-founded, especially considering that sexuality was one of the most underdeveloped areas of research. Interwar advances had been made in the United States, but studies such as A.J. Kilgour's were almost unheard of, in large part due to the influence of men like C.K. Clarke, Canada's preeminent psychiatrist during the first quarter of the twentieth century, who dismissed Freud in particular because of his unorthodox views about the nature of human sex development. Indeed, while it was after WWI that American psychiatrists began to experiment with Freud's ideas and theories, most Canadian psychiatrists remained staunchly opposed to psychoanalysis.<sup>96</sup> Even in the universities talking about sex could have severe consequences. Norman Jellinger Symons, Chairman of the Department of Psychology at Dalhousie University, taught a course in dynamic psychology. As part of the course Symons would solicit dreams from his students

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<sup>95</sup>RG 29, National Health and Welfare, Volume 315, File 435-6-2 part 2, Meetings of the Advisory Committee on Mental Health, "Resolutions, 1948." (NAC).

<sup>96</sup>Terry Copp and Bill McAndrew, *Battle Exhaustion: Soldiers and Psychiatrists in the Canadian Army, 1939-1945* (Montreal & Kingston: McGill-Queen's University Press, 1990), 7-8.

and “provide them with full-blown Freudian interpretations.” The university administration was horrified and promptly demanded his resignation.<sup>97</sup> By the late 1950s, discussions about sex remained, at least at Dalhousie, somewhat controversial. In 1959 a prospective PhD student from Queen’s University in Kingston was reassured by a faculty member, “Young man, you may *describe* sex, you must never *advocate* it.”<sup>98</sup>

### The Committee On Sex Offenders

Keeping sex respectable might have been good for the national soul, but it also meant that there was no intellectual foundation upon which to build a treatment program for sex offenders. When in 1947 sex assaults against children were made a matter of national concern, the Canadian Penal Association (CPA) decided to do for the federal government what 10 American state legislatures did for themselves: organize a committee to study the problem.<sup>99</sup> Using funds provided by the Kiwanis Club of Toronto, the CPA brought together a cross-section of Canadian experts in medicine, law and education to form the “Committee on the Sex Offender” (CSO). Representing governmental, academic and professional volunteer organizations were Dr. L.P. Gendreau, the newly appointed Deputy Commissioner of Penitentiaries in the Department of Justice, Dr. J.D.M. Griffin,

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<sup>97</sup>Mary J Wright and C Roger Myers, eds., *The History of Academic Psychology* (Toronto: CJ Hogrefe Inc., 1982), 26.

<sup>98</sup>*ibid.*, n. 15. Emphasis in original.

<sup>99</sup>Although the CSO had the support and co-operation of the federal government, it had neither the financial backing nor the access to resources US state commissions would have enjoyed. See Committee on the Sex Offender, “Chairman’s Statement”: 1. In total, ten states appointed commissions to study the sex offender problem. Freedman, 210.

Medical Director of the National Committee for Mental Hygiene (soon to become the Canadian Mental Health Association), and J. Alex Edmison, King's Council and President of the Canadian Penal Association. Joining this prestigious panel were a handful of Toronto-based experts, including members of the University of Toronto medicine and social work faculties; Chief Constable of Police John Chisholm; Dr. Kenneth Rogers, Executive Secretary of the Big Brother Movement and local Magistrates Robert Bigelow and Kenneth F. Mackenzie.

Three months after the committee was struck, the CSO issued an Interim Report. Research about sex offenders, the chairman remarked, is "involved and complicated." Especially, he added, because it had not been previously attempted in Canada, nor, it transpired, adequately elsewhere.<sup>100</sup> Hopeful that the work of the committee should prove useful to professionals in the field, members decided that the issue was best approached from three different angles: medical, legal and educational. While the end result makes it clear that the three sub-reports were written entirely from the standpoint of the individual authors, what is remarkable - and most revealing - is its ultimate cohesion. All four addressed the 'sexual psychopath' construct, and described how it should be treated (medical), whether it could be contained (legal), and how it might be prevented (education). Though the report did not provide a single solution or approach to the sex offender problem, it went a long way toward defining the parameters of the debate.

Gendreau and Griffin provided independent analyses of sex crime and its perpetrators. A study in contrasts, the two reports illustrate psychiatry's intellectual

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<sup>100</sup>Committee on the Sex Offender, "Interim Report," 1.

transition at mid-century from a mostly eugenically-based biological model to an anthropological and Freudian behavioural based model. First, Gendreau presented a single case study, one of the oldest and most common tools of his trade, to illuminate his subject. Of the many cases he could have presented, he chose to examine that of a man who was the recent subject of media attention.<sup>101</sup> Like most psychiatrists, Gendreau subscribed to no single theory of causality; instead, his assessment combined eugenic and degenerative as well as more modern environmental and behavioural theories. He described his subjects' parents as "sexually delinquent and not likely to raise their children with moral standards above their own." They were "of low grade stock mentally and morally." The father created a poisonous environment: he is "morally deficient," and had carried on an incestuous relationship with his 12 year old step-daughter. The mother exacerbated the problem by being "overindulgent and overprotective" - a post-WWII descriptor that would increasingly come to be associated with developmental abnormalities, particularly male homosexuality.<sup>102</sup> In the interwar years mothers of delinquent and especially sexually "perverted" boys were more likely to be described in opposite terms, as uninvolved, negligent and perhaps even 'New Women'. But here the failing mother was more likely to

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<sup>101</sup>On the case file as a psychiatric tool, see Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York, Vintage Books, 1979), 184-194; Steven Maynard, "On the Case of the Case," 65-87; and Lunbeck, *Psychiatric Persuasion*, 130-144.

<sup>102</sup>Though it was psychiatrists and other mental health experts who propagated this idea, cold war historians of women and the family have pointed to Philip Wylie's *Generation of Vipers* (New York: Rinehart & Co., 1942) as one of the most egregious examples of this line of thinking. See for example Elaine Tyler May, *Homeward Bound: American Families in the Cold War Era* (New York: Basic Books, 1988), 74-75.

be “emotionally unstable.” In this case, the mother “kept children home from school for no valid reason,” which not only prevented them from receiving a proper education, but also kept them from the positive normalizing influence the school offered. For Gendreau it was clear that “*due to her own emotional deficiencies,*” the mother was unwilling to allow her children to be ‘normal’.

Bad parenting would become one of the most ubiquitous and enduring explanation for delinquency in the postwar era.<sup>103</sup> In a 1950 radio report on child training, the Honourable Minister of Health Paul Martin implored parents to take greater responsibility for “training” their children to live emotionally healthy lives:

Mental illness develops over a long period of time and faulty upbringing of children is a major cause. The way in which we adults react to our responsibilities is largely the result of attitudes and habits developed in our childhood. This being the case, it is of the utmost importance that as parents, we should train our children in such a manner that they will develop healthy emotional patterns.”<sup>104</sup>

The home, Martin argued, “should not only develop healthy bodies but should foster sound and stable, well-balanced personalities.” The sex crime panic would make sexual health a central component of modern parental responsibilities.

Gendreau’s assessment reminds us how paradigm shifts are never sudden or complete, but that old and new ideas, even when they are seemingly incongruent, often

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<sup>103</sup>Biological explanations are enjoying a late twentieth century resurgence, as is especially evident in the dramatic use of mood-altering drugs such as Ritalin to control and manage the behaviour of children and adolescents.

<sup>104</sup>RG 29 Department of National Health and Welfare, Volume 112, File 181-2-2. General Department Publicity, Cooperation with Miscellaneous Home and School Associations. Part 1. 1945-1950. “‘As the Twig is Bent... (Child Training)’ An Address by the Hon Paul Martin, Delivered on the radio series ‘Report From Parliament Hill’ Oct 21 1950.” (NAC).

overlap.<sup>105</sup> Gendreau conjoined a germ disease model with newer developmental models of sexuality to explain his subject's deviant behaviour. His subject was "initiated in early life, in sexual activities along homosexual lines," and had been in trouble with the law as a result of his sexual activities. The original contamination, left untreated, had led him to "become a confirmed sexual invert. This is confirmed by his inability to make heterosexual adjustment."<sup>106</sup> Once infected with perverted sexual ideas, the young man could not progress toward the final sexual stage of development. Unable to arrive at the heterosexual endpoint, the victim remained in a perpetual state of immaturity, his development into full manhood with all its attendant rights, privileges, and responsibilities thwarted.<sup>107</sup>

In his final assessment, Gendreau concluded, "There are numerous socio-economic factors which work towards the development of such an individual emotionally conditioned to such behaviour." Unless he receives treatment in prison, he will most assuredly return to his "practices" and "be a menace, perhaps, to a greater extent than before and commit crimes of greater magnitude."<sup>108</sup> It was precisely these assumptions – that prison was not reformatory, that sex offenders would re-offend and commit

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<sup>105</sup>On paradigm shifts see Thomas Kuhn, *The Structure of Scientific Revolutions* Second Edition, Enlarged (Chicago: University of Chicago Press, 1970), esp. 43-51.

<sup>106</sup>Committee on the Sex Offender, "Interim Report," 5.

<sup>107</sup>On the emergence of a developmental model see Stephen Robertson, "Separating the Men from the Boys: Masculinity, Psychosexual Development, and Sex Crime in the United States, 1930s-1960s," *Journal of the History of Medicine and Allied Sciences* 56, 1 (January 2001): 3-35.

<sup>108</sup>Committee on the Sex Offender, "Interim Report," 6.

increasingly serious crimes, and that psychiatric treatment was the only possible method to rehabilitate (or perhaps more precisely re-habituate) the deviated offender to the norms of society – upon which the criminal sexual psychopath as a clinico-legal construct rested.

But what if treatment didn't work? It was a well-accepted truism among therapeutic experts that the better educated and more intelligent the individual, the more amenable to treatment. Anticipating that his subject was not a good prospect for this reason, Gendreau concluded, "Such an individual should not, for years to come, be given his freedom." Thus the preventative sentence, premised on the need to make the criminal justice system more pliable so that treatment programs would not be interrupted by the expiration of a prison sentence, could also now be conceived of as a means to ensure the long-term protection of society from a criminal deemed incurable. In this way, sex psychopath legislation appealed to those who regarded the sex offender as more mentally-disturbed than criminally minded, and provided for psychotherapy and other forms of psychological and medical treatment, in contrast to the bleak monotony of prison life and medieval methods of punishment, appear both humane and progressive.<sup>109</sup> At the same time, however, sexual psychopath legislation also appeased the fears of those who would have sex offenders incarcerated for life, and guaranteed as much by ensuring that no one judged a sex psychopath would be released from custody until cured, or, as some state laws held, judged by a psychiatrist to no longer be a threat to society.

While Gendreau reinforced the image of the sex fiend as the poor, unintelligent

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<sup>109</sup> Agnes MacPhail was instrumental in exposing prison brutality during the interwar period. See Alison Prentice et.al. *Canadian Women: A History* (Harcourt Brace Jovanovich, 1988): 280.

offspring of low-grade stock, Griffin joined a growing group of scholars who challenged the most basic premise of sex research. Influenced by anthropologists like Ruth Benedict and Margaret Mead, a new generation of North American sex researchers set out to exorcise the moral assumptions embedded in popular ideas about sexuality. Historian Jennifer Terry has cogently traced the influence of early twentieth century anthropology on the field of sex research. Critical of biologically determinist theories popular in many fields of medicine, including sexology, anthropologists of the Culture and Personality school sought to document cultural variation in sexual expression and practice. Influenced by Freud, most regarded personality formation as the sum total of socialization processes that varied according to the cultural norms in a given society. Gaining strength in the 1930s, this emergent body of scholarship made a contribution to early twentieth century nature/nurture debates that was quickly adopted by sex experts in other disciplines, including psychiatry.<sup>110</sup>

Griffin's arguments exemplified the influence of anthropology on forensic sexology. "Ignorance, superstition, rigid taboos and violent prejudice" complicate our understanding of sexual disorders, he complained. "So powerful have been the emotional and social repression concerning sex in our culture, that even scientific enquiry as to the actual facts has been hampered."<sup>111</sup> Griffin and other experts argued that sexual practices

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<sup>110</sup>Terry, *An American Obsession*, 163-8.

<sup>111</sup>Committee on the Sex Offender, "Interim Report," 9. This complaint was lodged in virtually every study in the field of sexuality until the 1960s. For a contemporary critique of that claim, see Johann Mohr, "The contribution of research to the selection of appropriate alternatives or sexual offenders," *Criminal Law Quarterly* 4 (January 1962): 317-328.



viewed with hostility and contempt by most North Americans might be highly valued in other cultures. Moreover, he explained, sexual behaviour varied tremendously even within North America. Echoing A.J. Kilgour, Griffin argued that Canadians could no longer sustain the illusion that “normal” sex was static, stable and definable. Any further advances in sex research required that we remove our sexual blinders and encourage more frank, open and honest discussions about sex.

Griffin’s report also diverged from Gendreau in method. By 1948 psychiatrists no longer had to rely on a handful of individual case studies to extrapolate some sort of understanding of sex crimes and sexual deviancy. The interwar decades spawned a number of large-scale studies of the sexual habits and attitudes of Americans, including Katharine Bement Davis’s 1929 study of the sexual attitudes of 2200 women and George Henry’s New York Sex Variant Study. Griffin drew on the findings of LaGuardia’s New York Report on sex crime charges laid in that city. Based on an examination of over 3,000 convicted cases, it provided the kind of raw numbers that individual case studies, no matter how colourful, could not. As a result of these recent mass surveys, including the just-released Alfred Kinsey report on male sexual behaviour, Griffin argued that sexual activities widely considered perverted and esoteric “are now known to occur with surprising frequency.”<sup>112</sup> With the support of raw data collected from a cross-section of middle America, experts had the tools they needed to strip the scientific study of sex of its moral embellishments, and reduce it to a medical expertise based not on social norms and

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<sup>112</sup>Committee on the Sex Offender, “Interim Report,” 9. Alfred Kinsey, Wardell B. Pomeroy, Clyde E. Martin, Paul H. Gebhard. *Sexual Behavior in the Human Male* (Philadelphia: W.B. Saunders Co., 1948).

values, but on the innovative systems of measurement Kinsey created. Categories such as “total sexual outlet” – a measurement of the frequency one engaged in any kind of sexual activity – and the infamous Kinsey scale, which rejected the categorization of humans as either heterosexual or homosexual in favour of a graded scale based on “total sexual outlet,” were but two of the tools that revolutionized the way people thought about sex.<sup>113</sup>

Kilgour, Kinsey and Griffin all agreed there were no common features - physical or psychological - that defined the ‘sex deviate.’ Griffin reported,

Sex offenders have no particular or easily recognizable features or stigmata to distinguish them from anyone else. They may be of any age, race, colour or creed. They may come from good homes or bad. They may live in wealthy or residential areas or in the slums. Their families may be criminals or respected pillars of the church.<sup>114</sup>

Indeed, Griffin continued, the sex psychopath scare was based on misinformation.

According to the latest research findings, the vast majority of sex offenders were not mentally ill, and the mentally ill were not more likely to commit sex crimes. Neither were sex offenders more likely to be recidivists. An analysis of 5821 New York cases over a nine year period showed that the general recidivism rate was 39%, and only 9% had a previous sexual offence conviction, an almost insignificant number in comparison with

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<sup>113</sup>This revolution was not limited to those who studied sex. At a 1962 conference in Colorado, the warden of the federal prison in Terre Haute, Indiana reported that, after consulting with staff members at the Kinsey Institute, he approached the question of homosexuality in an entirely different manner. Wardell Pomeroy, “Sex in Prison,” audiotapes of a presentation to a meeting of the Federal Warden’s Institute, University of Colorado, 26 June 1962. (Kinsey Institute Archives [hereafter KIA]).

<sup>114</sup>Committee on the Sex Offender, “Interim Report,” 9-10.

other crimes.<sup>115</sup> The sexual psychopath was a figment of the imagination of a zealous public built on sketchy psychiatric profiles like the one offered up by Dr. Gendreau. Still, Griffin did not reject the “sexual psychopath” concept completely. Instead, he argued that even though recidivism rates are low, society still needed protection from those who committed “compulsive and repetitive” acts of sexual violence.<sup>116</sup>

Psychiatrists could not agree about whether there was such a thing as a sex psychopath, and when they did, there was little clarity about what one was, but on one point most everyone concurred: the need for more sex knowledge. The education report, authored by Canadian Welfare Council member Kenneth Rogers, represented this position. Elaborating on the growing popularity of socialization and behaviourism schools of thought, many of the leading experts agreed that the sex instinct needed to be properly guided lest a young child be misled by a corrupt friend or a perverted stranger.<sup>117</sup> But frank talk about sex was as controversial in the late 1940s and 1950s as it was in Jellinger’s Dalhousie University psychology class of 1929, making Rogers’ task a delicate one. Already Alfred Kinsey’s pathbreaking surveys were inciting angry and censorious

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<sup>115</sup>The study was published as “The (New York City) Mayors Committee Reports on the Study of Sexual Offences,” *Journal of Criminal Law and Criminology* (January-February 1944). The Mental Health Division of the Department of Health kept a copy of the Committee’s findings on file. RG 29 Volume 345 File 436-6-5 Mental Health. Diagnosis and Treatment of Sex Offenders. (NAC).

<sup>116</sup>*Ibid.*, 11.

<sup>117</sup>See also Canadian psychologist JD Ketchum’s “Prude is Father to the Pervert,” *Maclean’s*, 15 January 1948, 42-4.

responses in both Canada and the United States.<sup>118</sup> Many historians of the period have focussed on the negative and controversial responses to his study, but the Kinsey Reports were also greeted with cautious enthusiasm and tempered delight. The Committee on the Sex Offender's legal representative Kenneth Mackenzie wryly noted that his study into the matter of sex offences was in part informed by, "if I may say so without being arrested, a perusal of the Kinsey Report."<sup>119</sup> In his summary of the proceedings, Stuart Jaffray quipped, "I, too have read Kinsey (strictly in the line of duty, or course)."<sup>120</sup> Clearly public opposition to Kinsey's research was not strong enough to keep Canadian experts from supporting his work and receiving his published report. In 1946 Dr. D. Ewen Cameron invited Kinsey to McGill University to talk about the gap between socially acceptable sexual mores and actual sexual practices as part of the "Lectures on Living" series, a mental health education organized by the university but open to the entire community.<sup>121</sup>

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<sup>118</sup>For the impact of the Kinsey reports in Canada, see Mary Louise Adams, *The Trouble with Normal: Postwar Youth and the Making of Heterosexuality* (Toronto: University of Toronto Press, 1997), 35-38. There are many US historical accounts of the Reports: one of the most recent is found in Terry, *An American Obsession*, 304-314.

<sup>119</sup>Committee on the Sex Offender, "Interim Report," 18.

<sup>120</sup>Mary Louise Adams documents the sex education debates in Toronto in *The Trouble with Normal*, 107-135. Other historical examinations of sex education include Christabelle Sethna, "The Facts of Life: The Sexual Instruction of Ontario Public School Children, 1900-1950" (PhD diss, Ontario Institute for Studies in Education, 1994) and Mona Gleason, *Normalizing the Ideal: Psychology, Schooling, and the Family in Postwar Canada* (Toronto: University of Toronto Press, 1999).

<sup>121</sup>Correspondence Files, D Ewen Cameron to Alfred Kinsey, July-October 1947. KIA. Remarkably, after Kinsey agreed to address a Montreal audience in exchange for 'histories', his usual required payment for any appearance, Cameron asked that Kinsey submit in advance a copy of the paper he would present so that it might be reproduced as part of the program material. Kinsey replied that he would be unable to furnish him with a

Kinsey received favourable publicity in the *Globe and Mail*, where journalist Lotta Dempsey covered his research activities and the publication of his Reports, and in 1953 the CBC invited him to record a nine-minute talk for the "In Search of Ourselves" radio series. Though Kinsey's policy to never speak from written papers nor to appear on radio or television got in the way of his addressing a Canadian audience directly, there was a lively interest in his work on this side of the border.<sup>122</sup>

Not all who embraced the Kinsey report as an important document did so because they wanted to liberate sex from the shackles of Victorian repression. For some, it only confirmed what they already suspected: sexual morality needed to be policed now more than ever. Contrary to Kilgour, Kinsey, Griffin and others who argued that what social and moral convention deemed 'normal' sexual practice did not reflect the wide range of sexual activity taking place, Kenneth Mackenzie's education report argued that the Kinsey data was proof positive of the urgent need for "greater moral restraints in family, community and national life."<sup>123</sup> If the basis of sexual perversion was psychogenic and not congenital, then better sex education was the key to a deviant-free future:

By our attitudes towards sex we have produced practically all our sexual

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written paper since his first priority was getting the report to press, and his second to control the publicity surrounding it. For that reason, Cameron politely thanked him for offering to participate but declined to have him included in the series. Correspondence Files, D. Ewen Cameron to Alfred Kinsey, 6 October 1947. KIA.

<sup>122</sup>Actually, Kinsey did give a talk in Canada at least once. In 1949 he participated in a roundtable discussion on sex offenders at the American Psychiatric Association's Annual Meeting, which was held in Montreal, Quebec. See Correspondence Files, Manfred Guttmacher to Alfred Kinsey, 1949. KIA.

<sup>123</sup>Committee on the Sex Offender, "Interim Report," 18.

abnormalities. By our ignorant, short-sighted and blundering treatment of the very natural subject of human reproduction and its relationship to the business of normal heterosexual relationships and social living, we manufacture perverts. We seek to protect ourselves from sex and by so doing we have developed a sex-centred and sex-ridden society. It is necessary to seek to established a changed attitude. We must stop being prudes. We must acknowledge and live the reality of sex. Sound sex information is the greatest single measure available for the protection and guidance of young people toward successful social living.<sup>124</sup>

For Rogers, the next and most important step in the battle against sex offenders was to offer “mass education for parenthood.” This, he argued, would give a solid foundation for proper sex education in the home.<sup>125</sup>

With so little to recommend it, was criminal sexual psychopath legislation the answer? According to Kenneth Mackenzie, the legal expert, perhaps not. In reviewing the existing American statutes, Mackenzie drew readers’ attention to a number of notable features of the legislation, including the fact that in some states, a person found to be a sexual psychopath could not be tried or sentenced for the original offence, but was treated as insane. For those states that acted otherwise, Mackenzie argued that the inconsistency – to treat a person as irresponsible while at the same time providing for his punishment – was at the core unjust.<sup>126</sup> In addition to these tricky legal issues, the British North America Act further complicated matters, and, Mackenzie pointed out, would impede any effort to fully implement the spirit of the legislation. Federal-provincial responsibility for prisoners

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<sup>124</sup>Ibid., 26; Like-minded psychologists agreed that the Kinsey Reports were a clarion call for a “moral renaissance”. See Correspondence Files, Frank Caprio to Alfred Kinsey, 14 Aug 1953. KIA.

<sup>125</sup>Committee on the Sex Offender, “Interim Report,” 27.

<sup>126</sup>Ibid., 20.

was divided, the former obliged to care for those sentenced to two years or more, and the latter liable for those sentenced to anything less. Dangerous and repetitive sex offenders, the object of public concern and the intended target of sex psychopath legislation, would likely be sentenced to lengthy prison terms, and thus would be required to serve time in a federal institution. However, provincial governments were responsible for matters of health, including mental health. Criminal sexual psychopath legislation, Mackenzie rightly pointed out, would require first that the Penitentiary Act be amended to permit those so convicted to be confined to a hospital for more than two years. Provincial governments would need to be persuaded to provide the facilities, the staff and the treatment programs for them.

The CSO never had the opportunity to propose solutions to any of the problems the report raised. By 1950 all activity on the project was suspended due to a lack of funds. The Committee was never revived, and no final report was ever published.<sup>127</sup> It must have been a tremendous disappointment to Stuart Jaffary and the other participants who had hoped to generate usable research in Canada, but for the Kiwanis, the Committee had done its job. The goal of the Kiwanis was to increase public pressure on Minister of Justice Ilsley in favour of the passage of some type of sex psychopath law.<sup>128</sup> Shortly after the *Interim Report* was publicly released at a press conference, Ilsley introduced a slightly

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<sup>127</sup>“Resolutions from the 1950 Convention” *Canadian Home and School*. Toronto: Canadian Home and School and Parent Teacher Federation. 10:1 (September 1950): 24.

<sup>128</sup>Correspondence Files, JDM Griffin to Alfred Kinsey, 29 November 1947. KIA.

modified version of Massachusetts' 1947 statute.<sup>129</sup> On June 14, 1948 Canada's Members of Parliament unanimously approved the passage of Section 1054A of the *Criminal Code*.

Criminal sexual psychopath legislation may have been the product of a moral panic that took shape during a particular historical period, but it also must be seen as but one point along a century-old trajectory of psycho-medical thinking about criminality, sexuality and the law. Beginning with simple "insanity" as a monolithic, homogeneous category in the early nineteenth century, the construction of the criminal sexual psychopath was part of an ongoing evolution of philosophical, legal and medical ideas about regulating and assessing moral responsibility. The offspring of a marriage between the justice system and medicine, between social reformers and psychiatrists, sex psychopath laws were in part the product of an almost century long effort to implement the principles of positivist criminology, spurred on by a moral panic over sex crime, and inspired by new advances in the sexual sciences. Historians of sexuality have rightfully emphasized the way in which criminal sexual psychopath legislation served as a literal and figurative expression of pre- and post-WWII ideas about containing and controlling male sexuality. However, it also must be regarded as part of a long tradition of social reform which took a dim view of punishment and repression, and instead sought new and innovative ways to solve intractable social problems.

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<sup>129</sup>Philip Girard, "Gays and Lesbians and the Legal Process since 1945," 83; cited in Gary Kinsman, *Regulation of Desire: Homo and Hetero Sexualities* (Montreal: Black Rose Books, 1996), 183, 209 n159. See also Canada. Parliament. *House of Commons Debates*. Volume V (1948) 14 June 1948, 5203.



Widespread support for what began as an American legal construct reveals something about Canada's changing location in the post-WWII political and cultural landscape. Though the Canadian legal system followed Britain's lead and rejected the concept of partial insanity at the turn of the nineteenth century, Canadian psychiatrists kept well abreast of the evolving relationship between psychiatrists, psychologists, social workers and the courts and prisons in the United States, and even advocated for similar advances here. For them, the border hardly existed. Canadian psychiatrists did not establish their own national professional organization until the mid-1950s, and even then retained their memberships in the American Psychiatric Association, attending their conferences, publishing in their journal and sometimes even serving as President. The postwar boom in university education further opened the doors of Canadian psychiatry, loosening the grip of the few dominant personalities that characterized the pre-WWII period and allowing greater circulation of the different schools of psychiatric thought. Given this environment, it is clear that Canadian psychiatrists were as much a part of the creation of the sexual psychopath as were their American colleagues.

Politically and culturally the war and the international re-organization of power that followed brought Canada under the sphere of American influence.<sup>130</sup> In the annals of legal history, the introduction of criminal sexual psychopath legislation was a dramatic expression of Canada's severance from the Empire. No longer would British law be *ipso*

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<sup>130</sup>Reg Whitaker and Gary Marcuse, *Cold War Canada: the Making of a National Insecurity State, 1945-1957* (Toronto: University of Toronto Press, 1994); Robert Bothwell, *The Big Chill: Canada and the Cold War* (Toronto: Irwin Publishing, 1998); Douglas Owsam, *Born at the Right Time: A History of the Baby Boom Generation* (Toronto: University of Toronto Press, 1996).

*facto* Canadian law. Everyday citizens had much more in common with the postwar reconstruction concerns in the US than they did with war-torn Britain. The re-integration of military men, the removal of women from the paid labour market, the development of the suburbs and the concomitant baby boom all helped contribute to the erosion of the border as a meaningful cultural divide. Cold War concerns about the preservation and protection of the family were no less poignant and pressing in the north, and the penetration of the mainstream US media helped to shape popular opinion here as effectively as it did in the 29 states that also passed some form of criminal sexual psychopath legislation. But the Canadian media also participated, not by challenging the model of the criminal sexual psychopath, and not by “exposing” the fiction upon which it rested, but by perpetuating the construct through narrative accounts of sexual deviation and the victims of sex crimes and through interviews with psychiatrists and other ‘experts’, and they used radio, print and film to do so. Our early participation in the wave of criminal sexual psychopath laws that swept through America is not a portent of the rising dominance of the United States, but in this instance is an example of how the Canadian body politic drew many of its nutrients from the same cultural soil as the northeastern United States. In other words, Canadians did not merely follow the lead of their southern neighbours. They were full participants in the converging relationships between the science of sex, psychiatry and the law.

Criminal sexual psychopath legislation represents a fundamental shift in the way Canadians and Americans thought about sex. It was a final and decisive victory for forensic sexologists who, since the late 1800s, struggled to take sex out of the dark

corners of the courthouse and the church and bring it into the full and bright light of the scientific gaze where its secrets and lies would yield to the bold and unflinching truth. However, this stance should not be mistaken as a liberation ideology. As Mrs. Geraldine M. demonstrated, most of the citizen-advocates who supported sexual psychopath legislation were merely seeking to improve the way the justice and penal system handled sex crime. Though some might individually have supported the liberalization of sex in areas such as public education, sexual liberation was not what drove women like Mrs. M. to pen a letter to the Minister of Health. However, it would be equally erroneous to imply or suggest that citizen-advocates were interested in greater sexual repression or regulation. What people like Mrs M wanted was for the state to recognize that sex crimes should not be treated like other crimes. She, like many others, were convinced that sexual deviants such as the exhibitionists whom she and her daughters encountered needed help, not punishment. This epistemological shift was facilitated not only by the moral panic that characterized the age, but was also part of the overall triumph of "everyday psychiatry." In post-WWII Canada and the United States, psychiatrists not only belonged in the bedroom, but also in the living room, the office, the factory floor, the courtroom, and even in the House of Commons and other political arenas.

With criminal sexual psychopath legislation in place, Canadians felt reassured that the sex crime problem was well on its way to being solved. Unfortunately, the feeling did not last long. Those who maintained a continued involvement with the criminal justice system were soon complaining that the law was rarely applied, and when it was, few Canadian judges were willing to convict sex offenders as criminal sexual psychopaths.

Moreover in 1952 the Canadian Welfare Council formally protested the government's failure to make provisions for treatment, and demanded that the government establish a Royal Commission to "study the whole matter of the sex offender."<sup>131</sup> The Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath inspired a national conversation about sex. Psychiatrists across the country endeavoured to answer the question Toronto Psychiatric Hospital's A.J. Kilgour asked in 1933: to what extent should the courts regulate sexual behaviour? And how do we define normal? The director of the Mental Health Division of the Department of Health and Welfare struggled with the same questions, and asked "What's 'abnormal'? What's a sex act?"<sup>132</sup> Once again it was to psychiatrists and other medical experts that the state would turn in seeking to find the answers.

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<sup>131</sup>RG 13 Volume 2837 File 155002: Revision of the Criminal Code. "Summary of Objections and Representations Made to the Special Committee on Bill 93". Clause 661. (NAC).

<sup>132</sup>RG 29, Volume 345, File 436-6-5 Department of Health and Welfare, Mental Health. "Diagnosis and Treatment of Sex Offenders." (NAC).

## II

### **Surveying Sex in Canada: The Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath**

Canadian Minister of Justice Ilesley's initial reservations about passing criminal sexual psychopath legislation into law were based on the very sound observation that there were very few psychiatrists or other treatment professionals working in federal penitentiaries, and even more troubling, there were no known effective treatments.<sup>1</sup> Nevertheless, Canada's federal parliamentarians forged ahead, certain had they scored a solid political victory when they unanimously approved criminal sexual psychopath legislation in 1948. However, less than four years later Minister of Justice Ilesley's concerns came back to haunt the Prime Minister. The intent behind criminal sexual psychopath legislation was to impose an indefinite sentence on sex offenders deemed likely to re-offend during which time curative treatment programs were to be provided. It was the general public that demanded that sex offenders be 'taken out of circulation' until they were 'cured', and medical practitioners justified the indeterminate sentence on the grounds that a fixed term could potentially disrupt a course of treatment, bringing therapy to a premature end. The problem was that there were no known treatments, no effective therapies.

Psychiatrists were well aware of the dearth of medical knowledge concerning the

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<sup>1</sup>For a memo to the Minister of Health from the Department of Health's Legal Advisor regarding the inadvisability of adopting criminal sexual psychopath legislation due to the lack of treatment facilities in Canada, see RG 29 Vol. 345 File 436-6-5, 19 November 1947. National Archives of Canada (NAC).

treatment of sexual deviation, but they argued that cures would not be found without opportunities to look for them, opportunities which they expected would be created with sex psychopath legislation. In order to implement the legislation, staff would be needed, programs developed and research funded. It was to this point that the Minister of Justice conceded when he voted in favour of Section 661. Ilsley rationalized his acquiescence on the grounds that “authorities might in some way or another try this out to see whether they get anywhere with it.”<sup>2</sup> Psychiatric treatment was, in the Minister’s words, worth some “experimentation.”<sup>3</sup>

Of the many variations of criminal sexual psychopath legislation passed in American state legislatures, Canada chose to model its own after that used in Massachusetts.<sup>4</sup> According to the 1948 Act, a criminal sexual psychopath “means a person who, by course of misconduct in sexual matters, has shown a lack of power to control his sexual impulses and who as a result is likely to attack or otherwise inflict injury, pain or other evil on any person.” The offences which were included under the proposed legislation at the time the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath began its hearings were rape, sexual intercourse with a female under 14, indecent assault on a female, buggery or bestiality, indecent assault, assault by male on

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<sup>2</sup>*Hansard*, 14 June 1948. Criminal sexual psychopath legislation was first written as section 1054A of the criminal code. When the code was rewritten in 1953, it became section 661. I refer to this latter designation throughout for the sake of clarity.

<sup>3</sup>*Ibid.*

<sup>4</sup>Gary Kinsman, *The Regulation of Desire: Homo and Heterosexualities 2<sup>nd</sup> ed.* (Montreal: Black Rose Books, 1996).

a male with intent to commit buggery, and gross acts of indecency. Persons charged with an attempt to commit any of these offences were also included.

In some US states the law stipulated that persons who faced criminal sexual psychopath charges were dealt with as mentally ill patients, and were sentenced to treatment in a psychiatric facility. In other states, the successfully convicted were first sentenced to treatment, and after they were declared “cured” they were then sent to serve the original prison sentence for the crime. In Canada and some states, the court heard an application to have sex offenders declared sex psychopaths before passing sentences on the original charges. The minimum evidential requirement was the testimony of two psychiatrists, at least one of whom was to be nominated by the Attorney-General. When the application was successful, the minimum sentencing requirement was for “a term of not less than two years in respect of the offence of which he was convicted, and, in addition, a sentence of preventive detention.”<sup>5</sup> In Canada a term of two years or more meant that the convict would serve his sentence in a federal penitentiary.

“Preventive detention” was introduced in Canada in 1948 solely for the purpose of enabling the penal system to keep in custody criminal sexual psychopaths and “habitual criminals,” those who, like the former, were judged to be recidivists. In order to ensure that those committed to preventive detention were not forgotten, the law required that the Minister of Justice review cases in which a prisoner was sentenced to an indeterminate

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<sup>5</sup>*Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths*, (1958), 6-10. Hereafter referred to as *Report*.

period at least once every three years.<sup>6</sup> Although the idea behind preventative detention was that for recidivists, prison did not bring about reformation and some other form of treatment was required, the Canadian government did not include treatment provisions in the law. Thus, in contrast to some American states, in Canada treatment was not mandatory, and the government was not legally obliged to provide it.

In a 1952 recommendation to Department of Justice's Committee on Criminal Code revisions, the Canadian Welfare Council demanded that the federal government strike a Royal Commission to investigate the lack of treatment services.<sup>7</sup> Meanwhile the National Council of Women wanted to know why the law was so infrequently used. By 1952 only 17 men had been successfully prosecuted under the law, and just as Ilsley feared, federal penitentiaries had not hired new psychiatric, psychological or social work staff. Why, the Canadian public demanded to know, was the law not being adequately applied? After some hesitation, in 1954 Prime Minister Louis St. Laurent agreed to establish a Royal Commission to explore just that question.

This chapter examines the hearings and the final report tabled by the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath (hereafter referred to as the Commission). In conducting the inquiry, the three appointed

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<sup>6</sup>*Report*, 13.

<sup>7</sup>RG 13 Volume 2837 file 155002 "Revisions of the Criminal Code": 6. (NAC). The Canadian Welfare Council's recommendation was endorsed by the Canadian labour Council. Interestingly, the Canadian Mental Health Association recommended against a Royal Commission, arguing in favour of a "study by the Department of Justice, if necessary assisted by an advisory committee of persons having special knowledge and experience with these matters." *Ibid.*



Commissioners - popular civil rights defender Chief Justice McRuer, Ontario County Court Judge Helen Kinnear, and Quebec City-based psychiatrist Gustave Desrochers - travelled across Canada, holding public hearings in each of the provincial capitals as well as in Montreal and Vancouver.<sup>8</sup> They received submissions from four major interest groups: medical and mental health experts, practitioners of the law and law enforcement agents, social service agencies, and women's groups. In total, the commission received 52 briefs and more than 100 witnesses gave *via voce* evidence. Medical doctors were the largest group to make submissions (41), followed by psychiatrists (35), members of the legal profession (21) and 'professors' (21). Representatives of myriad social service agencies, women's groups, volunteer organizations and parent-teacher associations made 44 submissions.<sup>9</sup> The Commission collected over 1800 pages of written text for consideration.

The hearings of the Royal Commission legitimated public discussions of the science of sex, and gave official sanction to mental health experts as interpreters and regulators of sexual practices and sexualized behaviours. In their quest to determine just how the criminal sexual psychopath law could best regulate sex in Canada, the Commissioners allowed for a wide range of testimony - almost all of it "expert" - on a variety of sexual practices. Although witnesses spoke largely in relation to criminal sexual acts, experts also gave testimony about medical ideas concerning "normative" sexual

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<sup>8</sup>For more on McRuer see Patrick Boyer, *A Passion for Justice: the Legacy of James Chalmers McRuer* (Toronto: University of Toronto Press, 1994).

<sup>9</sup>*Report, 2.*

practices. Public discussions about sex, especially within the context of sexual danger and exploitation, were not new. Feminists, social purity activists and mental health experts had a longstanding dialogue with both the public and the government concerning sexual danger. However the Royal Commission shifted the discursive ground upon which 'legitimate' discussion of sexuality could take place. Contained by the language of 'science', experts could speak openly and frankly about specific sexual practices including masturbation, oral sex and anal sex. Sessions were, with only a few exceptions, open to the public, and the local and national news media carried reports on the testimony.

As we saw in chapter one, the post-WWII era was characterized by open-mindedness toward the exploration of new avenues of scientific research in general and mental health issues in particular. However, this open-mindedness did not generally extend to the field of sex. Though this period saw an expansion of the definition of acceptable or 'normal' sexual activities, I argue that this shift - from morality to science - was a shift to a new type of regulation rather than de-regulation. In the battle between law and medicine, there was not a *divestment* of authority over sex but rather a *transfer* of authority. By claiming professional jurisdiction, psychiatrists and psychologists asserted their role as the architects and regulators of "norms", a concept that provided the scientific basis for the regulation of sexual morality in much the same way that eugenics provided a scientific basis for the regulation of race.<sup>10</sup>

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<sup>10</sup>Psychology as a discipline grew out of moral philosophy, a field of study taught primarily for the benefit of the clergy in nineteenth and early twentieth century Canada. In the 1910s and 20s, psychology successfully made the institutional transition from philosophy to science. See Mary J. Wright, *History of Academic Psychology* (Toronto : C.J. Hogrefe Inc., 1982), 1-15; see also James H. Capshew, *Psychologists on the March:*

The contest for jurisdiction over sex is most clearly evident in the discussions about homosexuality during the Commission's public and private hearings. In the 1950s early twentieth century forensic psychiatrist Richard von Krafft-Ebing's argument that homosexuality should not be criminalized but instead treated as a medical problem received widespread support among Canadian and American medical professionals. This seems incongruous with the popular perception that in the 1950s the stigmatization and legal prosecution of homosexuality was at its peak. Indeed, this chapter will not discount that perception. The argument in favour of the decriminalization of homosexuality did not indicate a more liberal view of sex but rather was part of the mental health profession's claim that the law should limit itself to the regulation of sex based on harm caused to the victim, not on the act's deviation from the norm.

The role of homosexuality in defining normative and legitimate sexual practices is highlighted by the fact that the "real" crime problem - sexual assaults against children and women - were considerably less discussed, and grossly under-theorized by the experts. An examination of legal and medical testimony regarding crimes against children 'of tender years', incest, and rape reveals how the operative model of sexual danger was premised more on gendered ideas about sexual culpability and the division of the public and private and less on any kind of modern scientific methodology. Concern over the application of

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*Science, Practice and Professional Identity in America, 1929-1969* (New York: Cambridge University Press, 1999). On the history of eugenics in Canada, see Angus McLaren, *Our Own Master Race: Eugenics In Canada, 1885-1945* (Toronto: McLelland and Stewart, 1990); for an interesting speech that called on the federal government to open Race Hygiene Department, see the "President's Address," *Ontario Journal of Neuro-Psychiatry* (September 1933): 4.

the law rather than the integration of treatment was much more central to these conversations, and gave psychiatrists the important opportunity to highlight problems with the administration of justice in sexual assault cases. Finally, this chapter examines how the Royal Commission took stock of the issues raised during the hearings in their final report. But first, we begin with the definitional problems the Commission considered in the convergence of mental health and the law.

### **Sexual Psychopathy**

On March 29, 1954, the three appointed commissioners met in Ottawa for the first time. Chief Justice McRuer took his seat and, turning to fellow Commissioner Dr. Desrochers, asked, "So, exactly what is a criminal sexual psychopath?" Desrochers replied, "That is a legal definition, not a medical one. We do not know exactly what is a sexual psychopath."<sup>11</sup> That McRuer, one of the most respected members of the bar in Canada, lacked clarity on the term is an important indication of why the law was so little used. Moreover, there was a good deal of confusion about how the law was to be administered. In 1956, two years into the Royal Commission's study and eight years after the law was passed, Minister of Justice Stuart S. Garson felt that misunderstanding about the law was so widespread that "it is definitely in the public interest that we should put on the record what is the law at the present time." Garson proceeded to read into the House

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<sup>11</sup>RG 33/131 Acc 83-84, Royal Commission on the criminal law relating to the criminal sexual psychopath, "Report of the Organizational Meeting, Ottawa, March 29 & 30 1954", 5-6. (NAC).

of Commons record a full description of Section 661.<sup>12</sup>

For most Canadian and many American psychiatrists, the whole notion of psychopathy was questionable at best, and sexual psychopathy was even less satisfactory.<sup>13</sup>

In his written submission to the Commission, Quebec psychiatrist Louis Bourgoin described the sexual psychopath as a person suffering from an

obsessive-compulsive neurosis characterized by the symptomatic trend: a more or less prolonged anxiety-laden struggle, a sudden state of irresistibility and a feeling of deep relief once the action has been performed. The same mechanism has been put forward to explain certain cases of habitual thieves (kleptomania) and arsonists (also referred to as pyromaniacs). All those presumed illnesses, sexual psychopathy or sexomania, kleptomania, pyromania and many others may be dangerously used as an excuse by genuine delinquents. *Hence, their reality is far from having gained the unanimous favour of psychiatrists for, in fact, there exists no objective criterion permitting a sure diagnosis of these so-called psychopathic states.*<sup>14</sup>

Dr. William Griffith Black, a psychologist with the Canadian Citizenship Branch of the Federal Government, called the psychopath a “wastebasket category” into which everything that falls outside of the norm is tossed, and suggested “habitual sex offender” as a more fitting label.<sup>15</sup> Vancouver’s Dr. Alcorn considered sexual psychopathy “useless as a medical term,” and suggested using “sex offender” instead.<sup>16</sup> Ontario’s Minister of

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<sup>12</sup>Canada. Parliament. House of Commons Debates. 1956 Volume I (25 January 1958): 529-533.

<sup>13</sup>See also K.G. Gray, “Psychiatry and the Criminal Code,” *Ontario Journal of Neuro-Psychiatry* 5 (December 1935): 44-53.

<sup>14</sup>*Transcripts of the Royal Commission of the Criminal Law Relating to the Criminal Sexual Psychopath*, Osgoode Hall Law School, Toronto [hereafter *Transcripts*], 819. Emphasis added.

<sup>15</sup>*Transcript*, 632.

<sup>16</sup>*Transcript*, 613.

Health Mackinnon Phillips refused to attempt a definition, offering instead the opinion of his Deputy Minister, Dr. McNeel who said, "I once heard a psychopath defined by a psychiatrist in the same way as, he said, some one defined a hippopotamus: he could not define it but he knew one when he saw it."<sup>17</sup> Queen's Council Mr. Stanley James Richard Remnant complained that "the term 'psychopath' has been much abused and misused. As I understand it now, it simply means every person who deviates from the normal."<sup>18</sup> Dr. George Herbert Stevenson, one of the few Canadian doctors with a particular expertise in the psychiatric treatment of sex offenders, felt that "the Act itself does not have a good philosophy underlying it."<sup>19</sup> He saw no advantage in "distinguishing between various groups of offenders – call them psychopaths if you like – who repeatedly engage in various types of crime." Though he favoured "proper psychiatric examinations for certain accused persons," he did not think that any one group of psychopaths should take precedence over another.<sup>20</sup> In this, Stevenson joined his American colleagues in the Group for the Advancement of Psychiatry in the United States (GAP), whose longstanding opposition to criminal sexual psychopath laws culminated in a book-length appeal for their

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<sup>17</sup>*Transcripts*, 1164.

<sup>18</sup>*Transcripts*, 644.

<sup>19</sup>RG 10-163-0-617. George Herbert Stevenson, "Psychiatry and Sexual Offenders," paper presented at the Ontario Neuro-Psychiatric Association, 16 Jan 1948. Archives of Ontario (AO).

<sup>20</sup>*Transcripts*, 579.

abolition.<sup>21</sup> The lack of precision, the amorphous, “catch-all” character of psychopathy, made many experts loathe to support its use as a medical diagnosis or legal category.<sup>22</sup>

The Canadian Bar Association officially supported greater co-operation between law enforcement agencies and medico-legal scientists, but judges and lawyers alike were often uninformed about the use of psychiatric services in legal proceedings.<sup>23</sup> Even among those who were more up-to-date with experiments in prison and sentencing alternatives that used mental health treatment programs and facilities, there was no shortage of scepticism about mixing the two.<sup>24</sup> Asked to comment on the application of psychiatry in the prosecution of sex crimes, Crown prosecutor Thomas Grantham Morris told the Commission, “I have a great respect for psychiatrists... But I think some of them are very far removed from reality... and when they got out of their own field I think they are wandering into pastures, the way through which they do not understand at all.” The

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<sup>21</sup>Group for the Advancement of Psychiatry, *Psychiatry and sex psychopath legislation, the 30s to the 80s* (New York, 1977).

<sup>22</sup>Only one medical doctor supported sexual psychopathy as a medical diagnosis. See testimony of Dr. Alastair MacLeod, Assistant Professor of Psychiatry at McGill, and Assistant Medical Director of the Montreal Mental Hygiene Institute, *Transcripts*, 1533-1537.

<sup>23</sup>RG 13 Acc # 89-90/067 Volume 22 File 155002 Revisions of the Criminal Code. Letter from the Deputy Attorney-General, Chairman, Provincial Sub-committee, Canadian Bar Association, Uniformity of Legislation (Criminal Section) to Forsyth, secretary, criminal law section, Canadian Bar Association, Department of Justice, Ottawa (10 April 1947). (NAC).

<sup>24</sup>H. Roy Brillinger, “The Judge and the Psychiatrist - Toward Mutual Understanding,” *Canadian Journal of Corrections* 1:2 (January 1959): 1-9; J.A. Graham, “Address” Magistrate’s Conference, London, Ontario 1959, RG 20-16-2 File 163.8 Misc., Visitors, Chaplains, Religious Items, 1958-59. (AO).

Commission appears to have taken these professional tensions in stride: McRuer responded “We will give the psychiatrists a chance to give their opinion of the legal profession later on.”<sup>25</sup>

McRuer could afford to have a little fun, but in the courtroom the opinions of legal experts, and in particular the judge, mattered most. The law required the testimony of two psychiatrists, but it fell to the judge to rule either in favour of or against the Crown’s application to have a convicted sex offender declared a criminal sex psychopath. Even if a judge accepted the idea that some people harboured sexual tendencies which deviated from the norm, be they learned or biological, few were willing to accept the argument that a person lacked the power to control his sex impulses, the key to the definition of a criminal sexual psychopath. Illustrating this problem, Ontario’s Attorney-General Kelso Roberts cited a case in which a trial judge found a man charged with multiple offences against children not to be a criminal sexual psychopath. His actions, the judge argued, “showed cunning, planning, resourcefulness and preparation [thus] he could not be said to show ‘a lack of power to control his sexual impulses’ ...”<sup>26</sup> Indeed, among the witnesses those who worked directly in the area of sex crime investigation agreed that most perpetrators put a good deal of forethought into their crimes. The Vancouver City Police Department described the sexual psychopath as “cunning enough to get his victim in circumstances where little or no corroborative evidence is available.”<sup>27</sup> Queen’s Council

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<sup>25</sup>*Transcripts*, 673.

<sup>26</sup>*Transcripts*, 1111. Emphasis in original.

<sup>27</sup>*Transcripts*, 761.



Mr. Dansereau cited a recent Montreal case in which a group of four men repeatedly trapped women in cabs and raped them. "We never considered them as habitual criminals because it was their first time in court, and we never considered them as insane. They were just 'wise guys'; that is all they were."<sup>28</sup>

Those who worked most closely with sex offenders and sexually deviated patients were the harshest critics of the idea that some sex offenders lacked the power to control their sex impulses. Dr. John Senn, a psychiatrist since 1925 and the medical superintendent of the Ontario Hospital, Hamilton, accumulated a great deal of experience assessing accused sex criminals sent to his hospital by the courts for 30 days of pre-trial observation. He compared the actions of most sex offenders "with those who would patronize a brothel: it is a calculated risk." Based on this experience, Senn argued that sexual offences are well-planned crimes and their perpetrators have no desire to control their sexual impulses.<sup>29</sup> Not everyone was as thoroughly dismissive of the idea that some men lacked the power to control, but many agreed with Dr. William Griffith Black who thought the whole idea of "lack of control" to be "unscientific."<sup>30</sup>

In addition to their misgivings about psychopathy as a meaningful clinical designation, psychiatrists from one end of the country to the other had great difficulty with the concept of a "lack of power to control". As one Vancouver practitioner put it, "It is

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<sup>28</sup>*Transcripts*, 924.

<sup>29</sup> See Senn's written submission, "Exhibit 54", *Transcripts*, 1609-1614, and his oral testimony, *Transcripts*, 1243-45.

<sup>30</sup>*Transcripts*, 636; Ontario Neuropsychiatric Association, *Transcripts*, 1686.

the old bugbear, is it non-controllable or is [it] uncontrolled? I do not see how the greatest doctors in the world could look into a man's mind and say, this man could not control the impulse, or could control it but did not.”<sup>31</sup> The director of the Allan Memorial Institute and Professor of Psychiatry at McGill, D. Ewen Cameron, asked, “Is it a complete inability, or is it an inability only under certain circumstances, when the person is slightly intoxicated, shall we say, or when he is particularly emotionally aroused, or something of that kind? I think here we are getting into definitions versus a real analysis of the men’s behaviour.”<sup>32</sup>

Psychiatrists readily admitted that the law as it stood was unsatisfying to members of their profession. Dr. Maurice Joseph O’Connor described criminal sexual psychopath laws as “a rather uncomfortable marriage of incompatible concepts.”<sup>33</sup> The purpose of the law is to determine if the accused possesses a guilty mind, known as *mens rea*, with respect to the commission of the crime with which he or she is charged. Psychiatry, on the other hand, is never interested in examining a single event in isolation. It is a medical science based on the understanding of the whole person.<sup>34</sup> For O’Connor and many other doctors, if a sex offender is a sex psychopath, he is mentally ill and should not be treated

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<sup>31</sup>*Transcripts*, 646.

<sup>32</sup>*Ibid.*, 836.

<sup>33</sup>*Ibid.*, 1429.

<sup>34</sup>On this point see RG 49-131 “Proceedings 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” Volume XXVIII: 6481. (AO).

as a criminal. "There is no justification for punishment of the mentally disordered," argued O'Connor. Though mandatory therapy is essentially a curtailment of one's personal freedoms, he argued, it is never "aimed at causing suffering to the wrongdoer as is imprisonment."<sup>35</sup> For O'Connor and many others, sending a sex psychopath to prison made as much sense as sending a cancer patient to prison. One was either sick or criminal. Psychiatrists may have been extremely critical of the terms and definitions, but they did not back away from their claim that sex offenders were best dealt with by them and not the courts or the prison system.

For the purposes of getting an offender into treatment, most medical experts accepted the legislation, faulty though it was, with the hope that they would gain the opportunity to conduct new research into the problem.<sup>36</sup> But the law could not set aside its need to adhere strictly to the definition provided in Section 661. Convicted sex offenders could only be declared criminal sexual psychopaths if the judge could be convinced that the accused had shown evidence of a "lack of power to control." Because of their

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<sup>35</sup>*Transcripts*, 1430.

<sup>36</sup>Psychiatry's inability to appreciate the role of the law in protecting the rights of the criminals was repeatedly revealed throughout the hearings. Gray, for example, suggested that if a convicted offender reveals previous sex offences in therapy, the psychiatrist should be able to seek preventive detention under criminal sexual psychopath legislation. Commissioner Kinnear asked if that would not be akin to information obtained under duress. "It would scarcely seem fair to an individual to use information obtained in that way to get a conviction against him," to which Gray responded, "It seems to me that a psychiatrist then has got to override that breach of professional confidence in the interests of the public." Kinnear pointed out that should therapy sessions become self-incriminating, psychiatrists might find their patients reticent to participate in treatment. *Transcripts*, 1214-1215.

independence from the political process that brought the law into existence in the first place, judges were much more inclined to look critically upon Crown applications to have a convicted sex criminal tried as a criminal sexual psychopath than were psychiatrists. The troubling lack of clarity about psychopathy combined with a good deal of confusion about the procedure for hearing these cases meant that few were impressed with the law, and even fewer convinced by the mandatory testimony of psychiatrists.<sup>37</sup> Psychiatrists were willing to accept such a flawed model because they stood poised to gain tremendous ground in expanding the application of their professional services. Judges, on the other hand, had no such motivation. Though they had neither the power nor the authority to determine the content of the Criminal Code, judges and magistrates had the power to interpret it. So long as a judge was unwilling to accept the concept, and given that there were few psychiatrists willing to testify with certainty that an individual lacked the power to control his actions, it was clear why by 1956 there were only 19 convicted sex offenders who were successfully prosecuted under the psychopath laws.<sup>38</sup>

In a more recent study of sex crime laws in the state of New Jersey, medical historian Simon Cole finds that one of the main determinants of the degree to which sex

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<sup>37</sup>On confusion about the term in the courts, see Tennant, *Transcripts*, 1230. On confusion about the application of the law, see R.L. Whitman, Assistant Psychiatrist, Department of Medicine, Vancouver General Hospital, *Transcripts*, 592.

<sup>38</sup>Cases are fought and won on the interpretation of the wording of the law. For another example of a struggle over the phrasing of a law related to sexual assault, see RG13 Vol 2853 file 173600-138(2) Criminal Code Section 138(2) Sexual Offence which debates whether or not the phrase “wholly and chiefly to blame” are two incompatible concepts. A “prairie judge” dismissed a case of assault based on this contention. (NAC).

psychopath statutes were implemented was the availability of treatment programs.<sup>39</sup> At the Royal Commission hearings, witness after witness complained that there were no treatment services available in Canada. Moreover, there was not even adequate medical staff able to service the needs of the existing prison population. Federal penitentiaries in British Columbia, Saskatchewan and Manitoba each employed one psychiatrist who served on a part-time basis. One psychiatrist, also working part-time, was shared by the Kingston Penitentiary, the Kingston Prison for Women, and Collins Bay Penitentiary, which had a combined population of approximately 1500.<sup>40</sup> At Quebec's only federal prison, St. Vincent de Paul, which in the mid-1950s held three of Canada's 19 criminal sexual psychopath inmates, and at Dorchester, the penitentiary that served all of the Maritime provinces, no psychiatrists were on staff.<sup>41</sup>

To place criminal sexual psychopaths in federal institutions and not provide treatment was regarded by many legal and medical witnesses as a violation of the principal of the law. Mr. N. Boris, a Crown Prosecutor in Quebec, compared the law's implications with the practices of the Nazi regime in Germany and elsewhere. "To pursue only a policy

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<sup>39</sup>Simon A. Cole, "From the Sexual Psychopath Statute to 'Megan's Law': Psychiatric Knowledge in the Diagnosis, Treatment, and Adjudication of Sex Criminals in New Jersey, 1949-1999," *Journal of the History of Medicine* 55 (July 2000): 292-314.

<sup>40</sup>*Transcripts*, 1407.

<sup>41</sup>Shortly after Major General Gibson, the Commissioner of Penitentiaries, furnished the Commission with these figures, Dr Bruce Cormier was employed to work at St Vincent de Paul two days a week. *Transcripts*, 1041-2. For a more detailed history of psychiatric and psychological services at St Vincent de Paul, see Cormier's colleague psychologist Justin Ciale's *Tales of St. Vincent de Paul Penitentiary* (Toronto: Legas, 1997).

of long terms of imprisonment without treatment begins to resemble... a suggestion to exterminate sex deviates as a measure of social hygiene. Extermination, I am sure, is not acceptable to democratic countries.”<sup>42</sup> Maxwell Cohen, also a member of the Quebec Bar, insisted “Canadian penal policy cannot have it both ways; it cannot, on the one hand, attempt to define a new type of offender who shall be given a new type of penalty, with the aim ultimately of treating him in a special category and yet not to provide the facilities for that treatment.”<sup>43</sup> Most witnesses agreed that an indefinite sentence with no treatment provisions was a particularly cruel punishment, leaving inmates with little hope for their eventual release.

The Commission’s objective was to find some way to deal with repeat sexual offenders that encompassed the goals and ideals of therapeutic confinement in such a way that the concerns of the legal profession and those of psychiatry could be satisfied. “We are not,” Chief Justice McRuer reminded his witnesses, “conducting any Kinsey investigation.”<sup>44</sup> However, McRuer was determined to generate a document that “stood up internationally,” meaning that while the core concern was Canadian law, the Commission provided an opportunity to examine thoroughly the problem of sexual deviancy.<sup>45</sup> For this reason much of the conversation during public hearings, particularly with psychiatric witnesses, was spent discussing the complexities of sexual behaviour. It is

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<sup>42</sup>*Transcripts*, 1252.

<sup>43</sup>*Ibid.*, 1099. For further critiques on this issue see also 677, 702-3, 1405-1415.

<sup>44</sup>*Ibid.*, 847-8.

<sup>45</sup>On the Commission’s terms of reference, see *Report*, 1.

to these discussions that we now turn.

**“What sort of whipping was it?”**

Mental health experts spent much of the post-WWII period defining and clarifying sex and gender norms, a process historian Mona Gleason calls “normalizing the ideal”. In her study of psychology and the family in post-WWII Canada, Gleason describes psychologists’ “normalizing strategies of comparing, differentiating, hierarchizing, homogenizing and excluding” as “technologies of normalcy” in which the normal was conflated with the socially acceptable.<sup>46</sup> In her study of heterosexuality and Canada’s postwar youth, sociologist Mary Louise Adams argues that the ability to “lay claim to a definition of normality was a crucial marker of postwar social belonging. To be marked as sexually ‘abnormal’ in any way was to throw into question the possibility of achieving or maintaining status as an adult, as a ‘responsible citizen,’ as a valued contributor to the social whole.”<sup>47</sup> Both Gleason and Adams demonstrate how the predominant discursive construction of ‘normal’ sex and gender roles was based on the science of mental health. Psychologists, psychiatrists and other professionals vigorously promoted their vision of normalcy through the media, schools, courts, mental health clinics and other regulatory and voluntary outlets.

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<sup>46</sup>Mona Gleason, *Normalizing the Ideal: Psychology, Schooling, and The Family in Postwar Canada* (Toronto, 1999), 9, 81; Mary Louise Adams, *The Trouble with Normal: Postwar Youth and the Making of Heterosexuality* (Toronto: University of Toronto Press, 1997), 26.

<sup>47</sup>Adams, *The Trouble with Normal*, 166-167.

The debate over sexual norms was enlarged immeasurably by Alfred Kinsey's 1948 *Sexual Behavior in the Human Male*.<sup>48</sup> His massive survey of the sexual habits of American men was the largest ever conducted in the United States, and showed that the sexual activities of Americans were much more varied than was commonly thought. Although Kinsey attempted to present his findings free of moral embellishment, one year after its release he and his research associates publicly denounced sexual 'norms' as scientifically sophistic. Modern sex laws were grounded in religious and cultural tradition, they argued, and while prohibitions against forms of behaviour which "do damage to the bodies of other persons" should be considered assault and battery, scientists have no training in the business of social custom, religious and cultural taboos and morality, the root of legal prohibitions regulating "unnatural" sexual activities.<sup>49</sup> The Kinsey team denounced sex norms as "the price which society demands of those who wish to share the advantages of belonging to an organized group."<sup>50</sup>

Most Canadian mental health professionals recognized the culturally and

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<sup>48</sup>Alfred Kinsey, Wardell B Pomeroy, Clyde E. Martin, Paul H. Gebhard. *Sexual Behavior in the Human Male* (Philadelphia: W.B. Saunders Co., 1948). Some historians have argued that the Kinsey Reports provoked the debates about what constituted sexually normative behaviour. However, these discussions - and debates - were well under way before the release of the first Report, and while Kinsey did serve to galvanize and to some degree polarize opinion, the role of his surveys has been overestimated. See Jennifer Terry, *An American Obsession: Science, Medicine and Homosexuality in Modern Society* (New York, 1999), 120-158.

<sup>49</sup>Alfred Kinsey et. al., "Concepts of Normality and Abnormality in Sexual Behaviour," *Psychosexual Development in Health and Disease* (New York, 1949): 11-32.

<sup>50</sup>Ibid. On the cultural anthropology influence in sexuality studies, see Terry, *An American Obsession*, 163-168.



historically variable nature of perceptions around normative sexual practices. For example, in its brief to the Royal Commission, the Canadian Mental Health Association (CMHA) stated that “at different times in different places, and under different cultural conditions, the climate of opinion as to what constitutes normal or abnormal sexual behaviour varies very widely.”<sup>51</sup> John Arnott, social worker and spokesperson for the John Howard Society of Nova Scotia, argued against including incest under the sex psychopath laws because in societies such as the Incas it was a revered practice.<sup>52</sup> D. Ewen Cameron testified, “We now know that sexual expression takes a wider range of ways and patterns than we thought was the case at the beginning of the nineteenth century.” Cameron explained that when he first began to practice psychiatry “not a few young men and women [...] were in a serious state of mind because of their concern over masturbation. Now that we know masturbation is a practically universal phenomenon,” he continued, “there are very few people I ever see who are concerned about it at all.”<sup>53</sup> He noted other changes as well. For example, he was surprised to discover that “couples into their 60s and 70s enjoy an active sex life.”<sup>54</sup> Behaviour “once considered peculiar to an individual is known to be more common.” It was only a matter of time before other forms of sexual activity enjoyed the same level of acceptance, he concluded.

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<sup>51</sup> *Transcripts*, Exhibit 56.

<sup>52</sup> *Ibid.*, 302.

<sup>53</sup> *Ibid.*, 829. The irony is that people who preserved “pre-modern” sexual standards were pathologized and, in the eyes of sex experts, needed therapy to overcome their irrational aversions. See R.S. Rodgers, *Sex and Law in Canada* (Ottawa, 1962).

<sup>54</sup> *Transcripts*, 828-830.

Throughout the hearings, Canadian mental health professionals persistently challenged earlier eugenically-based claims that there existed a link between economic class and sexual practices. Psychiatrists emphasized that all kinds of people, including the upper and middle classes, were having sex in ways never imagined (or at least not openly discussed). In a discussion about the practice of flagellation, Vancouver psychiatrist Dr. Douglas Earl Alcorn, a member of the American Psychiatric Association Fellow Committee on the Legal Aspects of Psychiatry, tried to impress upon the Commissioners that “the practice of whipping is by no means limited... to people we think of as inferior or deteriorated”:

Some of these people are extremely brilliant and are actually outstanding people in the community. There is in the United States a club of sadists; this club has members scattered around, various chapters in some of the larger cities... I was able to read up several of the members in "Who's Who," and they were people qualified for that on the basis of their public service.<sup>55</sup>

Alcorn was joined by other Canadian psychiatrists who insisted that sexual offences were committed by people from “all walks of life.” At least one police officer agreed that the people “apt to commit [sex] offences ... are out of good homes, poor homes, broken homes - they are from all classes.”<sup>56</sup>

The claim that sexual abnormality and sex criminals could be found in all classes was a significant departure from earlier beliefs about sexual abnormality. However, modern scientific discourses did not completely shed itself of older ideas concerning class

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<sup>55</sup>Ibid., 620-1. Alcorn's comments were followed by the Chairman's question: "What kind of whipping was it?" For the question and answer see 621-624.

<sup>56</sup>Ibid., 692.

degeneracy. In 1956, Dr. Kenneth Gray claimed that children sharing beds and homes shared with boarders were fertile ground for the development of sex deviancy.<sup>57</sup> Similarly, Dr. R.R. Maclean of Saskatchewan told the Commission that incest “is so frequently committed under special home circumstances and conditions, notably crowding in the home and poor morals.”<sup>58</sup> However, the singling out of working class and poor households was more in line with the findings of the 1915 report of the Social Survey Commission of Toronto, which listed poverty, overcrowding and boarders among the causes of social immorality and moral degeneration.<sup>59</sup> In the 1950s, most experts downplayed poverty as a factor in sexual assaults.

### Homosexuality

Although class was rejected as an explanation for the etiology of sex deviation, it was widely used to *legitimize* certain sexual practices. The middle-class heterosexual married family was the hallmark of normalcy, and sexual relations which took place within this social institution were - by extension - normalized. As D. Ewen Cameron explained to the Commission, “in marriage it is not infrequent for sexual relations to be carried out at times by mouth and by rectum. There is no indication that this is particularly damaging to

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<sup>57</sup> Ibid., “Toronto Star’s Citizens’ Forum on Sex Offenders”, Exhibit 105.

<sup>58</sup> *Transcripts*, 500. For a discussion of incest in an earlier period see Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993), 58-63.

<sup>59</sup> Carolyn Strange, *Toronto’s Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995), 105-115; Gary Kinsman, *Regulation of Desire*, 88.

either partner. It may be repugnant to a widely held view of decorum and aesthetics, but is certainly not a matter of pathology.”<sup>60</sup>

The idea that married couples who engaged in oral and anal sex were normal stood in stark contrast to contemporary ideas about male (and female) homosexuality. Though sex between men might involve the same sexual acts, only one witness challenged the pathologization of homosexuality. Axel Otto Olsen, a private citizen without connection to any group or profession, requested a private hearing with the Commissioners where he presented his recommendation to decriminalize sexual relations between men over the age of 16. Virtually all other witnesses who addressed the matter supported treatment for homosexuality.<sup>61</sup>

Drawing on the early twentieth century work of forensic sexologist Havelock Ellis, a handful of medical witnesses pointed out that homosexual activity was not harmful except perhaps to those who practised it. Moreover, they argued, homosexuals have throughout history made important contributions to the arts, literature and music. Even Minister of Justice Stuart S. Garson, responding to the rising level of hysteria surrounding the commission of sex crimes, took up this angle during a House of Commons debate:

The picture is not all bad. If one goes back through the history of music and literature and the arts one will find that some of the greatest masterpieces in these fields have been achieved by sex deviates to whom we are in fact greatly indebted for what they have created and handed down to their fellow man.<sup>62</sup>

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<sup>60</sup>*Transcripts*, 1484.

<sup>61</sup>Kinsman discusses Olsen’s testimony in *The Regulation of Desire*, 187-191.

<sup>62</sup>*Hansard*, 25 January 1956.

Toronto Police Chief Constable John Chisholm dismissed this claim outright:

Some people go so far as to almost morally justify the misconduct of the homosexual, the inference being in some quarters that because men of intellect and culture have been homosexuals, such behaviour is to be excused, condoned, and even accepted in the community. This surely is a dangerous trend and an insult to the intelligence to the masses.<sup>63</sup>

This “trend” was also abjured by the Saskatchewan division of the Canadian Mental Health Association which condemned homosexuals for “their tendency to acquaint their behaviour with the achievement of high intellectual and cultural achievements. In this way,” they argued, “susceptible and impressionable persons may be easily seduced into this form of activity.”<sup>64</sup>

The attempt to normalize homosexuality by associating its practitioners with the middle and cultured classes failed dismally, demonstrating that to be middle class in the 1950s did not just mean having a car, a house and a good paying corporate job. It also meant being married with children, signalling not only material success but also healthy and positive sexual and social adjustment. However, the battle over homosexuality was not over. Psychiatrists in Canada repeatedly insisted that homosexual acts between consenting adults should not be the subject of state persecution.<sup>65</sup> Not everyone argued that homosexual men were brilliant, but virtually all medical experts agreed that

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<sup>63</sup> *Transcripts*, Exhibit 64.

<sup>64</sup> *Transcripts*, 548-9.

<sup>65</sup> The same arguments in favour of decriminalizing homosexuality based on the claim that it did not cause harm were made by the New Jersey Commission of the Habitual Sex Offender. See Albert Ellis and Ralph Brancale, *The Psychology of the Sex Offender* (Illinois, 1956), 97.

homosexuality between consenting adults did not inflict injury or pain, and should not be treated as criminal by the law.

Homosexuality was one of the most discussed sexual deviations during the hearings of the Royal Commission, despite the fact that it was sexual assaults against female children that had fuelled the sex crime panic here and elsewhere.<sup>66</sup> Most historians have used this and similar examples of the disproportionate attention paid to homosexuality to illustrate the Cold War anti-homosexual climate and the conflation of homosexuality with pedophilia in popular, political and medical cultures.<sup>67</sup> This was most certainly the result of the Royal Commission hearings. However, the homosexual panic cannot entirely account for why homosexuals figured so centrally in these discussions. By placing homosexuality in the wider context of the Commission and mental health discourses and contrasting it with other concerns, we can identify two significant trends: it

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<sup>66</sup>See *Report*; on the public and media panic over sexual assaults against children and the subsequent police assault on homosexual communities see Kinsman, "Sexual Regulation of Family Relations," 1994; Fred Fejes, "Murder, Perversion, and Moral Panic: The 1954 Media Campaign Against Miami's Homosexuals and the Discourse of Civic Betterment," *Journal of the History of Sexuality* 9:3 (Jul 2000): 305-347; Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven: Yale University Press, 1998). It is worth noting that homosexuality was discussed at much greater length during the Royal Commission hearings in Toronto, Montreal and Vancouver, Canada's largest urban centres where homosexual subcultures were relatively established and visible.

<sup>67</sup>In Canada see Rob Champagne, "Psychopaths and Perverts: The Canadian Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths, 1954-1958" *Canadian Lesbian and Gay History Network Newsletter* 2 (September 1986): 7-9; Gary Kinsman, 1996; in the US see William N Eskridge Jr., "Privacy Jurisprudence and the Apartheid of the Closet, 1946-1961" *Florida State University Law Review* (1996) [journal online]; (accessed 8 June 2001); available from <http://www.law.fsu.edu/journals/lawreview/frames/244/eskrfram.html>

was the most discussed form of sexual behaviour because its status as a criminalized activity was repeatedly and consistently challenged; and homosexuality was the terrain upon which mental health experts demanded that the Criminal Code get out of the business of regulating morality and leave the matter of policing norms, in this case sex norms, to them. Psychiatrists in Canada repeatedly insisted that homosexual acts between consenting adults should not be the subject of state persecution, so long as their practitioners learned to conduct themselves in a socially acceptable manner.<sup>68</sup> Teaching all citizens good social conduct was clearly the concern of psychologists and psychiatrists, and not a matter for the penal system. Although ultimately the Commission sided with Chisholm, the Royal Commission marks the beginning of the late twentieth century shift away from the state regulation of sexual morality.

Up until 1953 laws regulating sexuality - with the exception of rape - were considered crimes of immorality, and they appeared scattered throughout the Criminal Code.<sup>69</sup> When in the late 1940s the federal government set out to overhaul the Code from beginning to end, one of the things they did was bring all sex-related charges under one section, indicating that sex crimes were for the first time viewed as a discreet and distinct

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<sup>68</sup>The same arguments in favour of decriminalizing homosexuality based on the claim that it did not cause harm were made by the New Jersey Commission of the Habitual Sex Offender. See Ellis and Brancale, *The Psychology of the Sex Offender*, 97.

<sup>69</sup>The Canadian Criminal Code was based on the British Code, and the post-WWII revisions represent the first significant overhaul of the Code according to the demands and needs of Canadian people and politicians. See "The History of Canadian Criminal Justice, 1750-1920" in eds. R Ericson, J Gladstone and C Shearing, *Criminology: A Reader's Guide* (Toronto: University of Toronto Press, 1991).

form of criminal behaviour.<sup>70</sup> Two other important changes took place: the definition of gross indecency was extended to include “acts between women,” and criminal sexual psychopath legislation was expanded to include buggery and gross indecency, both of which were used almost exclusively in cases involving some sort of sexual contact - either real or perceived - between two men.<sup>71</sup> Both these changes demonstrate the growing concern over homosexuality in this period.

The convergence of three main factors contributed to the radical change in the cultural status of homosexuality in the 1950s and 60s: the deployment of homosexuality as a political red herring in the United States and Canada; the expansion and subsequent increased visibility of public lesbian and gay communities; and finally, the changing medical model of homosexuality from gender inversion to sexual deviancy, and the consequent linking of homosexuality with other forms of sexual “perversion” including transvestism, exhibitionism, rape, and pedophilia. Together these factors created a new villainous sexual archetype, the “stranger in our midst.”<sup>72</sup>

In 1950 the US Senate Appropriations Committee learned that most of the 91 employees who had recently been dismissed from the civil service were fired because they

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<sup>70</sup>Kinsman, *The Regulation of Desire*, 169.

<sup>71</sup>*Ibid.*, 184, 270.

<sup>72</sup>On the sexual psychopath as a popular cultural symbol of monstrosity, see Frederick Whiting, “Monstrous Desires: Psychopathy and Subjectivity in Cold War America,” PhD Dissertation, University of Chicago, 2000. On the construction of sexual villains see Dubinsky, *Improper Advances*, 35-63, and Judith R. Walkowitz, *City of Dreadful Delight: Narratives of Sexual danger in Late-Victorian London* (Chicago, University of Chicago Press, 1992).



were homosexual. Republican senators pounced on the opportunity to discredit President Truman's administration as "soft" on degeneracy. According to American legal historian William N. Eskridge,

National Republican Party Chairman Guy Gabrielson sent several thousand Republican party workers a newsletter, alerting them to the new "homosexual angle" in Washington: "[S]exual perverts . . . have infiltrated our Government in recent years," he warned, and then stated they were perhaps "as dangerous as the actual Communists." Eager to fend off Republican charges, the Truman Administration stepped up its investigations.<sup>73</sup>

And so began a new era in American politics and the history of homosexuality. From that meeting forward, Republican senators made homosexuality, more commonly referred to as "sexual perversion," an issue of national concern, and forced the resignation and firing of virtually thousands of government employees.<sup>74</sup> It is difficult to give an accurate measure of the impact of these events on the sex crime problem in Canada, but the fact that gross indecency and buggery were not added to the list of offences for which one could be deemed a criminal sexual psychopath until 1953 suggests that the American Congressional "witch hunt" for homosexuals influenced official Canadian policy - and thus local policing practices - with respect to the construction and regulation of sexual danger.<sup>75</sup>

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<sup>73</sup>Eskridge, "Apartheid of the Closet".

<sup>74</sup>See especially John D'Emilio, "The Homosexual Menace: The Politics of Sexuality in Cold War America" in Kathy Peiss and Christina Simmons, eds., *Passion and Power, Sexuality in History* (Philadelphia, 1989): 226-240; 199 225; George Chauncey Jr., "The Postwar Sex Crime Panic" William Graebner, ed., *True Stories from the American Past* (New York, 1993); Terry, *An American Obsession*, 329-352; for an interesting account of these events "from the perspective of the closet", see Eskridge, "Apartheid of the Closet".

<sup>75</sup>Gary Kinsman, Dieter K. Buse and Mercedes Steedman, *Whose National Security? Canadian State Surveillance and the creation of enemies* (Toronto: Between

Numerous historical studies have shown how the post-WWII sex crime panic affected homosexual men in particular by linking homosexuality with other forms of dangerous sexual behaviour, particularly pedophilia.<sup>76</sup> In the interwar period, sex scientists abandoned the early twentieth century concept of gender inversion (male/female variation) in favour of the new model of sexual deviancy (normal/abnormal).<sup>77</sup> The nuances of this model did not often survive the translation from text book to popular press, and media representations of dangerous “sex degenerates” included homosexual men whose public displays of sex and gender “abnormality” were considered an expression of sexual psychopathy. The changing medical model combined with heightened anxieties about sex crime fuelled by the media critically shaped the way people came to think about - and fear - homosexuality. As historian Eric Setliff’s study of Toronto’s post-WWII scandal sheets demonstrates, the images of homosexuality as gender inversion and homosexuality as

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the Lines Press, 2000).

<sup>76</sup>Chauncey, “The Postwar Sex Crime Panic”; John Marshall, “Pansies, Perverts and Macho Men: Changing Conceptions of Male Homosexuality” ed., Kenneth Plummer (London, 1981): 133-154; John D’Emilio, “The Homosexual Menace: The Politics of Homosexuality in Cold War America,” in Kathy Peiss and Christina Simmons, eds., *Passion and Power, Sexuality in History* (Philadelphia, 1989): 226-240; Gary Kinsman, “Inverts, ‘psychopaths’ and ‘normal’ men: historical sociological perspectives on gay and heterosexual masculinities” in *Men and Masculinities: A Critical Anthology*, ed. Tony Haddad (Toronto, 1993), 3-35.

<sup>77</sup>This was also part of a wider intellectual shift from biology to behaviour. See Foreward, *Social Deviance in Canada*, ed. W.E. Mann (Toronto: Copp Clark, 1971). In his introduction Mann notes that theoretically “Canadians have not widely distinguished themselves” from American scholars of deviance.

deviancy existed side by side in popular culture.<sup>78</sup> In Canadian and American local papers, “cross-dressing” male and female homosexuals were depicted as pathetic and comical, and perhaps even as a public nuisance, but certainly not as violent or dangerous. However, as the medical model of sexual deviancy became more and more ubiquitous, the male homosexual was conflated with a (hetero)sexual menace and pedophilic predator.<sup>79</sup>

The greater visibility of homosexual men and women made them vulnerable targets in the ongoing effort to, in the language of the time, fight sex crime and eliminate sexual deviancy. In the years following WWII, most major North American cities witnessed either the creation or the expansion of homosexual “haunts”.<sup>80</sup> Openly congregating in restaurants, bars and in city parks and hotels made gay men easy targets for the police, who were anxious to appear to be doing something about the sex crime problem. Mass

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<sup>78</sup>Eric Setliff, “Sex Fiends or Swish Kids? Gay Men in Hush Free Press, 1946-1956”, in *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, eds. Kathryn McPherson, Cecilia Morgan, and Nancy M. Forestall (Toronto 1999), 158-178.

<sup>79</sup>Lesbians also felt the effects of the changing medical meanings attached to homosexuality, but were not commonly viewed as a threat to children. Though considered predatory toward heterosexual adult women, lesbians “never come to public attention” explained one medical witness to the Commission. Public sex might have happened sporadically, but gay women did not generally congregate in parks, tea rooms or other public places, and as women, they were not so easily conflated with sexually violent predators, a decidedly masculine construct See *Transcripts*, 1250; Donna Penn, “The Meanings of Lesbianism in Post War America,” *Gender and History* 3 no.2 (Summer 1991): 190-203. On male sexuality as predatory see for example Angus McLaren, *The Trials of Masculinity: Policing Sexual Boundaries 1870-1930* (Chicago: University of Chicago Press, 1997).

<sup>80</sup>John D’Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970* (Chicago: University of Chicago Press, 1983), 17; Marc Stein, *City of Sisterly & Brotherly Loves: Lesbian and Gay Philadelphia, 1945-1972* (Chicago: University of Chicago Press, 2000).

arrests of gay men in parks, bars and restaurants, and the local media coverage that described such actions as “rounding up known sex deviates,” popularized the misconception that homosexual men were part of a well-organized society of sexual predators who were a threat to women and children.

Psychiatrists repeatedly challenged the idea that homosexual men posed a danger to society, and likened it to exhibitionism and “Peeping Tomism”, which they described as offensive but harmless. Quebec forensic psychiatrist Bruno Cormier and his colleague Justin Ciaie argued, “Though they may create annoyance and conflicts for the offenders and the milieu in which they commit their offences, they present more often than otherwise no really great danger. Such offences are not to be considered similar to offences that involve bodily harm such as sadistic acts.”<sup>81</sup> Dr. MacLeod concurred: “They are offensive to the public or repulsive in their behaviour but they are not necessarily dangerous.”<sup>82</sup> A few social service agencies such as the British Columbia John Howard Society argued that homosexuality “and other socially distasteful, rather than socially dangerous, conduct” should be dealt with more leniently.<sup>83</sup>

Though most mental health experts agreed that homosexuality did not cause harm, they also agreed that it was a sickness that required treatment. Dr. Alcorn and Dr. Cameron both argued in favour of treatment. Alcorn rejected the disease model, claiming instead that homosexuals and other sex deviates do not suffer from an actual mental

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<sup>81</sup>*Transcripts*, 1522.

<sup>82</sup>*Ibid.*, 1094.

<sup>83</sup>*Ibid.*, 752, see also 680.

disease:

Individuals of that kind have no disease that you can cure them of; they have rather a defect of taste. One could perhaps not speak of curing them any more than one could speak of curing a person who liked Bach or Stravinsky. In other words, their taste runs along the line of a certain type of conduct. These people are still treatable, I believe that.<sup>84</sup>

For Alcorn, treatment for homosexuality, exhibitionism, voyeurism and “occasionally playing with children” consisted of teaching their practitioners how to “live with their peculiar tastes, to teach them the dangers that they may encounter in allowing tensions to develop, to avoid those tensions which arise and which create the setting in which most of these offences occur.” Many Canadian psychiatrists adopted a Freudian model which ascribed same-sex desire to immature personality development.<sup>85</sup> Most were also aware that the majority of “confirmed” homosexuals had no desire to bring their sexual practices in line with normative standards.

Few held out any optimism for treating homosexuals, but it was becoming popular to suggest that homosexuals could be taught to conduct their lives in a way that was neither offensive nor a public nuisance. In this way, though psychiatry offered no “cure”, treatment experts insisted they had a role to play. During the Commissioners’ research visit to the New Jersey Menlo Park Clinic for the assessment and treatment of sex

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<sup>84</sup>Ibid., 606.

<sup>85</sup>See especially the 1948 Canadian abnormal psychology textbook by Stevenson and Neal, *Personality and its Deviations*, 158-9. For an historical account of the popularization of psychosexual development, see Stephen Robertson, “Separating the Men from the Boys: Masculinity, Psychosexual Development, and Sex Crime in the United States, 1930s-1960s,” *Journal of the History of Medicine and Allied Sciences* 56 no.1 (Jan 2001): 3-35.

psychopaths, director Ralph Brancale explained, “we do not attempt to change ... the deep-seated homosexualist... [A]ll we are interested in the lifelong homosexual is that he is able to contain himself and sublimate his own sexual activities and channels so that it does not make him publicly offensive.” If the mental health expert could not teach some one to *be* normal, then they hoped they could teach him to at least *act* normal.

Even D. Ewen Cameron, Canada’s greatest champion of Alfred Kinsey, perhaps the best known American opponent of the criminalization of homosexuality, agreed that homosexuals needed treatment. Borrowing a page from the Kinsey Report, Cameron testified that 33% of men engage in at least one homosexual act, yet only 7% become exclusively homosexual. It is unfair to send a man off to prison for what might be a one time act, he argued, and as for the others, why send them to prison when there is no treatment or help available? “Humanity has many unhappy occurrences on its records, but certainly incarceration of the homosexual man in a prison with no contacts save other men, where *he is given no treatment to rectify his condition* and where he is kept, not until a predetermined period of time has elapsed, certainly ranks high among those things in which we can take little pride.”<sup>86</sup> Remarkably Cameron and others continued to make a distinction between men who have sex with other men out of a desire to experiment or a lack of female “outlets”, and those who are innately homosexual, a construct that echoed the gender-inversion model of the pre-war era in which effeminate men were considered

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<sup>86</sup>*Transcripts*, 1485-6. Emphasis added.

'true homosexuals' and the men who had sex with them were not.<sup>87</sup> For Cameron, the real offence was that homosexuals were being thrown in jail for their sexual "crimes" but were not being offered any treatment to cure their disorder. For this reason, psychiatrists' struggle to wrest sex from the shackles of the law can only be seen as proprietary.

Arguing that homosexual activity between two consenting adults in private should not come under the law might seem a moot point, but there were in fact cases in which the police entered homes, hotel rooms and other private spaces where men, and less often women, were found engaging in homosexual sex acts.<sup>88</sup> However gross indecency charges were most commonly laid against men caught having sex in a public place. Homosexual cruising in parks, making out in cars, congregating in clubs and using public washrooms for the purpose of having sex had long been considered inappropriate behaviour, and it was the one issue on which most psychiatrists agreed with law enforcement officers.<sup>89</sup>

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<sup>87</sup>On this model, see George Chauncey, *Gay New York: Gender, Urban Culture and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994) chapter 2; see also the testimony of Dr Theriault who argued that sometimes, such as when a man is on board a naval ship, it is the situation and not the sex act that is abnormal. *Transcripts*, 197.

<sup>88</sup>*Transcripts*, 98. For a tabloid report of the only known case in which women were charged with gross indecency, see *Hush Free Press*, 17 February 1962, 7. Because the outcome of charges heard in Magistrates Courts' were not often reported in legal case studies, Alex Gigeroff's *Sexual Deviations in the Criminal Law: homosexual, exhibitionistic and pedophilic offences in Canada* (Toronto: University of Toronto, 1968) erroneously reported that a woman had never been successfully prosecuted on gross indecency charges. He does, however, cite one such case in which the charges were dismissed. See 122, 143.

<sup>89</sup>See Steven Maynard, "Through a Hole in the Lavatory Wall: Homosexual Subcultures, Police Surveillance, and the Dialectics of Discovery, Toronto, 1890-1930" *Journal of the History of Sexuality*, 1994 (5:2): 207-243.

Sexual contact of any type that took place outside of the privacy of the home was pathologized as “anti-social behaviour”. The tendency among some men to visit gay ‘haunts’ despite the danger of arrest provided yet another link to the criminal sexual psychopath model. Viewed through the lens of the postwar middle class heterosexual family, men who had sex in public places appeared both out of control and dangerous.<sup>90</sup> A homosexual who commits a “public act” is both anti-social and has demonstrated an inability to control his desires. Canadian psychiatrists tended to agree that in such instances homosexual sex did come within the definition of the act simply because it constituted a social nuisance.<sup>91</sup>

While psychiatrists agreed that public sex was a problem, some used the hearings to denounce the heavy-handed tactics used by local police forces against urban homosexuals. During a private session with the Commission, respected Quebec criminologist Reverend Noel Mailloux reported that homosexuals are “very often... despised and treated with contempt, and often the way the police talk to them it is just as if they were the very dust of humanity, and it is an extremely poor way to handle such cases. I have seen worse than that, and this I would like to leave off the record, if you please.”<sup>92</sup> Chief Psychiatrist for the Department of Reform Institutions in Ontario Frank H. van Nostrand was asked his opinion of Montreal’s 1954 “aggressive police campaign” to

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<sup>90</sup>On the cultural motif of ‘containment’ in this era, see Elaine Tyler May, *Homeward Bound: American Families in the Cold War Era* (New York: Basic Books, 1988): 16-36.

<sup>91</sup>*Transcripts*, 1004-1005.

<sup>92</sup>*Transcript*, 126.



clean up the mountain and other prime cruising and social spots.<sup>93</sup> Chief Justice McRuer noted that there was “a good deal of public criticism with respect to homosexuals, that they were operating in a certain area and in downtown restaurants.” “But they were not violent people,” van Nostrand replied, “they were people that, I suppose, after their haunts were found out, moved off to some other place.” The only thing such tactics accomplished was “a certain tidying up.”<sup>94</sup> The police trend toward mass arrests of homosexuals was denounced by even the most hard-nosed proponents of old-fashioned methods of punishing criminals who were less concerned about the human rights and dignity of the men targeted by the police than they were of the unnecessary strain such actions placed on medical, psychiatric, psychological and social work professionals who were expected to provide assessment and treatment services.<sup>95</sup>

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<sup>93</sup>Arrests for gross indecency in Montreal jumped from 65 in 1953 to 311 in 1954. *Transcripts*, 978. According to Gary Kinsman, even the 65 arrests in 1953 were abnormally inflated. In that year Maurice Leznoff’s Masters thesis on Montreal’s gay community garnered media attention which in turn aroused public concern and police attention, resulting in an increase in the number of arrests. Kinsman, *The Regulation of Desire*, 161-163.

<sup>94</sup>*Transcripts*, 1192-93. On police sweeps as public housekeeping, see also the Miami Beach Police Chief who explained of the 1953 crack-down on homosexuals gathering at the local beach: “we had no charges we could book them on, but it’s just a question of cleaning up a bad situation and letting undesirables know they’re not wanted here.” Bureau of Public Information, “Miami Junks the Constitution” *ONE* (January 1954) cited in Eskridge, “Apartheid of the Closet”, 1996.

<sup>95</sup>At a 1952 conference the Director of the Chicago Psychiatric Institute, Dr. E. Kelleher, argued that the marginal rise in the number of sex arrests was produced by “many special drives on the part of the police... stimulated by the media and various public organizations.” For example, the drive to “clean up North Clark Street” resulted in “clubs being raided and mass arrests made.” On one particular night, 42 “suspected homosexuals” were brought to the Institute. Psychiatrists like Kelleher were frustrated with the way public panics led to police assaults on gay areas: unable to arrest men for any

## Homosexual as Pedophile

The idea that men interested in sexual relations with men were a threat to children also contributed to widespread confusion about sex deviates generally and the conflation of homosexuality with pedophilia specifically. It was not until the 1950s that the image of the homosexual as a sadistic fiend took hold in popular culture, but by then psychiatrists were drawing finer lines between those perversions which caused harm and those which did not. If the law was to distinguish between harm-causing behaviours and those which were merely morally distasteful, the Commission and its witnesses who supported the continued criminalization of homosexuality were forced to demonstrate that homosexuality *was* harmful.

This goal was achieved by linking homosexuality with pedophilia.<sup>96</sup> Men who congregated in parks, restaurants and theatres at night posed little threat to the children that were the primary concern of many of the nation's parents, but Toronto Police Chief Chisholm exploited nascent fears of a generalized sexual threat by suggesting just the opposite. "Homosexuality is a constant problem for the Police in large centres, and if the Police adopt a laissez-faire attitude toward such individuals, city parks, intended for the relaxation of women and children and youth recreation purposes, will become rendezvous

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crime, the Chicago force instead dropped them off at the clinic for treatment, overloading the staff with work that they were neither interested in nor had the proper resources to cope with. E Kelleher, "The Role of Psychiatry in Programs for the Control and Treatment of Sex Offenders" (paper presented at the Institute on the Illinois Penal and Correctional System on 18 May 1952) Kinsey Institute Archives.

<sup>96</sup>For an examination of the very same links and arguments being made by Britain's Wolfenden committee see Kinsman, *Regulation of Desire*, 214-219.

for homosexuals.” Moreover, he claimed, “homosexuals corrupt others and are constantly recruiting youths of previous good character into their fraternity.”<sup>97</sup> When asked if carnal knowledge and seduction of those under the age of 14 should be included among the crimes covered by criminal sexual psychopath legislation, Dr. Pincock replied, “I would say that the indoctrination or, you might say, initiation of minors and people who previously were normal, by homosexuals into the habit of homosexuality should be included” because they are “menacing to the public good and inflict harm on the individual.”<sup>98</sup> Citing Maurice Leznoff’s 1954 sociology Master’s thesis on Montreal’s gay male culture in Montreal, Reverend Noel Mailloux argued that homosexuals are dangerous because “they constantly recruit new members... younger boys, usually around eighteen – sixteen, seventeen, eighteen to twenty.”<sup>99</sup> Commenting on the 1954 Montreal crack-down, Queen’s Council J Fournier referred to the murder of a boy ten years earlier by way of justifying the police action.<sup>100</sup>

Indeed, throughout the course of the hearings, homosexuality was repeatedly linked with pedophilia. When asked if homosexuals were socially dangerous, Detective Mundie of the Vancouver Police replied:

A: I think myself you have to class the homosexual in two classes, the upper and

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<sup>97</sup>*Transcripts*, 1672-1673.

<sup>98</sup>*Ibid.*, 410.

<sup>99</sup>*Ibid.*, 122.

<sup>100</sup>See House of Commons Debates, Hansard, 3 July 1947; Exhibit 28, Brief to the Commission from the British-Columbia Parent-Teacher Federation, *Transcripts*, 721A-726.

the lower.

Q: By the lower I take it you mean the homosexual who goes after young boys?

A: Yes, hangs around the parks.

Q: Or youths?

A: Yes, that is right.<sup>101</sup>

Though some psychiatrists attempted to refute the conflation, Commission counsel James Worrell's method of examining witnesses appeared to seek reinforcement of the perception that homosexual men seek out younger sexual partners as a matter of course. For example, Dr. Karl Stern, Psychiatrist in Chief at Prevost Institute in Montreal and professor of psychiatry at the University of Ottawa, argued:

A: I feel that the dealings of adult homosexuals with one another, although they may be condemned by the laws of morality, are not necessarily in themselves so that they would warrant a removal of the person from society.

Q: However, many homosexual acts, of course, are directed toward children.

A: Yes. In this case I would say definitely that it would be necessary to treat the offender or take him out of circulation, or both.<sup>102</sup>

Dr John Nelson Senn, the Medical Superintendent at Ontario Hospital, Hamilton, told the Commission, "in the case of so many adult homosexuals - some of it may be excuse on their part - the majority of adult homosexuals will tell you that their homosexuality stems from an assault when a boy. You cannot believe them all but you can believe quite a few of them, and I do feel that if we are ever going to stop homosexuality that is where it has to be stopped."<sup>103</sup> A precursor to the modern day construction of the sexual abuser whose actions are often attributed to his own history of victimization, the homosexual was

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<sup>101</sup>*Transcripts*, 691-2. See also Menzies, *Transcripts*, 128.

<sup>102</sup>*Ibid.*, 941.

<sup>103</sup>*Ibid.*, 1251-1252.

trapped in a victim-perpetrator hall of mirrors, illustrating the tension between the post-war construct of sex deviants as the object of pity *and* fear.

Not surprisingly, of all the witnesses, representatives of social service agencies serving the needs of children and adolescents were the most vocal proponents of maintaining and even strengthening legal sanctions against homosexual sex acts. The British Columbia Psychiatric Division of the Social Welfare Branch described sexual deviation as “of greatest concern to the social workers” in their community, and that in psychiatric settings “homosexuality generally and pedophilic homosexuality in particular” was of great concern. They recommended “maximum security and treatment for homosexuals since efforts so far have met with limited success.”<sup>104</sup> Though no one confused the adult heterosexual male with the adult pedophile, most were unable to make the same clear distinction with homosexual men.

This conflation is easier to comprehend given the developmental model of sexuality popularized by child psychology and other experts in the post-WWII era. According to historian Stephen Robertson, the concept of psychosexual development had been gradually taking shape since the late nineteenth century. However, it was not until the sex crime panic and the concomitant popularization of the notion of sexual psychopathy in the post-WWII period that biological explanations for sexuality were eclipsed by theories of personality development that highlighted parental and familial relations during childhood over hereditary factors in shaping sexuality. Sexual psychopathy was premised on the assumption that the ‘normal’ adult male is able to contain his sexual impulses within the

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<sup>104</sup>Ibid., 789-791.

bounds of prevailing social and legal convention, meaning that those who are not able to exert such control are therefore sexually immature. Like the sexual psychopath, the homosexual (both male and female) was thought to be sexually immature, even if for different reasons. Along with the 'dirty old man,' who experts suggested had regressed to a pre-adult sexual level, the homosexual similarly was regarded as a sexual predator whose failure to achieve full heterosexual maturity led him to seek out young adolescents and even children.<sup>105</sup>

### **Children of Tender Years**

If sexual assault committed against young boys was considered a grave threat, it is odd that there were virtually no explicit discussions concerning those particular offences beyond the occasional inference or outright claim that homosexual men were *ipso facto* pedophiles.<sup>106</sup> However, the Commissioners did spend time exploring the problem of sexual assaults against female children, the offence which galvanized public demands for criminal sexual psychopath legislation in the first place. Two main issues were addressed: the problem of prosecution and the question of harm.

Laying charges and taking a case to trial was a major ordeal for children and their

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<sup>105</sup>Robertson, "Separating the Men from the Boys"; on male sexual restraint as a hallmark of proper masculinity in an earlier period, see Dubinsky, *Improper Advances*, 133.

<sup>106</sup>According to Bertha Shvemar, past president of the Parent's Action League, in their ongoing campaign to educate parents about sexual assault, they were one of the only groups to openly address the sexual assault of boys. However, Shvemar reports that audiences were not very receptive to this information. Interview by author, tape recording, Toronto, ON, 6 December 1998.

parents. In Canada and the US alike, postwar experts estimated that only a minority of cases of sexual assault were ever brought to trial, and even fewer were successfully prosecuted. The greatest single problem with respect to prosecuting adults who assaulted children under the age of 14 was that, according to the Canada Evidence Act, the uncorroborated evidence of a child of tender years was not admissible in court. Representatives of the Vancouver City Police Department identified the “difficulty of securing evidence acceptable to our courts” as the most significant barrier. “The criminal sexual psychopath is cunning enough to get his victim in circumstances where little or no corroborative evidence is available.”<sup>107</sup> Ontario’s Attorney-General agreed. “The law provides that the unsworn evidence of a child of tender years, who is too young to appreciate the nature of an oath, may be given, but it cannot be acted upon unless such evidence is corroborated by other evidence implicating the accused.” When all the Court has is the testimony of the child victim, even if it is corroborated by another child, “the Court has no alternative but to dismiss the charge.”<sup>108</sup> One of the reasons that judges were not inclined to accept the notion that some sex offenders “lacked the power to control” their sexual impulses was that most perpetrators took steps to ensure that they were not caught.<sup>109</sup> For this reason the Provincial Council of Women of Ontario described

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<sup>107</sup>*Transcripts*, 761-762.

<sup>108</sup>*Ibid.*, 1124-1125. Similarly, a 1936 commission established by the American Bar Association examined the issue of evidence in incest and the molestation of minors and advised the courts to be circumspect about child witnesses whose “erotic imagination[s]” all too often lead to false charges. Cited in Jenkins, *Moral Panic*, 78.

<sup>109</sup>*Ibid.*, 1567-68.

assaults against minors as “a fertile field for those who might be sexual psychopaths.”<sup>110</sup>

Because children were considered imaginative, suggestible and incapable of determining fact from fiction, female minors faced a kind of double jeopardy in the court room.<sup>111</sup> According to Ovilia Pelletier, Detective-Inspector in charge of the Preventive Bureau of the City of Montreal, “little girls imagine offences and sometimes there is a series of complaints of which 70 percent of them are unfounded.”<sup>112</sup> Ontario Attorney-General Kelso Roberts reported that “Young children are frequently prone to invent untrue occurrences or may give erroneous and exaggerated interpretations to innocent gestures, words or conduct of an adult” and that there “is the possibility of a plan of blackmail lurking in the background of some of these cases on the part of parents.”<sup>113</sup> Though Roberts offered no evidence to support his claims, linking blackmail to accusations of sexual transgression was a long established tradition, though in this period it was most commonly associated with homosexuality and national security.<sup>114</sup> The opinions of Pelletier and Roberts, the former involved in criminal investigations and the

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<sup>110</sup>Ibid., 1640.

<sup>111</sup>Jenkins, *Moral Panic*, 34.

<sup>112</sup> *Transcripts*, 894.

<sup>113</sup>Ibid., 1568.

<sup>114</sup>For late nineteenth and early twentieth century examples of blackmailing men by threatening to reveal sexually disgraceful secrets, see Angus McLaren, *Trials of Masculinity*. On blackmail and homosexuality in this period, see Gary Kinsman and Patrizia Gentile, “‘In the Interests of the State’: The Anti-gay, Anti-lesbian National Security Campaign in Canada: A Preliminary Research Report” (Laurentian University, 1998).



latter with prosecuting them, typify the level of scepticism characteristic of contemporary expert views of child sexual assault.

Ironically the other significant barrier to the meaningful prosecution of sex crimes against minors was the Juvenile Delinquents Act and the family courts that administered it. Early twentieth century responses to the special needs of children in the criminal justice system - whether as victims or perpetrators of crime - resulted in the creation of family courts. Originally intended to provide an atmosphere of informality where the media was locked out and social workers rather than prosecutors were the first to interview children, by the 1950s it was evident that the family court was doing a better job sheltering perpetrators than serving the victims of sex crimes. University of Toronto's leading forensic psychiatrist Kenneth G Gray argued that the parents of victims were most likely to choose family court where evidence was taken *in camera* over police court where trials are "published to the world." Additionally, argued Constable M Leach of the London Police Department, it was much easier to secure a conviction in Juvenile Court than in police court.<sup>115</sup> For this reason, sex offenders whose victims were under the age of 14 were usually charged with "contributing to juvenile delinquency", a catch-all infraction which covered everything from "telling the child to tell lies and to steal to doing the gravest sexual outrages."<sup>116</sup> Moreover, sentences were much more lenient under the

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<sup>115</sup>*Transcripts*, 1313.

<sup>116</sup> Edward George Potter, Executive Director, Montreal's Society for the Protection of Women and Children, *Transcripts*, 948. See also R.E. Turner, "Treatment of the Sex Offender" *Criminal Law Quarterly* 3:4 (February 1961): 416-472. In a study of 132 cases seen at the Toronto Psychiatric Hospital's Out-Patient Forensic Clinic, 34% of all court referrals, including both cases involving minors and cases involving adults, had

Juvenile Delinquents Act. Maximum penalties were rarely invoked, and often no charges were ever laid.<sup>117</sup> As for repeat offenders, a conviction under the Juvenile Delinquents Act was a summary conviction, not an indictable offence; thus it could not be brought under criminal sexual psychopath legislation. Family court judges were only authorized to hear summary convictions, and they were not permitted to transfer charges to a higher court, even in cases in which they thought the defendant posed a considerable risk to the community.<sup>118</sup> J.D. Atcheson, the Chief Psychologist of the Metropolitan Toronto Juvenile and Family Court, pointed out that charges of contributing to juvenile delinquency were not considered “on the whole socially as serious as those charged with other sexual offences in another court”.<sup>119</sup> He recommended that a juvenile court judge be given the power to transfer a case to an ordinary court. Given that the criminal sexual psychopath law was aimed primarily at treating sex crimes against children, it is astounding that the court which heard the majority of child sexual assault cases could not make any use of it.

Even still, a good percentage of the child victims of sexual assault never made it anywhere near the family or any other court. Outrage against an attacker could easily be outweighed by concern that to expose one’s child as a victim of a sexual attack was to subject her or him to the stares of the neighbours and ostracism by peers. Karen

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been charged with contributing to juvenile delinquency.

<sup>117</sup>*Transcripts*, 1510.

<sup>118</sup>*Ibid.*, 1602. One of the changes advocates pressed for was to allow magistrates to transfer cases from the lower to the upper courts.

<sup>119</sup>*Ibid.*, 1369.

Dubinsky's study of sexual assault in rural Ontario describes the years from 1880 to 1929 as a transitional period during which the courts came to be used more frequently in settling disputes and seeking retribution for sex-related crimes.<sup>120</sup> In the post-WWII era, it appears the transition was still underway, though this time more specifically with respect to offences against children. In 1948 the *Montreal Standard* reported that the parents of an 11 year old girl who had been raped, became pregnant and contracted venereal disease, refused to lay charges more serious than "indecent exposure," despite the fact that the perpetrator was caught by an adult. The parents cited the "unhappy publicity that would accompany the case" as the deterrent.<sup>121</sup>

The stigma attached to being the victim of a sexual assault was a significant factor in deciding whether or not to pursue formal charges. Referring again to late nineteenth and early twentieth century Ontario, Dubinsky shows how fear of sexual assault "seemed to revolve around public disgrace and community disapproval. Fears about moral standing eclipsed concerns about physical safety."<sup>122</sup> Pre-WWII ideas about sexual assault tended to regard victims as corrupted by the attack, a fact reflected in the charge of "contributing to juvenile delinquency". The idea that sexual assaults made children delinquent was expressed by Montreal Police Inspector Ovilia Pelletier who argued, "Children cannot defend themselves like the adults and... there always remains in the child something which sometimes is difficult to remove. Now this little child could teach to friends, class mates,

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<sup>120</sup>Dubinsky, *Improper Advances*, 86-112.

<sup>121</sup>*Montreal Standard*, 10 January 1948.

<sup>122</sup>Dubinsky, *Improper Advances*, 15.

those things which would have been done to him, and there also is the danger that the adult's illness should transmit itself from child to child and should create a certain problem for us."<sup>123</sup> While Pelletier's ideas about sexual abnormalities as contagious likely would have made most medical witnesses cringe, he at least reaffirmed the view that children were negatively impacted by sexual assault. In the 1950s, most experts talked about sexual assault upon children in terms of the emotional and developmental damage it would cause and, though implicit in such descriptions was an awareness of physical harm, this aspect of sexual assault was not articulated. In order to impress upon the Commissioners the seriousness of sexual assaults on children, for example, Hamilton, Ontario psychiatrist John Senn claimed that an "impression is left with children which remains with them indefinitely."<sup>124</sup> Dr William Griffith Black argued that "for a certain kind of boy or girl a small amount of exhibitionism might be rather ominous."<sup>125</sup> Arguments such as these validated parents' claims that sexual assaults against children needed to be treated very seriously.

Finally, most perpetrators of sexual assault were known to the victim, a fact which certainly must have influenced parents' decisions to prosecute. I.M. Thomson of the Recreation Directors' Federation of Ontario told the Commission he was concerned about offenders who commit assaults within recreation organizations, particularly in the case of

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<sup>123</sup>*Transcripts*, 894.

<sup>124</sup>*Transcripts*, 1612.

<sup>125</sup>*Ibid.*, 637. On the evolution of exhibitionism as a dangerous crime, see Angus McLaren, *The Trials of Masculinity: Policing Sexual Boundaries 1870-1930* (Chicago, 1997), 182-206.

someone who has "leadership qualifications" and "rises in an organization and has the trust and support of the organization."<sup>126</sup> (Ironically, Thomson urged greater family participation in recreational organizations in order to combat sexual deviancy.) Dr. R.E. Turner, Director of a clinical out-patient program for the treatment of sex deviation in Toronto, claimed that families sometimes avoided prosecuting other family members on sex charges by forcing them to undergo treatment.<sup>127</sup> Thus avoiding the humiliation and pain of a criminal trial, families could protect their reputation and perhaps the employment status of a male breadwinner while at the same time feel that they were taking effective measures to deal with the problem.

Since the turn of the twentieth century social service and other experts were well aware that most perpetrators of sexual assaults against children were known to the victim, yet the public continued to imagine sex offenders as strangers, not family members or trusted neighbours.<sup>128</sup> Critics of the sex psychopath laws regularly cited research by Paul Tappan, which showed that of 324 murders of women, 102 were killed by their own husbands, 37 by fathers or other close relatives, 49 by lovers or suitors. Only 136 were

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<sup>126</sup>*Transcripts*, 1474-5. For an example of a similar argument regarding men employed in recreation in inter-war Germany see William Stern, "Jugendliche Zeugen in Sittlichkeitsprozessen : ihre Behandlung und psychologische Begutachtung ; ein Kapitel der forensischen Psychologie," [= Juvenile witnesses in sex crime proceedings : their treatment and psychological assessment], (Leipzig: Quelle & Meyer, 1926).

<sup>127</sup>Dr R.E. Turner, interview by author, tape recording, Toronto, ON., 4 June 1999.

<sup>128</sup>Jenkins, *Moral Panic*, 32-33, Angus McLaren, *Twentieth Century Sexuality: A History* (Malden, Massachusetts: Blackwell Publishers, 1999), 162.

murdered by someone outside of those three groups.<sup>129</sup> John Howard Society representative A.M. Kirkpatrick provided the Commission with a table showing that of 74 local cases of sexual assault on a child, only 14 involved a stranger. The Commission's own research, based on Royal Canadian Mounted Police files, also indicated a surprisingly high ratio of known offender versus non-known offender assaults.

<b>Table 12 Acquaintanceship with Victim by Offender</b>			
<i>Offence</i>	<i>Total Convictions</i>	<i>Victim Known</i>	<i>Victim Unknown</i>
<b>Total</b>	<b>3380</b>	<b>1657</b>	<b>1723</b>
Rape and attempt	451	192	259
Carnal knowledge and attempt	479	328	151
Buggery or bestiality and attempt	139	90	49
Indecent assault on male and attempt	244	107	137
Indecent assault on female and attempt	1296	498	798
Gross Indecency and attempt	771	442	329

*From the Report of the Royal Commission on the Criminal Sexual Psychopath, 75.*

Even these numbers likely underestimated the degree to which sexual assault was committed by known offenders. According to Kirkpatrick, people were much more likely to report stranger assaults over those committed by a known offender, thus magnifying the

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<sup>129</sup>Cited in F.R. Wake, "Report of the Governor's Study Commission on the Deviated Criminal Sex Offender, 1951, State of Michigan."

perception of 'stranger danger.'<sup>130</sup> The construction of the sex psychopath maintained a profile of the typical offender as a stranger, and the myth of the family as the healthy, normative ideal was effectively preserved.

Edward George Potter, the Executive Director of the Society for the Protection of Women and Children of Montreal (SPWC), had first hand experience with the way the law worked to shelter perpetrators of intra-familial sexual assault. Potter insisted that only by looking at the victims could we escape the polarized positions that characterized the sex crime debate. At one end of the spectrum, he claimed, was the view expressed in the House of Commons that "we must be ruthless with these men"; on the other end were those opposed to any judicial measures "lest [the offenders'] feelings of hostility be increased while voluntary medical and social work efforts are being attempted. This latter group," the brief continued, "seems to manifest a lack of equal concern and sympathy for the victims of sadistic and sexual outrages, or for the close relatives and friends of such victims, and to ignore the possibilities of aroused hostilities in the personalities of such victims and their relatives."<sup>131</sup>

The SPWC's greatest concern involved cases of incest, which Potter claimed judicial authorities took few measures to address, despite the repeated pleas of his organization. In the first of two examples, Potter described how the Montreal SPWC became involved with a family where the father was forcing his three daughters to have sexual relations with him. The SPWC arranged to have the children removed from the

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<sup>130</sup>*Transcripts*, 1417.

<sup>131</sup>*Ibid.*, 1501-11.

home and placed with foster parents, but no charges were laid against the father.

Subsequently the father attempted suicide, was hospitalized, and was placed under police watch. However, the watch was discontinued when his condition was downgraded and he was transferred to another hospital, indicating that the 'watch' had more to do with his suicide attempt than with an effort to protect his children. On the day of his hospital discharge, the father made a number of threatening phone calls to the foster mother, who contacted the SPWC, which in turn implored the hospital not to release him. The hospital ignored the request, and the father proceeded to the foster home where he shot and killed the foster mother. "Only at that point was this man brought under police and legal control," Potter said.

In fact the Commission was very interested to know if medical experts felt that incest should be included among the crimes that fell under the sex psychopath law, and during the hearings almost every medical witness was asked their view on this matter. Interestingly, most psychiatrists assumed the question referred to sibling incest, and insisted that it should not fall under the law. When asked specifically about parent-child sexual relationships, however, most agreed that such behaviour had "extremely serious" psychological effects and should be included under the criminal sexual psychopath legislation.<sup>132</sup> Asked if a father - daughter incest should be dealt with as seriously as sex between a homosexual adult and a "young boy", Dr Ewen Cameron said yes. Assuming the victim was female, he replied, "It would be very disruptive to her personality and to her future relations with other men. I would regard it as quite a serious thing, as serious as

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<sup>132</sup>Ibid., 409, 846, 1104, 1370.



I would a homosexual situation.”

Toronto’s Dr Kenneth Gray, Canada’s leading expert in medical jurisprudence, likely agreed with the seriousness of the impact of incest, but he did not think it should be included under criminal sexual psychopath legislation. “A finding of criminal sexual psychopath would not ...[be] indicated,” he argued.

Q: Because of the relationship and so on?

A: Yes, quite.<sup>133</sup>

Montreal’s Dr. Alistair MacLeod put it more clearly:

As a citizen perhaps or somebody interested in maintaining the standards of morality, yes, but as a psychiatrist I would have to say that I do not see that such people are dangerous to society. [Incest between father and daughter] is a matter peculiar to that relationship, rather than a man who is a danger to the public.<sup>134</sup>

Saskatchewan psychiatrist Dr R.R. MacLean saw incest as an “offence which so frequently is committed under special home circumstances and conditions; notably crowding in the home and poor morals.”<sup>135</sup> Though these experts neither suggested nor implied that incest was acceptable, the Commissioners took the testimony to mean that they regarded the danger to be contained within the family, unique to the father-daughter relationship, and thus outside of the realm of the sex psychopath law.<sup>136</sup> According to Potter of the Montreal SPWC, the state was highly reticent to intervene until people outside of the family were endangered. That incestuous relationships garnered very limited

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<sup>133</sup>Ibid., 1212.

<sup>134</sup>Ibid., 1096.

<sup>135</sup>Ibid., 500.

<sup>136</sup>Report, 26.

discussion, especially in light of the length to which homosexuality was discussed, reinforces the claim that the sex panic and criminal sexual psychopath legislation obscured more than it illuminated.

### **Women and the Family**

It was no small concern to the Chief of the Toronto Police Force that women's reports of sexual assault were viewed with scepticism. Chisholm complained to the Commission, "There is in the minds of many intelligent people a fixed idea that [rape] cannot be committed without some degree of acquiescence on the part of the victim. This," he continued, "is a very unfair attitude to adopt.... Many rape cases are just on the borderline of murder."<sup>137</sup> Though it was not always the case that a rape victim had her rights championed by law enforcement agents and judges, no one in a position of authority would deny justice to a woman who was the victim of an attack. The problem was, however, that much like children, women first had to convince the authorities that they had been attacked. "This will make you laugh," Queens Council J. Fournier promised the Commissioners. He proceeded to describe a recent incident in which a "girl" of "about 26" wanted to press rape charges. She claimed she was raped three times in two hours. "I told her, 'Are you serious?' I said, 'You did not resist?' She said, 'I did not resist because he was too tall and I was too weak and I thought to myself it would be better to accede than to resist.' She want [sic] to bring a complaint of having been raped three times in two

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<sup>137</sup>*Transcripts*, 1673-4.

hours. So we have not to take that too seriously.”<sup>138</sup>

What the police, crown prosecutors, and judges took seriously was, as historians of sexual assault have shown, shaped by a complex mixture of ideas about race, class and respectability as well as prevailing social attitudes toward men, women and sexuality.<sup>139</sup>

The introduction of psychiatric treatment for sex offenders did not directly impact dominant attitudes about male sexual attacks on women over the age of 14. When asked if he would consider rape an abnormal act, Dr. Louis Bourgoïn told the Commission:

Absolutely. Not necessarily because of the act - my classification is not one based on the nature of the offence, but primarily on the subject's personality. It is not the offence which is important, in my opinion. Of course that has its social importance, but from the psychiatric point of view, it is not so much the offence which is important, as it is the one who commits offence.<sup>140</sup>

Though in theory this was certainly true, in practice this was not often the case. Old models of sexual types were preserved in the psychiatric imagination. As we saw earlier, psychiatrists maintained the view that homosexuals, by virtue of desiring the same sex, were deviant, while heterosexual couples or men in same-sex environments who engaged in the very same behaviour, namely oral and anal sex, were not. Conversely, men who raped could be either sexually deviant or just ‘wise guys’. The Commission asked D.

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<sup>138</sup>Ibid., 991.

<sup>139</sup>Though there is little question that race and class impacted sexual assault trials, these factors did not determine the outcome of all trials. For an examination of cases in which public and professional sympathy favoured socially marginalised victims, see Carolyn Strange, “Wounded Womanhood and Dead Men: Chivalry and the Trials of Clara Ford and Carrie Davis” eds. Franca Iacovetta and Mariana Valverde, *Gender Conflicts: New Essays in Women's History* (Toronto, 1992), 149-188. See also Dubinsky, *Improper Advances*, 134-142.

<sup>140</sup>*Transcripts*, 806.

Ewen Cameron if men who raped were all sex psychopaths, or “aggressive selfish men”? Could rapists, the Commissioner continued, “be divided between those who will take advantage ruthlessly just the same as there is a division in business between those who will take advantage of others ruthlessly and selfishly?” Cameron agreed with the analogy, and explained that a man who raped could either lack sexual control, or possess an “attitude towards women in general... of a primitive, acquisitive male.”<sup>141</sup> In this analogy male desire for possessing women was naturalized and normalized as a masculine, though primitive state, and it suggested only that men needed to bring their methods of acquisition into line with acceptable forms. Physical violence was highly under-theorized and ill-considered throughout the hearings. Although the Commission regularly asked mental health experts if they thought rape should continue to be included in the legislation, most experts offered little more on the topic than their affirmative response.<sup>142</sup>

Adult women did figure in the hearings of the Royal Commission, just not as we might have expected. Women across Canada who were organized through the National and provincial and local councils of women, as well as through Parent-Teacher and Home and School Associations, were responsible for forcing the government to implement sex psychopath legislation in the first place. A number of the psychiatrists and other experts spoke to the Commission within their official capacity as advisors to these groups. Though

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<sup>141</sup>Ibid., 834-5, 849.

<sup>142</sup>As we shall see in chapter four, since the inception of the policy in 1955 Ontario Reformatories demanded mandatory psychological assessments of all incoming inmates convicted of sexual offences, including rape. After four years of experience, the Director of Psychological Services deleted “rape” from the list.

it was women who made sex crime and its treatment a central social and political issue in the 1950s, the psychiatrists they championed held parents (including mothers) responsible for causing sexual abnormalities in the first place. Moreover, by bringing constant and regular attention to the issue, a number of critics charged women with inflaming the problem by constantly bringing attention to it. In this way the debate was sexed: male doctors and female advocates had different roles to play in solving the sex crime problem.

But the debate was also gendered. The very same women who demanded a scientific approach to the problem were characterized and subsequently denounced as “hysterical” and “panicky” while the male doctors they promoted were viewed as reasoned and rational. Frank Van Nostrand was one of the loudest critics of the “publicity and hysteria” that surrounded the sex crime issue in Ontario. “A public campaign initiates thoughts which are latent in unstable individuals,” he argued. Toronto Chief Constable Chisholm told the Commission, “I believe parents and guardians can make a very substantial contribution to sex crime prevention, not by any hysterical approach to the problem, but by personally instructing and supervising their children, especially those of tender years.”<sup>143</sup> Suddenly, women, both as individuals and as groups, found themselves on the defensive: when Mrs W.R. Walton, the National Vice-President of the International Order of the Daughters of the Empire, submitted the resolutions of the 957 delegates representing 32,000 members “from Yukon to Newfoundland,” she felt compelled to insist, “We have no wish to be emotional or to add to the hysteria that is going around, and we have made no suggestions specifically because we thought that others better

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<sup>143</sup>*Transcripts, 1676-1677.*

qualified than ourselves could do that, but it was just to let you know that there was this concern existent right across the country.”<sup>144</sup> Similarly, Mrs Kerr, President of the Ontario Provincial Council of Women, defended her organization’s brief by insisting that “our submission is not the result of recent newspaper publicity at all; it has been going on for a considerable length of time, that is to say our study of it has been. We are not a panicky group.”<sup>145</sup>

The growing perception of the masculine expert as “legitimate” and of the feminine as irrational and “hysterical” was not limited those who directly participated in the hearings of the Royal Commission. At least one small group of women refused to sit quietly on the sidelines and instead conjured up the full force of vengeful maternalism in expressing their opinion on the problem of sex crime. In a 1956 letter to Ontario's Attorney-General, a group of women from the town of Whitby also exploited masculine stereotypes to shame politicians into taking a more punitive approach:

“... heed the rumblings of our anger as i will surely break into a mighty roar. we are disgusted with all this 'Mamly Pamily' coddling of 'Sex Perverts.' they are a menace and the way most of us feel right now consider the 'Lash' should be used; failing that 'The Death Penalty' our children must be protected.”<sup>146</sup>

Another mother writing in the same year also insisted that she be heard, though she made her demands in less colourful terms. After describing a man’s attempt to lure her seven-year-old daughter into a car, she wrote, “I trust that this letter will not be disregarded as

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<sup>144</sup>Ibid., 1260-1270.

<sup>145</sup>Ibid., 1276.

<sup>146</sup>RG 4-2 File 80.1 Criminal Sexual Psychopaths and Sex Offenders 1956. (AO).

just another emotional mother blowing off steam. Perhaps I am emotional," she continued, "but I feel I have sufficient reason to be. We do pay for protection, and we are free to vote, and we do have freedom of speech." That women's 'freedom of speech' was thwarted by the resistance to consider thoughtfully their testimony was confirmed by the Commissioners who did not draw upon the personal experiences or views of the parent representatives appearing before them. Instead, they accepted their submission and when, as was the case in British Columbia, the parent-teacher association brought along their medical advisor, questioned him.<sup>147</sup>

One of the things Parent Group's advisors were likely to tell the Commission was that sexual abnormalities took root in the home through improper child training. The domestic ideology that historian Elaine Tyler May has documented in this period was advanced considerably by mental health experts who not only championed the important task of child-rearing, but who held mothers accountable for a tremendous range of behavioural and biological problems, including male homosexuality and even their own infertility. Jennifer Terry has linked the "momism" of the 1950s with a longstanding anxiety over the erosion of gender distinctions throughout the twentieth century. While her own research focuses on the connection between these discourses and homophobia, mental health experts drew a direct line from parenting practices to all aspects of their children's sexual behaviour.<sup>148</sup> When asked why one commits a sexual offence, President

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<sup>147</sup>*Transcripts*, 627-32.

<sup>148</sup>For an example of Canadian scholarship linking parenting and sexual deviation, see Daniel Paitich, "Attitude toward parents in male homosexuals and exhibitionists" (PhD dissertation, University of Toronto, 1964).

of the Canadian Mental Health Association J.D. Griffin said, “There is evidence that many of the aggressive sexual offenders have a similar kind of childhood experience with reference to family life, parental attitude, and so on, as do the aggressive criminals of all kinds... The common denominator in their early history does seem to be maternal deprivation of some sort, and by maternal deprivation I mean the lack of a warm, protecting and supporting mother love.” But, he added, “I would say in parenthesis that [love and affection] is best given in a situation where there is father affection, too, as a total family group.” Though Griffin was very cautious in making this statement, even pointing out that crimes were committed by those who did and those who did not fall into this group, he suggested that the implications “may mean that we ought to discourage mothers from working, for instance, during this crucial period.”<sup>149</sup> The United Church of Canada agreed. Though it had nothing substantive to offer on the criminal law relating to the criminal sexual psychopath, the UCC saw the hearings as an opportunity to express concern “about the detrimental influence of the increasing employment of mothers outside of their homes.”<sup>150</sup>

Mothers were to blame for not providing their children with proper role modelling and for failing to provide them with sex education, but an improper response to sexual assaults against children was one of the most common criticisms levelled against parents during the Commission hearings. Remarkably, mental health experts claimed that the parental reaction could be more harmful than the actual sexual assault. In 1955 one of the

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<sup>149</sup>*Transcripts*, 1225-1226.

<sup>150</sup>*Ibid.*, 1464.



most studied US experts on sex crime argued, "Damage is done far more by the well-intentioned associates of the victim or by public authorities than by the Aggressor. This is not to condone the offence but merely to emphasize that its implicit danger has been grossly exaggerated and the possible traumatizing of the individual is almost always a product of cultural and individual responses rather than because of the intrinsic emotional value of the experience itself..."<sup>151</sup> For the most part, parent organizations uncritically adopted these claims. After a series of roundtable conferences, for example, the British Columbia Parent-Teacher Association affirmed that "the parent attitude had a stronger effect on a child than the actual incident of molestation... Parents should avoid emotional reactions which might impress the incident unduly on the child's mind. Parents should not over respond to an assault, that sometimes this is more traumatic than the actual assault."<sup>152</sup>

### **The Final Report**

After months of public hearings and four years of intermittent research, McRuer, Kinnear and Desroches completed their report in 1958, but it was not tabled in the House of Commons for another year. Public and parliamentary interest in the sex crime problem had waned, and as the baby boomers grew from small vulnerable children into troublesome

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<sup>151</sup>Paul W. Tappan, "Some myths about sex offenders" *Federal Probation* 19 (1955) 7-12.

<sup>152</sup>*Transcripts*, 727-730.

teenagers, illicit drug use emerged as the new social problem of the day.<sup>153</sup> In the end, the Commission's final report was strikingly conservative, containing nothing controversial enough to reignite the issues surrounding the legislation, and neither the federal government nor the opposition raced to have the recommendations implemented.

As a whole, the *Report of the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath* maintained the status quo with respect to both the relationship between the law and psychiatry and the application of criminal sexual psychopath legislation. The only consistent position taken was against the erosion of the authority of the court in the face of advancing psychiatric expertise about criminal behaviour: virtually every proposal that granted more power to psychiatrists in the disposition of sex crime cases was strongly opposed on the grounds that it would diminish important protections the law afforded the accused and the convicted.

Only two recommendations were of any significance with respect to the Criminal Code of Canada. First, the Commission argued in favour of eliminating wording that undermined the application of the law, namely that criminal sexual psychopath be changed to dangerous sexual offender, and that "lack of power to control" be changed to "failure to control". With these modifications, which were incorporated 1961, the law could

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<sup>153</sup>See the 1970 Report of the Canadian Committee on Youth, *Drugs and the Drug Culture*, Ottawa, s.n. 1970. The government of Canada also launched a commission of inquiry into the problem of illegal drug use in the late 1960s. The commission issued its final report in 1973. See Canada, *Commission of Inquiry into the Non-Medical Use of Drugs. Final Report* (Ottawa, 1973). On a history of changing social problems and the rise of youth culture in Canada in this period generally, see Doug Owsram, *Born at the Right Time: A History of the Baby Boom Generation* (Toronto: University of Toronto Press, 1996), 185-215.

capture those who planned and plotted their assaults as opposed to only those who might more properly be considered mentally ill, lacking 'normal' cognitive skills.<sup>154</sup> Although they did not recommend any changes to the requirement that two psychiatrists testify in a hearing to determine if a man found guilty should be sentenced to an indeterminate term, the successful application to have a man declared a criminal sexual psychopath was no longer wholly dependent on the vagaries of psychopathy or on the ambiguous opinions of psychiatrists. Instead, the law required only that the crown must convince the court of the probability that the accused might re-offend.

Probabilities, however, have more to do with crystal ball gazing and less with science, and in the postwar cultural imagination, sex offenders were by nature recidivists. Yet this image was not supported by the numbers the Commission had at their disposal. Citing RCMP and Statistics Canada figures, as well as a handful of American studies, the Report showed that sex offenders as a group have the lowest rates of recidivism of all criminals, and when offences related to homosexual acts, and second offences that were not sex-related were excluded from the statistics, the rates of recidivism were so low as to be almost inconsequential. Moreover, it found there was virtually no increase in the number of sex crimes committed, and no change in the rate or severity of conviction.<sup>155</sup> Such were the findings of virtually every similar study undertaken in the US. The sex crime panic was, as Saskatchewan's Dr Lucy put it, the result of "a somewhat morbid

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<sup>154</sup>A.M. Marcus, "A Multi-Disciplinary Two Part Study of those Individuals Designated Dangerous Sexual Offenders Held in Federal Custody in British Columbia, Canada," *Canadian Journal of Corrections*, 8 no. 2 (90-103): 90.

<sup>155</sup>*Report*, 76-77.

public interest no doubt stimulated and titillated by an unscrupulous and sensation mongering press [that] tends to focus its attention on these [violent crimes] to such an inordinate degree as to make it appear that these constitute a much more widespread problem than is in fact the case.”<sup>156</sup> That, combined with the over-selling of psychiatry and a false belief in its ability to cure sex deviants, amounted to a disproportionate level of social anxiety over what was essentially a marginal phenomenon. As many Canadian and American police officers pointed out, children were almost 300 times more likely to be killed by an automobile than by a violent assault.

There may not have been a rise in the number of sex crimes committed, but that did not mean that all was well. Despite the evidence of a number of witnesses who, based on their work with victims and perpetrators both, argued that the police and the courts were failing victims of sexual assault, the Commission did not use the opportunity to discuss ways in which sexual assault cases could be better managed by the courts or by medical experts. Nor did they suggest that the law be scrapped. Though the Commissioners argued that the concept of preventive detention and punitive detention were “illogic[al]”, that the failure to provide treatment “is definitely wrong and in large measure defeats the purpose of the law”, and that there was no justification for differentiating sexual psychopaths from other psychopathic offenders, the Commissioners concluded that “the principle of the law is right.”<sup>157</sup> Though there were very few repeat sex offenders, the Commission nevertheless believed that the state should have the power

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<sup>156</sup>*Transcripts*, 546.

<sup>157</sup>*Report*, 55, 84, 117.

to detain them until they were deemed safe to return to society.

Though the Final Report upheld the principle of psychiatric treatment, it rejected all arguments in favour of decriminalizing homosexuality. Despite the testimony of countless medical and psychological experts who insisted that the law had no business regulating morality, and though Britain's Wolfenden Report, released a year before the Royal Commission's final report, called for the decriminalization of homosexuality in that country, the McRuer Commission backed away from the issue by claiming that it was not its place to call for the decriminalization of any behaviour. It also let homosexuality stand as one of the offences that fell under the purview of dangerous sexual offender legislation. It argued that it should not be used against men who engaged in consensual sex with other men, and pointed out that indeed it never had been, but it nevertheless felt it prudent to leave it open to the court's discretion rather than to block the court from laying dangerous sex offender charges in such cases. Marshalling Toronto Police Chief Chisholm's claim that homosexuals created a problem for police by, among other things, recruiting youths into their "fraternity", the Commission reinforced the erroneous link between homosexuality and pedophilia. By suggesting that the homosexual act included the potential for harm, the Commission could preserve the traditional role of the law in regulating morals while appearing to apply modern 'scientific' standards.<sup>158</sup>

Equally perplexing was the Commission's refusal to include incest as one of the crimes included under the legislation. There were few questions that the Commissioners

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<sup>158</sup>For an example of how the dangerous sexual offender law was later applied to a man who engaged in consensual homosexual relations with men under the age of 21, see Kinsman, *Regulation of Desire*, 257-264.

consistently put to their expert witnesses, and whether or not incest should be included in the legislation was one of them. Most witnesses agreed that incest had serious consequences and should be covered by the sex psychopath legislation, yet the Commissioners decided against its inclusion. Remarkably, the Report claimed that “there were no specific cases brought to our attention in which ... the punitive provisions of the criminal law were not sufficient to protect society,” despite the compelling evidence to the contrary given by the *Montreal Society for the Protection of Women and Children*. This decision clearly demonstrates that the tendency of the law to be applied to strangers versus known offenders was neither an accident nor a mere tendency, but was a fundamental part of the postwar construction of sexual danger and the sex psychopath. Although psychiatrists urged a reassessment of sex crime based solely on a measure of harm, old ideas about the dangers of the public and the safety of the private clouded the Commissioner’s ability to shape new laws based on statistical claims about who was assaulting whom. The family continued to symbolize refuge from danger, not its incubator, despite evidence to the contrary.

The introduction of criminal sexual psychopath legislation was in large part a response to sexual assaults committed against children; thus is it little surprise that the legislation was directed at offenders whose victims were under the age of 14. In response to the key issues in cases involving minors, the Commission recommended that any offences under section 661 should be heard in the criminal court, not in a juvenile and family court under the *Juvenile Delinquents Act*. It claimed that existing criminal code provisions provided judges with the necessary tools to ensure a courtroom free from the

prying eyes of the public and the press, but it failed to address the way in which the adult trial procedure lacked special consideration for the needs of child witnesses, and how the absence of social workers and other support staff might make the process more intimidating and emotionally taxing. However, the Commissioners' belief in the rightness of the existing structure of Canada's legal system was unshakable. The final report rejected any suggestion that the unsworn evidence of children should be accepted. The need to protect the accused, it argued, outweighed the potential benefit to the victim. So long as there were no adult witnesses to a sexual assault against a person younger than 14, the law would provide no inroad for those seeking justice and no hope for formal retribution or punishment.

Perhaps the most obvious missing piece of the sex psychopath puzzle was the absence of treatment programs, facilities and staff in federal penitentiaries, a fact that was not overlooked in the Commission's report. The only present justification for criminal sexual psychopath legislation, the Report declared, was segregation from society. Echoing a decade of research into the problem of sex crimes, the Royal Commission recommended that the government support a joint federal-provincial board of researchers, clinical treatment programs and more education in the area of human sexuality. However, though the government's culpability was clear, the tone and language of the report was reserved, and the recommendations soft-pedalled. Little wonder that the report sat unclaimed by the House for a full year, and its recommendations implemented piecemeal, if at all.

## **Conclusion**

When the government set out to undertake a study of criminal sexual psychopath legislation, it produced a survey of ideas about the regulation of human sexuality in postwar Canada. Taking many of their cues from pre-WWII European sexologists as well as from contemporary American studies in the field, Canada's medical, psychiatric and psychological experts asserted their authority as regulators of deviant sexual behaviour by proposing a new paradigm for the organization of sex laws: the criminal code should regulate harm-causing behaviour such as rape and sexual assault. Areas of the criminal code that sought to regulate non-harm causing offences against morals, however, should not be treated punitively but as a mental health problem.

One of the most important ways in which psychiatrists and other professionals advanced this argument was through the example of homosexuality, and to a lesser degree, exhibitionism and voyeurism, all 'problem' behaviours which did not in and of themselves bring physical or serious psychological harm to their participants or victims. Though the linking of homosexuality with sexual psychopathy and deviancy ultimately led to waves of increased surveillance and regulation of urban homosexual public spaces, most Canadian as well as American psychiatrists were opposed to oppressive measures and instead advocated the decriminalization of consensual homosexual relations. However, even the most modern experts advocated treatment for homosexual men, illustrating how psychiatrists were not seeking to liberate but were competing to regulate.

Moving to a harm based model did not mean, however, that medical experts spent more time talking about violent crime. Heterosexual sexual conflicts, including those



against adults, female children and especially male children, were grossly under-theorized, despite the fact that of the 3,714 sex convictions for which the Royal Canadian Mounted Police had full details, more than 87% involved offences against women and female children. One of the other reasons why homosexuality received such disproportionate attention was that of all the non-normative sexual behaviours, it was by far the most studied.

The construction of the sexual psychopath propped up the myth of stranger danger and insulated the family - not from sexual assault, as the legislation's supporters had hoped - but from the scrutiny of the law and the punishment of the criminal justice system.<sup>159</sup> Indeed, as Philip Girard has shown, the 1969 Report of the Canadian Committee on Corrections reviewed the legislation and found that one in four child sex offenders made victims of family members or relatives, but only one out of every 15 offenders in the same category were sentenced under the criminal sexual psychopath law, which later became known as the dangerous sexual offender law. "In other words," Girard writes, "the dangerous sexual offender category was reserved for those who fit the public's stereotype of the 'sex deviate' or child molester: the unattached man, the outsider."<sup>160</sup>

The postwar sex crime panic has been described as a product of the post-WWII anxiety about transforming idealized masculinity from the fearless male soldier into the

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<sup>159</sup>Estelle Freedman, "'Uncontrolled Desires': The Response to the Sexual Psychopath, 1920-1960," ed. Kathy Peiss and Christina Simmons, *Passion and Power: Sexuality in History* (Philadelphia: Temple University Press, 1989); Chauncey, "The Postwar Sex Crime Panic"; Robertson, "Separating the Men from the Boys".

<sup>160</sup>Girard, "Gays and Lesbians and the Legal Process since 1945," (unpublished paper, Canadian Lesbian and Gay Archives), 98.

domesticated breadwinner. The sex psychopath has also been described as yet another cultural construct used to cajole women into staying at home lest one of their own children be the next victim. While these are both meaningful ways to help understand the cultural relevance of the construction of the sex psychopath and the disproportionate attention paid to sex crime in contrast to other social problems, it does not attend to the simple fact that sexual assaults against children was a real problem with a meaningful impact, and one in which parents, labour unions, women's groups, church councils and other citizens looked to the state for help. The Royal Commission gave witnesses and the letter-writing public the opportunity to reveal the ways in which the criminal justice system failed to work in favour of victims and exposed some of the most egregious aspects of the law's failure to take action against abusers, particularly when they were family members. Though the criminal sex psychopath was born of an erroneous perception that sex crime was on the rise, the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath provided those working directly with child victims the opportunity to reveal how the criminal justice system was failing the people it purported to serve.

The legacy of the construction of the criminal sexual psychopath continues to shape the way Canadians – and Americans – think about sex offenders: gay men continue to be linked with pedophilia, and sex offenders whose victims are children are still thought of as afflicted by an incurable mental disease that prevents them from 'normal' sexual expression, and worse still, compels them to continuously seek out new victims. The gay rights movement and even the social networks that predated organized homosexual political groups enabled gay men to resist the construction of homosexuality as a disease

in need of a cure, and to launch campaigns against the fallacious assumptions about them as a group. However, as one psychiatrist pointed out during the Commission hearings, sex offenders do not have the same social group support through which they might counter claims about their criminal and sexual tendencies. The internet has provided one of the few vehicles through which convicted sex offenders and their advocates have attempted to dispel the myth of recidivism. Most recently a massive review of 61 studies covering a total of 23,393 rapists and “molesters” showed that only 13.4 percent of sex offenders commit another sex crime after they've served their time and been back in the community for four or five years.<sup>161</sup>

But it also served to push the court of public opinion to favour sentencing of consequence in sexual assault cases. Though the criminal sexual psychopath legislation and later dangerous sexual offender legislation were little used, judges were both pressured to apply harsher penalties in child sexual assault cases, and they were also made more aware of the seriousness of the crime. The real impact in terms of the prosecution of sex offences was not so much in the application of novel legislation as it was in the shift of public and judicial opinion toward harsher sentencing for sex crimes.

As chapter four shows, criminal sexual psychopath legislation provided some opportunities to pursue experiments in treatment for sex offenders. In Europe, Denmark led the way with its treatment program at Herstedvester. In the US, California generously funded hospital and prison-based treatment programs for convicted sex offenders. In

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<sup>161</sup>Karl Hanson and Monique T. Bussiere, “Predicting Relapse: A Meta-analysis of Sexual Offender Recidivism” *Journal of Consulting and Clinical Psychology*, 66: 2.

Canada, the province of Ontario remained on the cutting edge with the Guelph Reformatory's Neuro-Psychiatric Clinic and later, a special segregation unit for sex offenders and sex deviates (homosexuals). However, Canada's federal government lagged far behind, despite the recommendations of the Commission. Only in the early 1990s did the federal government, under pressure from the populist Reform Party, increase the number of treatment spaces from 200 to 1,800.<sup>162</sup>

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<sup>162</sup>Canada. Parliament. *House of Commons Debates*. 1994 Volume 133 No. 106 (7 October 1994): 6741.

### III

#### **“Take a Woman and a Telephone and Stir”: The Parents Action League and the Fight Against Sex Crime**

On February 25, 1955, Judy Carter, an eight-year-old girl from Cabbagetown, didn't make it home from school. Somewhere in the short four blocks between her friend's house, where she stopped to read comics, and her parents' modest basement apartment in one of Toronto's rougher working class neighbourhoods, she disappeared. The press, the public and even the victim's mother immediately speculated that Judy was the victim of a “sex fiend”.<sup>1</sup> Hundreds of mostly male volunteers, including firemen, boy scouts, and the local Rotary Club, joined the “Search for Judy” campaign. Unfortunately, six weeks elapsed before her body was discovered on a river bank in Markham Township, well outside the city limits. An autopsy revealed that the victim was strangled with her own scarf, but she had not been sexually assaulted. Her attacker was not a “sex psychopath”.<sup>2</sup> However, in the days and weeks before her body was found, three women concerned about sex attacks on children launched one of the most successful citizen's action groups advocating the treatment approach to the sex crime problem. From the time they first met until they disbanded five years later, the Parents Action League cited the death of Judy Carter as the spark that ignited them into existence, despite the fact that Carter's death had no apparent or proven connection to sex crime. Not even the “truth” about Carter's death would slow the group's meteoric rise to public and political notoriety. In 1955, the Parents Action

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<sup>1</sup> *Toronto Telegram*, 28 February 1955.

<sup>2</sup> *Toronto Daily Star*, 10 April 1955, 3.

League (PAL) became a beacon for sex crime fighters across Canada and even in parts of the United States.

Virtually every study of the postwar sex crime panic in Canada and the US attributes some degree of responsibility for the advancement of criminal sexual psychopath legislation to citizen action groups.<sup>3</sup> Invariably these groups and the legislation that resulted from their political lobbying were a direct response to a local violent attack on a woman or, more often, a child.<sup>4</sup> As we saw in chapter one, such was the case in Canada in 1947 when Member of Parliament Howard C. Green cited recent assaults in his riding of Vancouver-South in his gambit for criminal sexual psychopath legislation. In Toronto, the death of Judy Carter had a similar mobilizing effect. Though sex psychopath legislation had already been passed in 1948, Carter's disappearance was for many a horrific demonstration of how the government needed to do more to put an end to sex crime.

Historians have attributed much influence to citizen's action groups, but no one has undertaken a serious examination of such lobby groups. Yet these groups should be of interest to feminist historians interested in the history of women's activism and to

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<sup>3</sup>For Canada see Gary Kinsman, *The Regulation of Desire: Homo and Hetero Sexualities* (Montreal: Black Rose Books); Rob Champagne "Psychopaths and Perverts: The Canadian Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths, 1954-1958," *Canadian Lesbian and Gay History Network Newsletter 2* (September 1986): 7-9; for the United States see Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester* (New Haven: Yale University Press, 1998); George Chauncey Jr., "The Postwar Sex Crime Panic," William Graebner, ed., *True Stories from the American Past* (New York, 1993) and Estelle Freedman, "'Uncontrolled Desires': The Response to the Sexual Psychopath, 1920-1960," *Passion and Power: Sexuality in History*, ed. Kathy Peiss and Christina Simmons (Philadelphia: Temple University Press, 1989): 199-225.

<sup>4</sup>Chauncey, "The Postwar Sex Crime Panic", 163.

historians of sexuality. Perhaps part of the reason why this gap in the historical literature exists is because information about them is difficult to collect: local, small and informal, they did not always keep records, or if they did, they were not often preserved. The news media provided important coverage of their activities, but as we shall see, they only ever told part of the story.

Lack of sources is one problem. Another one - even more significant - is that historians tend to rely on a theoretical model that lends itself to gendered assumptions about women's participation in the 1950s sex crime panic. Both Canadian and American scholars have drawn on a 'moral panic' model, first posited by sociologist Stanley Cohen in his analysis of the public and media response to a perceived rise in adolescent misbehaviour in the 1960s.<sup>5</sup> According to Cohen, a "moral panic" explains how certain groups – in his case teenagers – become

defined as a threat to societal values and interests; its nature is presented in a stylized and stereotyped fashion by the mass media; the moral barricades are manned by editors, bishops, and politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved, or (more often) resorted to; the condition then disappears, submerges or deteriorates.

In an early and influential text that helped give shape to the history of sexuality, author Jeffrey Weeks identified Cohen's concept as a useful tool in developing an understanding of how and why in different historical moments, all manner of sexual behaviour considered immoral, degenerate and dangerous are ascribed to certain groups. In Canada, historian

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<sup>5</sup> Stanley Cohen, *Folk Devils and Moral Panics: The Creation of Mods and Rockers* (London: MacGibbon and Kee, 1972); Jeffrey Weeks, *Sex, Politics and Society* (London: Longmans, 1981), 14.

Karen Dubinsky has effectively used Week's conceptualization of the moral panic to illuminate ways in which racial, ethnic and class differences have figured in the social and discursive organization of sexual behaviour in turn-of-the-century rural Ontario.<sup>6</sup> Sociologist Mary Louise Adams also draws on the 'moral panic' paradigm to understand the postwar response to sexuality and delinquency in the same province.<sup>7</sup> In approaching the sex crime panic in postwar America, American historians Estelle Freedman and George Chauncey also make good use of the moral panic model. In their separate accounts of the popularization of the sex psychopath in the absence of an actual increase in the number of sex crimes committed, both claim that the sex crime panic had everything to do with 'fears and anxieties' associated with the social and economic rupturing of the traditional sex, gender and family structures brought on by the war.<sup>8</sup> These historians have convincingly argued that the sex psychopath was the 'folk devil' upon which concerns over 'proper masculinity' were displaced.

However, the moral panic model can sometimes divert attention away from legitimate concerns about social problems. In Stuart Hall's interpretation of Stanley Cohen's thesis, for example, a moral panic exists when "the official reaction to a person,

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<sup>6</sup>Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993), 35.

<sup>7</sup>Mary Louise Adams, *The Trouble with Normal: Postwar Youth and the Making of Heterosexuality* (Toronto: University of Toronto Press, 1997), 56.

<sup>8</sup>Estelle Freedman, "'Uncontrolled Desires': The Response to the Sexual Psychopath, 1920-1960" in *Passion and Power: Sexuality in History*, ed. Kathy Peiss and Christina Simmons, (Philadelphia: Temple University Press, 1989), 199-225; George Chauncey Jr., "The Postwar Sex Crime Panic" in *True Stories from the American Past*, ed., William Graebner (New York: McGraw-Hill, 1993), 160-78.



group of persons or series of events is *out of all proportion* to the actual threat offered”... when the response is “above and beyond that which a sober, realistic appraisal could sustain”.<sup>9</sup> Critic Arnold Hunt has since pointed out that Hall does not provide any “criteria of proportionality” to distinguish an irrational response from a rational response.<sup>10</sup> As it happens, many of the key participants in the 1950s sex crime panic were women who voiced their concerns either as individuals or through organizations such as Women’s Institutes and Parent-Teacher Associations. Characterizing the response to a series of sexual assaults as irrational neatly fits with antiquated ideas about women’s ability to reason as emotionally handicapped. Indeed, it reproduces the way in which women’s demands for better state protection from sex crime were marginalized and dismissed as hysterical ravings. Groups like PAL were sometimes viewed as irrational, reactionary, repressive and anti-modern in their own time. Contemporary historical analysis of the 1950s sex crime panic has tended to reproduce this assumption.<sup>11</sup>

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<sup>9</sup> Stuart Hall, C. Critcher, T. Jefferson, J. Clarke & B. Roberts, *Policing the Crisis. Policing the Crisis: Mugging, The State, and Law and Order* (London: Macmillan, 1978), 16.

<sup>10</sup> Arnold Hunt, “‘Moral Panic’ and moral language in the media,” *British Journal of Sociology* 48(4) December 1997: 634-5.

<sup>11</sup> See in particular Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven: Yale University Press, 1998); John D’Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America*, 2<sup>nd</sup> edition (Chicago: University of Chicago Press, 1998), 280-285. Two Canadian historical sociologists, Mary Louise Adams and Gary Kinsman, have written about PAL specifically. In the first instance, Adams briefly mentions the League in connection with postwar concerns over sex crime and the construction of the sex psychopath, and she situates the group within the context of an irrational and exaggerated response to local and isolated attacks on children. Though he does not employ a ‘moral panic’ model, it is worth noting that Gary Kinsman situates the group within the context of the growing authority of

Feminist history has not yet provided a corrective to this body of literature, but women's historians have started paying more and more attention to the postwar era. Beginning with Joanne Meyerowitz's reassessment of Betty Friedan's *The Feminine Mystique*, recent scholarship shows that women's lives were much more dynamic than critics like Friedan claimed.<sup>12</sup> Although American scholarship has thus far challenged the "June Cleaver" stereotype by drawing our attention to women who lived and worked outside of the middle class mainstream, Canadian historians have gone one step further, showing that even those who comfortably fit the suburban mould were active in local, provincial and national 'progressive' politics.<sup>13</sup>

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mental health experts over matters of sexuality. In his more extended examination of the League's activities, Kinsman emphasizes how PAL "became defined organizationally by the social interests of... professional experts." See Adams, *Trouble with Normal*, 121-123; Kinsman, *Regulation of Desire*, 194-196.

<sup>12</sup>Friedan herself had a much more complicated history than she claimed. See Daniel Horowitz, *Betty Friedan and the Making of the Feminine Mystique: The American Left, the Cold War and Modern Feminism* (Massachusetts: University of Massachusetts Press, 2000).

<sup>13</sup>Notable examples of US scholarship include Betty Friedan's *The Feminine Mystique* (New York: Norton, 1963); Joanne Meyerowitz, "Beyond the Feminine Mystique: A Reassessment of Postwar Mass Culture, 1946-1958," *Journal of American History* (March 1993): 1455-1482; see also the essays contained in Joanne Meyerowitz's *Not June Cleaver: Women and Gender in Postwar America* (Philadelphia: Temple UP, 1994). Club women at the turn of the 20<sup>th</sup> century are regarded as instrumental in securing many political victories, and there is an enormous body of literature detailing their history; only recently have historians begun to look at similar "clubs" in the post-WWII era. See for example Andrea K. Peake, "Problematizing Maternalism: PTAs and the Politics of Integration in Postwar Chicago," Lynn Weiner, "The PTA and Constructions of Motherhood in the 20th Century," and Andrea Friedman, "Club women and Pornography in the 1950s", (papers presented at the 11<sup>th</sup> Berkshire Conference on the History of Women, Rochester, New York, 3-6 June 1999). For examples of Canadian historical scholarship on this topic, see Veronica Strong-Boag, "Home Dreams: Women and the Suburban Experiment in Canada, 1945-60," *Canadian Historical Review* 4 (1991): 471-

Yet on the surface, a traditional feminist historical approach – one that starts from the assumption that men’s and women’s relations are over-determined by unequal power relations – does not fully capture the interplay between PAL and all of the other ‘players’ involved in the sex crime issue, including the various levels of government, the media and the mental health experts PAL championed. As chapter two demonstrated, women’s and parent groups took their cues from the predominantly male psychiatrists that advised them.<sup>14</sup> Kari Delhi’s examination of the relationship between mental health experts and the Home and School movement in Ontario during the first half of the twentieth century holds that the pre-WWII shift to child study and parent education “entailed a new subordination to masculine power, which was now embodied as the expert and scientist.”<sup>15</sup> Indeed, many feminist historians advanced this argument with respect to the professionalization and state absorption of largely female-run social welfare and other volunteer organizations into the welfare state.<sup>16</sup>

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504; and Joy Parr, ed. *A Diversity of Women: Ontario, 1945-1980* (Toronto: University of Toronto Press, 1995).

<sup>14</sup>Reva Gerstein is the only female mental health expert I encountered. Women were much more likely to be found in the social workers’ ranks. See Lorraine M Williams, “Setting Up Social Work at the Forensic Clinic,” *TPH: History and Memories of the Toronto Psychiatric Hospital, 1925-1966* ed. Edward Shorter (Toronto: Wall & Emerson Inc, 1996), 253-257; James H. Capshew, *Psychologists on the March: Science, Practice and Professional Identity in America, 1929-1969* (New York: Cambridge University Press, 1999), 21-32 and chapter 3.

<sup>15</sup>Kari Delhi, “Women and Class, the social organization of mother relations to schools in Toronto, 1915-1940”. PhD. Dissertation, Ontario Institute for Studies in Education, 1988.

<sup>16</sup>Charlotte Whitton’s 1941 scathing rebuke of male dominance in the upper echelons of the field of social work is one of the earliest printed assaults on the tendency

A closer examination reveals that women, acting in their capacity as 'citizen-parents', championed mental health experts and promoted, not deferred to, their expertise and authority. Much of the authority mental health experts had in the 1950s was at the pleasure of parent groups which were instrumental in pushing local school boards and the provincial and federal governments to integrate mental health into government-funded services.<sup>17</sup> Production of knowledge about child development was a symbiotic process, shared between child experts like Ontario's William Blatz and Saskatchewan's Samuel Laycock and the thousands of parents who welcomed them into their homes and their children's schools through a variety of media outlets, including film, radio, television and print. Middle-class Canadian parents drove the industry by not only identifying what type of information they needed and by demanding that the federal government fund its production and dissemination, but also by imposing their new psychological standards on the nation through the imposition of social and behavioural norms that were regulated and policed through the schools, family courts, children's aid societies and other state-run agencies.<sup>18</sup> Because child development experts held parents, and especially mothers,

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of men to assume control of female-dominated movements, organizations and associations as they gain legitimacy and power. Whitton's comments and a development of her thesis is found in James Struthers, "'Lord Give Us Men': Women and Social Work in English Canada, 1918-1953," *The Benevolent State: The Growth of Welfare in Canada*, eds. Allan Moscovitch and Jim Albert (Toronto: Garmond Press, 1987), 126-143.

<sup>17</sup> Delhi, "Women and Class", 1988.

<sup>18</sup>For a detailed examination of these norms, including their gendered and sexual dimensions, see Mona Gleason, *Normalizing the Ideal: Psychology, Schooling and the Family in Postwar Canada* (Toronto: University of Toronto Press, 1999). Franca Iacovetta has paid particular attention to the way the courts regulated sex, gender and cultural norms in "Gossip, Contest and Power in the Making of Suburban Bad Girls:

responsible for their children's failure to conform to middle class standards of proper conduct, feminists have understandably regarded postwar women as the mental health movement's victims, not its architects.<sup>19</sup> But as we shall see, a large segment of Canada's middle-class – including women – were not only compliant but were actively supportive of this supposedly anti-women field of psychology.

This chapter seeks to fill the gap in the historical literature by providing a close examination of one of Canada's most prominent and successful postwar citizen's action group, the Parents Action League (PAL). Using this Toronto-based organization as a case study, I will illustrate how the 'moral panic' model reduces social and political contests over meaning to a simplistic action - reaction pattern. In so doing, hackneyed stereotypes about middle class "club women" as reactionary, meddling busy-bodies who were anti-sex, pro-repression and susceptible to emotional hysteria are implicitly or even explicitly reproduced. Through a detailed analysis of the Parent's Action League this chapter demonstrates that though the Parents Action League operated within traditional gender ideology it nevertheless challenged the way Ontario's political and legal systems dealt with

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Toronto, 1945-60," *Canadian Historical Review* 1999 80(4): 585-623. For an examination of the way the Children's Aid Society's normative standards negatively impacted lesbian women in postwar Toronto, see Elise Chenier, "Tough Ladies and Troublemakers: Toronto's Public Lesbian Community, 1955-1965," MA thesis, Queen's University, 1995.

<sup>19</sup>The classic feminist critique of psychology is Carol Gilligan, *In A Different Voice - Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, 1982). Other important contributions include Helen Levine, *The Power Politics of Motherhood: a feminist critique of theory and practice* (Ottawa: Carleton University, Centre for Social Welfare Studies, 1981); Phyllis Chesley, *Women and Madness* (New York: Avon Books, 1973); Maria Ramas "Freud's Dora, Dora's Hysteria," J.L. Newton, M.P. Ryand, & J.R. Walkowitz, eds., *Sex and Class in Women's History* (London: Routledge, 1983), 72-113.

sex offenders, and it made talking about sex not only respectable but necessary. PAL was instrumental in popularizing the “modern approach” to sex.

When Bertha Shvemar and her best and oldest friend Evelyn “Effie” Hahn decided to form an action group after the disappearance of Judy Carter, the first person they contacted was Kenneth Gray, a prominent psychiatrist affiliated with the University of Toronto and the Toronto Psychiatric Hospital’s Forensic Psychiatry Unit, where he specialized in medical jurisprudence. Like Mrs. M. who in 1947 expressed her concern about sex perversion to the Minister of Health, Shvemar also regarded the sex crime problem as a mental health issue.<sup>20</sup> Initially Gray suspected that Shvemar and Hahn’s enthusiasm would quickly burn out. However, when they followed through on his advice to “gather as much information as you can” on the subject, he and other mental health experts came on board as the League’s Scientific Advisory Committee (SAC).<sup>21</sup>

PAL had little trouble piquing the interest of experts and lay people alike. By their first annual general meeting held just four months after the group formed, PAL’s dossier bulged with endorsements from almost a hundred different groups, organizations and individuals, including local associations of both the Liberal and Conservative parties, luminaries in law and mental health in Canada, including Edson Haines, William Blatz and Reva Gerstein, and myriad social service and volunteer organizations, along with hundreds

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<sup>20</sup>RG 10-107-0-224, Letter to the Minister of Health, 17 April 1947. Archives of Ontario (hereafter AO). Dr. Gray was unique in that he was qualified as a doctor and as a lawyer, making him a key player in the effort to merge the criminal justice system with modern psychiatry.

<sup>21</sup>Bertha Shvemar, interview by author, Toronto, ON, 6 December 1999.

of Ontario parent-teacher and church and community groups and individuals.<sup>22</sup> By September, PAL had grown from a team of two into a nationally known lobby group which successfully used its public support and media profile to pressure the provincial Conservative government to open the first and only clinic in Canada for the treatment of sex deviation. It was a feat that even the most senior medical and psychological civil servants had not been able to accomplish in more than six years of internal lobbying.

Much like the expansive network of traditional women's groups founded in the late nineteenth century, PAL was a largely female-driven, volunteer run and pointedly non-partisan organisation.<sup>23</sup> Not surprisingly, women dominated the core membership of the League. Some men were active on the parent Board, but attracting male volunteers was a challenge.<sup>24</sup> PAL founder and first President Bertha Shvemar was aided by her familial connection to Ontario's Conservative Grossman family in launching the League. Obviously these 'housewives' had a prestigious pedigree, which gave them access to centres of power in Ontario many could only dream of. They counted provincial politicians and media barons among their friends and relations, and certainly made good use of these

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<sup>22</sup>For a complete list of PAL endorsements, see the transcripts of the *Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath*, Osgoode Hall Law Library, Exhibit 51, 1594-1601.

<sup>23</sup> Jill McCalla Vickers, "Feminist Approaches to Women in Politics" in *Beyond the Vote: Canadian Women and Politics*, eds. Linda Kealey and Joan Sangster, (Toronto: University of Toronto Press, 1989), 16-36.

<sup>24</sup>Paternal participation in parent groups was a persistent problem in the 1950s. The HSPTF monthly newsletter regularly published articles suggesting ways to make the PTA more appealing to them. See for example "Welcome Father! How to Get More Fathers to Attend Home and School and Parent-Teacher Meetings" October 1956, 3.

connections. Be that as it may, PAL remained a kitchen table organization.<sup>25</sup> Much of the group's planning was plotted over the telephone and drawn up on the backs of envelopes; PAL meetings depended on members' willingness to open their homes and whip up a coffee cake.<sup>26</sup> It was the rare occasion that the League sought to raise money, and even these efforts were small scale, providing more publicity than cash.<sup>27</sup> Everything, Shvemar explains, was donated.<sup>28</sup>

PAL was able to marshal an extraordinary level of public support for four principal reasons: it remained single-minded in its approach to the problem, the aim and goals of the group appealed to a broad constituency, it supported a program of intervention that already enjoyed widespread approval, and the local and national media provided the group with extensive and favourable coverage. This chapter explores each of these four themes in detail.

### *Single-Minded*

PAL's first (and until they met with success, its only) objective was to pressure the Ontario government to open a clinic for the treatment of sex deviants, and on September

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<sup>25</sup>Mary Louise Adams, *The Trouble with Normal: Postwar Youth and the Making of Heterosexuality* (Toronto: University of Toronto Press, 1997), 122.

<sup>26</sup>Bertha Shvemar, *Journal*, 9 September 1955.

<sup>27</sup>One example is the "Hat Party", a typical middle class women's fund raiser whereby women (preferably prominent or celebrity) donate their hat to be auctioned off at the party. Bertha Shvemar, 6 December 1998.

<sup>28</sup>Bertha Shvemar, 6 December 1998. For example, the Toronto Telegram paid for the publication of "The Strange One", a pamphlet that explained sexual deviation to parents who attended PAL public speaking engagements.



22, 1955, just seven months after it was founded, the League secured a meeting with the Ontario provincial Premier, Leslie Frost, to make their request known. It asked for what Ontario psychiatrists and a hundred other groups and organizations had demanded since 1947: a clinic separate from any other institution where persons charged with sexual offences could be examined by psychologists and psychiatrists for the purposes of advising the court in sentencing, and where they would provide treatment for convicted offenders, conduct research into the causes, treatment and prevention of sexual deviation and finally, act as a training facility where other professionals could gain experience treating sex offenders.<sup>29</sup> Though there were no effective treatments for sexual deviancy known to medical doctors, most believed that there existed a small segment of the sex offender population for whom prison would have no deterrent effect, and for whom it might even exacerbate the problem. They also believed that if given the opportunity, resources and staff, properly trained researchers would eventually find an effective treatment.

None of PAL's demands came as a surprise to the Premier. PAL's agenda was clearly spelled out in the extensive media coverage it received from the moment it formed. This included local coverage of their first annual general meeting in June, which was attended by then Attorney-General Dana Porter, a feature story by June Callwood on the League in the July 1955 issue of *Maclean's*, and, just weeks before the meeting, a *Canadian Home Journal* feature story on the sex crime problem centred around a profile

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<sup>29</sup>RG 10-107-0-784 "Parent's Action League: Scientific Advisory Committee". (AO).

of PAL.<sup>30</sup> The Premier could not possibly have been more prepared.

PAL's request was not out of line with the overall agenda in the Department of Reform Institutions (DRI) in this period. Ontario demonstrated a remarkable willingness to explore and implement new and innovative services in the province's reformatories. In 1951 they opened the Alex G. Brown Memorial Clinic at Mimico for the treatment of incarcerated alcoholics, and in 1954 the clinic was expanded to include a drug addiction treatment program. Both were widely regarded as avant garde in Canada and around the world. More ribbons were cut in the fall of 1955 when the DRI opened a new, 25-bed Neuropsychiatric Clinic at the Guelph Reformatory where inmates from institutions all over the province could receive prolonged courses of psychological and psychiatric treatment on an in-patient basis. Ontario was growing accustomed to receiving international accolades for its pathbreaking initiatives in criminal reform, all of which were premised on the belief that prisoner rehabilitation depended on the recognition that criminals were not a homogeneous group. The DRI aimed to provide individualized programs of treatment beginning with institutional placement, work assignment and in some cases, individual and group therapy.

By the time PAL arrived on Frost's doorstep, the Department of Reform Institutions was well into the planning stages for the creation of a new, maximum security unit to be built in the small town of Millbrook, northwest of Toronto. Responding to internal concerns about increased violence in provincial prisons and, in particular, to a

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<sup>30</sup>June Callwood, "The Parents Strike Back Against Sex Criminals," *Maclean's Magazine* (23 July 1955): 7-9, 48-51; Helen Beattie, "The sex criminals who walk our streets," *Canadian Home Journal* (September 1955): 10-11, 66-68.

dramatic riot that erupted in the Guelph Reformatory in July of 1952, the department devised a plan to house all violent offenders separately until they, through good behavior, earned their way back into the regular prison system.<sup>31</sup> After the Select Committee on Prison Reform tabled its report in 1954, the provincial government decided to add a sex offender program to Millbrook, thus fulfilling at least one of the Committee's recommendations. However Millbrook was not yet built, and to date none of the prisons offered anything approaching adequate psychiatric and psychological services.

The PAL delegation of four female founding members was met outside the Premier's office by the press as well as strongest supporters in public service, Minister of Health Mackenzie Phillips, Toronto Psychiatric Hospital's Kenneth Gray, and two M.P.P.'s, Bill Stewart and Shvemar's uncle, Allan Grossman. Much to the delegation's surprise none of them stood on their side of the Premier's desk. All four men took up a position behind Frost and remained silent throughout the meeting. Frost attempted to convince his guests that the clinic they were asking for was far beyond the provincial government's means. After rebutting arguments from Frost and the Department of Reform's head psychiatrist, Frank van Nostrand (who favoured such a clinic but resented PAL's 'intrusion' on medical territory) for almost three hours, the Premier fell silent. Shvemar and the other delegates simply sat and waited. "It looked as though we were going to lose," Shvemar wrote in her journal. She was wrong. The meeting ended with Frost's congratulations that they had "got everything they wanted." This, Shvemar

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<sup>31</sup>*Toronto Daily Star*, 7 July 1952.

triumphantly declared, was “democracy in action.”<sup>32</sup>

The victory was short-lived. The Ontario government sat on its hands in the months following the September meeting, making no substantive move toward the promised clinic. Shvemar grew increasingly pessimistic about dealing with politicians. “Some of them are the worse bunch of liars. They only do what they are pushed to and otherwise they spend more time blocking progress.”<sup>33</sup> Three days later she wrote in her journal “More dilly-dallying! I think they want to put us off with one excuse after the other... [We] need something they do not expect, but what?”<sup>34</sup> Unfortunately they got the unexpected on January 7, 1956 when five-year-old Susan Cadieux was found frozen in the snow in London, Ontario. Although the police initially admitted it was possible that she had simply wandered away from her friends, an autopsy confirmed that she was the victim of a sexual assault.<sup>35</sup>

Their faith in the democratic process somewhat bruised, PAL turned to their best ally, the media, to shame the government into living up to its duties and obligations. In a *Toronto Telegram* report covering a special emergency meeting of the League, Shvemar resorted to hyperbole: “Do we have to have a killing in every city to make the government wheels start turning?” The group’s provincial organizer claimed that they represented 70 organizations and close to 3,000,000 people in Ontario. “We want action and we want it

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<sup>32</sup>Bertha Shvemar, Journal, 22 September 1955.

<sup>33</sup>Ibid., 31 December 1955.

<sup>34</sup>ibid., 3 January 1956.

<sup>35</sup>*Toronto Telegram*, 9 January 1956, 1, 3.

now,” said director Margaret Scrivener. “Governments have made reports, established special committees and are even holding a Royal Commission. But until legislation is introduced and passed, women and children are not safe.” According to the *Globe and Mail*, PAL Directors “regard the present emergency at London as being a direct result of an inadequate government policy on sexual perversion” and they demanded a meeting with the Premier.<sup>36</sup> Two days later PAL was back at Queen’s Park, this time for a joint meeting with the heads of the Department of Health and Reform Institutions and the Attorney-General.<sup>37</sup> The next day the *Globe* reported that the government had taken “emergency action” to “keep sex deviates out of circulation until a permanent solution for the problem is devised.”<sup>38</sup> An internal governmental memo read “In view of the seriousness of this problem, and without awaiting the final report of this Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath, the Department of Health will make arrangements to provide facilities at all their Ontario Hospitals throughout the province... [and] will endeavour to provide special out-patient facilities in our psychiatric out-patient departments in general hospitals for those who are on parole or probation, or voluntarily seek assistance.”<sup>39</sup> On February 8, the Frost government granted PAL a charter in a public ceremony honouring their contribution to helping solve “the difficult problem” of sex

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<sup>36</sup>*Globe and Mail*, 11 January 1956, 2.

<sup>37</sup>*Windsor Star*, 13 January 1956; detailed notes on the meeting are found in RG 20-15 Ac 23851 TB 6 Parents Action League of Ontario. (AO). It is worth noting that also in attendance was the government’s director of publicity, John Scott.

<sup>38</sup>14 January 1956, *Globe and Mail*, 1.

<sup>39</sup>RG 4-2 File 80.1 “Criminal Sexual Psychopaths and Sex Offenders 1956” 13 January 1956, Mimeograph, Meeting with PAL.(AO).

deviation.<sup>40</sup>

If PAL rested on their laurels – or in this case, their provincial charter – perhaps the moral panic model would fully capture their story. However, the League’s interest in the sex crime problem extended well beyond implementing the therapeutic ideal behind criminal sexual psychopath legislation. In the course of gathering “as much information as they could”, PAL’s Board of Directors came to recognize that no single solution would eradicate sex crime, an objective they believed was fully realizable.<sup>41</sup> Immediately following the September meeting with Frost, PAL held an executive meeting in which they identified their next line of attack: PAL’s new goals were to secure better sex education for parents and to end the way child victims of sexual assault were treated during cross-examination in court room trials.

Mirroring the prescription of most postwar psychologists, PAL believed that ensuring children’s normal sexual development required parents to create an honest and open dialogue free of the embarrassment and shame that was too often attached to discussions about sexuality and the human body.<sup>42</sup> Arguments in favour of a more open and honest approach to dealing with sexual matters were generally well-received by most middle-class parents, but in her study of postwar youth and sexuality, Mary Louise Adams demonstrates that in the 1940s, organized efforts to introduce a course of study on human sexuality into the Toronto school board curriculum were ultimately defeated by those who

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<sup>40</sup>8 February 1956, *Globe and Mail*, 2.

<sup>41</sup>Bertha Shvemar, 1998.

<sup>42</sup>Gleason, *Normalizing the Ideal*, 84; Adams, *Trouble with Normal*, 107-125.

felt that the moral education of children still belonged to the family and the church.<sup>43</sup>

Though they never took a public position on the debate about sex education in the schools, SAC member Dr. Blatz, a known opponent of such a measure, undoubtedly encouraged the group to focus on educating parents instead. PAL agreed that mothers and fathers needed the right tools to provide their children with accurate and sensitive answers to difficult and sometimes embarrassing questions. They unsuccessfully lobbied the Mental Health Division of the National Department of Health to commission a film strip on sex crimes and sex knowledge aimed at a pre-adult audience.<sup>44</sup> PAL also worked toward creating a program where parents could learn about child sexual development and gain confidence and direction in maintaining an honest and open dialogue with their children about sex. The League devised a plan to work on a cooperative basis with an existing Toronto organization, the Parent Education Associates (PEA), a group dedicated to providing parental “guidance, assistance, encouragement and reassurance ... within the range of normal family living.”<sup>45</sup> Unfortunately after some months of intense fundraising

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<sup>43</sup>Adams, *Trouble with Normal*, 107-135. A late 1950s survey of middle class parents showed that most felt that sex education was a responsibility belonging to the home, but also reported a “growing demand for a more effective partnership in areas of ... sex education.” Canadian Federation of Home & School and Parent-Teacher Associations, *Canadian Family Study 1957-1960* (Toronto: The Federation, 1960): 26, 29.

<sup>44</sup>Bertha Shvemar, Personal Papers. Their request was likely refused because the Department of National Health and Welfare already has in its library an American-made film aimed at educating children, *The Dangerous Stranger*, 1950, Sid Davis Productions. On mental health films in this period generally, see Helen Harrison, “In the Picture of Health: Portraits of Health, Disease and Citizenship in Canada’s Public Health Information, 1920-1960,” PhD dissertation, Queen’s University, 2001.

<sup>45</sup>“The Parent Education Bureau – What It Is and What It Does”, Shvemar personal papers.

for the program, a PEA member apparently absconded with the money. Preferring not to attract a scandal, PEA quietly abandoned their efforts for a sex education program, and the League never pursued it again.<sup>46</sup>

The second major initiative undertaken after the opening of the Forensic Clinic aimed to change the way child victims were treated within the judicial system.<sup>47</sup> Though pre-pubescent girls were portrayed as innocent victims in the media, PAL members were horrified to discover that the inverse was true in the courtroom. It became apparent to Shvemar and her colleagues that the structure of the criminal justice system left the victims of sexual assault at a distinct disadvantage: if the accused was considered by the courts innocent until proven guilty, then it followed that victims were considered guilty until proven innocent. Subsequent visits to Toronto's Women's Court proved their hypothesis, and PAL established a legal committee to observe and report on the proceedings of sexual assault trials.

The Committee was deeply disturbed by the ruthless cross-examination techniques used by defence lawyers. Young children were forced to recount their experiences in a room that included an aggressive lawyer seeking to exonerate his client as well as the alleged perpetrator himself. To PAL members fully conversant in studies of child psychology, it was clear that the courtroom experience added another layer of trauma to the lives of victims, and the League was determined to find a way for children to provide testimony without having to undergo undue emotional strain. The key to such a reform

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<sup>46</sup>Bertha Shvemar, 1998.

<sup>47</sup>Ibid..



was abolishing, or, at the very least, placing meaningful restrictions on the cross-examination of child witnesses in sexual assault trials. Research into how other countries handled similar cases revealed that Israel had taken significant strides in that direction. Children in that country gave their testimony out of court and on tape, where it was later played at the trial and into the court record.

In stark contrast to the helpful encouragement provided by mental health experts on the League's SAC, however, PAL's legal advisors were reticent to accept any proposal that would deny the defence the opportunity to cross-examine. Not only were the rights of the accused compromised in such a scenario, but in the 1950s it was not unusual for accusations of sexual impropriety toward children to be dismissed as the fanciful imaginings of the complainant, especially if the charge was incest.<sup>48</sup> The only way to determine the veracity of a child's claim was by cross-examining the witness. Despite his reservations, SAC member and lawyer Edson Hains agreed to chair the controversial committee under one condition: he insisted that no one speak to the media about the group's activities until they were able to present a clear plan of direction. All of the Committee members agreed, and proceeded with the court watch and research programs. According to Shvemar, an inexperienced board member revealed details of the legal

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<sup>48</sup>Jenkins, *Moral Panic*, 33-34, 78. John Rich of the Thistletown Children's Hospital and lead researcher on an unpublished Brantford study of sexual assaults against children, along with psychiatrist Bruno Cormier, the director of the prestigious McGill Forensic Clinic were, both of the mind that parent-child incest was complicitous of both parties and should not be regulated by law. See John Rich, *Toronto Daily Star*, 23 Jan 1956; Law Reform Commission and Clarke Institute of Psychiatry, J.D. Atcheson et. al., *Incest* (Toronto : The Institute, 1975); René Fugère and Ingrid Thompson-Cooper, eds. *Breaking the Chains: Bruno M. Cormier and the McGill University Clinic in Forensic Psychiatry* (Westmount, QC : R. Davies Multimedia Pub., 1998).

committee's activities to a news reporter, and the story appeared in the paper the following day. Furious, Haines immediately resigned, and the Committee did not survive the upset.<sup>49</sup> When PAL's Board of Directors ceased meeting is uncertain, but no further actions were taken after these two projects met with failure.

In 1956 Bertha Shvemar was diagnosed with encephalitis, and opened up the leadership of the League to an election. The other two original founding members were feeling the effects of the hard work and long hours PAL demanded, and they also decided to scale back their contribution. PAL carried on under a new president, but with the Forensic Clinic up and running, a majority of the SAC members moved on to other pursuits, and the number of advising experts fell by 60%. The new Board was unable to recapture the media attention or the organizational successes of the first year of PAL's existence.

### ***PAL's Broad Appeal***

Without a doubt PAL's "militantly hopeful" spirit combined with the Board's "bull dog tenacity" had a great deal to do with the group's success at the Provincial Legislature, but there are other facets of both the group and postwar culture and society that contributed to the League's achievements.<sup>50</sup> The demographic and political trends that gave rise to the sex crime panic and to the attendant citizen-action response in Toronto

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<sup>49</sup>Bertha Shvemar, 1998.

<sup>50</sup>Callwood described PAL as "militantly hopeful" in "The Parents Strike Back", 7. Shvemar described the Board as having "bull dog tenacity" at their 1956 Annual Meeting. Bertha Shvemar, personal papers.

and elsewhere reveal the intellectual and ideological foundations of the construction of the sex psychopath and the modern treatment approach to interpreting and solving the problem of sex crime. As citizen-parents, Canadian and American mothers mobilized in the interests of 'family' to work individually and locally for a better future for their children, and collectively and nationally to pressure their provincial, state and national government to supply them with the tools and resources they felt they needed to meet their goals. PAL epitomized the best that modern womanhood had to offer: self-sacrificing, committed, hard-working and dedicated to community service, the Toronto League well represented of the concerns and values of Canada's urban and suburban middle-classes.<sup>51</sup>

In the years leading up to WWII, Anglo-Canadian women joined local, provincial and national women's organizations in large number. In English Canada, women's councils, the Women's Christian Temperance Union, the International Order of the Daughters of the Empire, the Young Women's Christian Association and similar organizations were instrumental in giving women a voice in local and national politics. After WWII, however, membership declined dramatically, but not because women "retreated" into their homes. From the mid-1940s on, women joined Parent-Teacher and Home and School Associations in record number: in 1946, the Canadian Home and School Federation claimed a membership of just over 77,000; by 1953 that number more than doubled to a total of 173,000.<sup>52</sup> Home and School and Parent-Teacher Associations

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<sup>51</sup>A comparison study of a similar US citizen's group might possibly yield interesting contrasts, but is beyond the scope of this study.

<sup>52</sup> "How to get Father out to meetings" *Canadian Home and School* 10 no.3 (January 1951): 1; see similar articles in 11 no. 3 (January-February 1952): 19-20; 12 no. 4 (March-April 1953): 7.

offered its largely female membership opportunities similar to those found in pre-WWII women's organizations. Participants attended lectures, formed study groups, and lobbied for institutional change from the classroom to the school boards, and up to their municipal, provincial and federal governments. And much like their predecessors, the overwhelming majority of PTA and Home and School members were middle-class and Anglo-Saxon.<sup>53</sup>

The President declared the Federation "destined to become one of the most powerful forces in the Dominion." Though women's councils could still catch the attention of provincial politicians at the end of the 1950s, their effectiveness as political lobby groups began to erode.<sup>54</sup> Although the shift from women's councils to PTAs demonstrates that Canadian women did not abandon their social activist past, the Home and School movement did have important consequences for how that activism was directed. For obvious reasons, PTA's only attracted women with school age children. Single women, married women without children, and older women were all excluded, with the exception of those who occupied upper level administrative positions in provincial and

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<sup>53</sup>See Kari Delhi, "Women and Class: the social organization of mothers' relations to schools in Toronto, 1915-1940," PhD Dissertation, Philosophy, Ontario Institute for Studies in Education, 1988; Canadian Home and School and Parent-Teacher Federation, *Canadian Family Study 1957-1960* (Toronto: The Federation, 1960): 28.

<sup>54</sup>When Local Council of Women, Owen Sound, demanded a meeting with a representative of the Ontario Department of Reform Institutions with regard to a controversial new facility for young female inmates, the Director of Neurology and Psychiatry made arrangements to meet with them personally. Memo from Dr. van Nostrand to Deputy Minister of the Department of Reform Institutions, 26 June 1957. RG 20-16 File 143.15 "Miscellaneous, Religious Items, Martin Pinker, Chaplains 1957". (AO). See also Barbara Roberts, "Women's Peace Activism in Canada," *Beyond the Vote, Canadian Women in Politics* (Toronto: University of Toronto Press, 1989), 276-308.

national offices. The Home and School Movement also had a much narrower mandate than women's councils; the national office promoted a social and political vision that saw the home, community, church and school as equal partners in shaping the next generation. The Canadian Federation of Home and School and Parent and Teacher Associations (CFHSPTA) advocated 'good citizenship' programs that including helping immigrants learn their rights as Canadian citizens as well as providing outreach to isolated families, but overall it tended to be politically neutral and ideologically liberal in its outlook, concerned largely with the trials of growing up, the challenges of parenting and child safety issues.<sup>55</sup>

A defining feature of the Home and School movement in Canada was its wholesale embrace of child psychology. According to Kari Delhi, understanding and improving the mother-child relationship became the central focus of Ontario's PTAs as early as 1926, a phenomenon substantially assisted by the work of Dr. William Blatz and his colleagues at the University of Toronto's Institute of Child Study. The membership of the Home and School and Parent-Teacher Associations often overlapped with that of local women's councils, creating a cross-pollination of ideas and strategies, and the two groups often worked together on projects of mutual interest.<sup>56</sup> Thus, Home and School support for the mental health movement was already in place at war's end, and many baby boom parents turned to their local association and the child development experts who advised them for help.

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<sup>55</sup>ibid., June 1957, 13.

<sup>56</sup> See Katherine Arnup, *Education for Motherhood: Advice for Mothers in Twentieth-Century Canada* (Toronto: University of Toronto Press, 1994), 32-56.

Though the family had an important role to play in society, it could not go it alone, insisted the President of the Canadian Federation of Home and School and Parent-Teacher Associations (CFHSPTA). "Who cares for the family?" he asked:

It is not parents alone who must have a concern for the family, but society itself for its own sake must be aware of the inherent strengths of the family, of its vulnerability. *We need to reaffirm our belief in the family as an institution.* Parents, too, need to feel their sense of worth. We cannot say that is the responsibility of parents and pass by on the other side. The individual can do some things himself and that, in part, is our hope, but the family does not live in a vacuum. It needs help to solve its difficult situations.<sup>57</sup>

"Help" was expected to flow from volunteer organizations such as the CFHSPTA as well as the federal government, in part through protective legislation but also through its support for mental health and child development programs, support which was an essential part of the expansion of the welfare state.

The problems of the family were best solved by "intelligent" means, and the goal of the CFHSPTA was to teach mothers and fathers the skills they needed for raising well-adjusted children who could be entrusted with the safekeeping of the planet in the new, atomic age.<sup>58</sup> The parent education movement was part of the wider trend toward adult education fuelled by post-secondary programs for returning veterans, and reflected in the

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<sup>57</sup>"Let's View from the Hill Top" Mrs. J.D. Taylor's Presidential Address *Canadian Home and School* (Oct 1958).

<sup>58</sup>RG 29 Health Services and Promotions Branch, Health Services Directorate, health Consultants Program. Volume 308, file 435-5-8 "Mental Health Division: Canadian Federation of Home and School, Parent-Teacher Associations. 1944-1954." 1950 conference, "Parenthood - A Skill to be Learned" (NAC); see also "The Place of the PTA in Today's World", *Canadian Home and School*, 9 no. 1 (Sept 1949): 4-5. Author Mrs. John E. Hayes writes: "this is the most important time in our history to be a parent or a teacher because we are guiding the first generation of children who will face the alternative choice of developing peace over the world or witnessing the destruction of civilization."

rapid expansion of Canadian universities. For women raising children, attending lectures and reading parenting magazines and books, all of which were chock full of mental health information, was an important way to participate in continuing education programming. The Home and School movement was instrumental in giving parents, especially those geographically or economically unable to take formal courses, immediate access to a wide range of resources on parenting techniques. Of course, not every local group lived up to the ideals established at the head office – some earned a reputation for antagonizing teachers or for functioning as little more than a “coffee klatch”, but the overall goals and aims of the “Home and School Movement” was to make parent education accessible across the nation. Everyday women were not just the consumers, but were also the messengers of the mental health message.<sup>59</sup>

That everyday women had an important role to play was reinforced by groups like PAL, which emphasized women’s special interests as homemakers and full time parents. Using the same kind of “We can do it” rhetoric meant to inspire women to participate in the war economy a decade earlier, PAL’s narration of the group’s origins emphasized the founders’ status as “just” housewives. In their autobiographical account of the League’s genesis, PAL founders wrote:

Neither of we four Toronto wives who initiated the Parents Action League are what you might call unusual. We’re each about 30 years old. We’re happily married to husbands - a pharmacist, a furrier, an accountant, an insurance broker-

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<sup>59</sup>The Canadian Mental Health Association formally recognized the symbiotic nature of their relationship with the public when in the mid-1950s they shifted their public education strategy from “overcoming the problem of educating the public” to “participating with the public in their own education.” “Report of the ‘Changes in Practice’ Study” CFHSPTA (June 1955): 10.

who hate undue publicity. We all have young children.<sup>60</sup>

Though these hardly sound like a list of credentials, in the 1950s it was an unbeatable resume. Women who put their children's interests front and centre were the ideological heroes of the day.<sup>61</sup>

In popular journalist June Callwood's *Maclean's* feature article, the problem of sex crime was but a backdrop to a close look at what women could accomplish when they "put their minds to it." Callwood's profile of the League emphasized the founders' domestic roles and reinforced their image as icons of responsible citizenship through maternity, domesticity and community involvement. Callwood coined the term "the PAL lunch", referring to a quickly prepared mid-day meal that demanded little effort so that busy mothers might get on with the business of the day. In other words, shortcuts like canned and convenience foods were quite alright when your time is committed to socially redeeming tasks. Though mothers were discouraged from seeking paid employment, in the 1950s community work was encouraged, if not expected, from mothers at home with their children.<sup>62</sup> PAL members were not unique in their efforts to improve community and family life, they were just a particularly good example of how women could watch over the children, drop off the dry cleaning, pick up the groceries, balance the household budget and change the world. As Callwood put it, "Take a woman and a telephone and

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<sup>60</sup>*Liberty Magazine* (August 1955), 69.

<sup>61</sup>Ron Kenyon was at first assigned to cover the PAL story, but he also came to act as their media advisor. This particular article was co-written by PAL founders and Kenyon.

<sup>62</sup>Eugenia Kaledin, *Mothers and More: American Women in the 1950s* (Boston: Twayne Publishers, 1984), 86.



stir.”<sup>63</sup>

The Parents Action League reinforced the notion that women had a special role to play in shaping the nation’s future. Adopting the rhetoric of maternal citizenship, PAL argued that while the availability of effective psychiatric treatment for sex offenders was a first and important step, the real work to end the problem of sex deviancy began in the home. In *Liberty*, a “magazine for young families”, the founding members exhorted readers:

Elimination of the sex "deviate" is up to you; not by waging a war against him, but by fighting his sickness, bred in the home and nurtured by the turned back of society. Participating in this campaign is your duty to your children. It's your insurance that your child may play freely without fear; that he or she will not be named victim in tomorrow's headlines.<sup>64</sup>

By mid-century the notion that mothers had a moral duty to protect and promote their children’s physical health from gestation to adulthood was a deeply-entrenched North American ideal. According to historian Katherine Arnup, in the early part of the twentieth century sickness and death among children was more and more likely to be attributed to a mother’s maternal failures than to external forces such as poverty, overcrowded living conditions, or the lack decent medical care.<sup>65</sup> In the 1950s a mother’s duty expanded to include emotional safekeeping as well.

That PAL chose a gender-neutral moniker over “Mother’s Crusade”, Shvemar’s first suggestion, illustrates a wider North American trend away from women’s interests in

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<sup>63</sup>Callwood, “The Parents Strike Back”, 51.

<sup>64</sup> *Liberty Magazine* (August 1955): 15.

<sup>65</sup> Arnup, *Education for Motherhood*, 36.

favour of the interest of the family. In her study of the Canadian family and the state in the postwar era, Annalee Golz argues that the push toward domestic retrenchment forced the redefinition of marriage as egalitarian and an “equal partnership”.<sup>66</sup> Though the 1950s are often idealized as a period of traditional family living, postwar marriages were decidedly modern. No longer the seat of male authority, marriage was recast as a union of equals, and motherhood as the most important career a woman could hope to have. National rhetoric claimed that women’s best contribution to Canada’s democratic future was raising educated and responsible citizens, a view perpetuated in a variety of mass communication mediums, including the official organ of the CFHSPTA. Both writers and readers of *Chatelaine*, Canada’s national women’s magazine, were quick to insist on women’s primary role as wife and mother, and vilified women who turned their backs on “the ultimate responsibility.”<sup>67</sup> As Golz points out, familialism was a concept that served to validate women’s domestic role by casting her household and child rearing responsibilities as “‘on par with any other occupation’ and equal in value to paid labour,” but the effect was to submerge women’s interests within the interests of the family.<sup>68</sup>

As easily as women were praised for their role as social stabilizers, they also were

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<sup>66</sup> Annalee Golz, “Family Matters: The Canadian Family and the State in the Postwar Period,” *left history*, 1 no.2, (Fall 1993): 9-49; see also Adams, *Trouble with Normal*, 32-35 and Gleason, *Normalizing the Ideal*, 57-62.

<sup>67</sup> Valerie J. Korenick, *Roughing it in the suburbs : Reading Chatelaine Magazine in the Fifties and Sixties* (Toronto: University of Toronto Press, 2000). For similar social attitudes in the US see Elaine Tyler May, *Homeward Bound: American Families in the Cold War Era* (New York: Basic Books, 1988).

<sup>68</sup> Golz, “Family Matters”, 15-16.

blamed for social ills. Accusations that mothers were corrupting or interfering with their children's emotional progress were made as early as 1942 in American author Philip Wylie's best-seller, *Generation of Vipers*.<sup>69</sup> Calling the phenomenon "Momism", Wylie argued that with husbands away overseas, the American mother was suffering from an excess of emotional feeling that was thwarting the psychological development of the nation's children. Postwar suburbs were described as incubators for "momism": women were not only home all day, stranded in the suburbs with nothing more to do that direct all their energy toward their children, but the suburban father was absent from the home for longer stretches of time owing to the long commute to and from the downtown core.

The problem was seen as especially acute with respect to sexual deviancy. In an interview with the *Toronto Daily Star*, Dr. Manfred S. Guttmacher, a Maryland-based criminal court judge and leading North American expert on sex criminals explained:

In most cases, sex crimes are basically the fault of parents. The main reason for a sex offender's attack on a child or a woman usually lies deep in his own youth. His home life, the amount of affection he received and the attitude of his parents towards sex - each of these factors can bring him one day to the disaster of committing a serious sex offence.<sup>70</sup>

Canadian experts were no different when it came to laying blame. In the first of a four part series on sexual deviancy that ran during Health Week, Dr. John Rich claimed that behind every sex deviant:

we often find a mother whose own problems about sex have driven her to destroy

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<sup>69</sup> Philip Wylie, *Generation of Vipers* (New York: Rinehart & Co., 1942) cited in Elaine Tyler May, *Homeward Bound*, 74.

<sup>70</sup>23 Jan 1956 *Toronto Star*, "Home Basic Factor in Sex Perversion Seen Parents' Fault"

in her son all self-respect and self-confidence. So who is the deviate-the man or his mother? She may be a devout women who has never committed a crime in her life. It is evident that when we talk of deviation we should include far more people than the criminals....<sup>71</sup>

Family-focussed moms were not always the target of ‘experts’ like Rich. In the interwar years, it was mothers who spent time *away* from the home, pursuing either political, career or educational goals at the expense of her children’s well-being, that were the target of criticism. Responding to an article by the post-WWII educated director of the Forensic Clinic R.E. Turner, past director P.J. Thomson suggested that an additional cause of homosexuality was the “decline of the status of the father” whose commute from the suburbs kept him from seeing his children, and more importantly, left them to be raised by the “educated and emancipated modern American female.”<sup>72</sup> Thompson’s suggestion that the problem with the contemporary mother was that she was emancipated and modern reflects his interwar youth, when the archetypal “bad mother” was a “New Woman” whose interests extended beyond the domestic realm and into the public world of entertainment, consumerism and politics. The “bad mother” of the 1950s was the exact inverse: trapped in the suburbs without a ‘helpmate’ or any meaningful occupation other than child rearing, she smothered her children with an excess of love and attention. As in the US, the idea that mothers interfered with their children’s “natural” development was a

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<sup>71</sup>*Toronto Telegram*, 26 Jan 1956. John Rich’s views were widely shared among his contemporaries. It should be noted that in this period, parents were not only held responsible for sexual deviancy but were blamed for the full spectrum of ‘anti-social’ behaviours their children engaged in. Gleason, *Normalizing the Ideal*, 70-72, 86-87.

<sup>72</sup>P.J. Thomson, “Response,” *Canadian Psychiatric Association Journal* 9 no.6, 540-541.

staple of the expert advice industry in Canada as well.<sup>73</sup> The Director of Parent Education at the Institute of Child Study, Karl S. Bernhardt, warned CFHSPTA members that parents should “develop attitudes towards their child which will enable them to love and enjoy him without either hindering his [sic] development towards maturity or fostering undisciplined licence.”<sup>74</sup>

As the 1950s wore on, some experts began to pay more and more attention to the impact of fathers on childhood sexual development.<sup>75</sup> In a 1961 *Maclean's* article, Daniel Paitich, a senior psychologist at the Forensic Clinic and a specialist on the causal role of parents in giving rise to male homosexuality explained:

If it is possible to make one large generalization about [sex deviates]... it's this: their relations with their fathers determine *whether* they will be deviates; the relations with their mothers determine what *sort* they'll be.<sup>76</sup>

Four years later Paitich placed even more emphasis on the paternal influence. “Momism is not so important a factor in maladjustment as it was once thought to be,” he told a *Toronto Star* journalist,

He says the father plays a crucial role as “rescuer” no matter how bad the child's relationship with the mother. “I'd predict there'd be no sexual problem if a boy saw his father as an admirable, competent figure,” says Paitich. “If the father is

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<sup>73</sup>CBC Broadcast, “The Mother Who Saw Herself” *Canadian Home and School* 24 January 1954. On “over-mothering” in the Canadian psychological literature see Gleason, *Normalizing the Ideal*, 62-67.

<sup>74</sup>CHSPTF, “Parent Education and Mental Health” *Canadian Home and School* 14 (4 April 1955): 38-39.

<sup>75</sup>Gleason, *Normalizing the Ideal*, 68-69, 71-72.

<sup>76</sup>Franklin Russell, “Clinic to curb sex crimes before they happen,” *Maclean's* (23 September 1961), 418-424.

negative, cold and detached, the boy is more likely to become sexually maladjusted later in life.”<sup>77</sup>

Whether the fault was placed on the father or the mother, the quality of parents’ relationship with each other and with their children, and the ease with which they filled their role as “mother” “father” and as “wife” and “husband” was decidedly a measure of the child’s mental, emotional, and sexual development.

The behaviour of North American parents was thrust under the psychological microscope, and articles in popular women’s and parenting magazines repeatedly instructed their readers that a happy and “sexually healthy” marriage was an essential ingredient in the normal development of a child.<sup>78</sup> However, even the qualities that defined a “happy” and “sexually healthy” marriage were narrowly prescribed according to modern scientific ideals which permitted and even encouraged pleasure so long as it occurred within ‘legitimate’ marital relationships and accordance with ‘normal’ gender role behaviour.<sup>79</sup> Moreover, the “wholesome attitude toward sex” that leading Canadian psychologist Samuel Laycock described as essential to the development of a “stable and mature individual” was characterized by an ability to talk about sex frankly, plainly and

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<sup>77</sup> *Toronto Star*, 4 Aug 1965, 24. Parental influences on sexuality was Paitich’s area of specialization. See Daniel Paitich, “Attitude toward parents in male homosexuals and exhibitionists,” PhD dissertation, University of Toronto, 1964.

<sup>78</sup> May, *Homeward Bound*, 116-117; Gleason, *Normalizing the Ideal*, 80-118.

<sup>79</sup> See Jennifer Terry, “‘Momism’ and the Making of Treasonous Homosexuals,” eds. Molly Ladd-Taylor and Lauri Umansky, *“Bad” Mothers: The Politics of Blame in Twentieth-Century America* (New York, New York University Press, 1998), 169-190.

easily with an emphasis on its biological, not erotic, components.<sup>80</sup>

Critics of the mental health approach agreed that the home was where social problems took root, but maintained that sex crimes and sexual deviancy was the result of a loosening of morality caused by parental negligence. For example, after the murder of a 13 year old in 1956, Metro Toronto City Council launched an investigation into the feasibility of creating a curfew for children, but the proposal was quickly dismissed in a *Toronto Star* editorial. "The responsibility of keeping children off the streets at night rests with their parents, not the police," they argued. Parents who supported a curfew were shirking their responsibilities: "The first line of defence... is the home. The first line in the home is parental discipline." The reported rise in sex crimes was held up as evidence of the degraded state of modern society, and blame was laid at the feet of parents whose disastrous handling of their children was "aided and abetted by shallow-pated 'child psychologists'."<sup>81</sup>

The call for a return to more traditional family arrangements was echoed by at least one letter writer to the *Star* who suggested that working mothers were the culprits:

Do you not think that it should be illegal for both parents to work? While their boys and girls carry on in all ways? Do you not think a mother's place is in the home, training the family while the father works? By her neglect of her family, is

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<sup>80</sup>S.R. Laycock, "Parents Share in Training for Citizenship" *Canadian Home and School* 12 no. 4 (March-April 1953): 4-6. See also the *London Free Press* report on CFPL-TV panel discussion of sex deviancy. Dr. George Jenkins, director of London's Mental Health Clinic, "urged" parents to set up study groups to help them overcome their "misgivings or fears of discussing sex."

<sup>81</sup>"Editorial" *Toronto Daily Star*, 24 January 1956.

she not allowing them to grow up as best as they can on the streets?<sup>82</sup>

Though public opinion was clearly of the mind that women's participation in the paid labour market was a fixture of postwar life, many people agreed with child psychologists who maintained that a mother with young children who "chose" work over full time homemaking was robbing her children of a happy and emotionally satisfying life. Yet ironically it was the full time mother who were most likely to be blamed for creating sex deviates. Claims that working mothers were responsible for sex crimes were rare.

### *Widespread Support*

Citizens' and church-based action groups were a staple of postwar political culture.<sup>83</sup> Grassroots campaigns against comic books, paperback novels, Hollywood movies and magazine pornography dotted the American landscape. Similar campaigns were waged in Canada, but on both sides of the border they failed to win over either enough legislators to invoke censure or enough citizens to stage effective boycotts.<sup>84</sup> As D'Emilio and Freedman explain, the tendency of such groups to "ascribe all manner of evil to sex" failed to appeal to the American middle classes whose views on sexuality were growing increasingly permissive.<sup>85</sup>

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<sup>82</sup> *Toronto Daily Star*, 26 January 1956: 6.

<sup>83</sup> John D'Emilio and Estelle Freedman, *Intimate Matters: A History of Sexuality in America*, 2<sup>nd</sup> Edition (Chicago: University of Chicago Press, 1997), 283.

<sup>84</sup>For an account of censorship campaigns aimed at comic books and paper back novels in Canada, see Adams, *Trouble with Normal*, 136-165.

<sup>85</sup> D'Emilio and Freedman, *Intimate Matters*, 284.



Whether or not views on sexuality were more permissive, they certainly were more modern. The doctrine of “modern sex” had its roots in the turn of the twentieth century, but in the 1950s its gained a foothold in popular culture, and became widely accepted as a topic for “intelligent” public discussion, and “puritans” who harboured out-dated Victorian attitudes were not only ridiculed, but blamed for causing sex problems.<sup>86</sup> In 1947, for example, a newspaper editorial described the recent Toronto showing of a “hygenic” film titled *Mom and Dad*, “which portrayed scenes of illegitimate birth, social diseases, and the results of immoral conduct” as an indication that “we have come a long way since Victorian days.” The editor admonished adults who “by their shame-faced conduct imply that sex should be a smirking, secret thing scrawled on walls and taught in the back seat of automobiles. ...The modern trend,” he editor declared, “is towards airing of the subject in an intelligent fashion....”<sup>87</sup> In an article in Canada’s most popular national news magazine, psychologist J.D. Ketchum warned that “Prude is Father to the Pervert.” Ketchum claimed that parents who failed to have open and honest discussions about sex with their children were condemning their children to ignorance. Children will learn sex on the streets and in the schoolyard where erroneous information is rampant, he warned. Where it was once considered both improper and indeed even corrupting to discuss matters pertaining to sex, it was suddenly quite the opposite, and those who refrained

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<sup>86</sup>Jennifer Terry, *An American Obsession: Science, Medicine and Homosexuality in Modern Society* (New York, 1999); Paul Robinson, *The Modernization of Sex: Havelock Ellis, Alfred Kinsey, William Masters and Virginia Johnson* (New York: Cornell UP, 1989).

<sup>87</sup>24 Oct 1947, *The Advertiser* (New Toronto).

from such discussions were ‘prudes’ at best, and at worst, were held responsible for creating the socio-sexual problems that would follow.

While in 1947 the object of ridicule might be those hold-overs from the Victorian age, by the mid-1950s it was the “hysterical” woman who was caricatured as the antithesis of the modern approach. With mental health experts in firm control of what defined “intelligent discussion about sex” women whose expertise on the topic was limited to their own experiences were pushed to the margins of the public conversation. However, women were not the only ones excluded. During the hearings of the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath, male witnesses whose opinions and recommendations were based on experience with victims rather than textbook psychology were equally marginalized in the Commissioner’s deliberations. In this way, the modern scientific approach was gendered male. Witnesses who did not have medical credential but who spoke ‘only’ from experience, including those whose experience and expertise was gleaned from providing services for victims of interfamilial violence, were gendered female and peripheral to the debate. At least part of PAL’s success was in their ability to straddle these lines .

For those who would organize politically around sexual issues, the assumption that women were hysterical when it came to sex crimes was a major obstacle. Indeed, in her history of moral regulatory campaigns in pre-WWII New York, Andrea Friedman shows that “moral authority” fell out of public and political favour in the 1930s and 1940s.<sup>88</sup>

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<sup>88</sup>Andrea Friedman, *Prurient Interests: Gender, Democracy and Obscenity in New York City, 1909-1945* (New York: Columbia University Press, 2000): 155-182.

Maternal politics, in other words, won fewer proponents than they had in the earlier decades of the twentieth century. PAL advanced what might be termed an “enlightened maternalism” as “citizen-mothers”. By surrounding themselves with, and, perhaps more importantly, by speaking in the language of, psychiatrists and psychologists that made up their Scientific Advisory Committee, PAL struck a balance between the appeal of populist maternal indignation and the legitimacy of scientific “modernity.” Speaking at PAL’s second annual meeting in 1956, SAC member and Head Psychiatrist of Toronto’s Juvenile Court Clinic, J.D. Atcheson applauded the group for realizing that “action based on fear alone is not in and of itself a sufficient answer to the problem.... Although the fear is still present in all of us as parents, it has now been complemented by sound, scientific, enquiry” conducted in an “objective” and “detached scientific manner.”<sup>89</sup> Though PAL formed an advisory committee because they believed the treatment approach was the best hope for reforming sex criminals, they effectively silenced their critics by inviting them on board. Not surprisingly, dedicated professionals like Atcheson were delighted to have a group of “concerned parents” advocate their profession’s remedies.

For all their attempts to appear modern, PAL spent a certain amount of time and effort distinguishing themselves from early twentieth century empire-building “purity” campaigns. At the League’s second annual general meeting, Shvemar told the crowd:

Some called us ‘The Do Gooders’, others dubbed us “The Ladies Against Sex” and some “The Ladies of the Purity League”. One gentleman playfull[y] envisioned our expansion to darkest Africa. He said he sees the directors of the League along the Congo riding elephants with native pygmies marching along - carrying banners

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<sup>89</sup>J.D. Atcheson, “The Young Sex Offender” Parent’s Action League Annual Meeting, King Edward Hotel, Toronto, May 29, 1956.

- "Join our League of Purity". He even prepared a song for the cause....<sup>90</sup>

Though Shvemar conceded that their "topic lends itself to ... playful teasing" and claimed that "we learned to laugh at ourselves with our teasers", she refused to be derided when it came to conducting League business.<sup>91</sup> One unlucky psychiatrist responded to Shvemar's request for medical information with the glib question "Are you for sex or against it?" to which she sarcastically replied, "I'll call an executive meeting and get back to you..."<sup>92</sup> PAL was determinedly modern in their approach, and refused to be characterized as anything less than intelligent, thinking and caring parents informed by "objective" and "detached" scientific enquiry.

The tremendous popularity of the idea that psychiatry could cure sexual deviancy illustrated the heady optimism of many postwar North Americans who shared a "re-awakened faith not only in the value of science... but also in the dignity of the partnership between the scientist and the layman, the citizen." In his official report on the Fifth International Congress on Mental Health, University of Toronto Professor William Line observed that "there appears to have been demonstrated the reality of a common cause – man himself and his destiny, not merely his 'welfare' in the protective sense, but man as he can and needs to become."<sup>93</sup> This optimistic view defined PAL's 'where there is will, there

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<sup>90</sup>President's Address. "Second Annual Meeting of the Parents Action League, May 29, 1956", Bertha Shvemar Personal Papers.

<sup>91</sup>Ibid.

<sup>92</sup>Callwood, "The Parents Strike Back", 9.

<sup>93</sup>RG 10-107-0-931 Canadian Psychiatric Association, 1954-1955. (AO).

is a way' approach to overcoming the problem of sex crime and deviation. Major Canadian health organizations like the Canadian Cancer Society and the Canadian Mental Health Association used war-like rally cries in their speeches, press releases and promotional literature; PAL too deployed these familiar metaphors. In its first and only publication, the League wrote:

We believe that when a sufficient segment of mankind decides to do something it usually gets it done. An atom bomb was built and the Salk vaccine produced because, in the one case, large numbers of people decided they were going to win a war, and they provided the money that enabled a government to build an A-bomb; in the latter case, thousands of selfless volunteers collected assistance from millions of volunteer givers in the March of Dimes campaign. Mankind has made up its mind to beat polio. And it did.... If similar determination could be aroused to conquer the problem of the sex criminal, there is very little doubt that progress would be made in that field too.<sup>94</sup>

Faith in humankind's ability to conquer massive social problems was inspired by the ideals of responsible, democratic citizenship. According to PAL's Scientific Advisory Committee, science was at the ready, restrained only by the lack of political will, something Shvemar and her colleagues were determined to inspire.

Given the high profile PAL lent to the push for a psychiatric treatment program for sex offenders, the League had little difficulty recruiting leading experts to their organisation. By the time the group held its first annual general meeting at Toronto's King Edward Hotel in June of 1955, the Scientific Advisory Committee was a virtual *Who's Who* in Ontario politics, academe and mental health, and included such luminaries as William Blatz and Reva Gerstein of the Institute of Child Study, J.D. Griffin, founding

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<sup>94</sup>"The Strange One: A Report from the Parents' Action League", pamphlet, printed by the Telegram, Toronto, [1960?] p. 5.

member of the Canadian Mental Health Association, and, of course, Kenneth Gray, who had a long-established career both at the University of Toronto and in the Department of Health as a psychiatrist with a degree in law. Gray was but one of a number of University of Toronto faculty members who volunteered their time and knowledge to the Board, along with J.A. Edminson, a member of the Queen's Council, former president of the Canadian Penal Association and Assistant to the Principal of Queen's University. Both the Ontario Conservative and Liberal parties were represented on PAL's Board of Directors by M.P.P.'s Alan Grossman, Bill Stewart, and Donald MacDonald. Also on board were two representatives of the Toronto branch of the Kiwanis Club, a community service organization whose interest in the sex crime issue began as early as 1947 when they provided lump sum funding to a team of psychiatrists and criminologists for a study into the extent and nature of the problem.<sup>95</sup> The Kiwanis men joined with the express purpose of making the League a national organization.<sup>96</sup> Though they were ultimately unsuccessful, the Board of Directors assigned a provincial organizer and at least three independent branches formed in London, Hamilton and Windsor. PAL also piqued the interest of at least one American border city: in 1956 Shvemar and Dorfman were invited to visit Detroit at the invitation of a group of community leaders interested in starting up a similar organization.<sup>97</sup>

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<sup>95</sup>Committee on the Sex Offender, "Interim Report" unpublished photocopy (Toronto: Canadian Penal Association June, 1948). RG 10-107-0-784 (AO).

<sup>96</sup>Bertha Shvemar, Personal Diary, 30 September 1955.

<sup>97</sup>Bertha Shvemar, 1998.

### *Making Good Copy*

People in Detroit would never have heard of the Parents Action League were it not for the news media. In his original formulation, Stanley Cohen placed considerable emphasis on the role of the media in creating and sustaining moral panics.<sup>98</sup> Others have since disagreed, arguing that “the media does not produce so much as ‘reproduce and sustain’ the dominant interpretations” of the news.<sup>99</sup> Both are compelling arguments: clearly the news media did not construct the criminal sexual psychopath. In the 1950s journalists simply turned to psychiatrists as well as police investigators when distilling meaning from violent crime.<sup>100</sup> Together, however, reports from the police and psychiatrists converged to create the illusion of a menace of epic proportions: psychiatrists claimed that rather than there being a single, crazed killer on the loose, there were virtually hundreds of sexual deviants living in every city. Police responses to local sex crimes reinforced this perception of a widespread menace. As we saw in chapter two, local forces told the media that they were “rounding up all known sex deviants” for questioning which in practice amounted to little more than conducting raids on known homosexual ‘haunts’.

For their part journalists helped foster the illusion that violent sexual assaults on

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<sup>98</sup>Hunt, “Moral Panic”, 634.

<sup>99</sup>Stuart Hall et al., *Policing the Crisis: Mugging, the State, and Law and Order* (London: Macmillan, 1978) cited in Hunt, “Moral Panic”, 634.

<sup>100</sup>Elise Chenier, “Seeing Red: Immigrant women and sexual danger in in Toronto’s Postwar Daily Newspapers,” *Atlantis: A Women’s Studies Journal*, 24.2 (Spring 2000): 51-60.

children were frequent events, a claim unsubstantiated by statistical accounts.<sup>101</sup> As we saw earlier, Judy Carter was not sexually assaulted, yet respected writers like June Callwood continued to suggest that she had been murdered by a sex deviate well after the “facts” were known.<sup>102</sup> In another feature on sex criminals, journalist Helen Beattie opened with descriptions of what today we call sexual harassment – “a pinch in an office building elevator, a furtive hand on a crowded streetcar” - and made the rather extraordinary claim that “frequently these manifestations take violent forms.”<sup>103</sup> However misleading, articles such as these were instrumental in disseminating scientific, psychiatric and psychoanalytic ideas about sexual deviancy.<sup>104</sup>

While hard numbers are impossible to ascertain, it is clear that the sex crime panic

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<sup>101</sup>Although both mental health experts and the police agreed that sex crime was as a rule under-reported, the rate of reporting sex crimes did not rise in this period, even though the need to report crimes was part of the discourse of the sex crime panic. See chapter two.

<sup>102</sup>See especially Callwood’s dramatic re-telling of the disappearance of Carter, writing “it was assumed that the little girl had been the victim of ... a sex deviate” and “the apparent nature of the crime touched off a wave of revulsion...” At no time does she write that these assumptions were false. “The Parents Strike Back”, 7. PAL also kept this false perception alive by consistently narrating the League’s history as beginning with Carter’s disappearance. Though it is true that it was this event, combined with an increased awareness of the problem of violent sexual assault in general, compelled Shvemar to form a citizen action group, using the Carter death in such a misleading manner contributed to the generalized sense of a growing threat against children’s safety.

<sup>103</sup>Beattie, “The sex criminals”, 10.

<sup>104</sup>Practicality rules that I have limited my research to the print media. However, radio and television were both active participants in the story. Each year the Forensic Clinic Annual Reports list the number of media interviews its staff gave, and interviews for radio and television were as common as those for print. See *Forensic Clinic Annual Reports*, 1957-1965.



pump was primed by US magazine and other media reports. J. Edgar Hoover, the Director of the Federal Bureau of Investigations, is credited with launching the “war on sex crime”. Facing stiff competition from the Federal Bureau of Narcotics, Hoover was anxious to redirect public support and federal funds to his own Bureau. Just before the US became involved in WWII, Hoover penned the article “How Safe is Your Daughter?” in which he claimed that sexual assaults on young girls were reaching epidemic proportions. The war redirected attention elsewhere, but Hoover took another stab at it and reprinted the same article under a slightly different title – “How Safe is your Youngster?” – in 1955.<sup>105</sup> In it, he urged parents to organize into pressure groups to urge their state government to pass sex psychopath legislation. Of the many events that led PAL president Bertha Shvemar to form the group, Hoover’s was one of them.<sup>106</sup>

Canadians were served an intermittent diet of information about sexual deviation in their own national and local presses from 1947 until roughly 1957, though sporadic stories did appear after that time.<sup>107</sup> The three largest national magazines covered the topic in its earliest days with the publication of “Guiding Sexual Attitudes” in *Canadian Home Journal*, “We the People vs. Sex Criminals” in *Chatelaine*, and “Truth About Sex Criminals” in *Macleans*. Leading experts recognized the centrality of the press in

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<sup>105</sup>Jenkins, *Moral Panic*, 72 .

<sup>106</sup>*Toronto Telegram*, 27 Jan 1956.

<sup>107</sup>For example, in 1961 the *Globe and Mail* ran a four-part series on sexual deviation, and in 1963 well-known journalist Robert Fulford penned a feature on sex offenders and the lack of treatment programs in prison.

educating the public about the scientific study of sex.<sup>108</sup> According to University of Toronto professor Dr Daniel Cappon, the press could “render the highest public service by maintaining a steady and even pressure of public interest in this and other mental and human problems.”<sup>109</sup> Even Ontario’s Department of Reform Institutions used a *Saturday Night* article on sexual deviation to distribute to institutional staff for educational purposes.<sup>110</sup>

The educative function of the press aside, the bottom line interest in generating profits, combined with the proven aphorism “sex sells”, was instrumental in PAL’s success. In 1957 Shvemar wrote to the Department of Reform Institutions’ Minister John W Foote suggesting that he read “Protecting Children Against Sex Offenders” in the most recent issue of *Ladies’ Home Journal*, which detailed the efforts of “a group of aroused Mothers” in Omaha. “It so closely parallels the work being done in our organization here in Ontario,” wrote Shvemar, “that we feel this subject covered by a magazine of national

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<sup>108</sup> “Guiding Sexual Attitudes” *Canadian Home Journal*, 42 (April 1945): 14-15, 38; “We the People vs. Sex Criminals” *Chatelaine*; “Truth About Sex Criminals” *Macleans* (January 1947): 12, 46-7.

<sup>109</sup> *Toronto Telegram*, 27 January 1956. Dr Daniel Cappon’s area of expertise was sensory perception. In the early 1960s he was offered a book contract to write *Toward an understanding of homosexuality* (Englewood Cliffs, N.J : Prentice-Hall, 1965). Edward Turner, interview by author, Toronto, ON, tape recording, 1999.

<sup>110</sup> Kenneth G. Gray, “Sexual Deviation: Problem and Treatment” *Saturday Night Magazine*, (26 November 1955): 9-10. This article provided thumbnail sketches of wide variety of “deviations” from the norm, familiarising readers with terms like “fetish” and “sado-masochism”. For the request to order copies for distribution within the DRI, see RG 20-16-2 113.2 “General Mr Potts and Dr. van Nostrand”, Memo to Purchasing Officer, 7 December 1955. (AO).

prominence can enhance the work of P.A.L.”<sup>111</sup> By the time Shvemar penned that letter to Foote, PAL had already received significant local and national media coverage. Family friend and owner of the *Toronto Telegram* John Bassett was one of the first people Shvemar phoned when she and Hahn decided to form an action group. The “*Tely's*” coverage of the League from their inception until their General Meeting four months later in June was extensive and regular.<sup>112</sup> PAL was a *Telegram* exclusive: Bassett assigned science and medicine reporter Ron Kenyon to not only report on PAL activities, but to act as their advisor in shaping their public image.<sup>113</sup> It was Kenyon, for example, who instructed them to come up with a name for their organization.<sup>114</sup>

As a media story, PAL could not have been more palatable. Three attractive, middle class mothers fighting a noble battle against a social demon and who simultaneously reinforced hegemonic sex and gender roles represented the highest ideals of postwar culture. According to Ron Kenyon, PAL became the *Toronto Telegram's* *cause celebre* because, he explains, they enabled the paper “to publish without criticism endless stories about sex crimes.”<sup>115</sup> Much like today, the media was publicly condemned

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<sup>111</sup>RG 20-15 Ac 23851 TB 6 “Parents Action League of Ontario”, Letter to Foote, 18 April 1957. (AO).

<sup>112</sup>Though Shvemar’s connection to the Basset is worth noting, the *Telegram* was already getting actively involved in the issue from a populist standpoint. Shvemar contacted and met Evelyn Dorfman, the third founding member of the League, after the *Telegram* printed a copy of Dorfman’s petition asking the government to take immediate action in the sex crime problem. See *Toronto Telegram*, date, page.

<sup>113</sup>Ron Kenyon, telephone interview by author, Vancouver, BC., 29 April 1999.

<sup>114</sup>Callwood, “Parents Strike Back”, 9.

<sup>115</sup>Kenyon, 1999.

for covering sex crimes to excess; only months after the murder of Judy Carter, for example, delegates at the annual meeting of the National Council of Women criticized newspapers for “the unwholesome exploitation of sex through detailed reports of murders, suicide and other horrors,” and passed a resolution urging the Canadian Daily Newspaper Publishers Association to “curb sensationalism.”<sup>116</sup> By framing sex crime stories around the activities of a citizen’s action group, the Telegram hoped to absolve itself of such unsavoury charges. The League’s Directors and its Scientific Advisory Committee were consulted by a wide range of community groups on a regular basis, and welcomed the many opportunities to provide commentary and analysis of sex crimes for the news media. PAL became a household name almost overnight, and Kenyon “became as well known in Toronto as Walter Cronkite.... Everyone was reading those stories,” Kenyon claims. For that reason, and because PAL was based in Toronto where Canada’s English-language national print media was located, the League was catapulted onto the national stage first with Callwood’s feature in *Macleans*, followed by the League’s own autobiographical story in “Canada’s young family magazine”, *Liberty*, and finally in the *Canadian Home Journal*. As we saw earlier, the media and PAL together crafted the image of “citizen mothers”, women who embodied the postwar feminine ideal of intelligence, modernity, familialism, volunteerism, democracy, tolerance and anti-authoritarianism.

That PAL was as much of a media story as were sex crimes is amply demonstrated by the fact that they received comparably little coverage in the Tely’s main competition, the *Toronto Daily Star*. The *Star*, the less sensationalist of the two papers, actively

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<sup>116</sup> *Toronto Telegram*, 18 May 1955.

participated in the debates and dialogue about the sex crime panic and played the role of responsible corporate citizen by organizing a Citizen's Forum on Sex Offenders in January 1956, right after the Cadieux murder. The *Star* invited experts to speak, government officials to attend, and its readers to mail in questions they want answered by the panel. In the week leading up to the forum, the paper ran a series of articles exploring the subject of sex deviation, research and treatment options here and around the world. Remarkably, over 2,000 residents made the trip to downtown Toronto's Massey Hall to hear four psychiatrists – two Canadian and two American – answer what today we would consider basic questions about human sexual variation. The event affirmed the views of both Ron Kenyon and PAL: people were reading the stories and were highly receptive to psychiatric ideas about human sexuality.

Because medical experts did not think it useful to isolate any one type of sexual deviation but instead preferred to speak more broadly about the full range of abnormal sexual behaviours, the medical construction of the 'sex psychopath' was readily conflated with the cultural construction of the 'stranger in our midst' in public discourse about sexual danger. Despite the insistence of many psychiatrists and other sex experts that the first step forward was to separate harmful sex offences from the merely "nuisance"-type crimes, in the 1950s journalistic discussions about sex deviation and violent sex crime went hand in hand. A typical example is Callwood's 1955 article in which she asks "What causes a sex deviate?" The question "What goes wrong in a male to cause him to choose his own sex?" was buried in a paragraph of questions about why some men rape, why some men molest "moppets of five and sex", and why some fathers "desire their own

daughters.”<sup>117</sup> Yet an examination of the southern Ontario news coverage reveals that the key concern of everyday citizens was not the problem of sex deviation but rather inappropriately lenient sentences for men convicted of sexual assault. For example, at the same time London’s Susan Cadieux was found frozen in the snow, the press reported that 28 year old William Backshall of St. Catharine’s was caught molesting two girls, aged seven and eight. Backshall received only a suspended sentence.<sup>118</sup> The judge agreed with the expert psychiatric witness that Backshall’s problem was cured by “not drinking alcohol.”<sup>119</sup> Shortly after the *Globe and Mail* reported on a similar case in which a man found guilty of molesting three boys aged 6, 7, and 8 was only fined because, the Magistrate argued, prison would do little good. He advised the perpetrator to “move from the district as soon as possible.”<sup>120</sup>

Readers were outraged by these judgements, and in letters to provincial and the federal government as well as to local and national newspapers everyday parents demanded that sexual assaults against children be taken more seriously.<sup>121</sup> For example, at the height of the first ‘wave’ of the sex crime panic, the owner of a Hamilton construction company wrote to the Ontario Minister of Health complaining that the local postman

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<sup>117</sup>Callwood, “The Parents Strike Back”, 48.

<sup>118</sup>10 Jan 1956 *St Catherine Standard* “Assault Case Here Brings Protests Suspended Sentence In Indecent”.

<sup>119</sup>10 Jan 1956 *Toronto Telegram* “Tiny Girls Assault Verdict Blasted”.

<sup>120</sup>18 January 1956 *Globe and Mail*.

<sup>121</sup>RG 4-2 Attorney General, file 71.5 “Criminal Sexual Psychopaths” and file 80.1 “Criminal Sexual Psychopaths and Sex Offenders 1956”. (AO).

attempted to sexually assault his five-year old daughter. In return for a guilty plea, he received a suspended sentence. "This struck me as being a very peculiar way to deal with a person who might easily have killed the child, or damaged her physically and certainly mentally for the rest of her life."<sup>122</sup> Indeed, postwar parents had little faith in the criminal justice system's ability to deal with such cases in a judicious and sensitive manner. "What we women and children need is protection from the judges," complained a reader of a local Toronto daily who argued that sentences for sex crimes were too light.<sup>123</sup> In his study of the sex crime panic in Miami, Fred Fejes found that in response to the kidnapping and murder of a local girl, the *Miami Herald* ran a feature that asked its readers, "What Would You Decide? If you discovered your child had been molested by a sex pervert would you press charges against the molester?" Of the 1,200 replies they received, a full third claimed that they would not.<sup>124</sup> When in 1957 the Toronto Parent's Action League surveyed 364 of its own members, they discovered that of 75 who indicated that at least one family member had been sexually assaulted, only 26 reported the incident to the police.<sup>125</sup>

Throughout the 1950s localized campaigns by parent-teacher and other citizen's

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<sup>122</sup>RG 10-107 File 224 "Sex Criminals 1947-1954", Letter, 10 November 1947. (AO).

<sup>123</sup>*Toronto Telegram*, 30 March 1955, 5.

<sup>124</sup>Fejes, "Murder, Perversion, and Moral Panic", 325-326.

<sup>125</sup>"President's Address" Parent's Action League of Ontario Annual Meeting, 13 June 1957, Bertha Shvemar Personal Papers. See also Bernard Oliver Jr., *Sexual Deviation in American Society* (New Haven, Conn.: College and University Press, 1967), 25-26.

action groups across Canada and the US tried to link reporting sex crime with civic responsibility. Crown Prosecutor Thomas Grantham Morris praised the parents of a child victim of sexual assault for having a “very commendable sense of public duty, not protecting the little girl in any way, went to the police with the whole thing and had the little girl give her evidence.”<sup>126</sup> In the 1950s there remained a significant number of parents who did not regard the police and the courts as a reliable, necessary, or appropriate tool for dealing with sexual assaults against their children. More research needs to be undertaken to show if the same holds true in other Canadian and American towns and cities. In the meantime, citizen’s responses and PAL’s main activities suggest that in the 1950s, the cultural preoccupation with the sex crime problem cannot be fully explained by the ‘moral panic’ model. While it is clear that the sexual psychopath and the sex deviate were the ‘folk devils’ of postwar Canada and the US, we should not make the mistake of overlooking other important social trends unfolding at the same time. The public consistently demanded that sex crime be taken more seriously, and that more meaningful state-imposed consequences be enforced. It was a consistent and logical response to individual assaults.<sup>127</sup>

Finally, while there is little doubt that the media was a critical player in “manufacturing consent,” the public did not always read the news the way journalists,

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<sup>126</sup>*Transcripts*, 670-671.

<sup>127</sup>Jenkins also addresses outrage toward sex offences as a logical response, and asks not why do concerns over sex crime become heightened at certain times, but instead suggests that given the seriousness of the problem, why do concerns ever dissipate?



photographers and editors intended.<sup>128</sup> Within days of the death of five year-old Susan Cadieux, yet another murder took place in Toronto. Linda Lampkin, a 14 year-old girl who took dance lessons, was “popular with the boys”, looked older than her age, belonged to a “girl gang” named the Four Hustlers and wore an embroidered jacket that said so, was murdered by the married man she was reputedly dating.<sup>129</sup> After her body was found at the side of Commissioners Road near Toronto’s industrial lakeshore, the *Telegram* ran a full page of portraits of Lampkin in which she appeared in true movie star-style as a bare-shouldered, lipstick-wearing seductress. The *Toronto Telegram* clearly aimed to suggest that Lampkin was a sexually precocious teen who was looking for trouble, and found it.

The public rejected the *Teley’s* 'spin' on the Lampkin murder. For many, her death was as tragic as that of five year-old Susan Cadieux and eight year-old Judy Carter. As was the case following those deaths, hundreds of telephone calls and letters demanding government action were made to local MPs.<sup>130</sup> Moreover, her caught and convicted murderer seemed to confirm what psychiatrists (and PAL) were saying all along: sex criminals were “apt to be quiet, married, mild-mannered pillars of the community.”<sup>131</sup>

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<sup>128</sup>Hunt, “‘Moral Panic’”, 645; Herman, Edward S. and Noam Chomsky, *Manufacturing Consent: the political economy of the mass media* (New York: Pantheon Press, 1988).

<sup>129</sup> *Toronto Daily Star*, 19 January 1956, 1; 20 January 1956, 1.

<sup>130</sup>Hansard, 24 January 1956, 510. [Comments by Ms Aitken of York-Humber]; RG 4-2 Attorney General, file 80.1 "Criminal Sexual Psychopaths and Sex Offenders 1956". (AO).

<sup>131</sup>PAL, “You too can curb sex crimes”, *Liberty Magazine*, 69.

Robert Fitton was a young, Anglo-Canadian married man with two small children, a wife, and dreams of home ownership.<sup>132</sup>

Media coverage of the sex crime problem dropped off dramatically after 1957, and with it public interest in the subject.<sup>133</sup> In 1963, Robert Fulford penned an article in *Maclean's*, Canada's national news magazine, in which he described how Leopold Dion, a repeat offender out on parole, sexually assaulted and murdered four young boys. Fulford blamed the crime on the failure of the federal corrections system to live up the promises made during the previous decade. In 1963 there was still no treatment available for sex offenders in federal institutions. Ten years earlier such revelations prompted massive letter-writing campaigns, protests from organized labour and social service agencies as well as a Royal Commission, but in 1963 they fell on deaf ears.

By the late 1950s parents were growing weary of experts' increasingly audacious pronouncements. In an angry response to a *Toronto Telegram* article by sex crime researcher John Rich, one female reader grumbled, "He doesn't call [sex criminals] maniacs but poor, timid, pathetic, immature men – and of course he blames the mothers."<sup>134</sup> The constant stream of criticism aimed at the "average parent", including their apparent failure in the area of sex education, was becoming tiresome, and the experts

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<sup>132</sup>*Toronto Daily Star*, 20 January 1956, 2.

<sup>133</sup> Jenkins, *Moral Panic*, 72.

<sup>134</sup>*Toronto Telegram*, 3 February 1956. It is worth noting that that was only the first insult. The letter writer's more important complaint was that Rich claimed that children who were sexually assaulted were "willing partner[s]." In fact, she blamed psychiatrists for "creating" sex "monsters" by counselling parents to tolerate all sorts of bad behaviour so as "not to frustrate Johnny."

were getting far too big for their professional britches. In 1961, for example, a panel of speakers from Toronto's Forensic Clinic argued that "many parents were not qualified, or were unlikely, to give their children frank, sound training nor to set good examples," begging the question how had parents managed without experts for so long?<sup>135</sup> Parents' growing disenchantment expressed itself most clearly in a massive survey undertaken by the CHSPTF from 1957 to 1960. As the most powerful lay organization which supported the mental health movement, in 1957 the leadership was looking to record "the experience, judgement and hopes of people who are often silent and yet who should be competent to speak for themselves - the parents." The author acknowledged that a lot had been learned about children in the last quarter century, but wondered "where is the wisdom we lost in knowledge?"<sup>136</sup> The mood among Canadian parents was shifting, and the "experts" would have to modify their message if they hoped to continue to enjoy the support of their audience.

The baby boom generation was also growing up. No longer vulnerable young children needing protection, parents had a whole new set of troubles to contend with.<sup>137</sup> In

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<sup>135</sup>*Globe and Mail*, 6 February 1961, 4. The panel consisted of R.E. Turner, Director of the Forensic Out-Patient Clinic, Tutchie, Director of the Forensic In-Patient Clinic, Kenneth Gray, an expert in medical jurisprudence and leading advocate of treatment for sex offenders, and J.D. Atcheson, past Director of the Toronto Child and Family Court and the Research Division of the Department of Reform Institutions.

<sup>136</sup>CFHSPTA, *Canadian Family Study*, 3-4.

<sup>137</sup>There is an enormous body of literature on the social problems and issues that surrounded the baby boom generation in their adolescence. For a general Canadian overview see Doug Owram, *Born at the Right Time: A History of the Baby Boom Generation* (Toronto: University of Toronto Press, 1996).

the United States and Canada, the public and media appetite for groups like the Parents Action League dissipated along with the political will to fund new projects or support proposed changes to the way sex offenders were dealt with by the state. As we shall see in the next chapter, the treatment era ended without ever having gained the full support of those who controlled the purse strings, making PAL's victory all the more notable.

### *Conclusion*

PAL was founded on two of the most ubiquitous pieces of misleading information that characterized the postwar sex crime panic across Canada and the US: that violent sexual assaults against children were on the increase, and that there were large communities of dangerous sexual deviants openly congregating in public city spaces. In Toronto, the 1955 disappearance of eight year-old Judy Carter was erroneously assumed to be the work of a sex pervert, and the news reports that followed claimed that Toronto police responded by "rounding up all known deviates". That both of these "facts" mobilized widespread support for innovative legislation and novel government treatment programs amply demonstrates that the heightened concern over sex crimes committed against children was indeed a "moral panic" in its classic form.

However, by setting aside the assumption that responses to sex crime were irrational we can begin to see how the postwar panic was much more than the displacement of social anxiety onto a folk devil or scapegoat. In a process greatly assisted by parents of the baby boom generation, by organizations representing their middle class familial interests, by professional and lay advocates of the mental health approach, as well

as the federal and provincial governments which financed and promoted the mental health movement, the “modern” scientific approach to understanding and talking about sex assumed cultural dominance. Displacing religious and classic criminological as well as biological explanations for sexual assault, the panic over attacks on children facilitated a paradigmatic shift that profoundly changed the way Canadians – and Americans – would think about human sexual behaviour in the latter half of the twentieth century.

As a political lobby group, PAL’s success in achieving at least one of its primary goals cannot be understated. The Toronto Out-Patient Forensic Clinic, an arm of the Toronto Psychiatric Hospital (TPH), put Toronto and Canada on the forensic sexology map. Though psychiatric ideas about criminal sexual behaviour were part of the criminal justice complex since before the turn of the century, in the 1950s the field was only in its toddler stage, and the Forensic Clinic made its mark internationally through its innovative research and treatment programs. When the TPH folded and was re-born as the Clark Institute in the mid-1960s, the Forensic Clinic moved in and evolved into the present day Clinical Sexology program, which includes a nationally-recognized phallometric testing facility and gender re-assignment clinic. According to Bertha Shvemar, Dr Kenneth Gray regarded PAL as “the jewels in the crown”. Without them, it is unlikely the Clarke Institute would enjoy the reputation it has today as a leading edge sex and gender research institute

Parents across the country embraced many of the ideas of child psychologists and other mental health experts. Initially championed by the web of parent-teacher and home and school associations in the interwar period, the mental health movement enjoyed much

greater exposure in the postwar decades. Intelligent approaches to parenting were not only accepted by the PAL leadership, but were promoted in their lectures, media reports and published literature. However, it would be erroneous to assume that the League membership's middle-class pedigree and its focus on the family meant that its activities were ideologically bound to the Cold War entrenchment of conservative sex and gender roles. Additionally, to reduce League members and their supporters, including the expansive web of local women's councils and parent-teacher organizations, to mere foot soldiers in the service of Ontario's medical elite is to obscure how the mental health movement was an expression of the interests and ideals of the postwar Anglo-Canadian middle class. Part of those ideals included demands for more compassionate treatment of sex offender, an almost radically progressive position given the conditions of most jails, prisons and reformatories, and the abhorrence with which most people viewed sex deviates and especially those who made children their victims. The opening of the Forensic Clinic was nothing short of a political victory, and benefited not only the career aspirations of sex researchers, but in the minds of its lay advocates, it benefited society as a whole, including sex deviants themselves but most especially their future victims.

Though the 1950s sex crime panic did little to improve the way victims of sexual assault were treated by the courts in Canada, and in fact did little to affect the way the courts treated sex offenders, what did revolutionize the issue for PAL was the "new" information psychiatrists were feeding them. In addition to the claim that the home was where sex abnormalities took root, statistics revealed that sexual offenders were as likely if not more likely to be known to the victim. In contrast to the popular image of the stranger

luring unsuspecting children and teens with offers of car rides and candy, in the 1950s experts repeatedly pointed out that family members, community leaders and other people in positions of trust were more often the perpetrators of sex crimes against children. Moreover, they also discovered that boys were often victims of sexual molestation as well. A key part of PAL's work was visiting with parent, church and community organizations to lecture on the problem of sex crimes. Breaking through silence and debunking mythology were at the core of their agenda, and they spoke with a frankness that shocked some of their audiences. As a group of "just housewives", PAL demonstrated that talking openly about human sexuality was not only acceptable, but necessary. Members of the League are more aptly characterized as pro-modern science rather than anti- or pro-sex.

That the prevalence of incest and sexual assault against boys did not become common knowledge until the 1980s supports what other historical studies of sexuality in the Cold War era have argued: rather than address the problem of sex crime, the concept of the criminal sexual psychopath served to obscure the truth about sexual danger by idealizing the heterosexual family and stigmatizing those who lived outside its protective walls. PAL's choosing to frame their organization in familial rather than gendered terms may be partly explained by the absence of an organized women's movement, but it also demonstrates how in the 1950s social problems were typically and most effectively framed around the perceived needs of the family.

If parents didn't have the language to continue the conversation outside of the school gymnasiums and church basements, PAL provided them with it in clear and understandable terms. From fetishism to fellatio, the League's publication taught readers

the language of sexual deviation. However, they also exploited the popular image of the sex criminal in the title and on the cover of their published pamphlet, "The Strange One." Despite persistent claims to the contrary, 'stranger danger' continued to define the sex crime problem throughout the postwar era and the heterosexual family and its network of respectable community organizations remained intact and unblemished by the stain of sexual deviancy.

Given that psychology was the dominant paradigm in understanding human sexuality, it comes as little surprise that neither PAL nor the experts that advised them placed sexual assault within the wider social context of unequal gender relations. Indeed, PAL straddled the fence between early 20<sup>th</sup> century maternal feminism and late 20<sup>th</sup> century liberal feminism: they embodied both the belief that women had a political voice that the state should be responsive to, and that social problems could be solved through democratic means.

The mental health approach had tremendous support well before the media focussed on it as a solution. PAL also was able to use the media to their advantage in this instance. These were negotiated relationships, each operating within a certain set of parameters, and one could not be easily manipulated to work for the other. So, for example, in the same way the relationship between parents and mental health experts was symbiotic, so too was the relationship between PAL and the *Toronto Telegram*. They, according to Kenyon, allowed the paper to run endless stories about sex crime, a proven paper-seller, and in turn the coverage enabled PAL to wield the political influence they needed to "get the job done". Everyone got what they wanted.



PAL neither challenged nor questioned the fundamental structure of social relations, and in fact were deeply invested in the preservation of the family. However, as I demonstrated in chapter two, the shift away from legal and religious interpretations of sexuality toward psychiatric and psychological explanations pathologized homosexuality, and local police forces' desire to appear to be doing something about sex crime led to the mass arrest of men found in 'homosexual haunts' including bars, clubs, 'tearooms' and parks. But action groups who organized around the sex crime problem clearly articulated the problem as attacks on women and children, not sexual "deviancy" as a whole. Though psychiatrists and other experts often included homosexuality as part of their discussions on sexual deviancy, PAL did not.

Unfortunately, the construction of the sex psychopath drew attention from those who launched the 'panic' in the first place, victims of sexual assault. Though real knowledge about sex crime – that the attacker was more likely to be known than unknown, that sex crime was under reported, that recidivism among sex criminals was among the lowest of any crime category, that only a very small percentage of sex offenders were "psychopathic" – was as much a part of expert discourse then as it is now, fear seems to always win out over "sound, scientific, enquiry" conducted in an "objective" and "detached scientific manner." Though PAL was but a conduit through which the psychiatric construction of the sex psychopath passed, it played a critical role in sustaining the construction by ensuring that research into 'sex deviants' continued long after the sex

crime panic passed.<sup>138</sup> While it is true that increased attention to the topic of sex deviation likely contributed to a heightened sense of fear and danger, it seems more accurate to suggest that the media was an important participant in the paradigm shift toward psychological interpretations of human sexual behaviour, but that the ‘panic’ itself was the result of a convergence of a range of different interest groups, social and demographic phenomena and political and cultural trends.

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<sup>138</sup>The Toronto Psychiatric Hospital’s Forensic Out-Patient Clinic that opened in May, 1956 was later absorbed by the Clarke Institute of Psychiatry and today exists as the world-renowned Gender Identity Clinic and the Sexual Behaviour Clinic.

## IV

### **The Mad and the Bad: Treatment programs for sex offenders**

“Experiment is viewed as superior to precedent,” proclaimed American sexologist Benjamin Karpman in a 1948 professional journal article.<sup>1</sup> “Old methods are readily abandoned, to give way to newer methods.” Indeed, at war’s end medical and psychiatric experts had all but renounced somatic solutions to sexological problems in favour of increasingly popular theories of personality development. Drawing on the work of people like G. Stanley Hall in the US, Sigmund Freud in Europe and George Stevenson in Canada, postwar sexologists elaborated on the role of culture, society, and especially the family, in giving shape to a child’s sexual self. However, not one of the experts knew how best to translate these theories into treatment. Experiment was not just better than precedent. In the atomic age, it was the only way forward.

Despite the absence of any evidence suggesting that psychiatrists could ‘cure’ sex deviation, from the late 1940s onward, court and prison clinics dedicated to just that purpose opened up in Ontario and across the United States. The Toronto Psychiatric Hospital’s Out-Patient Forensic Clinic, Menlo Park in New Jersey, Waupun in Wisconsin, Patuxent in Maryland and Norwalk in California were just a few of the institutions that aimed to provide service to a population so recently identified that almost nothing was known about them. The creation of clinical treatment programs was without a doubt the direct result of what seemed an unprecedented level of citizen involvement in the problem

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<sup>1</sup>Benjamin Karpman, “Sex Life in Prison,” *Journal of Criminal Law and Criminology* 38, 1948, (475-486): 476.

of sex crime. Legislators, politicians and treatment experts lauded the grassroots origins of the push for innovative therapy programs.<sup>2</sup> At a 1955 conference held at Menlo Park, New Jersey, one of the first sex psychopath diagnostic clinics in America, sex psychopath laws were described as “one of the most interesting and the most modern experiments in penology” because:

it doesn't reflect the whim of any group of legislators or for that matter just a wish of our department. The sex law is the result of a changing, evolving social point of view where society is perhaps putting punishment in a lesser role and... developing the framework through which we will get better results so that the treatment process is emphasized.<sup>3</sup>

The dramatic growth of modern forensic sexology was not the result of either an explosion of medical interest in sexual deviation research or advances in psychiatry, psychology or any other field of medical science or mental health. In fact, treating “the mad and the bad” – people whose crimes were attributed to mental instability, aberration, or illness – was one of the least appealing fields of psychiatric work, and sex deviants the least palatable among them.<sup>4</sup>

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<sup>2</sup>Arthur V Huffman, “A Report of a Study of Sex Offenders in Illinois,” *Proceedings of the 83<sup>rd</sup> Annual Congress of Correction of the American Prison Association* (New York: Central Office, 1953): 178-185 [183].

<sup>3</sup> RG 4-2 Attorney General File 80.2 Criminal Sexual Psychopaths - Material from New Jersey, “Conference of Judges”, Held at the Diagnostic Centre, Menlo Park, New Jersey, (21 Dec 1955): 15. (AO). A group of DRI officials attended the conference.

<sup>4</sup>On the sex offender as an unpalatable research or treatment subject, see Bruno Cormier and Siebert P Simons, “The Problem of the Dangerous Sexual Offender,” *Social Deviance in Canada*, ed. WE Mann, (Toronto: Copp Clark, 1971), 343; Valdemar Hartman, “Group Psychotherapy with Sexually Deviant Offenders (Pedophiles),” *Proceedings of the 4<sup>th</sup> Research Conference on Delinquency and Criminology*, Montreal (1964): 259-272; Leo H Berman and Lawrence Zelic Freedman, “Clinical perception of Sexual Deviates,” *Journal of Psychology* 52 (July 1961): 157-160. Ontario’s Department

The development and diffusion of forensic sexology in the 1950s and 60s was the direct result of public pressure exerted by the parents of the baby boom generation. Though the concept of the criminal sexual psychopath was predicated on the idea that such persons were unable to control their sexual urges and consequently would continually repeat their offences, compassionate understanding rather than retributive punishment was the order of the day.<sup>5</sup> The postwar popularization of “mental health” combined with a growing interest in the psychology of sex facilitated the shift in public opinion away from punishment for sex crimes toward an almost exclusive focus on the reformation, or, perhaps more accurately, re-socialization, of the sex offender.<sup>6</sup>

The heady optimism that characterized the 1950s mental health approach to solving social problems came to an end with the rise of the anti-psychiatry movement of the 1960s and 70s. Activists challenged claims that psychological and psychiatric treatment services were humane and progressive alternatives to the ‘medieval’ practice of simply locking up criminals. In a number of venues, including the mainstream press, academic journals and media coverage of public protests, critics denounced prison

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of Reform Institutions attempted to attract treatment staff and researchers by establishing “Fellowships for Teaching and Research”, a bursary system that traded money for a one year post-graduation commitment to the DRI. By 1959, the department had not received a single application from a graduate student in psychiatry. See RG 20-16-2-0-186.2 General “Potts” “Atcheson” 1959-60, Letter, Murray G. Ross, Vice President, University of Toronto, to W.G. Palmer, Atkinson Charitable Foundation, 4 June 59. (AO).

<sup>5</sup>RG 20-16-2-0-165.6 “General --- Royal Commission - Bal.” Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations, United Nations, New York, 1958. (AO).

<sup>6</sup>See Harvey G. Simmons, *Unbalanced: Mental Health Policy in Ontario, 1930-1989* (Toronto: Wall and Thompson, 1990).

treatment programs as mere extensions of the carceral culture of repression. Exposes revealed that behind the walls of some of the largest US prisons the “helping professions” were conducting painful experiments on a captive population. These revelations had their intended effect, resulting in the massive withdraw of public and political support for such measures.

Like the activists who exposed the dark side of prison psychiatry, Michel Foucault warns against the temptation to see the integration of the helping professions as a humanitarian measure. However, in his characteristically provocative assessment of relations of power and the production (and regulation) of knowledge, Foucault refuses to treat the mental health professions as a blind repressive force. In *Discipline and Punish*, Foucault agrees that the integration of psychologists – “professionals of discipline, normality and subjection” – marks the beginning of a new stage in the history of the prison. He also recognizes the ways in which these professionals were absorbed by the prison’s disciplinary regime. However, Foucault argues that the combination of the custodian and the psychologist provided a new type of supervision – that of both knowledge *and* power – over “individuals who resisted disciplinary normalization.”<sup>7</sup> Psychiatry and psychology became a new form of law, “a mixture of legality and nature, prescription and constitution.”<sup>8</sup>

This chapter explores the introduction of this “new type of supervision” for sex

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<sup>7</sup>Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York, Vintage Books, 1979): 296.

<sup>8</sup>Ibid., 304.

offenders in post-WWII Ontario reformatories. The handful of Canadian men found to be criminal sexual psychopaths were sentenced to federal penitentiaries, but Ottawa's efforts to provide even the most basic medical services moved at a snail's pace. However in Ontario, treatment programs for sex offenders fit well with the goals and ideals of the "Ontario Plan", an ambitious project introduced by the Department of Reform Institutions (DRI) in 1947 aimed at "ensuring that the period of incarceration is one of 'treatment'". Officially, the goal of Ontario's DRI was to transform military-style custodial institutions into "well-conducted hospital[s]."<sup>9</sup> Across Canada and the US this increasingly popular approach to penology came to be known as "therapeutic confinement".

Attempts of various measures were made to implement the Plan, specifically with recidivist populations like drug addicts, alcoholics and sex deviants.<sup>10</sup> In 1950s and 60s Ontario, men found guilty of a sex offence likely found themselves channelled into one of four clinical programs: the "Group I" sex deviant program at the Neuro-Psychiatric Clinic (NPC) attached to the Ontario Reformatory, Guelph; the "Group II" sex pervert program at Millbrook maximum security prison; the Out-Patient Forensic Clinic at the Toronto Psychiatric Hospital; and later the pedophile treatment program at the Alex G. Brown

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<sup>9</sup>RG 20-16-2-113.3 Memo from AR Virgin to GH Basher, 6 May 1947. (AO).

<sup>10</sup>On British Columbia's commitment to alcohol and drug treatment, see Wesley Topping, "The Rise of the New Penology in British Columbia, Canada," *British Journal of Delinquency* 5 (1955): 180-189. Many homosexual men supported psychiatric treatment as an alternative to prison, and in 1964 the BC-based Association for Social Knowledge, one of Canada's first gay organizations, unsuccessfully lobbied for a sex deviant treatment program similar to that offered by the Toronto Psychiatric Hospital's Out-Patient Forensic Clinic. See Gary Kinsman, *The Regulation of Desire: Homo and Hetero Sexualities* (Montreal: Black Rose Books, 1996): 240.

Memorial Clinic (AGBM) in Mimico.<sup>11</sup> This chapter examines each of these programs and, in order to place Ontario within the wider Canadian and American context, brief consideration is given to clinical programs elsewhere, including Norwalk in California, Quebec psychiatrist Bruno Cormier's therapeutic community at Dannemora in New York, and Anthony Marcus' group therapy program for criminal sexual psychopaths in a federal British Columbia prison.

However widespread public support for these programs may have been, the 'soft-pated' psychological approach was vigorously opposed within prisons and penitentiaries themselves. Though both the custodian and the psychologist wanted the same things – cooperation, compliance, and submission – they had fundamentally opposing ideas about how to procure it.<sup>12</sup> Throughout this period of integration, mental health professionals experienced aggressive resistance at all levels, from the Deputy Minister of the Department of Reform Institutions and prison superintendent down to the custodian and even the inmate for whom such 'treatments' were planned. In the following pages I document how widespread public support for the normalization of inmates through mental health initiatives was – and was not – put into practice by medical experts who struggled

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<sup>11</sup>On the wide-range of fines and sentences imposed in homosexual cases in this period, see DE Saunders, "Sentences of Homosexual Offenders," *Criminal Law Quarterly* 10 no1 (1967): 25-29. In 1966 the Toronto Psychiatric Hospital closed and with it, the Out-Patient Forensic Clinic. They were absorbed by the Clarke Institute for Psychiatry where sex and gender disorder programs continue to this day. Practical considerations forced me to exclude the Clarke Institute from this study.

<sup>12</sup>Reference to the "tensions" between the two "opposing ideologies" appear regularly throughout the records of the Department of Reform Institutions from the time of its introduction until the 1960s. See especially RG 20-16-2-0-60.4 "Guelph – Inmates 1952-53" Psychologists report on the July riot. July 24 1952.(AO).



to coerce inmate compliance and to achieve satisfactory therapeutic results. I also show how resources intended to be used to 'cure' pedophiles were instead deployed to uphold and maintain discipline and control over homosexuals.

### *The Value of Surgery*

Using medical science to control, regulate and punish those accused of sexual immorality was not new to Europe or North America. In the interwar years, sterilization and vasectomy were regarded by many as appropriate methods for dealing with sex offenders for therapeutic as well as prophylactic purposes.<sup>13</sup> In the United States alone, by 1938 32 states had eugenic sterilization laws in place and 25,403 "surgical treatments" were recorded.<sup>14</sup> Switzerland, Germany, Denmark, Norway and Finland adopted similar legislation allowing for the sterilization of exhibitionists, rapists, homosexuals and those who committed "crimes against the morals of minors, boys and girls."<sup>15</sup> In all cases the decision to sterilize was based on psychiatric testimony.<sup>16</sup> The Swiss, Danish and the Finnish used the law minimally, the first recording 6, the Danes 63 and the Finns 9, but

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<sup>13</sup>Mark Linsky, "The Most Critical Option: Sex Offenses and Castration in San Diego 1938-1975," *Journal of San Diego History*, 35: 4 (1989): 248-257; Angela Gugliotta, "'Dr. Sharp and His Little Knife': Therapeutic and Punitive Origins of Eugenic Vasectomy, Indiana, 1892-1921," *Journal of the History of Medicine*, 53 (October 1998): 371-406.

<sup>14</sup>Marie E Kopp, "Surgical treatment as a sex crime prevention measure," *Journal of Criminal Law and Criminology* 28(5):692-706, Jan-Feb 1938.

<sup>15</sup>Kopp, 701.

<sup>16</sup>Ibid., 704.

Germany recorded 1,116 castrations between 1933 to 1936.<sup>17</sup> Marie Kopp, an American medical doctor and advocate of castration, wrote of the Germans zealotry with approval. Kopp recommended greater availability of sterilization to treat 'abnormal persons', and lifelong imprisonment for those "not amenable to treatments."<sup>18</sup>

The idea that sterilization could eliminate crime and immorality in future generations was a product of eugenics, the scientific philosophy that attributed human behaviour to biological heredity. In Canada, support for sterilization was high among the educated middle classes, particularly as a means to control sex perversion.<sup>19</sup> Though Canadian experts refuted claims that the surgery reduced the male sex drive, they believed that by eliminating the ability to reproduce, they could eradicate immoral defectives for future generations. Ontario's 1930 Report of the Royal Commission on Public Welfare recommended:

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<sup>17</sup>Ibid., 705-6.

<sup>18</sup>Ibid., 706.

<sup>19</sup>On sterilization in Canada see Ian Robert Dowbiggin, *Keeping America Sane: Psychiatry and Eugenics in the US and Canada* (Ithaca, New York: Cornell University Press, 1997): 164; Terry L. Chapman, "Early Eugenics Movement in Western Canada," *Alberta History*, 1977 25(4): 9-17; Angus McLaren, "The Creation of a Haven for 'Human Thoroughbreds': The Sterilization of the Feeble-Minded and the Mentally Ill in British Columbia", *Canadian Historical Review*, 1986 67(2): 127-150; Catherine Annau, "Eager Eugenicians: A Reappraisal of the Birth Control Society of Hamilton" *Social History* 1994 27(53): 111-133; on sterilization in the US, Molly Ladd-Taylor, "Saving Babies and Sterilizing Mothers: Eugenics and Welfare Politics in the Interwar United States," *Social Politics* 1997 4(1): 136-153; James W. Trent, "To Cut and Control: Institutional Preservation and the Sterilization of Mentally Retarded People in the United States, 1892-1947," *Journal of Historical Sociology* [Great Britain] 1993 6(1): 56-73; Philip Jenkins, "Eugenics, Crime and Ideology: The Case of Progressive Pennsylvania," *Pennsylvania History* 1984 51(1): 64-78.

that some endeavour be made by legislation to lessen the amount of evil which is certainly promoted by unchecked sexual freedom of criminals or defectives who have a record of immorality. The medical process known as Sterilisation or Asexualization does not destroy sexual desire, nor to a certain degree sexual power, but it does prevent procreation. Your Commission holds that the Legislature should take action parallel to that which has already been taken in this regard by other States and Provinces on this Continent.<sup>20</sup>

Twenty-six years later the Minister of the Department of Reform, Major John Foote, received a letter from an Ontario farmer who, responding to a recent radio address on the sex crime problem, offered his own solution: "Any stock breeder knows the value of surgery to prevent the undesirable male stock from siring stock of poor qualities," he wrote. A castrated animal can be "turned loose among any female without the slightest danger of trouble... Of course every sex offender is not a criminal, but those who attack children or make brutal attacks on women sexually should get the knife."<sup>21</sup> Foote agreed that in some cases castration "would seem to be the only solution. However," he added, "it looks as though there will be a tremendous lot of opposition to amending the Criminal Code to make this possible."<sup>22</sup>

Demands for castration were made by hundreds of citizens during the sex crime panics in the late 1940s and through the 1950s, but by the 1950s most Canadian doctors

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<sup>20</sup>Ontario. *Royal Commission on Public Welfare - Report to the Lieutenant-Governor in Council* (Toronto, 1930): 9.

<sup>21</sup>RG 20-15 Ac 23851 TB 6 "Parents Action League of Ontario", CO Dean, Gateway, Ontario to Minister J. Foote, 30 Jan 1956. (AO).

<sup>22</sup>Ibid., Minister J. Foote to C.O. Dean, 15 Feb 1956.

abjured eugenics, and with it, sterilization.<sup>23</sup> Historians have attributed the postwar renunciation of eugenics as a theory and certain invasive medical procedures as a practice to the horrible revelations of Nazi medical experiments during the Nuremberg trials.<sup>24</sup> While this doubtless had an impact, Canadian doctors rejected castration and sterilization based on evidence from more than four decades of sterilizing criminals in the US and in Alberta. According to the statistics, castration reduced neither immorality nor the number of sex crimes committed. Moreover, some medical experts maintained that castration would in fact aggravate a disturbed sex deviant. During a private hearing with the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths, Dr. G.F. Nelson pointed out that castration would only affect the sex drive if it was performed in pre-pubescence. With the onset of puberty, the removal of the testes would have no impact on the male hormonal composition. Furthermore, Nelson continued, it "must leave

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<sup>23</sup>For letters and petitions demanding castration, see RG 4-2 File 80.1 "Criminal Sexual Psychopaths and Sex Offenders 1956." (AO). See also J.D. Griffin in Committee on the Sex Offender, Interim Report, Canadian Penal Society (June 1948): 12. The Director of Psychiatry at Denmark's high profile prison and sex offender treatment centre Herstedvester, used castration as a regular but "voluntary" part of his treatment program. Georg Kristoffer Sturup, *Treating the Untreatable: chronic criminals at Herstedvester* (Baltimore: Johns Hopkins Press, 1968).

<sup>24</sup>Jennifer Terry, *An American Obsession*, 297-298; Angus McLaren, *Our Own Master Race: Eugenics in Canada* (Toronto: McLelland and Stewart, 1990): 168; Allen M Hornblum, "They were Cheap and available: prisoners as research subjects in twentieth century America," *British Medical Journal*, 315(7120) 29 November 1997: 1437-1441; National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research: Staff Paper "Prisoners as Research Subjects," *Crime and Justice (3) The Criminal Under Restraint*, 2<sup>nd</sup> ed., eds Sir Leon Radzinowicz, and Marvin E Wolfgang (New York: Basic Books, 1977): 312-329.

a bad psychological effect on them.”<sup>25</sup> In the absence of any test that could accurately predict who would develop a deviated sex drive, pre-pubescent castration was simply out of the question.

Depending on one’s perspective, Canadian doctors were either more conservative or more advanced in their thinking about treating sex offenders than were their American counterparts. In the 1950s, a number of US doctors experimented with hormone injections, electro-convulsive therapy (ECT), castration, and lobotomy (also known as leucotomy) in treating sexual deviation.<sup>26</sup> Although a thorough examination of psychiatric hospital records in Canada needs to be undertaken, in Ontario, psychopaths, homosexuals and other sex deviates were excluded from the eligible pool of candidates for leucotomy.<sup>27</sup>

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<sup>25</sup>RG 33/131 Acc 83-84/253 Report of the Organization Meeting, Ottawa, March 29 & 30, 1954. Private Hearings, Winnipeg, Regina and Edmonton, 2-9 Sept 1954, Interview with Dr G F Nelson: 107-8. (NAC). See also Committee on the Sex Offender, *Interim Report*, 1948.

<sup>26</sup>California Department of Mental Hygiene, *Final Report on California Sexual Deviation Research* (March 1954): 32; F.L. Golla and R.S. Hodge, “Hormone Treatment of Sexual Offenders,” *Lancet* (1949): 256, 1006-1007, cited in Charles W Cabeen, “Factors Related to Improvement of Sex Offenders in Therapy,” PhD diss., University of California, Los Angeles, 1955; G.N. Thompson, “Electroshock and other therapeutic consideration in sexual psychopathy,” *Journal of Nervous and Mental Disease*, 109 (1949): 531-539. For lobotomy, see J.W. Friedlander and R.S. Banay, “Psychosis following lobotomy in a case of sexual psychopathy,” *Archives of Neurology and Psychiatry Chicago*, 59 (1948): 302-321. For a German example see Inge Rieber and Volkmar Sigusch, “Psychosurgery on Sex Offenders and Sexual ‘Deviants’ in West Germany” *Archives of Sexual Behaviour* 8 (1979): 523-527 cited in Harvey Simmons, *Unbalanced: Mental Health Policy in Ontario, 1930-1989* (Toronto: Wall and Thompson, 1990): 214. It should be noted that hormonal therapy was originally used to treat homosexuality in men. See Winterstein-Lambert, Carl E. “Observations on Homosexuals,” in *Bulletin de la Faculte de Medecine de Istanbul* 12 (3): 216-220, 1949.

<sup>27</sup>RG 10-107 B.7, Gen 1-9-8 August 19, 1948, Memo Dr. RC Montgomery to Ontario Hospital Superintendents, (AO); see also Committee on Sex Offenders, *Interim*

Of the many psychiatrists and medical doctors who testified before the Royal Commission on the Law Relating to the Criminal Sexual Psychopath, virtually all rejected lobotomy, and only one spoke in favour of US experiments with chemical castration.<sup>28</sup> None advocated the surgical castration popular in Denmark's Herstedvester Prison, where Director of Psychiatry Georg Sturup firmly believed in its ability to enable sex offenders to overcome or gain control of their 'impulses'. The whole concept of castration, concluded the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath, was not consistent with Canadian views of civil rights.<sup>29</sup>

**"The more subtle techniques of psychotherapy"<sup>30</sup>**

In the postwar era psychotherapy was by far the fastest growing approach to treating deviancy in Canada and the US. Still a novel method, in 1948 the American Psychiatric Association's Group for the Advancement of Psychiatry (GAP) loosely defined it as a "conscious plan of treatment" using psychological techniques to help understand the psycho-dynamics of the patient, and to help bring about a better "adaptation of the patient in social, economic, sexual and physical function." According to the GAP report,

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*Report*, 13.

<sup>28</sup> In his testimony Dr Douglas Alcorn referred to Dr. Ruth Jennings of Oregon who was then administering massive doses of oestrogen to her sex offending patients. Transcripts of the Hearings of the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath, Osgoode Hall Law Library, 610.

<sup>29</sup> Canada, *Report of the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath* (Ottawa: Queen's Printer, 1958): 103.

<sup>30</sup> Griffin, *Interim Report*, 13.

psychotherapy recognized that, contrary to Enlightenment philosophy, 'man' is not by nature socially conforming.<sup>31</sup> California's leading forensic sexologist, Karl Bowman, explained how this discovery shaped modern thinking about sexual deviancy:

It is now clear that man's [sic] nature is characterized by antisocial and destructive impulses as well as by potentialities for ethical and conforming behavior. He may have the capacity to become a sadistic sex killer or an emotionally mature, respected citizen. Which he actually becomes may depend less on his genes than on the quality of his family relationships and on helping and hindering factors in his developmental history.<sup>32</sup>

If the quality of a man's family relationships was less than ideal, it fell to the psychiatrist and the psychologist to do what parents had failed to do.<sup>33</sup> In 1952 DRI Chief Psychologist F.H. Potts explained the goal of psychotherapy in any potential treatment program established in an Ontario prison:

Since sexual aberrations are most often symptoms of maladjustment, therapy must be directed toward readjustment of the entire personality. Guilt feelings, a sense of insecurity, and threats to feelings of adequacy must be neutralized and socially approved methods of gaining status and resolving conflicts introduced. Proper sex education is extremely important. Psychotherapy entails educating the individual as to the nature, development and possible effects of aberrated sexual behaviour and redirecting his attitudes from fear and shame to confidence and courage adequate to make a satisfactory social adjustment.<sup>34</sup>

Psychotherapy relied almost entirely on the experts' own idea of what constituted

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<sup>31</sup>RG 10-107-0-505 "Group for the Advancement of Psychiatry, Report No. 5, April 1948," 15. (AO).

<sup>32</sup>Karl Bowman, *Final Report on California Sexual Deviation Research*. State of California Department of Mental Hygiene 4(1), March 1954: 71.

<sup>33</sup>On the role of the family and the psychiatrist see J.D. Atcheson, "Social Aspects of Sexual Behaviour," *Criminal Law Quarterly* 3 no.4 (Feb 1961): 455-461.

<sup>34</sup>RG 20-16-2 52.5 General - Inmates 1951-52 Report Submitted to Col. G Hedley Basher, Deputy Minister, Department of Reform Institutions, March 28, 1952. (AO).

“satisfactory social adjustment.”<sup>35</sup>

During the 1962 meeting of the Second Canadian Institute on Mental Health Services, speakers at a session on psychotherapy were still struggling to define it. Some thought “any procedure intended to benefit a distressed person psychologically” too broad, but rejected the APA’s exclusion of pastoral counsel.<sup>36</sup> Canadian practitioners emphasized a team approach which recognized the contribution made by social workers, the patient’s family, religious counsellors and the post-release employer.<sup>37</sup> However, like their colleagues to the south, Canadian practitioners agreed that their objective was to help inmates ‘adjust’ to social and legal norms.

Whatever the definition, virtually everyone agreed that prisons were the least likely place psychotherapy could be successfully undertaken. Frank van Nostrand, a psychiatrist with a decorated military background and the DRI’s Director of Psychiatry and

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<sup>35</sup>For two noteworthy accounts see Martin Duberman, *Cures: a gay man’s odyssey* (New York, Dutton, 1991) and Michael Riordan, “Blessed are the deviates: a post-therapy check-up on my ex-psychiatrist” in *Flaunting It! A decade of gay journalism from The Body Politic*, ed., Ed Jackson and Stan Persky (Toronto: Pink Triangle Press, 1982): 14-20.

<sup>36</sup>RG 10-107-0-934 “Canadian Psychiatric Mental Hospital Institute, 1961-1962” Proceedings of the Second Canadian Institute on Mental Health Services, “Anyone can do psychotherapy?” 18 January 1962. (AO).

<sup>37</sup>For example, psychologists provided a more positive parole board recommendation if an inmate was returning to his family, and if he had a record of steady employment and a job to which he could return, all of which anchored him to a socially normative way of living, including a secure and stable masculine social role. In cases in which men were charged with incest or sexual assault against a step-daughter, social workers and parole officers who went to offenders’ homes sometimes recommended against their return, even if the victim’s mother hoped for it. However, psychologists interested in the inmate’s reintegration viewed the return to the domestic fold as the most stabilizing force.



Neurology, noted that “the first duty of the department is to protect society from the criminal - the second important duty is the reformation and rehabilitation of the criminal. These two purposes will always result in conflict, as it is impossible to achieve the maximum rehabilitation in the presence of maximum security.”<sup>38</sup> In fact, prison’s disciplinary regime was widely criticized for its tendency to exacerbate the overwhelmingly negative psychological impact of incarceration. At a joint Quebec-Ontario conference on the provision of psychiatric and psychological services in security institutions, Justin Ciale, the psychologist at Quebec’s federal penitentiary St. Vincent de Paul, complained that it was impossible to help an inmate toward normal socialization in such an abnormal environment. Therapy in prison is thwarted by the “serious personality modifications” caused by emotional starvation and deprivation of liberty, he explained. This is only further exasperated by the anti-social and non-compliant attitude of most prisoners; the “defiant, authoritarian and oftentimes suspicious atmosphere” of the prison, and the greater need to help inmate adjust to “a socially abnormal situation which is without parallel,” rather than addressing the behaviour that brought him to prison to begin with.<sup>39</sup> If the government was serious about shifting from the punitive model to a therapeutic one, it would have to reconsider the entire structure of incarceration;

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<sup>38</sup>RG 20-16-2-0-96.3 General Psychologists file 1954-55, “Research and Treatment Department of Reform Institutions Policy and Organization.” (AO). On van Nostrand’s military career see Terry Copp and Bill McAndrew. *Battle Exhaustion: Soldiers and Psychiatrists in the Canadian Army, 1939-1945* (Montreal & Kingston: McGill-Queen’s University Press, 1990).

<sup>39</sup>RG 20-16-0-189.3 Conferences, 1959-60, Justin Ciale, “Problems in Establishing a Therapeutic Relationship in a Prison Community”, 1. (AO).

employing a handful of psychiatrists was clearly not going to do the trick.<sup>40</sup>

In addition to the tough, authoritarian atmosphere cultivated by prison staff and the administration, 'helping' prisoners was further hindered by inmate culture. Newly admitted convicts were advised to avoid Hoods, Punks, Heppos, Wheels, Sharpies, Musclemen, Big Deals, and Psychos. "Do not permit yourself to be drawn into a gang or a clique dominated by these people," the Guelph Reformatory guide book warned.<sup>41</sup> However, new prisoners were quickly socialized into inmate culture, which demanded conformity with the "inmate code". Author and ex-inmate Roger Caron explained, "The inmate code was really a guidebook on how to succeed in prison by not really trying to reform." Inmate culture was organized around an "us versus them" mentality that pitted inmates against custodians and other prison staff, including treatment experts.<sup>42</sup> Upon their arrival at most any reformatory, prisoners were assessed by a "classification committee" composed of a staff psychologist and social worker whose job it was to determine where and how an inmate would serve his time. But, explained Caron, an inmate's "true standing comes from fellow prisoners, who will classify him as a wheel, a solid guy, a tough guy, a

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<sup>40</sup>For an example of the tension and struggle between the military-style 'old guard' and staff psychologists, see Col. H Basher, the superintendent-cum-Deputy Minister's response to the Psychologists Report on the July 1952 riot at Guelph, RG 20-16-2-0-60.4 "Guelph – Inmates 1952-53" July 24 1952. (AO).

<sup>41</sup>RG 20-16-2 105.6 Guelph - Inmates, "Ontario Reformatory, Guelph Ontario". (AO).

<sup>42</sup>Jean Garneau, Classification and Psychological Services, Penitentiary Service of Canada, "Treatment in Canadian Penitentiaries", an address delivered at the Annual Meeting of the JHS of Kingston, Ontario, 21 March 1961.

goof, or, if he is thought to be an informer, a rat.”<sup>43</sup> Or, he might have added, ‘bugs’, the nickname given to inmates considered mentally unstable. At mid-century, Ontario’s inmate population was largely working class men of Anglo-European descent whose crimes were against property, not people.<sup>44</sup> The inmate code was shaped primarily by the prison setting, but was also shaped by the contours of working and street class masculinity which valued not only physical strength but also mental stamina. Meeting with a psychiatrist or psychologist to talk over life’s difficulties was in violation of these virtues.<sup>45</sup>

Given all of these obstacles, it is little surprise that the DRI had tremendous difficulty finding and keeping qualified treatment staff. Postwar reconstruction planning ensured that there were plenty of decent jobs to go around, and with the growing popularity of industrial psychology and the absorption of social work services into the expanding welfare state, the DRI’s offer to work in a hostile and occasionally violent

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<sup>43</sup>Roger Caron, *Go-Boy! Memoirs of a Life Behind Bars* (Toronto: McGraw-Hill Ryerson Limited, 1978): 21. Though not published until 1978, the memoirs are based on Caron’s experiences in Canadian prisons and reformatories since the 1950s.

<sup>44</sup>Unlike the US, research into the ethnic composition of Canada’s prisons and penitentiaries has yet to be undertaken. At mid-century it appears that, in Ontario at least, non-white job applicants were deemed unsuitable as prison guards. See the report of a black man who was refused a position on these grounds in *Toronto Telegram*, 19 July 1956.

<sup>45</sup>Caron cogently captures this value system when he described how men who could withstand the strap without either fainting, crying or shouting earned tremendous respect among other inmates. However, men who falsely reported withstanding the strap were seen as especially disgraced. That guards participated in the perpetuation of these ideals is evident in the fact that only they and the doctor present witnessed the beating. Clearly inmates sometimes trusted them to report truthfully on the veracity of an inmate’s claims. See Caron, *Go-Boy*, 70.

environment in isolated parts of the province for low pay was not much of a draw.<sup>46</sup> Even more discouraging was the overwhelming administrative hostility directed toward mental health treatment services for prisoners in general. Although Major John Foote, the Minister of the Department of Reforms from 1950 to 1957, was a strong advocate for the Ontario Plan, his employees were not. Even his Deputy Minister remained steadfast in his refusal to assist psychologists in any way.<sup>47</sup>

### **Treating sex deviants in Ontario Prisons**

Canada's provincial governments have long been parsimonious in the administration of prisons, even in times of economic prosperity. Newly-recruited psychiatrists quickly realized that individual counselling – the most time-consuming and consequently the most expensive form of treatment – would be virtually impossible to

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<sup>46</sup>Even were a person interested in this type of work, the DRI competed with the Parole Board which, under the auspices of the Attorney-General, paid its social work and psychological staff better wages. RG 20-16-2 113.2 “General Mr Potts and Dr van Nostrand”, Memo, van Nostrand to the Minister of the DRI, 20 Feb 1956. (AO). The federal government's Penitentiary Service also complained of similar problems attracting staff. See Garneau, “Treatment”, 1961.

<sup>47</sup>RG 20-16 96.3 Memo, G. Hedley Basher to Superintendent, Industrial Farm, Burwash, 9 September 1954. (AO). When Basher was the Superintendent of Guelph at the time the Ontario Plan was introduced, he was reprimanded for ignoring psychological reports regarding the appropriate work assignments for inmates. See RG 20-16-2-113.3 Memo, FH Potts to G Hedley Basher, 6 May 1947. (AO). On Basher's surly personality, see RG 20-148 Minister Advisory Council on the Treatment of the Offender, Subgroup 1.2, Council Minutes 1960, 10. (AO). Newly-elected CCF leader Donald MacDonald regularly attacked Basher for his “19<sup>th</sup> century military minded” approach to running the department. In response to the 1956 Throne Speech, MacDonald argued that DRI was “Basher's empire. And the motto of that empire is ‘Bash ‘em.’” *Toronto Telegram*, *Toronto Daily Star*, *Globe and Mail*, 9 February 1956.

provide in any meaningful, ongoing fashion.<sup>48</sup> The solution was provided by California's Deputy Director of Corrections, Norman Fenton, who advocated group therapy as an effective *and* economical treatment method for prisoners. Not only could you provide treatment to a group rather than a single person over the course of an hour, but group therapy sessions could also be led by lesser-paid staff including psychologists, social workers and even trained custodial officers.<sup>49</sup>

The other landmark text was Maxwell Jones' *Therapeutic Community*.<sup>50</sup> Based on an approach to solving emotional and behavioural problems formulated during WWII in British military hospitals, Jones expanded on the concept that everyone in a structured community such as a hospital or prison plays a role in helping residents work through personal conflicts and problems. Jones advocated the creation of a structured environment in which virtually every activity and every interaction has an intrinsic therapeutic element. Intended as a means for patients to take an active role in their own 'adjustment', and as a recognition of the role staff other than the medical doctor and the psychiatrist play,

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<sup>48</sup>Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford, California: Stanford UP, 1994), 16.

<sup>49</sup>Group therapy first began as a psychoanalytic treatment method in the interwar period, and became more widespread in army mental health hospitals during WWII. See Cummins, *The Rise and Fall*, 14 . A copy of Fenton's for *An Introduction to Group Counselling in State Correctional Service* (Dept of Corrections, State of California: American Correctional Association) was stocked in the DRI library. In 1962 DRI social worker H. Saville wrote "To Relatives of Prison Inmates", a Canadian adaptation of Norman Fenton and Jesse Chase Fenton's *When a Man Wants to Go Straight: how his family and friends can help him* (Sacramento, California: County Project in Correctional Methods, 1961). RG 20-16-2-255.14 Guelph NPC. Clinic 1962-1963. (AO).

<sup>50</sup>Maxwell Jones, *Therapeutic Community: a new treatment method in psychiatry* (New York: Basic Books, 1953).

psychologists and other prison reformers embraced the concept of the therapeutic community as the next obvious step forward in the way modern society confronts criminal behaviour.<sup>51</sup> Although posited as an alternative for *all* types of criminals, later we shall examine how Jones' ideas were applied in two different sex deviant treatment programs, one in Ontario and the other in California.

Ontario's first official investigation into establishing a treatment program aimed specifically at sex deviants was prompted by the 1947 sexual assault and murder of Arlene Anderson, a young disabled Toronto girl. The Department of Health appointed a Committee on Sex Delinquency to explore the possibility of providing treatment for sex deviates.<sup>52</sup> Seven psychiatrists, all upper-level employees in Ontario Hospitals, met along with the Solicitor of the Department of Health in November. Not everyone agreed that the number of sex offenders in the prison system warranted the kind of psychiatric attention the public was demanding; most acknowledged that there existed little authoritative data on the matter, and that there were no proven methods of treatment, a fact supported by

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<sup>51</sup> In his 1933 expose of Kingston Penitentiary, medical doctor-turned-prisoner Oswald C. J. Withrow argued we now have "hospitals for sick bodies and hospitals for sick minds... we should consider our prisons as hospitals for sick souls." *Shackling the Transgressor: an indictment of the Canadian penal system* (Toronto: T. Nelson & Sons, Limited, 1933): 217; For an internal DRI advocacy of the therapeutic community see also RG 20-16 File 188.3 Parliamentary Select Committee, 1958-60 (1); "Select Committee, Tues 12 May, 1953. (AO). "The essential function of an Institution is treatment and re-education as well as safe keeping. To attempt to do remedial work, teach them to live happily with others, contribute usefully to the world's work, to take responsibility for others in the community. In other words our Institutions are a place for the treatment of emotionally disturbed and socially maladjusted individuals."

<sup>52</sup>RG 10-107-0- 224 "Sex Criminals, 1947-1954". (AO).

the literature review undertaken by committee members.<sup>53</sup> Nevertheless, the majority of participants maintained that a research facility where Ontario psychiatrists could make a better study of the issue was a necessary step toward establishing a treatment program.

The Committee Chairman, Superintendent of Ontario Hospital, Whitby, D.R. Fletcher, disagreed. He thought it premature to allocate precious resources to such a speculative project.<sup>54</sup> Fletcher's final recommendation to the Deputy Minister of Health called for psychiatrists currently employed by the Departments of Health and of Reform Institutions to undertake a survey of sex deviants in their respective institutions, and that any further action be based on the data collected.<sup>55</sup> The trouble with Fletcher's recommendation was that there was not enough staff to conduct such a survey. The Deputy Minister of Health, J.T. Phair, notified Fletcher of the problem, adding that "the situation will soon correct itself."<sup>56</sup>

The Committee on Sex Delinquency's report languished on the provincial government's shelves, but Ontario's inertia was made possible in part by the fact that, less than a year after the report was submitted, public attention shifted to the House of Commons in Ottawa. Demands for better protection from sex crimes were also directed to federal Members of Parliament, and when the government of Louis St. Laurent passed

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<sup>53</sup>Ibid.

<sup>54</sup>Ibid., D.R. Fletcher to A.B. Stokes, 8 December 1947.

<sup>55</sup>Ibid., D.R. Fletcher, M.D., Chairman, Committee on Sex Delinquency, to J.T. Phair, Deputy Minister of Health, 29 December 1947.

<sup>56</sup>Ibid., J.T. Phair to Fletcher, 15 January 1948.

criminal sexual psychopath legislation into the criminal code in 1948, the furor subsided.<sup>57</sup> However, not five years later the Canadian Welfare Council, a self-appointed watch dog, reported that criminal sexual psychopath legislation was rarely invoked in the criminal courts, and the federal government had yet to take any meaningful steps toward providing treatment. This latest scandal did not directly implicate the provincial government since sex psychopaths served their sentences in federal institutions. Moreover, under the Ontario Plan, provincial reformatories were much further ahead in hiring treatment staff than was the federal government. Nevertheless, Ontario's provincial Conservatives were once again made the target of public demands for decisive and immediate action.<sup>58</sup>

In the spring of 1952 the Department of Reform Institutions (DRI) asked its Chief Psychologist to submit a report on the need and feasibility of a sex offender program. Potts' four-page proposal offered an adumbrative plan for treatment based on a study undertaken with inmates in English prisons.<sup>59</sup> He supported the idea of a clinic, citing in

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<sup>57</sup> See letters to the Minister of Health in RG 29-345, File 436-6-5. (NAC).

<sup>58</sup>Not all Ontarians were clear about the different roles the federal and provincial governments played in the criminal justice system. The Criminal Code of Canada was regulated by the federal government; provincial governments were responsible for operating local jails and prisons for those sentenced to anything less than two years. Federal penitentiaries were for those sentenced for periods of two years or longer. This confusion allowed both levels of government to blame the other for failing to deal with the problem.

<sup>59</sup>RG 20-16-2-52.5 "General – Inmates, 1951-52". F.H. Potts, "Treatment for Sex Offenders" Report submitted to Col. G. Hedley Basher, Deputy Minister, Department of Reform Institutions, 28 March 1952. (AO).



particular the need for the segregation of homosexuals.<sup>60</sup> Managing homosexual activity in prison was considered a “disciplinary problems of the first magnitude” in both Canada and the United States.<sup>61</sup> For Potts, the clear advantage of creating a segregated clinic was that it would eliminate the “grave danger” inmates who “engage in aberrant sexual activity” pose to others.

Morale generally is likely to be improved if this group is segregated because it is not unusual to find that several, for example homosexuals, may combine forces in any Institution and through intimidation and force make normal boys indulge in abnormal sex practices with them.<sup>62</sup>

Potts argued that by segregating all ‘known’ homosexuals into one place, the Department could protect younger inmates from becoming homosexual prey while at the same time creating an opportunity to conduct research into the treatment of homosexuality.

Despite Potts’ parsimonious proposal, plans for a separate facility for sex offenders

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<sup>60</sup>Potts suggested the clinic be established at the Industrial Farm in Burtch where, he reported, one of the storage buildings could easily be converted into a modest clinic. Similarly Bruno Cormier’s internationally acclaimed forensic psychiatric clinic at McGill University began in 1955 as an office in an unused stable on McGill property, indicating that while psychologists assumed enormous cultural authority in the postwar era, as a professional group and especially in Canada, they started from the bottom and had to fight to work their way up. Some DRI psychologists were opposed to the segregation of homosexuals. See RG 20-16-2-0-105.6 “Guelph – Inmates 1955-56” G.E. Jacobs to Chief Inspector, 26 May 1955.(AO).

<sup>61</sup>George W. Henry, “The Homosexual Delinquent” *Mental Hygiene*, 25(3) July 1941: 420-442. See also Joseph F. Fishman, *Sex in Prison: Revealing Sex Conditions in American Prisons* (National Library Press, 1934); Samuel Kahn, *Homosexuality and Mentality* (Boston: Meador Publishing Company, 1937).

<sup>62</sup>The DRI was also responsible for juvenile delinquents, and young offenders were throughout the twentieth century the primary object of concern over homosexual corruption, thus the reference to boys. RG 20-16-2 52.5 “General Inmates 1951-1952” F.H. Potts, Treatment for Sex Offenders, 28 March 1952. (AO).

were once again left to collect dust. The torch was lit again two years later when the Minister of Reform Institutions, Major John Foote, ordered a complete study of its reformatories and training schools. The Select Committee on Problems of Delinquent Individuals and Custodial Questions dedicated an entire day's discussion to problems associated with sex criminals and deviant sexual behaviour in the prison system. Appearing before the Committee was John Foote, Minister of the DRI; A.R. Virgin, the Director of Treatment Services; and Aldwyn B. Stokes, a Professor of Psychiatry at the University of Toronto and head psychiatrist at the Toronto Psychiatric Hospital's Forensic Unit. When the Committee asked Foote about the current procedure for placing sex criminals, Foote argued, "I have been slow about having one place for sexual offenders, until I could get assurance from the medical people that they can do something for them. There is not much use in just herding them into one place."<sup>63</sup>

In a typical rebuttal to this common sentiment, Stokes countered that the only possible way for the medical experts to discover effective treatments was to launch a program that would provide experts an opportunity to study them. "If we could get an understanding of how far our present treatment measures can assist," Stokes explained, "we would be making some advance."<sup>64</sup> The Committee was convinced, and in its final report recommended that a detailed study of sex offenders be made to help guide

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<sup>63</sup>RG 49-131, "Proceedings 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" (hereafter Select Committee) Volume XXVIII, 2704-5. (AO).

<sup>64</sup>Select Committee, "Hearings", 6539.

magistrates in sentencing; that sex offenders be given indefinite sentences which are not to be determined until “curative measures have taken effect”; that a separate close-security unit, adequately staffed with trained personnel, be established for their treatment; and that an extensive study should be undertaken to develop an understanding of the nature of sex deviation and the methods of dealing with it.<sup>65</sup>

Two important initiatives were undertaken toward meeting the recommendations. Plans for two new DRI facilities already under construction – the first a hospital ward for prisoners with tuberculosis and the second a maximum-security prison in the town of Millbrook – were modified to create sex offender facilities.<sup>66</sup> The TB unit was changed to a Neuro-Psychiatric Clinic (NPC), which would make the treatment of sexually deviated prisoners a primary concern. Plans for Millbrook, intended to syphon off the most violent and non-compliant prisoners from Guelph Reformatory, were modified to accommodate a special sex deviant wing where homosexuals could be removed from the general prison population.

### **The Neuro-Psychiatric Clinic**

At the official opening ceremony in 1955, the DRI announced that the NPC was to be more than just a treatment facility. It was also designated as a research centre, the only

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<sup>65</sup>Select Committee, *Report*, 309-319.

<sup>66</sup>Psychiatry in Canada was still closely linked to neurology in this period, though the 1950s was the decade in which those ties were ultimately severed. See, for example, RG 10-107-0-997, President of the Ontario Neurological Association to Aldwyn B Stokes, September 1956 (AO), and RG 10-22-0-169 “Psychiatry - University of Toronto” Report to the Dean, Academic Year 1960-61 (AO).

one of its kind in Canada. While not exclusively for the study and treatment of sex deviation, the Director of Psychological Services was given a green light on a directive calling for complete psychological and psychiatric examinations for all first time offenders convicted of carnal knowledge, incest, rape and assault with intent to commit rape, indecent assault, indecent exposure, seduction and buggery, and to run treatment programs at the NPC aimed at that particular population.<sup>67</sup> For the first time, sex offenders were to receive mental health treatment aimed specifically at their sexual rehabilitation.

Like many other Canadian doctors during the early and mid-1950s, the one hired to run the NPC rejected electro-convulsive and insulin coma therapy as suitable treatments for sex deviants. What inmate patients needed, claimed Dr Buckner, was “insight into the fact that they were individually responsible for their actions, to give them confidence in themselves, and to help them to cooperate with their fellow beings.” Buckner was an advocate of the therapeutic community model developed by British psychotherapist Maxwell Jones. He rejected the hierarchical doctor-patient model in favour of active patient participation in their own treatment through a highly structured community of enlightened participants. Buckner aimed to socialize patients into a clinical culture of healing (and out of the world of inmates) by pairing new patients with established ones who supported and accepted the treatment program. He regularly screened the federal Department of Health and Welfare’s series of “Mental Mechanisms” films to help explain

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<sup>67</sup>RG 20-16-2-215.5 “General Potts Alton”, Memo to the Superintendent, OR Guelph RE: New directive on Sex Offenders 8 June 1960. (AO).

the concept of unconscious motivation and the fundamental drives of human behaviour.<sup>68</sup> Inmates directly participated in the daily operation of the clinic from running the library to leading group therapy.

From their earliest attempts with psychotherapy, prison treatment practitioners reported that “patients are resistant and hostile, [and] assume no responsibility for their actions.”<sup>69</sup> In 1954 Dr Gendreau, reporting to the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath, explained “In the penitentiary we must realize, as far as treatment is concerned, we are working under two contradictory concepts; first, the concept of the law, which is punitive, which the individual recognizes as punishment for what he has done, which engenders in him hostility.... He thinks of the day when he can be free. ...[H]e will not co-operate with the psychiatrists, believing that it may be used against him.”<sup>70</sup> Indeed, even in the seemingly ideal conditions at the NPC, Buckner struggled against patient resistance. To overcome this, selected inmates were treated twice weekly with CO<sub>2</sub>. Carbon dioxide therapy was popularized in the 1950s and used to treat a variety of disorders including anxiety states, phobias, obsessive-compulsive

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<sup>68</sup>RG 20-16-2 132.3 “Guelph Neuro Psychiatric Clinic 1957-1958”, Dr Bukner, Report on the Neuro Psychiatric Centre, Guelph, June 1/55-May 31/57. (AO). For a study of these films see Helen Harrison, “In the Picture of Health: Portraits of Health, Disease and Citizenship in Canada's Public Health Information, 1920-1960,” PhD dissertation, Queen’s University, 2001.

<sup>69</sup>RG 10-163-0-316 “American Psychiatric Association.” Paper delivered at the 106th Annual Meeting of the American Psychiatric Association, Detroit Michigan, May 1-5, 1950. Bernard A. Cruvant, M.D., Milton Meltzer, M.D., Francis J. Tartaglino, M.D. “An Institutional Program for Committed Sex Deviants.” (AO).

<sup>70</sup>RG 33/131 Acc 83-84/253 “Report of the Organization Meeting, Ottawa, March 29 & 30, 1954”, Testimony of Dr. Gendreau, 30 March 1954. (NAC).

neurosis and depression as well as sexual deviation.<sup>71</sup> By a controlled application of carbon dioxide, the inmate-patient was immediately robbed of oxygen. Once oxygen was returned to the lungs, patients often experienced a violent outburst. The theory was that these outbursts of aggression broke through protective mechanisms and rendered a patient more open to exploring repressed emotions through “the more subtle techniques of psychotherapy”. Buckner began experimenting with this treatment shortly after his arrival.

Author and ex-inmate Roger Caron was one of the “hostile” inmates Buckner selected for treatment. According to his autobiography, Caron ‘volunteered’: as an alternative to receiving the strap for an earlier infraction, he agreed to undergo the therapy.<sup>72</sup> Without any warning of what was about to happen, Caron was escorted into a small room where he was placed in a full length canvas sack “with a heavy-duty zipper running from head to foot.” The sack was strapped to the table. Once inside, a mask was clamped over his mouth and nose. Caron was instantly unable to breathe; he panicked, “thinking that the doctor goofed”. He described a “buzzing sound as if my brain were being invaded by wasps”; he “felt a surge of super human strength”, the faces in the room appeared “hairy” and the room started to spin. “I was being engulfed by a wave as thick and dark as molasses, a wave that was carrying me off into a shadowy world full of lurking horrors, a universe of flashing lights and buzzing sounds, sound that were getting louder and louder until I was being consumed.” Once the mask was removed, Caron “felt

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<sup>71</sup>LJ Meduna, *Carbon dioxide therapy; a neurophysiological treatment of nervous disorders* (Springfield, Ill. : Thomas, 1950).

<sup>72</sup>Caron, *Go-Boy!* 61.

an intense anger and began thrashing about". Caron endured seven treatments in three weeks and finally quit.<sup>73</sup> Whether or not Buckner used it with his sexually deviated patients is unknown, but it was considered an appropriate and effective treatment in such cases.<sup>74</sup>

The use of CO<sub>2</sub> may have been uncommon, but the employment of external means to break down patient resistance was not. Sex offender treatment programs in Toronto and in some US states employed sodium amytal, a drug widely used by Canadian military doctors World War II for its ability to "produce an 'easily controlled hypnotic state.'"<sup>75</sup> In peacetime, psychiatrists used the drug to conduct "intensive psychiatric interviews" at the NPC, at Toronto Psychiatric Hospital's Forensic Clinic and at New Jersey's Menlo Park Diagnostic Center for sex offenders.<sup>76</sup> Injected intravenously "at a slow rate until the patient becomes drowsy but not stuporous," sodium amytal produced a "lowered state of consciousness" during which time "inhibitory processes are released, rapport is often produced and suppressed conflictual material is brought into consciousness."<sup>77</sup>

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<sup>73</sup>Ibid., 64-66.

<sup>74</sup>See Robert P. Odenwald, "Carbon Dioxide Treatment of Sex Deviations," Meduna, *Carbon dioxide therapy*, 256-265.

<sup>75</sup>Terry Copp, *Battle Exhaustion*, 23.

<sup>76</sup>Albert Ellis, "A Study of 300 Sex Offenders," *International Journal of Sexology* 4(3) February 1951: 127-135.

<sup>77</sup>Michael D Tuchtie, "A Symposium on the Sex Offender: Forensic Inpatient Service," *Criminal Law Quarterly* 3:4 (February 1961): 451. George Scott, the psychiatrist for Kingston Penitentiary and the Prison for Women, later employed LSD, a drug popularized as a treatment modality by American psychiatrist Timothy Leary, for the same purpose. Whether or not he used it to treat sexual deviation is unknown. Norbert

The DRI appeared unconcerned with the goings-on at the NPC until Buckner violated government protocol by inviting a Canadian Broadcasting Corporation radio journalist to witness CO<sub>2</sub> treatment without first clearing it with the Ministry's Toronto office. It was an indiscretion that violated a number of DRI regulations, including the penultimate obligation to protect inmates' identities. Soon after these events the DRI received a letter from an ex-prisoner who complained that while an inmate at the Guelph Reformatory, he had been forced to participate in group therapy with other sex offenders. The group, he claimed, was led by two prisoners who demanded he reveal details about the sexual relationship between him and his wife, something which he refused to do. Permitting inmates to run group therapy themselves was an approach completely in line with the ideals of the therapeutic community, which held that patients should together take an active part in their own emotional and psychological growth. However, other staff members confirmed that Buckner had allowed two inmates to "exert authority over other patients".<sup>78</sup>

In addressing the issues raised by the NPC scandal, van Nostrand, the Director of Neurology and Psychiatry, argued that group therapy was problematic in a prison setting, particularly for those convicted of sex offences. For example, an inmate might reveal other crimes for which he had not been charged. Moreover, he was concerned that "some information revealed by an inmate under emotional stress may be used by other inmates to

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Gilmore and Margaret A. Somerville, *A Review on the use of LSD and ECT at the Prison for Women in the early 1960s*. McGill, Medicine, 1998.

<sup>78</sup>RG 20-16-2-132.3 Guelph Neuropsychiatric Clinic, 1957-1958, Memo, F.H. Potts to Deputy Minister, 16 May 1957. (AO).



force him into line with the group, or after discharge from the institution may be revealed in order to work off a grudge.”<sup>79</sup> Indeed, confidentiality was a significant problem for inmates involved in group therapy, and led some to refuse to participate.<sup>80</sup> However, as a willingness to participate in therapy came to be viewed as a measure of a willingness to rehabilitate, attending group therapy became less and less of an option for inmates hoping to be paroled, especially for those convicted under criminal sexual psychopath and later, dangerous sexual offender legislation.

The two inmates accused of dominating the NPC program were not just any inmates: they were homosexual. Taking his cues from Maxwell Jones, Buckner adopted a liberal attitude toward homosexuality, attempting neither to suppress nor punish men who engaged in sex with other men.<sup>81</sup> However, prison administrations took a very different view of the matter. DRI superintendents ran prisons like boot camp, relying on a military-style regimen to maintain control over inmates and public confidence in the prison system. Even the slightest appearance of institutional laxity was instant fodder for political point-making at Queen’s Park, and in the 1950s, the Cooperative Commonwealth Federation (CCF) regularly criticized the Department of Reform.<sup>82</sup> Although the DRI’s most

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<sup>79</sup>Ibid.

<sup>80</sup>RG 20-42-3 Millbrook Inmate Files, #MA 487.

<sup>81</sup>Jones, *Therapeutic Community*, 126-128.

<sup>82</sup>For an example of how the depiction of homosexuals having freedom to roam a prison at will discredited one New York political administration, see George Chauncey, *Gay New York: Gender, Urban Culture and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), 91-95. For media coverage of CCF critiques of the DRI, see RG 49 Series 63, Press Clippings Files, “Reform Institutions” Microform, 1956-

persistent critics – the CCF and Stuart Jaffray of the University of Toronto School of Social Work – usually attacked the Ministry for not taking the treatment ideal far enough, it is unlikely that even they would countenance giving homosexuals free reign.<sup>83</sup>

Buckner's group therapy sessions also violated one of the longest-standing practices in Canadian and US prisons: keeping younger inmates away from the corrupting influence of adult prisoners, especially if the older prisoner was known to engage in homosexual practices. Buckner's therapy group included some "seasoned sex offenders, past middle-age, and some young first offenders," leading van Nostrand to conclude that "these sessions should have never been tolerated!"<sup>84</sup> Even more worrisome was the dormitory-style housing all NPC patients shared. In a memo to the Deputy Minister, van Nostrand complained that the Ontario Training School boys were "forced or permitted to associate with hardened incorrigible sexual deviates whose conversation appears to centre around abnormal sexual practices."<sup>85</sup> Despite van Nostrand's complaints, Buckner refused to change the way he ran the NPC, and continued openly to violate orders from the

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1960. (AO).

<sup>83</sup>Interestingly, the DRI defended itself against accusations that the Deputy Minister was a "nineteenth century military minded" administrator who stood in opposition to the Ontario Plan by reminding critics that when the academic headmaster at the Cobourg Training School for Boys was discovered to be a homosexual, they fired him *with pay* until his contract ran out at the end of the school year. 10 February 1956 *Toronto Telegram*. In 1950s Ontario, compassionate understanding of homosexuality was a mark of middle-class modernity.

<sup>84</sup>RG 20-16-2-144.5 "General 'Potts' - 'Van' 'Wilson' 1957-58", Confidential Memo, FH van Nostrand to J Foote, 18 November 1957. (AO).

<sup>85</sup>RG 20-16-0-132.3 Memo, FH van Nostrand to GH Basher, 7 June 1957. (AO).

Guelph Superintendent and even from van Nostrand, claiming a proprietary right to run the clinic as he saw fit. Soon after the DRI opened a new, maximum security prison in Millbrook, Ontario, where plans were made to provide the segregated treatment facility experts had long recommended. All sex deviants were to be transferred to Millbrook, and Buckner was offered the opportunity to go with them. However, given that one of van Nostrand's criticisms of Buckner's administration of the NPC was that he spent too much time away from the Guelph Reformatory developing his own private practice without having sought the Ministry's permission, he correctly anticipated that Buckner would reject the offer.

As a result of the heightened public concern over sexual attacks on children, all DRI inmates convicted of a sex crime were sent for a full psychological and psychiatric evaluation at the NPC. However, with the expected transfer of sex deviants and the forced resignation of Buckner, van Nostrand was looking to scale back the program. DRI head psychologist and the remaining NPC staff argued that mandatory assessments for all inmates convicted of a sex offence was an onerous task, using up precious few resources and robbing seriously mentally disturbed patients of much needed care.<sup>86</sup> Although the NPC continued to assess and recommend treatment for a handful of men serving time on

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<sup>86</sup>On the "piling up of sex cases", see RG 20-16-2-0-198.2 "Guelph NPC Clinic 1960-61" June 30 Staff Conference Minutes. (AO). Once an inmate was in prison, it was very difficult to secure a transfer to a mental ward in a general hospital; mentally disturbed patients languished in both provincial and federal prisons, and a few received anything approaching medical care. The NPC stood out as an exceptional facility for this reason. According to most psychiatrists servicing federal institutions, they had time only for most disturbed inmates. See Bruno Cormier quoted in Robert Fulford, "What we can learn from the tragic history of a sex criminal," *Macleans* (21 September 1963): 24, 46-47.

sex-related charges, Potts dramatically reduced the original 1955 list of offences meriting a full assessment by eliminating those charged with: rape, viewed as a violent crime, not a crime of sexual deviation; carnal knowledge, a charge that tended to be used in cases of non-coercive sexual activity, most often between a male 16 years of age or slightly older, and an adolescent female 15 years or younger; and the little-used charge of seduction, a crime of sexual betrayal, not assault.

Full psychological and psychiatric examinations were henceforth limited to include only those whose sexual outlet or object choice was considered a deviation from a same generational, adult heterosexual norm. Specifically, the new NPC list targeted inmates involved in a sexual offence with a person of the same sex (this would have applied to minors at the adjacent Ontario Training School who were too young to be transferred to Millbrook); a sexual offence with a person of the opposite sex who had not yet attained puberty, an animal, or one of their own children, and those charged with exhibitionism.<sup>17</sup> Despite the latest directive, Dr G.S. Burton, Buckner's replacement, was not much in favour of any sort of treatment at all. "Too much therapy would not be wise for the kind of inmate we are largely dealing with," he argued. Inmates would simply learn the language and methods of modern psychotherapy and "bandy these about, but would not

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<sup>17</sup>RG 20-16-2-215.5 "General – 'Potts' - 'Alton'" Memo from Potts to Guelph Superintendent and NPC Staff, New Directive on Sex Offenders, 8 June 1960. (AO). What is particularly interesting about this revised directive is that it identified inmates subject to assessment not according to the crime for which they were found guilty (i.e. indecent assault, male) but by the "deviant" sexual object choice (ie person of the same sex).

really be changed in their personality.”<sup>88</sup> By 1960 staff agreed that the Clinic did more by way of diagnosis than actual treatment.<sup>89</sup> Bucker’s attempt to empower inmates by taking an active role in their own psychotherapy had come to an abrupt and inglorious end.

The NPC experiment paled in comparison to the comprehensive program exclusively for sex offenders in Norwalk, California, the Haight Ashbury of the treatment movement. In 1950 Norwalk became one of two state hospitals assigned to establish a separate unit to accommodate sex offenders for 90-day pre-trial observation and to provide treatment as well as conduct research on sex deviation. Determined to have “more than just an eyewash treatment program”, Robert E. Wyers, the Superintendent and Medical Director, added new staff and emptied out a small ward in anticipation of an estimated 60-80 patients. By 1953 Norwalk was home to over 400 sex offenders.<sup>90</sup>

With hospital care as its model, the Norwalk philosophy was founded on a spirit of non-hierarchical voluntarism. “We do not force treatment,” Wyers explained to a mixed crowd of staff, patients and prominent citizens from the local community, “lest the professional staff become another authority or something of that sort... for you to reject

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<sup>88</sup>RG 20-16-2-198.2 “Guelph NPC 1960-1961” Staff Conference Minutes, 6 May 1960. (AO).

<sup>89</sup>In a memo to NPC staff, Potts complained that one inmate who was serving time for having sexual relations with his sister should have been provided with sex education at the bare minimum. RG 20-16-2-198.2 “Guelph NPC Clinic 1960-1961” Memo, Potts to Deputy Minister, 7 September 1960. (AO). Some of the personality tests in use were the Minnesota Multiphasic Personality Inventory, the Guidford Zimmerman Temperament Survey and the California Test of Personality. RG 20-16-2-81.7 “Psychological Clinic 1953-54” Memo, F.H. Potts to Sunde, 29 April 1953. (AO).

<sup>90</sup>Robert E. Wyers, “Sex Offenders help organize their own treatment,” unpublished paper, 1953. Kinsey Institute Archives (KIA).

and to resent.” Even the professional staff were beneficiaries of advanced ideas in program delivery. Treatment “teams” invariably consisted of a psychiatrist, psychologist and social worker, and in that order. Elsewhere professional tensions between “team” members undergirded many clinical staff meetings, but Norwalk boasted full equality among its treatment professionals.<sup>91</sup> Each were responsible for his or her own area of expertise, and each for his or her own groups and programs. Staff interviews with the Kinsey team revealed a high level of job satisfaction and professional fulfillment, suggesting that the team ideal was realized.

In virtually every aspect the Norwalk program was unique. For example, the staff established the Emotional Security Program (ESP), a self-governing patient board that served a number of roles including determining the pace and scope of the program, helping to shape policy, assisting new arrivals’ integration into the program, and boosting patient morale on the floor. Like Buckner who had programs aimed at socializing inmates into the NPC milieu, Norwalk staff knew that once a group of patients were entrenched in a program, they would set its tone and reinforce it by socializing new participants. For this reason Superintendent Wyers viewed the ESP as a critical element in the overall scheme. It kept patients together as a cohesive group, helped foster “proper attitudes”, and helped “sell” therapy to unmotivated patients. In short, the ESP created and sustained a culture of participation rather than a culture of resistance.

But it was Norwalk’s controversial position vis a vis sexual matters that really

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<sup>91</sup>File SO1 Folder 1A, “Norwalk: Outstanding and Unusual Aspects of the Program” unpublished paper, 1953. (KIA).

made the program one of a kind. First, the sex offender ward employed female staff, a practise almost unheard of in the early 1950s. Women were excluded from carceral settings for two reasons: working with inmates was not considered appropriate for the female sex, and it was not considered appropriate for inmates either, who might be sexually aroused by their mere presence, thus creating a new and perhaps hard-to-manage discipline problem.<sup>92</sup> Integrating female staff was a fundamental part of the alternative vision proponents of the therapeutic community brought to the field of corrections and forensic sexology. The practice of hiring women in such settings was part of a carefully planned strategy to “heterosexualize” carceral institutions generally. Prisons have long been understood to be abnormal places, in part because of the absence of women. While some prison administrators and treatment experts advocated conjugal visits to create opportunities for normal heterosexual contact, proponents of the therapeutic community believed that hiring female staff was another means to create as ‘normal’ an environment as possible. Bruno Cormier, one of Quebec’s most prominent forensic psychiatrists, also employed a large number of women at the therapeutic community he established in Dannemora, New York.<sup>93</sup> However, both of these were exceptional programs. By and

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<sup>92</sup>Lorraine M Williams recounts her experience replying to a “men only” position at the TPH Out-Patient Forensic Clinic in “Setting up social work at the Forensic Clinic,” *TPH: History and Memories of the Toronto Psychiatric Hospital, 1925-1966*, ed. Edward Shorter (Toronto: Wall & Emerson Inc, 1996), 253-258.

<sup>93</sup>Bruno M Cormier, *the watcher and the watched* (Montreal: Tundra Books, 1975): 139-171.

large women were excluded from the intellectual development of forensic sexology.<sup>94</sup>

Norwalk was purposely permissive in its structure, believing that therapeutic gains could not be made without meaningful opportunities for sexual expression.

Homosexuality, common in all prisons but subject to administrative control and punishment, was unregulated and patients were encouraged to speak openly about their relations with other inmates. Staff estimates of homosexual activity varied widely, from 90% to hardly at all, but most guessed that between 30 and 50 per cent of the patients engaged in homosexual sex.<sup>95</sup> Norwalk professionals agreed that homosexual expression, like masturbation, was positive because it provided an opportunity for men to discuss and gain insight into their emotions.

Staff were also cognizant of the need to allow opportunities for heterosexual contact, especially if they felt that an inmate's orientation was toward women. Norwalk was probably the first institution to allow semi-conjugal visits. Physical contact between visitors and patients was permitted and together they freely roamed the ward. They were

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<sup>94</sup>Significant contributions were made by women in the pre-WWII era. See Jennifer Terry's *American Obsession* for a discussion of anthropologists Margaret Mead and Ruth Benedict 163-168, psychologists Catherine Cox Miles 163-177 and Lura Beam, 143-154 as well as the contribution made by medical practitioner Katherine Bement Davis 126-135. See also Marie Kopp, who incidentally composed the chapters on lesbianism for Davis' book, *Ibid.*, 131. Evelyn Hooker, who did not enter the field until the mid-1960s had a dramatic impact on studies of homosexuality. Hers was the only substantive contribution made by a female to forensic sexology in the two and a half decades following WWII. Based on her examination of homosexuals *not* culled from the patient lists of treatment experts, Hooker concluded that social struggle rather than psychotherapy was the "appropriate healing tool." See Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis* (New York: Basic Books, 1981), 49-53.

<sup>95</sup>SO1, Folder 2 "Prison Staff Interviews." (KIA).



also allowed privacy in patients' rooms, though only heavy petting was officially sanctioned. One staff social worker argued that what the program needed was a "sex room" so that inmates could have intercourse, but, she lamented, "this is not possible in our culture."<sup>96</sup> Others felt that patients without a wife or "sweetheart" should be provided with prostitutes. Only this way would inmate-patients learn to put into practice the normative sexual values their therapeutic peers tried to foster.

While it is unlikely that the California state budget would afford the services of local prostitutes, the institution did find other ways to create opportunities for heterosexual contact. With the organizational assistance of a group of volunteer housewives from the local community, the Norwalk program included weekly dances. Lessons were provided by the female volunteers, and dance partners were supplied by the psychotic ward. Described by one staff member as "recreational therapy", the dances were regarded as an ideal setting for sex offender patients to learn social skills and to "test or put into operation some of the insights gained in psychotherapy."<sup>97</sup> According to one staff psychiatrist, dances provided a much needed sexual outlet, and "helped keep the institution heterosexual."<sup>98</sup>

If staff members conceived of any possible benefit for the invited guests, they failed

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<sup>96</sup>SO1, Folder 2 "Prison Staff Interviews." (KIA).

<sup>97</sup>Bessant, "Therapy Program, part II". Unpublished paper, 1955. (KIA).

<sup>98</sup>SO1, Folder 2 "Prison Staff Interviews." (KIA). Creating opportunities for "normal" social interaction among patients was not uncommon. The Toronto Psychiatric Hospital held monthly dances for its patients, and introduced hairdressing and other beauty services for female patients in order to help raise their self-esteem. *Toronto Daily Star*, 17 June 1939: "Dancing, Beauty Aid Held Mental Help"

to mention what it was, but the shortcomings of the program were impossible to ignore. The staff actively encouraged socializing and mild petting between the sexual psychopaths and the psychotic female patients, and secretly arranged “private visits” between them. Even the hospital minister maintained a permissive stance, explaining to a Kinsey Institute staff person that he would “wink at it if it is not exploitative.” However, at least two of the female wards became pregnant, and the Superintendent quickly intervened, putting an end to these practices.<sup>99</sup>

Bruno Cormier’s therapeutic community at Dannemora prison in New York also tried to put into practice the ideas Maxwell Jones and his proponents advanced concerning sexuality.<sup>100</sup> Homosexuality was considered part of the prison “landscape”, and staff at Dannemora similarly battled the stigmatization of sex offenders. There were no facilities permitting conjugal visits, but Cormier supported the concept and allowed inmates and their visitors to make limited physical contact in the visiting room. In contrast with Norwalk, the female treatment staff at Dannemora were highly critical of the idea that prison homosexuality could be managed by providing women to sexually gratify male inmates. Describing it as “simplistic”, they argued that it failed to take into account either the inmates or the women. Therapist Lydia Keitner claimed that inmates would continue their negative patterns of behaviour in their relationships with women without ever having to change. Moreover, she directly challenged the ethics of providing women to sexually service inmates. From where would these women come, she asked, and how could we

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<sup>99</sup>SO1, Folder 2 “Prison Staff Interviews.” (KIA).

<sup>100</sup>Cormier, *the watcher and the watched*, 125-138.

allow them to engage in relationships with men we know to be abusive and destructive? Keitner and her female colleagues were also circumspect about the notion that female employees ‘heterosexualized’ the prison environment, pointing out that there were a variety of sexual tensions that coursed through the Dannemora program, including those between male staff and the inmates.<sup>101</sup> Their criticism highlighted one of the fundamental assumptions of the psychotherapeutic paradigm: that the therapist was a living embodiment of ‘normativity’. As the women at Dannemorra pointed out, male therapists failed to openly acknowledge and account for the ways in which their own ideas, thoughts, sexual fantasies and ‘impulses’ shape the therapeutic relationship. Although they did not deal exclusively with sex offenders as did the Norwalk program, they nevertheless demonstrated an insight into sex and gender relations that appeared to evade many of the most experienced forensic sexologists.

### **Millbrook**

The 1957 transfer of “sex deviants” from the Guelph NPC to Ontario’s newest prison at Millbrook represented a dramatic step backward in the treatment ideal.<sup>102</sup> Touted by the DRI as the first North American facility for the psychopathic inmates, Millbrook was intended to house the “tougher and meaner breed of inmates” who, guards complained, were overrunning the Guelph Reformatory and corrupting young, first-time

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<sup>101</sup>Ibid., 170.

<sup>102</sup>RG 20-16-2-114.6 “Annual Reports for 1955-56” Millbrook Annual Report, 14 May 1958. (AO).

offenders.<sup>103</sup> The province's most incorrigible inmates were to be reformed by the prison's highly regimented and strictly controlled environment in which treatment, not punishment, would be the guiding spirit.

Planning for Millbrook paralleled internal calls for the segregation of "sexually maladjusted" inmates.<sup>104</sup> van Nostrand saw Millbrook as an ideal opportunity to isolate homosexuals and men charged with sexual offences involving members of their own. Few North American sexologists would have considered this initiative as progress. First, though the intention was to provide a separate wing for sex deviates, it fell short of the request for a free-standing facility that would function more like a hospital for healing than a prison for punishment. But more importantly, it placed sex offenders in an institution for criminals considered the most hardened and difficult to manage.

Indeed, Millbrook was an extremely punitive environment. Situated on 100 acres of bucolic Ontario land, the prison buildings were immured by 20-feet of concrete. Eight glass-enclosed towers housed guards on a 24-hour watch. According to the sentencing guide for magistrates, an inmate was "lodged in a single cell bare of anything but a mattressless [sic] steel bunk, bedding, and flush-to-wall-button wash-basin and toilet; with a frosted bullet-proof glass window set in masonry and solid flush-with-wall door. The

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<sup>103</sup>RG 20-16 File 60.3 Special Investigation File, Riot of 5 July 1952, 1952-1953. (AO).

<sup>104</sup>RG 20-16-2-124.4 General - Superintendents' Conference, Magistrates' Conventions. (AO).

atmosphere of the place is chill, clean, silent, and self-revealing.”<sup>105</sup> Though each cell had a window, it was too high to look through, and prisoners were forbidden to stand on their bed to do so.<sup>106</sup> There were no dining facilities where inmates could gather and foment trouble. All meals were delivered through a small opening at the bottom of cell doors and consumed alone.

A major aspect of the “treatment” offered at Millbrook was the “Progressive Stage System,” which aimed on the one hand to force compliance with prison regulations through the withdrawal of sensory stimulation, and on the other hand reward compliance by incrementally introducing the pleasure of food, human contact and leisurely pursuits. Upon arrival inmates spent 16 days on a “special diet” with no letters, no visitors, no opportunities to exercise and only a Bible to read.<sup>107</sup> At stage two, inmates were permitted

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<sup>105</sup>RG 20-16-2-146.2 “Requests for Information” Sentencing, Transferring, Sorting and Subsequent Procedures, 5. (AO).

<sup>106</sup>RG 20-16-2-154.16 “Millbrook - Miscellaneous, 1957-1958” Maximum Security, Millbrook, Ontario, Canada; RG 20-16-2-200.6 “Millbrook - Miscellaneous, 1960-61” Inmate Rules and Regulations, 2. (AO).

<sup>107</sup>“Special diet shall consist of -  
2 oz powdered milk or 8oz whole milk  
3 1/2 oz raw grated potato  
3 1/2 oz carrots, chopped fine  
1 oz by volume tomato juice or puree  
3 1/2 oz cabbage, chopped fine  
4 oz ground beef  
2 oz lard or shortening  
1 oz white or whole wheat flour  
1/2 oz salt  
1 tbsp chopped onion  
1 egg  
5 oz dried beans (precooked before mixing)

The above ingredients are to be shaped into a loaf and baked. This formula is the

regular meals, one non-fiction book, tobacco, 45 minutes of recreation and one 30 minute visit from a family member each week. The best behaved inmates entered stage three, where they were afforded library privileges, one letter out to family, a movie a week and the opportunity to take a correspondence course.<sup>108</sup>

Though the DRI promised that Millbrook would be a laboratory for treatment, housing sex offenders in a maximum security facility was in direct conflict with the dominant view that sex offenders were in need of psychological help, not punishment. According to the most recent studies, the majority of prisoners serving time on sex-related charges were not dangerous. Popular sentiment leaned toward institutionalizing them in a hospital or other treatment setting, certainly not a maximum security prison for the “disturbers and disturbed.” W.T. McGrath, the Executive Secretary of the Canadian Corrections Association, complained that using the criminal justice system to enforce a moral order “made criminals out of otherwise normal people.... If we can learn to see [that many of these people are in no way dangerous] it might make a great difference in the number going to prisons, and would specifically remove the need to plan for these special types of inmates.”<sup>109</sup> Judge Helen Kinnear, one of the three Commissioners who studied

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daily amount for one person and shall be served in three equal portions with two slices of whole wheat bread at each meal.”(AO) RG 20-16-2-168.3 “General -- Rules and Regulations 1958 to 1959” ONTARIO Official Rules and Regulations for the Guidance of Employees of Provincial Correctional Institutions for Male Persons.

<sup>108</sup>RG 20-16-2-155.3 Millbrook Inmates 1960-61. “Progressive Stage System.” (AO).

<sup>109</sup>W.T. McGrath, “Planning Canada’s Correctional System” Annual Meeting of the John Howard Society of Peterborough, 12 April 1960, 3.

Canada's criminal sexual psychopath legislation, was deeply distressed by the plan to incarcerate sex offenders at Millbrook, arguing that it was not only unnecessary but discriminatory: "This is really a terrible way to be absolutely segregated and for one guard to every two prisoners or so and all these gates. [The Royal Commission] would think that was discriminating against the sex offender as compared with other offenders."<sup>110</sup>

Kinnear's comments might have alarmed DRI officials if their primary concern was the pursuit of treatment alternatives for the DRI's sex offender and homosexual population. However, internal documents show that van Nostrand and other upper-level officials were more interested in isolating prisoners who might have a negative influence on other inmates and who made the custodian's job more difficult and, in some cases, more dangerous. For "Group II inmates", those charged with a sex offence "against anyone other than an adult female" or found to be homosexual once inside the prison system, the primary objective was not to help cure sexually deviated prisoners but the "complete segregation of some of the sexual perverts... for the protection of other inmates."<sup>111</sup> In van Nostrand's view, removing homosexuals and other sexually deviated inmates was a step forward in that it protected the young offenders left behind who, he believed, were at risk of being sexually corrupted.

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<sup>110</sup>RG 20-148 Correctional Services File 11.5 "Sexual Psychopaths, Observations by Judge Helen Kinnear" Observations by Her Honour Judge Helen Kinnear Concerning the work of the Royal Commission on the Criminal Law relating to the Criminal Sexual Psychopaths, 8. (AO).

<sup>111</sup>RG 20-16-0-132.3 Memo, van Nostrand to the Deputy Minister, 7 June 1957. In 1961 the Department went even further, and limited "Group II" transfers to *only* homosexual men.(AO).

As at the Guelph Reformatory, sex offenders and homosexuals were fully integrated into the general prison population when they were not in their cells during the first two years of operation.<sup>112</sup> Group II inmates were subjected to the same punitive structure as were "Group I" inmates, despite Ministry promises to provide a specialized treatment program. With the support of Superintendent RH Paterson, in 1959 Millbrook staff sent a memo to the Deputy Minister arguing that Group II inmates "should be dealt with in an entirely different manner".<sup>113</sup> At the very least they should be segregated, they argued, because:

- a) There is a higher incidence of major personality disorder, or potential mental illness, in this group of inmates.
- b) They present less criminal tendencies, aside from their sexual deviant pattern.
- c) They present [a] marked institutional problem when mixed with other inmates.
- d) Many staff have an intense dislike of homosexuals, and selected staff should be used in dealing with them.

Paterson reminded Basher of the DRI's original intention to "effectively segregate homosexuals from other Inmates" and to "develop a treatment plan for them." When he suggested that certain specially trained officers be assigned to work exclusively with this group, he argued that inmate exposure to "Custodial Staff who are manly, well-adjusted types and who have some understanding and acceptance of their charges can do much toward changing attitudes within this group."<sup>114</sup>

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<sup>112</sup>RG 20-16-2-0-105.6 "Guelph - Inmates 1955-56" G.E. Jacobs to Chief Inspector, 26 May 1955.(AO).

<sup>113</sup>RG 20-16-2 155.3 Millbrook Inmates Removal Warrants.(AO).

<sup>114</sup>RG 20-16-2-155.3 "Millbrook Inmates Removal Warrants" Letter, Paterson to Basher, 22 January 1959.(AO).



Changing custodial officers' attitude to become more accepting of the psychological approach was in itself a challenge but showing a compassionate acceptance of homosexuals was a tall order indeed. According to a number of postwar writers, an intense dislike of homosexuals - by which the "mincing effeminate type" was usually meant - was commonplace among not only custodians, but medical doctors as well. In an American study of sex in prison, leading expert Benjamin Karpman claimed that "discussion of homosexuality by physicians is pervaded with a feeling of revulsion; homosexuality is spoken of as debauchery and evil, homosexuals as dregs, and nothing better is offered for its solution than forcible repression and punishment."<sup>115</sup> It would be a mistake to assume that all staff were repelled by effeminate men, but according to the treatment paradigm, playful teasing, sexual repartee and, of course, actual sexual contact were equally unacceptable.<sup>116</sup> At the time of the 1958 staff conference, there were 44 Group II inmates. The Deputy Minister approved the hiring of two new guards so that a special wing could be set aside for them, and staff were given the option to refuse work in that section. Homosexuals were assigned to work in the laundry, and all other Group II

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<sup>115</sup>Benjamin Karpman, "Sex Life in Prison," *Journal of Criminal Law and Criminology* 38(5): 475-486 (Jan-Feb 1948): 476.

<sup>116</sup>Jean Genet explored the sexual tension between guards and inmates in his 1950 film *Un Chant d'amour*; Canadian playwright John Herbert explored the sexual repartee in prison in his play *Fortune and Men's Eyes*. Sex between prison staff and inmates is explored more fully in chapter five, but in 1961 the arrest of the Chief Turnkey from the Whitby Jail on a charge of Gross Indecency, Male, with an ex-inmate was brought to the Deputy Minister's attention. RG 20-16-2-240.8 "Miscellaneous 1960-1961" Notes, 25 August, 1961.(AO).

inmates in the tailor shop.<sup>117</sup> The segregation of sex “perverts” was complete.<sup>118</sup>

Millbrook treatment staff failed to distinguish themselves from their colleagues in the field of forensic sexology. Millbrook’s first consultant psychiatrist FE Webb prescribed narcotics and electro-convulsive therapy to jump start the therapeutic process, and just before his retirement he began a project to administer ECT to sex offenders for “those who are willing to take this treatment on a voluntary basis.”<sup>119</sup> What he hoped might be the outcome is unknown as no report was ever filed or paper published, and he retired shortly after. Fortunately, Webb’s was the last significant venture in treating the sex offender and homosexual population at Millbrook, which had almost doubled from 44 in 1958 to 83 in 1962. Though at the institution’s opening Millbrook was heralded as the “ideal laboratory” for research, in May 1962 the remaining treatment staff unanimously agreed that treatment for sex offenders could not be carried out at that institution, and that other alternatives should be pursued.<sup>120</sup> Director of Psychology F.H. Potts cited Millbrook’s remote location as one of the reasons why it was difficult to attract and retain

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<sup>117</sup>RG 20-16-2-0-154.16 “Millbrook - Miscellaneous, Visitors, Chaplains, Religious Items, 1957-58” Maximum Security Reformatory, Millbrook, Ontario, Canada. (AO).

<sup>118</sup>A further sign of van Nostrand’s regressive policy was the 1961 re-classification of Group II inmates as sex “perverts”, a pre-medical term, from sex “deviants”, the sexological term favoured by psychiatrists, psychologists and other medical and treatment experts. RG 20-16-2-243.4 “Inmates - General 1961-1962” Classification, December 1961. (AO).

<sup>119</sup>RG 20-16-2-167.5 “General 29 1958-1959 Conferences”, F.H. Potts to W.T. McGrath, 13 May 1958. (AO).

<sup>120</sup>RG 20-16-2-154.16 “Millbrook - Miscellaneous, Visitors, Chaplains, Religious Items, 1957-58” Maximum Security Reformatory, Millbrook, Ontario, Canada. (AO).

quality staff. Other obstacles to building up a program included conflict with the prison administration, lack of flexibility and the architecture of the building itself.<sup>121</sup> Abandoning treatment was abetted by Webb's successor, B.A. Kelly, who maintained "incarceration is a useful thing" for Group II inmates, but that most sex offenders are not amendable to treatment. Even among those who were, Kelly insisted that treatment in an out-patient setting was most suitable where "sincere motivations for changed sexual behaviour can only be assessed by a patient's willingness to keep appointments."<sup>122</sup>

In 1957 the DRI's most important treatment advocate, Minister Major John Foote, retired and in the six years that followed Reform Institutions portfolio changed hands five times. In 1958 the newly hired Director of Research and Treatment Services, J.D. Atcheson, complained to the Minister that inmates were being transferred to Millbrook simply to keep the marker plant running at full capacity.<sup>123</sup> A year later, following a series of articles in the *Toronto Daily Star* and the *Toronto Telegram* denouncing the continued use of the strap, Ministry staff held a special meeting on the issue.<sup>124</sup> Because of his opposition to the use of corporal punishment, Atcheson was not invited to attend. At the

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<sup>121</sup>RG 20-16-2-258.1 Memo, F.H. Potts to G. Hedley Basher, 8 May 1962.(AO).

<sup>122</sup>RG 20-16-2-287.3 Memo, B.A. Kelly to J. Marsland, 30 January 1964.(AO).

<sup>123</sup>RG 20-16-2-155.3 "Millbrook Inmates Removal Warrants" Memo, Atcheson to Basher, 29 April 1958.

<sup>124</sup>Journalist Pierre Burton wrote an article exposing the use of the strap in Ontario Reformatories, prompting many citizens of that province to write letters to the Minister of Reform Institutions protesting its use. For the article see *Toronto Star*, December 4 1958, 21. For the letters of protest see RG 20-16-2-0-152.17 "Guelph – Miscellaneous – Visitors – Chaplains – Religious Items 58-59." (AO).

meeting, Ontario Prime Minister Leslie Frost approved its continued use, but only at Millbrook. Alarmed by reports that inmates were actually requesting transfers to Millbrook, Frost warned his Deputy Minister to “Keep Millbrook tough”, a statement interpreted by some as a further retreat from the treatment aspect of the program.<sup>125</sup> The Superintendent resigned in disgust, and custodial officers were told to keep their distance from inmates.<sup>126</sup>

By 1963 Millbrook’s skeletal treatment team of two part-time consulting psychiatrists could no longer provide even a general counselling service for inmates. Staff agreed that the maximum security needs of Group I inmates, the “troublemakers,” clashed with the therapeutic needs of Group II (sex deviant) inmates, and that the clinical program never got beyond the initial intake stage.<sup>127</sup> R.R. Ross, the supervising psychologist for the region reported that treatment services would “henceforth be extremely limited in scope” and that because of the shortage of staff, “there is little room for optimism about future

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<sup>125</sup>RG 20-16-2-186.4 “Superintendent’s Conference, 1959-1960”, Transcript, 2 July 1959. (AO). See Pott’s response, RG 20-16-2-176.11 Memo, Potts to Basher, 21 September 1959. (AO).

<sup>126</sup>*Peterborough Examiner*, 13 July 1965. Col. Paterson’s enthusiastic support for transforming the prison into a therapeutic community is documented in his 1958 Annual Report (AO) RG 20-16-2 168.4 Annual Reports, 1958-59 (1). It appears that the DRI administration played a significant – and manipulative role – in forcing Paterson’s resignation by accusing him of “institutional irregularities”. Officially, Paterson resigned because he refused to force his staff to submit to an investigation. The nature of the “irregularities” the DRI threatened to investigate were not documented, but it seems likely Paterson was considered too permissive by Basher’s standards. See RG 20-16-2 176.7 Millbrook - Miscellaneous 1959-60. (AO).

<sup>127</sup>RG 20-16-2-258.1 “Millbrook Inmates 1962-63.” Minutes of the Monthly Treatment Meeting, 1 May 62.(AO).

expansion.” Ross recommended that the department transfer many of the duties that normally fell to the social worker and psychologist, such as general counselling, psychological testing, and intake interviewing, to a custodial officer.<sup>128</sup> Various political appointments and public promises during the late 1950s and 1960s kept the illusion of the DRI as a therapeutic haven afloat, but there were never enough resources in the treatment programs to bring with, and Millbrook became a “storage bin” for all sorts of “problem” inmates.<sup>129</sup> In 1965 two inmates hoarded their lighter fluid rations and lit a fire, hoping to draw attention to the conditions at the prison. The media responded and gathered inside information from guards who were themselves appalled by what inmates were forced to endure. The opposition party called Millbrook the “Alcatraz of Ontario”, and demanded its closure.<sup>130</sup>

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<sup>128</sup>RG 20-16-2-298.4 “Staff: General Correspondence 1963-64.” R.R. Ross to F.H. Potts, 28 August 1963. (AO).

<sup>129</sup> Two major announcements that had virtually no impact on treatment services were the hiring of J.D. Atcheson, the former Head Psychiatrist of the Toronto Family and Juvenile Court, as Director of Research and Treatment Services in 1957, and the 1962 announcement that the DRI was preparing to establish a Research unit. RG 20-16-0-132.3 19 November 1957. On Millbrook as a “storage bin”, see Richard Steffy, telephone interview by author, Waterloo, ON, 2 March 2001, as well as comments by Member of Provincial Parliament George Ben, reported in *Peterborough Examiner*, 8 October 1967.

<sup>130</sup>Millbrook still stands today. The inmates who set the fire were sentenced to an additional two years incarceration, but they got two of their wishes: to expose the brutality at Millbrook and to be transferred to Kingston Penitentiary – Canada’s oldest penitentiary – where they believed they would have a better quality of life. See *Peterboro Examiner*, “No Treatment Given - Men are Just Broken” 12 July 1965, and “Hearts of Prison Staff Being Broken,” 13 July 1965. For “Alcatraz of Ontario” see *Toronto Telegram*, “Millbrook Reformatory.... or deformatory? A Dormant Volcano,” 13 August 1965. See also the 1963 internal investigation into Captain Brodie, a senior custodian, who was disciplined for physically assaulting an inmate who suffered cracked teeth and a ruptured groin as a result. RG 20-16-2-0-287.2 “Millbrook - Staff, 1963-64” G.E. Jacobs to Chief

The problem was not limited to Millbrook. The treatment sham exploded in 1961 when all but two of the staff at Toronto's Juvenile and Family Court quite after the government imposed new and highly punitive policies on the clinical management of the Court's clients.<sup>131</sup> Later that same year, eight staff members at the Alex G. Brown Memorial Clinic resigned *en masse*. According to Stuart Jaffray of the University of Toronto School of Social Work – a regular critic of Ontario's prison system – “Because of custodial regulations and practices the professional staff have encountered increasing difficulty in operating a treatment program in the clinic. Despite its name they got little indication that the therapeutic program was really the primary purpose of the clinic. When the growing conflict was neither recognized nor resolved by top administration, they resigned in protest, stating that much of their effort was negated and wasted under the prevailing conditions.”<sup>132</sup> For Jaffray, the DRI had to take concrete steps toward resolving the conflict between punishment and treatment. “Does the institution exist for the man, or the man for the institution?” he asked. “If the former, it will have to have a full complement of treatment services, and use them. If the latter, all you need is a rockpile [sic] and a treadmill...” The pretense of ‘treatment’, he concluded, gives a show of humanity with one hand and keeps a firm hold on the inmate population with the other.

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Inspector, 10 June 63. (AO). Notably, the victim's complaint was either not made or not listened to while he was a resident of Millbrook, but instead was formally recorded while he was at the Metro Toronto Jail awaiting deportation.

<sup>131</sup>*Globe and Mail*, 2 February 1961, 5. One of the staff members told a journalist that the “official” explanation for this and previous staff resignations was the result of budget cuts.

<sup>132</sup>*Globe and Mail*, 4 January 1962.

After the retirement of Major John Foote, the DRI made less and less of an effort to maintain the 'pretense' that the DRI was working toward the implementation of the goals and ideals laid out in the Ontario Plan. By 1961 the Director of Treatment Services, Director of Psychiatry and Director of Social Work positions were vacant; F.H. Potts, the first psychologist hired by the DRI, was the only mental health administrator remaining. Then-Minister George Calvin Wardrope announced that his department was retreating from the "idea that every offender, given the proper treatment and assignment, could be successfully molded [sic] into a useful citizen. Penologically speaking," he concluded, "the pendulum is swinging nearer to where it should [be]."<sup>133</sup> In the 1969 Report of the Canadian Committee on Corrections, the authors described the relationship between prison services and treatment professionals in the federal system in much the same terms as every mental health critic since WWII had: an uneasy alliance of opposing ideologies, the latter lacking the support of the former. "The real power structure in the institution is mainly concerned with custody, with keeping the inmates in line, in order, and above all, *inside*" wrote British Columbia psychotherapist Anthony Marcus. "This is not an environment in which the principals of reform and rehabilitation can even exist and to say otherwise would be a mockery."<sup>134</sup> A guard at the Millbrook Reformatory explained to a

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<sup>133</sup>RG 20-16-2-0-240.7 "Misc Speeches and Press Releases, 1961-62" Speech by the Minister to the Canadian Club, Sioux Ste. Marie, October 5 1961. (AO). On Potts' 1947 hiring see RG 20-16-2-0-276.2 "Requests for Information, 1962-63" Graham to Dr. Lewison, 3 April 63. (AO).

<sup>134</sup>Anthony Marcus, *Nothing Is My Number: An Exploratory Study With a Group of Dangerous Sexual Offenders In Canada* (Toronto: General Publishing Ltd., 1971), 58-59.

journalist that “the whole philosophy is to break the inmate’s spirit and make him realize that no one is tougher than the institution.”<sup>135</sup>

The Department of Reform Institutions may have refused to recognized the depth of the conflict between the treatment and prison ideology, but as far as the Millbrook experiment went, top administrators would concede only that because of the remote locations of Ontario reformatories, and because of the type of work offered, the DRI was never going to be able to provide a treatment program for sex deviates at Millbrook. In the past, psychiatric staff were affiliated with local universities or in private practice and worked on a part-time contract basis, but never had the Department enjoyed a full staff compliment.<sup>136</sup> Given its inability to attract and keep psychologists, by 1962 Potts concluded that the only way it was going to make any headway was to continue to court outside help by building bridges between reformatories and faculties of psychiatry, psychology and social work. In the meantime, Potts recommended that a sex deviant treatment program be set up at the Alex G. Brown Memorial Clinic (AGBMC), where the DRI ran a pre-release treatment program for alcoholics and drug addicts. There, he argued, research into the effective treatment of homosexuals who constituted approximately 25% of the Millbrook Group II population and who posed the greatest

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<sup>135</sup>*Peterborough Examiner*, 12 July 1965.

<sup>136</sup>RG 20-16-2-0-242.1 “Inspections”. (AO). Even a bursary program for psychiatrists in graduate school failed to attract applications. See RG 20-16-2 File 113.2 “General Mr Potts and Dr van Nostrand”, Summary of Scholarships, Training Grants, Bursaries and Loan Funds Available for the 1955-1956 Session, 1 July 1955; Interim Report to the Atkinson Charitable Foundation May 1956. (AO).



discipline problem for prison administrators, could be set up.<sup>137</sup>

### **Learning Theory, Behaviour Therapy and the AGBMC Pedophile Program**

Not surprisingly, Potts' 1962 proposal got the same response as did his report a decade earlier. However, just two years later Richard Steffy, a psychoanalyst just returned from graduate school in Illinois, turned up at the DRI with external funding from the newly-formed Ontario Mental Health Foundation.<sup>138</sup> Keen to learn more about the new school of behaviour therapy and knowing that there was a demand for treatment programs for pedophiles, Steffy successfully proposed to establish a program of treatment that combined psychoanalysis with aversion therapy.<sup>139</sup> Unaware of the recent controversy at the AGBMC, in 1965 Steffy saw his first clients, whose four months of therapy was administered at the Mimico clinic where programs for alcohol and drug addiction were

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<sup>137</sup>In 1964 the Sexual Offender Group (a misnomer given that 7 of the 83 in this group were not convicted of sexual offences) was organized into four groups. Of the total group population, 20% were assigned to the pedophile group; 15% to the character disorder group; 25% to the homosexual group; and 40% to the neurotic psychopathic group. It is not clear if all homosexuals were in the homosexual group, or if some were categorized as neurotic psychopathic or character disorders. RG 20-148, 11.3 Sexual Offender Group, Millbrook, 31 January 1964. (AO).

<sup>138</sup>Steffy, 15 March 2001.

<sup>139</sup>Hans Jurgen Eysenck is considered the 'founding father' of the behaviour therapy movement. He published a considerable number of books and articles including *Behaviour therapy and the neuroses; readings in modern methods of treatment derived from learning theory* (Oxford, New York, Symposium Publications Division, Pergamon Press, 1960); *Experiments in behaviour therapy : readings in modern methods of treatment of mental disorders derived from learning theory* (New York : Pergamon, 1964). On Steffy's pedophile program, see Richard A. Steffy and Rene Gauthier, "Report of the Alex G. Brown (AGB) Memorial Clinic Pedophile Treatment Program, 1965-1973," unpublished manuscript, University of Waterloo, Waterloo, Ont., June 1976.

already well-established. Nicknamed “finishing school”, inmates arrived at this minimum-security, home-like facility to serve out the last four months of their sentences so that they might gain control over their addictions or disorders, and thus avoid re-offending.<sup>140</sup>

Aversion therapy as a method of treatment for sexual deviation was immortalized in Stanley Kubrick’s 1971 film *Clockwork Orange*.<sup>141</sup> Although Kubrick’s character was convicted for violently raping an adult women and therefore would not have been considered a candidate for sex deviation treatment in postwar Ontario, Steffy’s program operated under a similar treatment philosophy. Pedophiles were presented with images of pre-pubescent boys, or girls, or both, depending on the sex of their victim(s). The presentation of the image was accompanied by an electric shock, thus aiming to displace the pleasure response with a painful one. Images of appropriate sexual object choices – adult women – were also shown without any accompanying shock.<sup>142</sup>

Learning theory generally encompassed two types of conditioning: operant conditioning (now called systematic desensitization) and respondent condition, more

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<sup>140</sup>Steffy, 15 March 2001.

<sup>141</sup>*A Clockwork Orange*, prod. and dir. Stanley Kubrick, 1971.

<sup>142</sup>A study of the records of provincial hospitals has yet to be done, but at least one inmate at Millbrook Reformatory received electro-convulsive treatments as a form of aversion therapy for his homosexual desires while a patient at Ontario Hospital, Whitby, in 1956. See RG 20-42-3 “Millbrook Correction Centre Inmate case files” KBT, #618. (AO). Toronto artist Jack Pollock described his experiences undergoing aversion therapy to treat his homosexuality while a patient in the provincial mental health system. Jack Pollock, Queen Street Mental Health Centre, Research-in-Progress Conference, 1993. On homosexuality and mental health, see Ernest J Nagler, Department of Social Pathology, Clarke Institute “Male Homosexuality in Toronto - A Sociological and Social Problems Overview and Perspective” June 30, 1971 (Canadian Lesbian and Gay Archives, Community Homophile Association of Toronto).

commonly known as aversion therapy. The first method was championed by the South African psychotherapist Joseph Wolpe, whose 1958 classic *Psychotherapy by reciprocal inhibition* detailed the slow and careful introduction of an anxiety causing stimulus as a means to overcome 'irrational' or disturbing anxiety responses.<sup>143</sup> Two psychologists at the TPH Forensic Out-patient Clinic were the first in Canada to apply Wolpe's methods for the treatment of sex deviation. In 1959 R.E. Turner, the Director, reluctantly approved a project that allowed the Chief Psychologist H.C. Hutchison, and I.K. Bond, to attempt a course of treatment with a homosexual and an exhibitionist, both of whom were considered "intractable, very severe cases."<sup>144</sup> Wolpe himself corresponded with the project leaders, interested to learn more about the treatment method and outcome.<sup>145</sup> Bond and Hutchinson triumphantly published a positive result in the case of the exhibitionist, who later re-offended.<sup>146</sup> They immediately began planning a new experiment, this time employing aversion therapy to treat a pedophile who had been rejected for psychotherapy because of his low scores on intelligence testing.<sup>147</sup> The use of

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<sup>143</sup>Joseph Wolpe, *Psychotherapy by reciprocal inhibition* (Stanford, CA: Stanford University Press, 1958).

<sup>144</sup>*Forensic Clinic Annual Report* (1959): 12.

<sup>145</sup>*Ibid.*, 21.

<sup>146</sup>I.K. Bond and H.C. Hutchison, "Application of reciprocal Inhibition therapy to exhibitionsim," *Canadian Medical Association Journal* 83 (1960): 83, 23-25 and reprinted in H.J. Eysenck, ed. *Experiments in Behavior Therapy* (New York: Pergamon Press, 1964), 80-86. The failure of the treatment is described in Douglas A Quirk, "A Follow-up on the Bond Hutchison Case of Systematic Desensitization with an Exhibitionist," *Behavior Therapy*, 5 (1974): 428-431.

<sup>147</sup>Toronto Psychiatric Hospital. *Forensic Clinic Annual Report* (1960): 12.

conditioning was controversial, and divided the Clinic's otherwise amicable staff into opponents who preferred to stay the course with psychotherapy and proponents who were anxious to achieve success with all of the clinic's referrals.<sup>148</sup>

Richard Steffy's pedophile program was the first Canadian treatment facility to employ aversion therapy as the central treatment modality. Conscious of the problems associated with providing treatment as part of a prison term, Steffy permitted inmate-patients to choose between the full program of electro-convulsive shock treatments combined with talk therapy, just talk therapy, or just shock. A full 93% of the program participants chose to undergo the combination treatment, demonstrating not only a remarkable willingness to be 'cured', but either faith or at the very least hope in forensic sexological methods. According to Steffy, pedophiles selected to participate in the Mimico program were "relieved to be offered more than just talk", though given the lack of treatment services at Millbrook, it is difficult to determine where they received psychotherapy.<sup>149</sup>

Steffy joined the ranks of hundreds of other treatment professionals who were disenchanted with psychotherapy and who sought new methods to bring about desired changes in patients' sex drive. In November 1970, journalist Don Jackson reported on a new drug in use at California's Atascadero and Vacaville institutions which reproduced the same symptoms as CO<sub>2</sub> but without the inconvenience of physical resistance from the

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<sup>148</sup>Hans Mohr in Fugère, René and Ingrid Thompson-Cooper, eds. *Breaking the Chains: Bruno M. Cormier and the McGill University Clinic in Forensic Psychiatry* (Westmount, QC : R. Davies Multimedia Pub., 1998),146.

<sup>149</sup>Steffy, 15 March 2001.

patient.<sup>150</sup> Succinylcholine, an anxiety-producing drug, causes instant paralysis of all muscles, including those linked to the cardio-vascular system. Those undergoing behaviour modification were administered the drug and kept alive through the use of machines. Californian inmate-patients were “selected” for treatment for a variety of reasons, among them sexual deviancy.<sup>151</sup>

Growing public criticism of ECT and aversion therapy led Steffy to pursue other interests in the field of cognitive disorders.<sup>152</sup> Media exposes of different experimental treatments, particularly those in California, where state support for medical, psychiatric and psychological programs was the highest in North America, combined with a new generation of graduates who were informed by the civil rights and social justice movements and the radical protests that unfolded at the meetings of the American Psychiatric Association in the early 1970s to contribute to either the closure or at the very least the scaling back of invasive treatment programs.<sup>153</sup> In a special issue of the journal

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<sup>150</sup>Don Jackson, “Dachau in America,” *Gay Sunshine Journal* 3 (November 1970) rpt *Gay Roots: Twenty Years of Gay Sunshine*, ed., Winston Leyland (Gay Sunshine Press: San Francisco, 1991), 264-266.

<sup>151</sup>Allen M Hornblum, “They were cheap and available: prisoners as research subjects in twentieth century America,” *British Medical Journal* 315 (7120) 29 November 1997: 1437-1441.

<sup>152</sup>Steffy, 15 March 2001.

<sup>153</sup>Thomas S. Szasz was the leading civil rights critic of psychiatry and though he continues to write on the subject, his most influential texts in this period were *The myth of mental illness: foundation of a theory of personal conduct* (New York: Harper & Row, 1961) and *The manufacture of madness: a comparative study of the Inquisition and the mental health movement* (New York: Harper & Row, 1970). Critiques specifically aimed at psychiatry in prisons include a June 1974 feature issue of *Psychiatric Opinion*, 11 (3) June 1974, and Jessica Mitford, “The Torture Cure,” *Harper's Magazine*, (August 1973):

*Psychiatric Opinion*, young professionals aimed their critiques directly at sex offender and sex deviant treatment programs. Phyllis J Lundy and Peter R Breggin argued that there can be no such thing as voluntary consent in a prison setting. With specific reference to an institution that housed a special treatment program for sex offenders, they argued, "In therapeutically oriented facilities in which psychiatrists have the most control, prisoners are most likely to lose their human rights. This is particularly true at Patuxent Institution in Maryland, where 'defective delinquents' are imprisoned until cured."<sup>154</sup> Both drug and aversion therapy, the latter involving the application of electrodes directly to the penis, were simply methods of control and oppression in the service of the institution, they argued. Though Steffy's Mimico program continued on a smaller scale for a short period of time at a nearby Brampton correctional facility, his departure marked the end of an era in Ontario Corrections.<sup>155</sup>

### **Anthony Marcus and *Inmate response***

During Canada's centennial year, Anthony Marcus established one of the first intensive treatment programs aimed at federal inmates sentenced to an indefinite term

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16, 18, 24-25. The *Harper's* article was an excerpt of Mitford's *Kind and Usual Punishment: The Prison Business* (New York: Alfred A. Knopf, 1973.) On the homosexual liberation and feminist movements' very public denuncements of psychiatry in the early 1970s, see Bayer, *Homosexuality and American Psychiatry*, 101-154.

<sup>154</sup>Phyllis J. Lundy and Peter R. Breggin, "Psychiatric Oppression of Prisoners," *Psychiatric Opinion*, 11 (3) June 1974: 35. Patuxent was one of the clinical programs Ontario doctors maintained ties with. See *Forensic Clinic Annual Report* (1962): 21.

<sup>155</sup>Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America*, (New Haven: Yale University Press, 1998), 111-112.

under criminal sexual psychopath or dangerous sexual offender legislation.<sup>156</sup> Working out of the federal penitentiary in British Columbia, Marcus distinguished himself from his predecessors by approaching inmates from a prisoners rights perspective. Marcus solicited not only the ideas and opinions of the men he worked with, but took their issues and concerns seriously enough to build a critique of the treatment of sex offenders based on them. Inmates in Marcus' program expressed frustration with the treatment process and anguish over their status as "social pariah" within the prison community and society at large where "even as a number you are nothing."<sup>157</sup> As one inmate explained, the police, probation officers, lawyers, and other "defining agents" were "disgust[ed] that they have to speak to me, and the sooner they can be rid of me and do some symbolic hand-washing, the better."<sup>158</sup> Soon into his group work Marcus discovered that incarcerated sex offenders

find a mockery in 'psychiatric help' so gratuitously flung at them in court by presiding judge or magistrate, but rarely made explicit, with those in power often unaware that there are few professional services available in prison for these men. The sex offenders sense that they are being left to rot for a long period of time in confinement, stored like furniture. Even with a superabundance of good will, they find 'rehabilitation' an empty word."<sup>159</sup>

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<sup>156</sup>Following the recommendations of the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath, "criminal sexual psychopath" was changed to "dangerous sexual offender", and was later changed again to "dangerous offender," a category which included, but was not exclusively aimed at, sexual offenders. See Cyril Greenland, "Dangerous Sexual Offender Legislation in Canada, 1948-1977: An Experiment that Failed," *Canadian Journal of Criminology* 26.1(Jan 1984): 1-12.

<sup>157</sup>Marcus, *Nothing is my Number*, 72.

<sup>158</sup>*Ibid.*, 20.

<sup>159</sup>*Ibid.*, 29.

According to the group, therapists got more out of the interaction than their 'patients.' They assumed that time spent in discussion was helpful, and some group members accused them of "manipulating the apparent result," presumably for their own professional ends.<sup>160</sup> Most inmates were completely dismayed by the therapy they had been offered, and were poorly motivated to participate in "milksoop measures to improve... institutional conformity, or isolated research schemes, conducted by outsiders for their own aggrandisement, using them as guinea pigs."<sup>161</sup>

Many of Marcus' proposed solutions were familiar. He called for a specialised facility more like a mental hospital than a prison; shared decision-making powers; the positive use of peer pressure; greater personal responsibility on the part of inmate-participants for their actions, growth and development; staff who would role model appropriate behaviour rather than impose controls to force compliance.<sup>162</sup> Inmate-participants should have greater mobility within the institution, more intensive and meaningful interaction with staff, heterosocial contact, and a pre-release program that would ease the shock of moving from a maximum security institution to the community.

Marcus differed, however, in his level of critical engagement with his own role in the power structure. In order to address this imbalance, he allowed the group to critique

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<sup>160</sup>See also "The Homosexual and the Prison System," *TWO* (July/August) n.d. [1966?]: 5-6. In describing his experience in prison, the anonymous author claimed the "prison head-shrinker" and "visiting 'specialists'" are "more than eager to interview [homosexuals] on tape... and then use their 'material' for learned discussions in the classroom, or medical lounges. But interest in you, or your woe... certainly not."

<sup>161</sup>Marcus, *Nothing is my Number*, 24.

<sup>162</sup>*Ibid.*, 68-69.



his 'expertise'. Completed and scored psychological tests were presented to the groups. Inmates readily challenged Marcus' conclusions, particularly his assertion that many of them had cheated.<sup>163</sup> Marcus' willingness to allow his authority and expertise to be so openly scrutinized was remarkable, and led him to conclude that therapists were too often withholding full engagement with inmates. Fear of getting "conned by the cons" compounded by "anxiety in dealing with the anti-social and the violently aggressive" left most psychiatrists and psychologists aloof and distant.<sup>164</sup>

Marcus viewed dangerous sexual offender legislation as an egregious abuse of psychiatric power and the rights of convicted sex offenders. From his view, a psychiatrist could not possibly determine if a sex offender should be considered "dangerous" in the short pre-trial interview normally conducted for such purposes. He also expressed concern about the lack of protection for the rights of the accused, citing one case in which a French Canadian with a limited understanding of English was designated a dangerous sexual offender after his first sexual offence. His trial was in English. Marcus pointed out that being charged as a dangerous sexual offender was the "equivalent of receiving a life sentence."<sup>165</sup> Furthermore, he argued that the fear of recidivism meant that few parole

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<sup>163</sup>Ibid., 30. Psychologists assessments of inmates were rife with subjective assertions based on all kinds of prejudices. For example, when a Millbrook inmate answered the question "One day I hope to be ...." with the response "an author", the staff psychologist labelled him as suffering from grandiose ideas, and of having highly unrealistic expectations, a finding which would not put the inmate in good stead when the Parole Board asked how socially well-adjusted he was.

<sup>164</sup>Ibid., 20-21.

<sup>165</sup>Ibid., 13.

boards were willing to risk releasing a criminal who was designated a dangerous sexual offender, and that the assessments of an inmate's "adjustment" in prison did not take into account the unique pressures placed upon sex offenders within a prison community. Based on his discussion with his group, Marcus concluded

for a man to live for long periods in a maximum security setting and still maintain his dignity required personal rules of adaptation that did not necessarily conform to those the institution would wish him to have. ...Even by examining such factors as non-participation in homosexual activity, personal change cannot be measured. Facultative homosexuality in the prison setting may be an appropriate adjustment response to increased sexual tension. In a prison setting questions of aberrancy have to be re-evaluated.<sup>166</sup>

With this Marcus challenged the entire premise of psychotherapy. Though psychologists and other treatment experts sat in regular judgement of an inmate's ability to conform to normative standards, what Marcus revealed was that inmates probably knew a good deal more about 'satisfactory social adjustment' and the 'adaptive function' than the "average" Canadian citizen, mental health experts included.

Marcus broke from his predecessors by championing the rights of prisoners and by calling attention to the unique problems faced by incarcerated sex offenders whose social isolation compounded the psychological trauma of incarceration. Though he did not gain any new insight into how to treat sex offenders, he was perhaps the first to document the troubled social location of sex offenders – not just homosexuals – inside prison.

### **"Diddlers"**

It is common knowledge that within Canadian and American prisons, informants,

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<sup>166</sup>Ibid., 17.

sex offenders, effeminate homosexuals, and transvestites served their time in segregation. Among these, “diddlers” – men known to have or merely rumoured to have had sex with children - were at the bottom of the prison barrel, and administrators maintained that the only way to protect them from physical injury was to keep them separate from other inmates. That pedophiles and other sex criminals are seen as loathsome miscreants within the prison seems at first to be a natural expression of a ubiquitous cultural sentiment. However, the diddler is a historically specific, socially constructed sexual type.

“Sex criminals” were a newly defined group at the end of the nineteenth century.<sup>167</sup> But the construction of the child or the violent sex offender as a “social pariah” in prison culture appears to be a post-WWII phenomenon, an unanticipated side effect of the public demand for psychiatric treatment, a demand which ironically was based on the belief that sex criminals needed to be dealt with more humanely and compassionately, not more brutally. Although there is no clear documentation showing precisely when the creation of this particular inmate social class occurred, the initial integration of sex offenders with the most incorrigible of the general inmate population at Millbrook combined with the lack of any evidence demonstrating that such distinctions were made in the pre-WWII era suggests that the marginalization of sex offenders – especially those whose victims were children and excluding those whose victims were women – occurred as prison administrators brought in sex criminal treatment programs identifying this particular constituency as a homogeneous group set apart from other prisoners. The conjoining of medicine and the law, in other words, created both a new class of criminal

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<sup>167</sup>Jenkins, *Moral Panic*, 15.

and a new object of medical inquiry – the sexually deviated, socially dangerous offender – and in so doing created a new class of prisoner, the “diddler”.

The creation of the diddler magnifies the way sexuality shapes masculinity, and how a street tough heterosexual masculinity structured inmate culture. Until mid-century, effeminate homosexual men known as “fairies” provided a measure of femininity against which mainstream prisoners asserted and maintained a masculine identity. Based on an early twentieth century sexological model that regarded effeminate homosexuals as afflicted by gender “inversion”, the ‘natural’ division between the two groups was further highlighted by the longstanding practice of segregating fairies in separate units, presumably out of reach of the regular inmate.<sup>168</sup> Up until the late 1950s, fairies embodied not only the gendered “other”, but also its co-relate, the sexual “other”. Prisoners and their keepers adhered to a pre-WWII sexual construct which held that effeminate men were ‘true’ homosexuals, and the typical male prisoners merely engaged in ‘situational’ homosexuality, a theory which both preserved the notion that men’s need to exert themselves sexually was natural and normal, and that the female role was to fulfill that sexual need, without regard for her (or in this case, his) own. However, changing models of sexuality undermined the gender-based construction of identity that defined normative ‘roles’ in and outside of the prison. Increasingly, men who engaged in sexual activity with other male bodies, no matter what their gender identity or sexual status within the prison,

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<sup>168</sup>Joseph F. Fishman, *Sex in Prison: Revealing Sex Conditions in American Prisons* (National Library Press, 1934); Samuel Kahn, *Homosexuality and Mentality*, (Boston: Meador Publishing Company, 1937).

were faced with a crisis in masculinity.<sup>169</sup> Violently assaulting men who victimized women and children became a new way to assert a tough heterosexual masculinity. Inside prison, power and dominance in inmate culture was defined against – and at the expense of – fairies on the one hand, and rapos and the diddlers on the other.

Nowhere did this dynamic play out more graphically than on “Bloody Sunday”, the climax of a massive riot at Kingston Penitentiary that began on the first of April, 1971 and ended 17 days later. On the first day, prisoners gained complete control of the prison; the army threatened to invade, and negotiations with government officials lasted 92 hours. According to Roger Caron, “the bloody climax was so primitive that it left even the most hardened criminal gasping in awe-struck horror”:

[F]ourteen diddlers, rapos and stool pigeons were tied with chains in a circle in the centre of the dome. Under ghostly illumination they were ritualistically tortured while hundreds of convicts lined the four circular galleries pounding rhythmically with steel clubs on the hollow railing like jungle drums. By daybreak twelve of the ‘undesirables’ were horribly mutilated and in critical condition; two others were dead. Dead, because according to the inmate code they deserved retributive ‘justice’; one had viciously raped two little girls, while the other had ‘disciplined’ his children by burning them on a red hot stove.<sup>170</sup>

Remarkably, despite the extreme brutality they endured, all those who survived the ‘trial’ adhered to the inmate code and refused to identify their attackers during the subsequent

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<sup>169</sup>On the role of homophobia in regulating of male sexualities, see Eve Sedgwick, *Between Men: English Literature and Male Homosocial Desire* (New York: Columbia University Press, 1985) cited in Janice M. Irvine, *Disorders of Desire: Sex and Gender in Modern American Sexology* (Philadelphia: Temple University Press, 1990): 241.

<sup>170</sup>Caron, *Go-Boy!*, 231-2.

investigation.<sup>171</sup>

Junior DRI psychologists were critical of the practice of segregating groups of inmates from the larger population, arguing that it only led the main inmate body to treat them with ridicule.<sup>172</sup> At the Guelph NPC, inmates suffering from whole range of emotional and mental problems mixed and mingled throughout the hospital ward and in dormitory-style sleeping quarters; at the Alex G. Brown Memorial Clinic, alcoholics, drug addicts and pedophiles had separate individual and group therapy sessions, but in every other way they intermingled, watching the National Film Board “Mental Mechanisms” films together, eating together and working together. Similarly, at Dannemora in New York, inmates convicted of sex offences were fully integrated into the program. However, as Cormier’s inmate-participants were quick to point out, the moment they were back in a prison they would have little choice but to adhere to the inmate code. Despite learning that sex offenders are “just like everyone else,” Dannemora inmates knew that inside a regular prison, “diddlers” were a class of their own. Treatment specialists hired to deliver therapeutic programs to cure inmates of sexual deviancy first singled out men charged with sex crimes as a unique type of prisoner who needed ‘special’ care. Inmate culture

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<sup>171</sup>Prison psychiatrist George D. Scott recounts the riot in *Inmate: The Casebook Revelations of the Canadian Penitentiary Psychiatrist* (Montreal: Optimum Publishing International, 1982): 9-16. A more recent account can be found in Peter H. Hennessy, *Canada's Big House: the Dark History of the Kingston Penitentiary* (Toronto: The Dundurn Group, 1999).

<sup>172</sup>RG 20-16-2-0-60.4 “Guelph – Inmates 1952-53” Psychologists report on the July riot. July 24 1952.(AO).

adapted accordingly, and won the tacit approval of the public.<sup>173</sup>

### **Conclusion**

Of all the sex deviant treatment programs that operated in Canada and the US in the postwar period, not a single one could claim success in reducing recidivism. Although many hastily pronounced positive results within months or just a few years following the termination of treatment, a series of comprehensive longitudinal studies published over the last decade confirms that in most cases, sex offenders who received treatment of any kind did not have a lower incidence of recidivism, and in some cases had an even higher rate than untreated populations.<sup>174</sup> Studies such as those undertaken at the Toronto Psychiatric Hospital's Forensic Out-Patient Clinic produce research findings which continue to have cultural currency: though initially optimistic about treating homosexuality, their results confirmed that "they" are "untreatable", thus helping to both fix a stable homosexual identity and to pave the way for a revival of biological theories of sexual etiology.

Drawing on the popular personality development model, postwar researchers pathologized homosexuals and pedophiles (as well as exhibitionists) as psychologically immature, a

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<sup>173</sup>Public sentiment toward sex criminals reveals itself when high-profile cases garner media attention. For example, when Paul Bernardo was convicted for the sexual assault and the murder of two teenage women and sent to prison, it was not uncommon to hear people suggest that he should be let out into the general inmate population where he would be dealt with accordingly. Stockwell Day, then the Alberta treasurer, made a similar comment to the media with regard to another serial murderer and sex offender, Clifford Olsen. Susan Riley, *Ottawa Citizen*, 28 January 2000.

<sup>174</sup>There are many studies in this field. The most pertinent to Ontario and Canada is R Karl Hanson, Richard A Steffy and Rene Gauthier, "Long-Term Recidivism of Child Molesters," *Journal of Consulting and Clinical Psychology* 61 (1993): 646-652.

characterization which is perhaps less used now to describe homosexuals but certainly continues to influence how we think about pedophilia.

Postwar researchers also learned that homosexual pedophiles were most likely to seek out sexual activity with a stranger while heterosexual pedophiles were most likely to pursue a female child known to him.<sup>175</sup> First time sex offenders were the least likely of all criminals to re-offend, but the more one offended, the greater the likelihood he would continue to re-offend. However, as researchers lamented in their own time, no matter how accurate the profile they were able to create of different types of sex offenders, it did little to help prevent sex crime from happening. Instead, they merely replaced one “truth” with another.

However, as a form of knowledge and power over the field of sexuality, postwar forensic sexology was a complete success. From the time the Clinic opened in 1957 until it was absorbed by the Clarke Institute of Psychiatry in 1966, the Director reported increasing numbers of patients who came not as a condition of their parole or as part of a conditional release, but because they believed themselves to have a sexual aberration that could be, and should be, treated.<sup>176</sup> Among the voluntary patients were Catholic priests

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<sup>175</sup>Of all the clinics and treatment facilities, it seems that in Canada only the TPH Forensic Out-Patient Clinic came anywhere close to achieving the dream of a combined research and treatment institute, likely because it was part of the provincial hospital system and not the Department of Reform Institutions. This meant that the treatment staff were neither compelled nor cajoled into working in the interests of the prison, and that adequate staffing numbers permitted them to pursue research and publishing.

<sup>176</sup>The majority of the volunteer patients were men seeking treatment for homosexuality. See *Forensic Clinic Annual Reports*. On counselling Catholic priests, see Johann Mohr, interview by author, 1999.



seeking expert advice on how to regulate and control their peccant desires, demonstrating that in the postwar period medical practitioners eclipsed both Christian and criminal law as the penultimate regulators of normative sexuality and gender relations, a process Foucault described as the “normalization of the power of normalization.”<sup>177</sup> The annual rise in the number of voluntary patients is a testament to how everyday people absorbed the medical construction of sexuality by becoming self-regulating citizens.

In some ways what is ‘normal’ today has changed considerably from what was considered normal in the 1950s, particularly with respect to ideas about homosexuality. Exhibitionists have been restored to the realm of ‘nuisance’, but pedophiles are still seen as immature, and even worse, ‘fixed’ in their sexual object choice. Pedophiles who refuse treatment during the course of their sentence confirm this perception. But regardless of how the public interprets the refusal to accept treatment, there appears to be a number of reasons that have little or nothing to do with one’s sexual history or desires to do so. As Anthony Marcus pointed out, for the inmate serving time on child sexual assault charges, ‘adapting’ to the environment is dramatically different from adapting to social norms outside the prison. Given the way such inmates are treated on a daily basis, ‘adapting’ might well entail a refusal to engage anyone, including therapists. No doubt some inmates refuse to admit culpability, and others are innocent altogether. Richard Steffy’s program enjoyed a tremendously high level of participation, but as Marcus discovered, some convicted pedophiles became disillusioned, not so much with the therapy but with therapists who appeared self-interested, prejudiced and ignorant. Moreover, given that

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<sup>177</sup>Foucault, *Discipline and Punish*, 296.

after 50 years of trying there have been no substantial gains made in the field, the refusal to accept treatment is disturbing only when it is interpreted as a refusal to change.

Embedded in these beliefs are two assumptions that are very clearly products of an age: that the sexual assault of a child is never an isolated act independent of the 'self' but is an expression of a deviated drive located in the core of one's personality 'make-up', and that treatment is the only pathway to change. Neither belief is borne out by the evidence.

While there is plenty of evidence that some people, regardless of the penalty, will continue to attempt to engage in sexual activity with children and young adolescents, there is no reason to believe that all men who commit a sexual offence against a person 'of tender years' is a pedophile, if by that we mean people who are sexually aroused by children *because* they are children. For example, in the case of adult rape, we can separate the 'normal' sex act from the assault, and we identify the problem not as a sex disease or pathology but as violence. However, in the case where a sexual act is committed with a young person, the two are not so easily divided. This is a critical problem in contemporary society, most recently leading to debates about the criminalization of thoughts, fantasies, and child pornography.<sup>178</sup> If a person sexually fantasizes about a child, does that mean he will inevitably sexually assault a child, or will his 'reason' outweigh his sexual compulsion? And perhaps more saliently, do we want to wait and find out? People are compelled to act in all sorts of ways which cause serious harm, but we do not look upon these acts in the

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<sup>178</sup>There was an extended public debate around the issue of child pornography and its regulation when Robin Sharpe first successfully defended his right to own it, a decision that was later overturned by the Supreme Court of Canada. See *R. v. Sharpe* [2001] 1 S.C.R. 45.

same light as we do pedophilia. This is not to say that the sexual assault of children is somehow less important. Instead, it seems time to ask questions less about pathological desires and uncontrollable compulsion and more directly interrogate the erotics of power relations.

### “Any Old Port in a Storm”: Sex in Prison

In May 1944, Ottawa Magistrate Joachim Sauve wrote to Dr J.D. Heaslip, the Superintendent of the Guelph Reformatory, Ontario’s largest provincial prison. “We had lately a few charges of gross indecency,” Sauve explained, the most recent involving a flight lieutenant in the air force “who has homosexual inclinations.” Sauve planned to send him to Guelph, but first wanted to know what special disposition was made in these cases. “This man could not of course be placed with others,” he wrote so as to be sure Heaslip fully understood his query. Heaslip promptly replied, explaining that if caught “practising [his] disability”, the “known homo-sexual” received corporal punishment and was “segregated in a special corridor of cells” known among inmates “as ‘Gunzil’s Alley’.”<sup>1</sup>

Magistrate Sauve’s query demonstrates the growing awareness of the problem of homosexuality in the post-World War II period, but for most every prison superintendent and warden in Canada and the United States, sexual activity between men had long been considered a “disciplinary problem of the first magnitude”.<sup>2</sup> In accordance with early twentieth century ideas about human sexual ‘inclinations’, Canadian and US prisoners were expected to sublimate their sexual energies. “Known” homosexuals – identified by gender attributes rather than sexual behaviour – were segregated in separate wings or

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<sup>1</sup>RG 20-16 Reel MS3167 “Correspondence and Administration Files on Training Schools and Other Institutions,” Sauve to Heaslip, 25 May 1944; Heaslip to Sauve, 28 May 1944. Archives of Ontario (hereafter AO).

<sup>2</sup>George W. Henry, “The Homosexual Delinquent,” *Mental Hygiene* 25 no.3 (July 1941): 420-442.

units within prisons, and any other prisoners who engaged in sexual activities did so under the threat of punishment.

At the time Heaslip penned his reply, the practice of segregating 'known homosexuals' was a longstanding tradition in prisons across Canada and the US.<sup>3</sup> Known as 'fairies' and 'pansies', effeminate men were kept segregated from the main inmate population. Called "true" homosexuals and "third sexes", fairies were seen as distinct from other, masculine inmates – known as wolves – who sought them out as sex partners. Many prisoners who engaged in sexual relations with other prisoners were considered a discipline problem, not a sex problem. Disciplinary measures taken against wolves were much more likely to be corporal punishment than permanent segregation.

Like their predecessors, post-World War II mental health professionals were highly critical of the military-style approach to regulating prisoners' lives, including the repressive approach to regulating sexual desire. However, influenced by schools of personality development, in the 1950s psychiatrists, psychologists and medical doctors looked for new answers to the old problem of homosexual activity among inmates.<sup>4</sup> Rejecting the biologically-based two-sex system that viewed effeminate homosexuals as gender inverts (and therefore unchanging), postwar experts introduced a variety of

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<sup>3</sup>George W. Henry, "The Homosexual Delinquent," *Mental Hygiene* 25 no.3 (July 1941): 423, 430. Though segregating 'known homo-sexuals' was not *official* policy in Ontario until after World War II, at mid-century at least one long-time inspector of the provincial reformatories believed that it had always been the practice. RG 20-16-2-0-59.13 "Guelph - Inspections 1952-53" F.J. Matthews, Inspector, Report for week ending February 14<sup>th</sup>, 1953, 23 Feb 1953. (AO).

<sup>4</sup>The degree to which prisoners' lives were regulated is mind-numbing. See for example, RG 20-16-2-0-83.7 "Rules and Regulations, OR Guelph." (AO).

measures aimed at bringing the prison fairy in line with normative sex and gender ideals. But unlike their predecessors, the new generation of sexologists dismissed suggestions that homosexual activity in such settings was inevitable, and perhaps even 'natural.' If the same-sex environment was the cause, they argued, then it was the environment that needed to be changed.

In the 1950s and 60s, modern sexologists sought to heterosexualize the prison as part of the overall plan to replace the punitive treatment of prisoners with a mental health approach to reform. By pressing administrators to abandon the traditional policy of sexual sublimation, treatment staff hoped to channel men's sexual energy toward heterosexual outlets by allowing inmates to keep sexually provocative images of women in their cells, encouraging prisons to hire more female staff, and allowing inmates conjugal visits, family day passes and weekend release programs. When such innovations in penology were adopted, prison administrators and mental health experts alike described them as part of the shift toward a compassionate humanitarian ethic that recognized the prisoner as a social and sexual being. However, while it is certainly the case that mental health professionals brought an awareness and limited acceptance of prisoners as sentient beings, the loosening of restrictions around inmates' heterosexual behaviour was expressly aimed at improving the manageability of inmates by reducing homosexual activity, and had virtually nothing to do with prisoner's "rights".

In advocating new approaches to the sex problem, it was not only the prison administrators that experts had to convince. Sex was an integral part of the hierarchical social structure that organized inmates into different social groupings. Mediated by a

range of variables including race, age, physical stature, prison experience and social connection, prison sexual culture was structured around a street-class masculinity which was defined in part by male entitlement to sexual gratification.<sup>5</sup> Built on an early twentieth century system of sexual relations that defined normative masculinity as sexually “aggressive”, men in prison who took an “active” role in the sex act were not considered sexually aberrant. As in sexual relations with women, wolves’ relations with younger men – known as ‘punks’ ‘kids’ and ‘lambs’ – were based on a combination of negotiation and coercion, and particularly in prison, on the manipulative use of the threat of violence and the exploitation of sexual shame.

Drawing on sources from both Canada and the US, this chapter explores how gender and power were inextricably linked in the way medical experts, prison administrators and inmates themselves organized and understood bodies, desires and pleasures. With remarkable consistency, the distribution of power among white male inmates was produced and reproduced through sexual activities that were almost always expressed in gendered terms. During much of the twentieth century, most Anglo-Celtic male inmates of Canadian and American prisons adhered to a “wolf-punk-fairy” sex system grounded in prevailing constructions of masculinity and femininity that were recognizable and to some extent accepted, legitimized and perpetuated by inmates, their keepers, and medical professionals. Though the material under consideration here is limited to all-male institutions, gender as an expression of relations of power was ever

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<sup>5</sup>Though sex in women’s prisons also deserves careful study, for practical purposes this study is limited to an examination of male institutions.

present, even when women were not.<sup>6</sup>

### **Sex, Sublimation, and Punishment**

According to the former inspector of US federal prisons Joseph Fishman, sex in prison was shrouded in a “passive conspiracy of silence”.<sup>7</sup> He claimed that while on the inside homosexuality was an open secret, prison officials did their best to keep the issue from leaking out into the public arena for “political reasons.” For prison officials, publicity was rarely good and almost always bad. Social reformers decried the brutal conditions inside the prison walls; law and order-types complained about staff and administrative laxity and criticized attempts to improve the daily lives of prisoners as inappropriate indulgences. According to Fishman, fear of public criticism and the potential political damage revelations about homosexual activity would bring ensured that prison officials remained silent on the matter.

Indeed, it was just such a political scandal that prompted Fishman to go public

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<sup>6</sup>Racial segregation, and later integration, was an essential part of the organization of inmate culture in the United States, and demands special attention. Some sources indicate that the sexual dynamic among black prisoners was different then it was for whites. The sources I use for this chapter do not tell me enough about African-American experiences in prison, either in Canada or the US. Nor do they speak to other ethnic and cultural minorities’ experiences. For this reason, I have included what few references I do have regarding the experiences of black inmates, but it cannot be assumed that the wolf-punk-fairy system applied to non-white and minority (and other socially marginalized) inmates. It should also be noted that this study is concerned with state and provincially-run prisons and reformatories, and with federally operated prisons and penitentiaries. It does not include jails, which are municipally-operated institutions.

<sup>7</sup>Joseph F. Fishman, *Sex in Prison: Revealing Sex Conditions in American Prisons* (National Library Press, 1934).



with his own insider's expose.<sup>8</sup> In 1934 the newly-elected Mayor of New York Fiorello La Guardia and political appointee Austin H MacCormick set out to score voter points by conducting a highly-publicized raid of Welfare Island, the New York City jail. Though corruption was widespread throughout the jail, the prison's "sex pervert" population quickly came to symbolize "the depths to which the prison had sunk."<sup>9</sup> Both the *New York Herald Tribune* and the *Daily Mirror* offered detailed descriptions of the effeminate occupants of the homosexual segregation unit who reportedly had not only been permitted tremendous liberties in their style of dress and conduct, but who had also been granted tremendous freedom of movement around the island complex.<sup>10</sup> The warden and his deputy were publicly lambasted for neglect of moral duty, and MacCormick proposed a "get tough"-style clean-up program.<sup>11</sup>

However unwelcome these events may have been on Welfare Island, the 1934 newspaper coverage cleared a path for more open dialogue among prison administrators about managing homosexual activity in male institutions. Samuel Kahn, another major figure in New York's prison administration, followed Fishman's gambit with *Homosexuality and Mentality*, a book based on a study he conducted ten years earlier

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<sup>8</sup>Ibid., 148.

<sup>9</sup>George Chauncey, *Gay New York: Gender, Urban Culture and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), 93.

<sup>10</sup>Fishman wrote his book to correct what he felt was inaccurate coverage. According to Fishman, the segregated homosexual population did not have the kind of freedom the news media suggested. See also Chauncey, *Gay New York*, 92.

<sup>11</sup>Fishman, *Sex in Prison*, 148-9.

while serving as a prison psychiatrist.<sup>12</sup> In the 1940s, prison wardens and superintendents began speaking openly about the problem at conferences and in professional journals.<sup>13</sup> As it happened most wardens and superintendents understood, approached and handled the issue in a remarkably similar fashion, a coincidence made less remarkable by the fact that most twentieth century prisons were operated like military boot camps.<sup>14</sup>

Prisons did not – and still do not – permit homosexual activity, and punishment was brutally, if inconsistently, applied. In 1933, a year before the Welfare Island expose, Dr. Oswald Withrow published an account of his experiences as a prisoner inside Canada's maximum security federal penitentiary in Kingston, Ontario. As far as he could tell, homosexuality was not common, but when it was discovered, the participants were brought to appear in the warden's court. "Filching a piece of pie might be a heinous crime; homosexuality would probably be treated lightly or passed over altogether," Withrow complained.<sup>15</sup> Harvey Blackstock's autobiographical account of his life in and out of Canadian prisons from the 1930s to 1958 includes an indictment of the administration of

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<sup>12</sup>Samuel Kahn, *Homosexuality and Mentality* (Boston: Meador Publishing Company, 1937).

<sup>13</sup>See, for example, J.G. Wilson and M.J. Pescor, *Problems in Prison Psychiatry* (Caldwell, Idaho: The Caxton Press, 1939); Henry, "The Homosexual Delinquent", 420-442.

<sup>14</sup>At least one session at the 1945 2<sup>nd</sup> Annual Superintendents' Conference, held in the US, was devoted to the topic of sex in prison. In his report to the Deputy Minister, Guelph Superintendent Dr. Heaslip wrote "nearly all troubles discussed are common to us as Superintendents, whether one comes from South Carolina, Illinois or Canada."

<sup>15</sup>Oswald C. J. Withrow, *Shackling the Transgressor: An Indictment of the Canadian Penal System* (Toronto: Thomas Nelson & Sons Ltd. 1933), 178.

justice at the prison in Prince Albert, British Columbia. He recounts an incident in which two inmates were found in a cell together. The usual punishment for such an infraction was "the paddle", a piece of thick leather punctured with holes attached to a handle used to strike the back, buttocks and legs. On this particular occasion, the prison warden reduced the "visiting" inmate's charge to being away from his place of work, and he received three days "in the hole". Though the warden's punishments were usually harsh, Blackstock claimed that he purposefully created an "atmosphere of distrust and fear" by meting out different sentences for the same offence.<sup>16</sup> The suggestion that homosexual acts were punished inconsistently because punishment itself was used in a much more manipulative manner is supported by the events surrounding a riot at Guelph Reformatory in 1952. Despite the fact that, according to prison psychiatrists, "sexual perversion is so prevalent during both normal and abnormal times," a disproportionately high number of the inmates who received corporal punishment in the fallout after the riot were charged with "indecent act (homosexual practices)" and given the strap.<sup>17</sup>

The strap at Guelph was "a piece of leather... three inches wide, three-eighths of an inch thick and 15 inches long" and it was excruciatingly painful, even for the toughest inmate.<sup>18</sup> But many thought solitary confinement was worse. In Ontario's Kingston Penitentiary, 12 cells in the basement were reserved for recalcitrant prisoners. Upon

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<sup>16</sup>Harvey Blackstock, *Bitter Humour: About Dope, Safe Cracking and Prisons* (Toronto: Burns & MacEachern Limited, 1967), 109, 113.

<sup>17</sup>According to the psychologists' report, homosexual charges constituted 18% of the total charges laid. RG 20-16-2-0-90.2 "Guelph - Inmates, 1954-55." (AO).

<sup>18</sup>RG 20-16-2-0-89.13 "Guelph Miscellaneous 1954-55" May 25 1954. (AO).

entering, an inmate's clothes were removed and he was issued a baby doll outfit with wool socks. At 6 p.m. he was provided with 3 blankets and at 6 a.m. they were taken away. Nourishment consisted of bread and water. Roger Caron described the cell as a "brick cocoon": he could touch both walls at the same time. A single bright light burned around the clock, and the toilet consisted of a hole in the floor "that gurgled and flushed once every sixty seconds" <sup>19</sup> "Close confinement" was regularly used to punish men for having sexual relations other men, but men could also be punished for speaking openly about sexual abuses. One Guelph inmate was thrown into "close confinement" for three days – for his own protection, the guards assured him – after he revealed that the reformatory's minister was known by some inmates to be a "sex pervert".<sup>20</sup>

The degree to which sexual activity was punished varied from institution to institution across Canada and the US, but all imposed at least some restrictions on inmates in an effort to reduce its frequency. At the 2<sup>nd</sup> Annual Superintendents' Conference in 1945, "[v]arious methods of dealing with sex problems in institutions were described," reported Dr Heaslip. "It was emphasized that discussion and talk about sex activities tended to intensify the problem and it should be dealt with quietly."<sup>21</sup> Premised on the

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<sup>19</sup>Roger Caron, *Go-Boy!*, 23-24. See also the report of a Guelph inmate who committed suicide while in solitary confinement, RG 20-16-2-0-90.2 "Guelph – Inmates 1954-55," 7 January 1955. (AO).

<sup>20</sup>RG 20-16-2-0-152.2 "Guelph - Inspections (1) 1958-59" E.H., Sworn Statement. (AO).

<sup>21</sup>RG 20-16-2 Correspondence and Administration Files on Training Schools and Other Institutions – Microfilm Reels MS 3167: "Minutes of the 2<sup>nd</sup> Annual Superintendents' Conference Feb 14-16 , 1945." (AO).

Victorian assumption that sex was a force that could lay dormant and be awakened translated in prison to the notion that thinking about sex inevitably led to it. Thus with the exception of wives and family members, prisoners were prevented from having contact with women lest they become sexually aroused. Mixed sex institutions were almost completely phased out by WWII.<sup>22</sup> Partitions were placed between prisoners and visitors to prevent physical contact. In many institutions female employees were restricted to doing clerical work where they were well away from the general inmate population, and “pin-up” posters and other images of the opposite sex were prohibited.

It was not only the opposite sex which threatened to spark the sexual longings of inmates. The “sight and smell of naked bodies” created sexual stimulation, noted American sexologist Benjamin Karpman. Where it was economically possible, dormitories were eliminated or reduced.<sup>23</sup> The “lockstep”, a march that required men to follow one behind the other, with the right hand resting on the shoulder of the man in front, the left hand swinging, and “the toe of one man practically touching the heel of another,” was abolished in US federal prisons based on the premise that close contact was potentially arousing.

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<sup>22</sup>On the creation of the Kingston Prison for Women see Kelly Hannah-Moffat, *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada* (Toronto: University of Toronto Press, 2001), 80-91. On the movement as a whole, see Lucia Zedner, “Wayward Sisters: The Prison for Women” in *The Oxford History of the Prison: The Practice of Punishment in Western Society*, eds. Norval Morris and David J. Rothman (New York: Oxford University Press, 1995).

<sup>23</sup>RG 20-26-1-0-45.13 “Guelph – Inmates 1951-52,” Neelands to Basher, 17 May 1951. (AO). For an early example of complaints about immorality in prison dorms, see Report-Central Prison, 1898 (No. 11): 13; cited in Donald G Wetherell, “To Discipline and Train: Adult Rehabilitation Programs in Ontario Prisons, 1874-1900,” *Histoire sociale/Social History*, 23(12): 145-165.

Inmates were prohibited from entering other men's cells, and physical contact of any sort was discouraged unless it was on the sports field.<sup>24</sup>

The shower was another common trouble spot. In the mid-1950s, staff at the Guelph Reformatory complained that the steam in the shower area was so thick that inmates could not be properly monitored. Within months an improved exhaust system was installed.<sup>25</sup> Further advances included one facility known among inmates as "the carwash". Built in the shape of a horseshoe, prisoners handed in their clothes upon entering and walked through showers operated by guards located on an elevated platform. Prisoners passed through a series of stations that allowed them to wet down, soap up and rinse off, all while remaining in constant motion toward the exit where fresh towels and a clean set of clothes were provided.<sup>26</sup>

### **The Prison Fairy**

But more than the lock step, the dormitories and the showers put together, prison officials considered the greatest sex stimulant to be the "fairy". According to US historian George Chauncey, fairies molded their bodies "in ways that approximated the ideal gender

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<sup>24</sup>See for example Blackstock, *Bitter Humour*, 102-103.

<sup>25</sup>RG 20-16-2-0-105.6 "Guelph - Inmates 1955-56" GE Jacobs to Chief Inspector, 26 May 1955. (AO).

<sup>26</sup>Caron, *Go-Boy!* 120. Canadian and American prisons relied heavily on architecture to manage their populations. Specifically, there are two ways problems in management and reform were approached: provide people-based programs or provide new structures. In the history of the prison, most problems were met with architectural, not program-based, solutions. See Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford, California: Stanford University Press, 1994), 6.

types of their cultural group.”<sup>27</sup> They indicated a sexual preference for men with clothing or behavioral cues that marked them as either flamboyant or feminine. Just a “mincing walk” and lilting voice were indications of “the classic homosexual”, easily identifiable even to a small town Ontario prison guard in the 1950s.<sup>28</sup> Tweezed eyebrows, bleached hair and painted faces also complimented their feminine demeanor and speech mannerisms. Fairies in prison had a difficult time sustaining their cultural style, and went to tremendous lengths to acquire goods they needed to do so. Class room chalk doubled as face powder, laundry room bleach lightened hair, hospital tweezers plucked eyebrows, cell bar grime doubled as eyeshadow and tomato can labels from the kitchen were soaked in water to make rouge.<sup>29</sup>

Prisoners seeking contraband material were forced to become highly inventive. Fairies apparently were no different. The desire to procure “beauty products” was well known among the staff of course, and could sometimes interfere with real medical needs. One of the most difficult items to procure were creams and oils, usually only available in medical supply chests. In 1962 an African-American imprisoned at Ontario’s Millbrook Reformatory repeatedly requested shaving salve for a skin condition, claiming that without it “it is next to impossible to shave”. Each time the doctor refused his request. Though by

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<sup>27</sup>Chauncey, *Gay New York*, 54-55.

<sup>28</sup>RG 20-42-3 Millbrook Case Files, KHD # 300. (AO).

<sup>29</sup>These practices occurred in prisons across Canada and the US. See Millbrook inmate files and William H. Haines, MD., John J. McLaughlin, MD. “Treatment of the Homosexual in Prison” *Diseases of the Nervous System*, 3:(3) March 1952; Fishman, *Sex in Prison*, 60. See also Al Maloney, interview with author, tape recording, Toronto, ON, 15 August 2001.

all reports a model prisoner, he insisted “[t]his ‘man’ is a confirmed passive homosexual who wants to be beautiful.”<sup>30</sup> The Superintendent accepted the doctor’s explanation, and the medication was never provided.

Though fairy style was never officially sanctioned, it does appear that there existed a certain level of acceptance of those inmates who insisted on feminizing their behaviour – at least in some institutions. No doubt this was due to the fact that the majority of prisoners and custodians were from the working classes. In his study of homosexual cultures in pre-WWII New York City, Chauncey discovered that fairies were tolerated in much of working class society.

He was so obviously a ‘third-sexer’, a different species of human being that his very effeminacy served to confirm rather than threaten the masculinity of other men, particularly since it often exaggerated the conventions of deference and gender difference between men and women. The fairies reaffirmed the conventions of gender even as they violated them: they behaved as no man should but as any man might wish a woman would.<sup>31</sup>

Based on his 1920s study of imprisoned fairies in New York State, psychiatrist Samuel Kahn described the “true” homosexual as “not just one who is in love with a member of his own sex” but who “has an emotional makeup of the opposite sex so that he could attract his own sex.” Those capable of loving the opposite sex Kahn specifically excluded.<sup>32</sup> For him, fairies were in a class of their own, a distinct sex “entitled to the same

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<sup>30</sup>RG 20-42-3 Millbrook Inmate Case Files, KBL, #2480. (AO).

<sup>31</sup>Chauncey, *Gay New York*, 57

<sup>32</sup>Kahn, *Homosexuality and Mentality*, 14. Note that George Chauncey shows that bisexual originally meant both male and female. Kahn used it here in its more modern form. Chauncey, 49.



rights as women.”<sup>33</sup>

It was the fairy’s womanly ways that early sexologists pinpointed as the source of trouble. Their “feminine carriage, gestures and mannerism,” observed Fishman, “tends to keep aglow the fire of sex in even the most heterosexual of the prisoners.”<sup>34</sup> Consequently, one of the main strategies wardens and superintendents used to control the sex problem was to isolate effeminate men from the main adult male prison population. Known variously as Lover’s Lane, Queen’s Row and, at the Guelph Reformatory in Ontario, Gunzil’s Alley, in North America special wings or cell blocks were set aside specifically for these types of prisoners.<sup>35</sup>

The differential treatment of fairies was based on a socio-cultural construct already in place in some urban centers. Singling out effeminate men – a practice which effectively reinforced and reified their difference – was not a practice invented by prison administrators but rather a reflection of early twentieth century popular cultural and,

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<sup>33</sup>What special rights Kahn had in mind, he does not say. Kahn, *Homosexuality and Mentality*, 160.

<sup>34</sup>Fishman, *Sex in Prison*, 22.

<sup>35</sup>At the Ontario Reformatory, Guelph, 24 of the institution’s 373 individual cells were set aside for homosexuals.(AO) 20-16-105.4 “Guelph - Inspections, 1955-56,” Accommodation. “Gunzil” is more properly spelled as “gunsel.” At the beginning of the twentieth century prisoners and hoboos called young, inexperienced boys, especially homosexuals, gunsel. Today, however, it means merely second-rate criminal. See Robert Hendrickson, *Facts on File Encyclopedia of Word and Phrase Origins* (New York: Facts on File, 1987); “Lover’s Lane” is cited from Roger Caron, *Go-Boy! Memoirs of a Life Behind Bars* (Toronto: McGraw-Hill Ryerson Limited, 1978), 21 22; “Queen’s Row” is cited from Edwin Johnson, “The homosexual in prison,” *Social Theory and Practice* 1 (4): 83-95, Fall 1971: 83.

increasingly, medical perceptions.<sup>36</sup> Though segregating effeminate men was commonly understood as a protective measure, the medical experts who were the first to describe prison conditions in detail claimed that isolating fairies was a means to keep manly inmates' sexual urges at bay.

The acceptance of fairies as "real" women was aided by the prison staff and administration who sometimes treated them as women, even addressing them by their female names. Up until the 1970s, fairies were assigned work in the laundry and tailor shops, labour considered more suitable to women.<sup>37</sup> Some were even permitted to work in the clerical unit, the only part of the prison outside of hospital wards that employed women. While most men were considered sexually ravenous, fairies seemed to pose no threat to female civilians.<sup>38</sup>

Each of these work assignments gave them access to highly valued prison goods and services such as new and clean clothes. However, fairies were considered unsuitable candidates for the most desirable opportunities with the DRI and likely elsewhere. They

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<sup>36</sup>For historical accounts of how the field of sexology was built on descriptions of the existing homosexual culture(s) including interviews and correspondence with homosexual men and women see Harry Oosterhuis, "Richard von Krafft-Ebing's 'Step-Children Of Nature': Psychiatry and the Making of Homosexual Identity" in *Science and Homosexualities*, ed. Vernon A. Rosario (New York: Routledge, 1997), 89-107 and Terry An *American Obsession*, especially chapter 7.

<sup>37</sup>RG 20-16-2- 53.6 "Annual Reports, 1951-52" Mercer Reformatory for Women, 7 May 1952. (AO). In mixed-sex institutions such as mental hospitals, laundry was considered women's work and men were assigned elsewhere. See Geoffrey Reaume, *Remembrance of Patients Past: Patient Life at the Toronto Hospital for the Insane, 1870-1940* (Toronto: Oxford University Press, 2000), 146.

<sup>38</sup>Johnson, "The homosexual in prison", 89.

were excluded, for example, from the skills and education training programs available for first time offenders at less punitive provincial training centers, and at the reformatory in Guelph where farming remained a central work activity until at least the 1960s, “sex perverts” were unwelcome in the piggery.<sup>39</sup>

For fairies entering the prison, camping it up and appear as “swish” as possible was an important strategy used to ensure a cell in segregation where they were protected from the threat of sexual assault by a wolf.<sup>40</sup> Segregation provided an important degree of protection from the ‘natural’ desires of other manly inmates, but it was also an especially arduous way to serve time. Not all prisons enforced their complete segregation. At the Guelph Reformatory, for example, fairies were separated “only during the darkness of a picture show” and when they were in their own cells.<sup>41</sup> However, some prisons enforced a round-the-clock policy, something that became possible to implement in Ontario with the opening of the Millbrook Reformatory in 1956. In these instances, virtually every aspect of their daily lives was conducted apart from the general inmate population. Segregated

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<sup>39</sup>On policy excluding homosexuals from training centers, see RG 20-16-2-0-173.20 “Guelph – NPC Clinic 1959-1960” Revised 1959 Psychological Standards of Students for the OTC, Burtch, and RG 20-16-2-0-75.7 “Guelph – Prisoners 1953-54” 18 December 1953 Memo to Miss G. Bownam, Bailiff’s Office from J.A. Graham. (AO). The farm manager complained that young inmates today know nothing about running a farm, and he requested that transferees “have a background in rural employment, between 30-50 yrs old, sentences less than 12 months, good conduct records and... have no history of drug addiction or sex perversion.”

<sup>40</sup>On declaring one’s homosexuality as a survival strategy, see “Sissy in Prison: An Interview with Ron Vernon,” *Out of the Closets: Voices of Gay Liberation*, ed. Karla Jay and Allen Young, (New York: New York University Press), rpt [1972] 1992.

<sup>41</sup>RG 20-16-2-0-90.2 Guelph – Inmates, 1954-55. G.E. Jacobs to Chief Inspector 26 May 1955. (AO).

prisoners took their meals, attended religious services, and used the exercise yard separate from the rest of the inmate population. They slept one to a cell, and had much less freedom than did other prisoners. Inmates in segregated units usually had less time outside of their cell block, and less time outdoors.<sup>42</sup>

Ironically, though segregation placed severe restrictions on inmates' freedom, it allowed fairies to be sexually provocative with little risk of danger from other inmates who might take umbrage at their sexual gestures and verbal advances.<sup>43</sup> According to Fishman, as soon as other men came into sight, "[i]mmediately, the homosexuals take on all the mannerisms of a kittenish girl flirting with a young man. They arch their necks, smile, cast suggestive looks, and despite the vigilance of the accompanying guards, make *sotto voce* remarks, usually of an endearing or insinuating nature."<sup>44</sup> Forty years later, fairy culture seemed to be unchanged. "So well has inmate culture created the concept of 'broad' that it is accepted as if it were real," wrote Edwin Johnson in 1971. "It is more than a theatrical performance, it is an actual life situation."<sup>45</sup>

A fairy's invitation to sexual repartee may have been welcome respite from the

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<sup>42</sup>(AO) RG 20-16-2-0-155.3 "Millbrook" FE Webb to WA Cardwell, 17 November 1958.

<sup>43</sup>In their 1939 monograph on prison psychiatry, Wilson and Pescor argued that the best way to eliminate homosexuality was to "throw" known homosexuals in with "men who are known to be aggressively heterosexual, and advise that the authorities turn a blind eye if physical mischance befall them if they are assaulted by those who resent their advances." Wilson and Pescor, *Problems*, 208-209.

<sup>44</sup>Fishman, *Sex in Prison*, 69-70.

<sup>45</sup>Edwin Johnson, "The homosexual in prison" *Social Theory and Practice* 1 (4): 83-95, Fall 1971: 87.

monotonous drudgery of prison life, but it also made him a target of abuse. In 1965, the Leader of Ontario's provincial opposition party launched an official investigation into rumours that "sex perverts" were forced to wear baby doll pyjamas at Millbrook.<sup>46</sup> The information turned out to be wrong, and the investigation closed, but there was no shortage of examples of cruel treatment meted out to Millbrook's effeminate inmates. Just two month earlier the *Peterborough Examiner* reported that an effeminate inmate in Group II (sex pervert) segregation was forced to parade up and down the cell block while a guard repeatedly demanded that he "walk like a man".<sup>47</sup> Both prisoners and custodians alike singled out fairies for differential treatment based on their gender status.

#### Postwar Medical "Treatment"

Many treatment experts were horrified by the way prisons treated their inmates, and were particularly critical of the unofficial policy of sexual repression.<sup>48</sup> By the 1930s most medical professionals agreed that sublimation over the long term "is neither healthy nor possible."<sup>49</sup> The sex urge is "too elemental and instinctive to be completely controlled

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<sup>46</sup>*Toronto Telegram*, 28 September 1965.

<sup>47</sup>*Peterborough Examiner*, 12 July 1965.

<sup>48</sup>Benjamin Karpman, "Sex Life in Prison," *Journal of Criminal Law and Criminology* 38(5): 475-486, Jan-Feb 1948: 482. See also the report of G.E. Jacobs, Inspector, concerning homosexual activity at Guelph: "... the measures found necessary by the Superintendent in routine treatment and punishment of sex deviates, were often in conflict with those procedures favoured by the Psychologists." RG 20-16-2-0-105.6 "Guelph - Inmates 1955-56" 26 May 1955. (AO).

<sup>49</sup>Fishman, *Sex in Prison*, 133-139.

by confinement,” explained American sex expert Benjamin Karpman in 1948. Celibacy is rare, he continued, and can only be achieved by those who “have other diversions and stimulants.”<sup>50</sup> Four years later in Ontario, Albert R. Virgin, the Department of Reform Institution’s Director of Rehabilitation, explained that this prescription was not to be confused with older ideas about simply wearing a man down:

I do not know whether working with a wheel-barrow, or a pick and shovel, is a cure for sexual tendencies or not. I do not think so. We have heard from time immemorial about hard “slogging” work as a cure for the sex urge. Maybe that is so. But I think a full occupation is the main thing in connection with men of that type.<sup>51</sup>

Unfortunately, one of the major problems in prison management was a sorry lack of things to do. From unions who successfully argued that prison labour was unfair competition, to staunch advocates of the prison as a punitive, not reformatory, institution, throughout the last century prisoners were most likely to serve their time with little or nothing to occupy them.<sup>52</sup> Fresh air and exercise was severely limited, reading materials were often

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<sup>50</sup>Benjamin Karpman, “Sex Life in Prison,” *Journal of Criminal Law and Criminology* 38(5): 475-486 (Jan-Feb 1948): 477-478. Fishman pointed out that it was the usual practice in the Navy to discourage abnormal sex by “keep[ing] the men occupied mentally and physically almost to the point of exhaustion.” Fishman, *Sex in Prison*, 20. See also Charles Ford, who gave similar advice to wardens of women. “Homosexual Practices of Institutionalized Females,” *Journal of Abnormal Psychology* 23 (1929): 448.

<sup>51</sup>RG 49-131, “Proceedings 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” Volume XXVIII: 6546-6547. (AO). Hereafter referred to as “Select Committee”.

<sup>52</sup>Deidre Foucauld, “Prison Labour: Punishment or Reform: the Canadian penitentiary system 1867-1960,” MA thesis, University of Ottawa, 1982. See also John Kidman, *The Canadian Prison: The Story of a Tragedy* (Toronto: The Ryerson Press, 1947), 66-70.

unavailable, inaccessible, or worn out from overuse, and letter writing was restricted and censored as were visits from family and friends.

For all of these reasons, medical experts viewed sexual activity between prisoners as normal under the circumstances. "All environments in which large masses of men congregate – navy, army, concentration camps and prisons, lend themselves to homosexuality," declared Samuel Kahn, the New York prison psychiatrist. This standpoint remained intact after – and may even have been boosted by – World War II. Despite vigorous attempts to eliminate homosexuals from the ranks of the military during the early 1940s, the high instance of homosexual activity led many to concede that in certain settings it was impossible to eradicate.<sup>53</sup> For example, Dr. Aldwyn B Stokes, a leading medical and psychiatric expert in Canada explained that prison

merely illustrates that the homosexual way of satisfying sex impulses is because, in most people, circumstances bring it out. That was evident in some of the prisoner-of-war camps, and other places of that kind...There is a tendency there which finds its expression when the sexes are aggregated. It was true in the women's barracks during the war, and it is an expression of sex deprivation, when one sex is aggregated.<sup>54</sup>

American experts made the same comparisons. For example, the authors of a 1952 article on the treatment of homosexuality in prison entreated their readers to reflect on their own

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<sup>53</sup>On the role of mental health experts screening inductees in the US, see Allan Berube's *Coming Out Under Fire: The History of Gay Men and Women in World War Two* (New York: Penguin, 1991). On the Canadian military experience see Gary Kinsman, *The Regulation of Desire: Homo and Heterosexualities* 2<sup>nd</sup> ed. (Montreal: Black Rose Books, 1996).

<sup>54</sup>Select Committee, 6510, 6512. When the example of the Women's Army Corps was raised, the Chairman instructed the recording secretary to temporarily refrain from transcribing the rest of the discussion, presumably to avoid besmirching the reputation of that arm of the military.

wartime experiences when they wrote, "Those who have served in the Navy will recall the saying, 'Any old port in a storm.'"<sup>55</sup>

So widely accepted was this phenomenon that at least three post-WWII treatment experts focused their attention on prisoners who did *not* want to have sex. In an article that attempted to dispel the myth that prisons "make" homosexuals, Robert Linder conceded that confinement did have certain "regressive effects". However, he argued, "homoeroticism, a function of heterosexual starvation", should be distinguished from the "integrated and patterned attitudes characteristic of homosexuality". In other words (and as the wolf-punk-fairy erotic system maintained), there were homosexual acts and a homosexual identity.<sup>56</sup> Finally, Linder argued that while all prisoners experienced some type of mental breakdown as a result of confinement, the most common mental disturbance found in prisons was the "acute panic episode" during which one's "natural" defenses against homosexuality began to crumble.<sup>57</sup>

One of the earliest medical experiments in prison related to homosexual activity was not, as one might have expected, aimed at "curing" homosexuality or gender inversion, but rather the treatment of homosexual panic.<sup>58</sup> Like Linder, Sing Sing prison

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<sup>55</sup>William H. Haines and John J. McLaughlin, "Treatment of the Homosexual in Prison," *Diseases of the Nervous System* March 1952, 13 (3): 2.

<sup>56</sup>See also Bernard Glueck Jr., "An evaluation of the Homosexual Offender," *Minnesota Law Review* 41(2) 1957: 194.

<sup>57</sup>Robert Linder, "Sex in Prison," *Complex* 6 (1951): 5-20.

<sup>58</sup>This "condition", though never delimited from the broader diagnosis of an acute panic episode, has recently re-emerged as "HAD", Homosexual Advance Defense. Lawyers have argued with varying success that their clients' violent attacks on gay men



psychiatrists Bernard C. Glueck Jr. and Russell H. Dinerstein diagnosed inmates who reported fear of homosexual contact with “homosexual panic state”, and they set out to cure them with one of the newest psychiatric treatments available: insulin shock. Discovered by accident, insulin coma therapy was first used in a psychiatric context in Vienna in 1933. By 1937 insulin coma wards were established in Canada and the US. Regularly employed during WWII, insulin coma therapy was intended to “break down the vicious circle of anxiety and loss of weight” associated with panic states.<sup>59</sup> Psychiatrists were unable to explain how the treatment worked but were satisfied that “putting patients into repeated comatose states seemed to improve their condition.” Dinerstein and Glueck noted that the combination of rest, sedation and sub-coma insulin therapy resulted in “a marked decrease in the physiological components of anxiety, a greater degree of manageability and a feeling of well-being.”<sup>60</sup> Dinerstein and Glueck’s experiment is remarkable in a number of ways, the most obvious being its intention to help men overcome their fear of homosexual sex. The study, however, was driven by economic, not sexual, concerns, and set out to provide in-house treatment, a “quick fix” as it were, to a group of inmates who would normally have to be transferred to a more costly

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were caused by their repressed homosexual feelings. See also Eve Sedgwick on homosexual panic, *Epistemology of the Closet*, 187-192.

<sup>59</sup>Terry Copp and Bill McAndrew, *Battle Exhaustion: Soldiers and Psychiatrists in the Canadian Army, 1939-1945* (Montreal & Kingston: McGill-Queen’s University Press, 1990), 6.

<sup>60</sup>“Sub-coma Insulin Therapy in the Treatment of Homosexual Panic States,” *Journal of Social Therapy* 1955; 1: 182-186. Robert Linder, “Sex in Prison”, *Complex* 1951, no. 6: 5-20.

psychiatric institution. Despite the many pronouncements on the evils of homosexuality peculiar to this period, the moral cost of sex between men was apparently judged to be less expensive than the financial burden on the taxpayer imposed by providing medical refuge to inmates paralyzed by their fear of it.

Although prison discipline was not the job of treatment experts, psychiatric and psychological theories about human socialization and gender normativity sometimes worked in tandem with the institutional push to produce prisoner manageability, including the elimination of the disruptive effect caused just by “being a confirmed homosexual”.<sup>61</sup> Medical measures to bring about institutional conformity were varied, and could be more brutal than traditional prison techniques. For example, in 1939 American prison doctors J.G. Wilson and M.J. Pescor suggested that “known homosexuals ...be thrown in with men who are known to be aggressively heterosexual, and ...that the authorities turn a blind eye if physical mischance befall them if they are assaulted by those who may resent their advances.”<sup>62</sup> Wilson and Pescor aside, at mid-century experts were most likely to support continued segregation for fairies, though not because they should be treated like women. The Director of Neurology and Psychiatry, ex-Royal Canadian Air Force doctor Frank van Nostrand instituted the policy of placing “actual Homo Sexuals” in Millbrook, Ontario’s first maximum security prison built specifically “for those who upset good order and who exert an undesirable influence over the better adjusted prisoners.” He acknowledged that

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<sup>61</sup>RG 20-16-2-0-134.3 “Millbrook - Inmates, 1957-58” Draft Copy of the Millbrook Policy, 2. (AO).

<sup>62</sup>Wilson and Pescor, *Problems*, 208-209; cited in Henry, “The Homosexual Delinquent”, 432.

there was no plan in place for immediate treatment, that “[i]t was simply to remove them as a disturbance factor.”<sup>63</sup> In cases such as this, experts defended their policy initiatives on the grounds that it was a mental health measure aimed at protecting young impressionable inmates from the influence of homosexuals.

van Nostrand did hope, however, that treatment for homosexuals would eventually be initiated. Consulting psychiatrist FE Webb soon began conducting experiments on homosexual men who “volunteered” to receive electric shock treatments at Millbrook, but the experience of one such volunteer illustrates how medical ‘help’ was sometimes wielded as a punitive and regulatory device.<sup>64</sup> In February 1958, “Norman”, a French-Canadian prisoner in an Ontario facility, was cited for “doing his hair in a feminine way” and was docked seven days good conduct remission.<sup>65</sup> One month later Officer Woody reported the same prisoner for “[b]iting his lips and rubbing his cheeks to make them red and also plucking his eyebrows.” This time he was sentenced to three days in solitary confinement on a rationed diet. On April 1 he received yet another misconduct report for “failing to achieve the required standard in conduct and industry for 5 weeks”, and lost yet another 5 days of good conduct. Two weeks later Norman was admitted to the prison hospital for a course of electro-convulsive therapy. He received a total of six treatments

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<sup>63</sup>RG 20-16-2-0-134.3 “Millbrook - Inmates, 1957-58”. Minutes of Meeting held February 18, 57.” (AO).

<sup>64</sup>Other repressive measures psychologists and psychiatrists “approved” as having no long term harmful effects were the use of the strap in corporal punishment and the use of solitary confinement and windowless cells. RG 20-16-2-0-90.2 “Guelph – Inmates, 1954-55. AO. See also Scott, *Inmate*, 1982.

<sup>65</sup>RG 20-43-3, Millbrook Inmate Case Files, NTH, #223. (AO).

and was released back into the prison. It is impossible to conclude with certainty that his refusal to conform to institutional masculine ideals resulted in his receiving electroconvulsive therapy, but given the absence of any other documented explanation – medical or otherwise – it is possible that his persistent efforts to feminize his appearance was the “problem” in need of “treatment”.<sup>66</sup>

Similarly, medical treatment could also be withheld in order to exact compliance. As we saw earlier, fairies could be denied any remedy authorities suspected was for beauty purposes. In a more modern example, in 1973 a transsexual inmate serving time at Millbrook insisted on being treated as a woman. However, the presiding physician withheld her medication and hormone treatments. The staff at the jail were “instructed to refer to him as a male on all occasions.”

Like many fairies in the prison system, Thomas S. refused to capitulate to the demands that he act like a man. According to the report, he refused to come out of his cell “unless he was provided with his dress.”<sup>67</sup> The longstanding tradition of resistance illuminates why throughout the twentieth century, custodians, treatment professionals and inmates all maintained a distinction between true and situational homosexuals. Fairies (some of whom would later be identified – self or otherwise – as transsexual) persistently

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<sup>66</sup>RG 20-42-3 Millbrook Inmate Case Files. KBL, #2480. In a separate case, a Toronto-born inmate of Italian descent was reported by the presiding physician to be “resentful to the guards because they want to have his haircut. He takes great pride in letting his hair grow long and looking after the waves in his hair. There is no tendency toward homosexuality here.” RG 20-16-2-0-60.4 Guelph – Inmates 1952-53. (AO).

<sup>67</sup>RG 20-8 Incidences of Homosexuality, 1973-1974. Memo from H. Garraway to H.S. Cooper, 12 Nov 1973. (AO).

refused treatment, and repeatedly insisted that it was society, not themselves, that needed changing.<sup>68</sup> Though it is difficult to gain an accurate sense of how often and for how long fairies maintained this oppositional stance given the various forms of punishment that could be imposed to enforce a change of ‘attitude’, we know that men like Webb felt they had to resort to methods such as electro-shock therapy in an attempt to create a more compliant patient. Indeed, the consultant psychiatrist who replaced F.E. Webb regarded “confirmed homosexuals” as the worst treatment prospects.<sup>69</sup>

### **The Wolf**

So long as fairies were considered “true” homosexuals, men who sought them out as sexual partners were not considered abnormal, not by their peers, by the fairies, by prison officials or by medical doctors. From the beginning of the twentieth century to the end, masculine-looking and acting men who exhibited a preference for sex with “fairies” earned a moniker of their own: “wolves.” As George Chauncey’s study of gay New York illustrates, the fairy and the wolf were common characters on pre-WWII streets, and the ideas about sex ‘roles’ that molded them were simply transferred into the prison setting with one important difference: a wolf’s prey, as it were, had few places to hide.

In prison, when wolves were unable to access inmates who willingly assumed the

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<sup>68</sup>RG 20-42-3 Millbrook Inmate Case Files. KHD, #300. “[T]he ordinary homosexual is more inclined to shun the idea of treatment - preferring to remain in his demi-monde.” Probation Officer’s Report, 12 Nov 1958. (AO).

<sup>69</sup>RG 20-148 Correctional Services File 11.3 Sexual Offender Group, Millbrook. 31 January 1964. Kelly to J. Marsland, 30 Jan 64. (AO).

“passive” feminine role, they readily forced others weaker than themselves to do so. New inmates were called “fish”, a moniker with etymological roots in early to mid-twentieth century male homosexual slang – fish was originally a derogatory word for a woman.<sup>70</sup> If a fish was young and especially if he was attractive, wolves sought him out as a sexual partner. “He needn’t be a homosexual nor necessarily is the kid, who with his adolescent smile, his unsophisticated manners, soft skin and aesthetic proportions, embodies the female,” explained Roger Caron, an inmate with experience in a number of Ontario institutions. Like prison staff, prisoners understood the wolf to be a ‘normal’ heterosexual man. Though his sexual partner was a biological male, he “used” him as he would a woman.

When a wolf “used” a fish for sexual pleasure, the fish became a punk, sometimes also known as a lamb or a kid. On the streets of New York, punks occupied a similar space in that they were not gender inverts, and therefore not homosexual in the way “fairies” and “pansies” were. But they were willing to have sex with men, often for money. Inside prisons, punks were likewise seen in a near-prostitution role, but in exchange for sex they received protection, not money. “A punk is neither a wise kid nor a small time hood,” explained an inmate in a US prison in 1965, “he is a kid that has been made, made many times in the past, and that can be made now with no difficulty whatsoever. He is what, if he were a girl, would be known as a pig. Sometimes he is actually a prostitute.”<sup>71</sup>

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<sup>70</sup>“Prison Diaries” 1951. (KIA).

<sup>71</sup>Anon., “Homosexuality in Prison”, 1964: 6. (KIA). This is an essay an inmate wrote as a contribution toward a collection of writing by inmates. The warden refused to allow him to submit it, another indication of prison administrator’s attempt to keep a lid

Although there was an element of choice that existed in these relationships on the streets of pre-WWII New York, (choice over-determined by economic hardship no doubt), there was less choice in the prison environment.

Early sexologists appear to have been somewhat preoccupied with the prison fairy, but in the 1950s there was much more recognition of the “aggressive” homosexual as the real problem inmate. During a 1952 review of Ontario’s reformatories and training schools, the appointed investigators questioned AR Virgin, Director of Rehabilitation, on the problem of “pansies and fairies”:

Chairman: We have seen them running around with their sideburns down to here (indicating), and swinging their hips. What can we do with them?

Virgin: Segregate him at night, and try to keep him under supervision.

Grummett, Q.C.: They are not nearly as dangerous as the aggressive homosexuals?

Virgin: No.

Grummett: What are known as “pansies” or “fairies”, whom the majority avoid.

Virgin: That is right.

Grummett: But the aggressive homosexual is one who will push his aggressiveness to a point where he catches an unwary person; those are the ones we have to watch.

Virgin: That is right.<sup>72</sup>

Yet Virgin and his colleagues in the Department of Reform Institutions continued to dismiss and deny the seriousness of the problem in their day-to-day work. Following a riot at the Guelph Reformatory in the same year, three staff psychologists, including FH Potts, the first mental health expert hired by the department in 1947, interviewed inmates and

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on the sex problem.

<sup>72</sup>RG 49-131. “Proceedings 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” Volume XXVIII, 6497-6499. (AO).

prepared a report on the causes of the disruption. They saw the sexual assault of inmates by inmates as a critical issue, and argued that known homosexuals should be segregated, though in this case they meant wolves, not fairies. “Until this is done inmates will have to go through the terrifying and revolting experience of having to comply with the wishes of sexual perverts who overpower them by force.” Virgin and the Deputy Minister both dismissed sex perversion as a factor in the riot, though Basher admitted that it was an issue they needed to address nonetheless.<sup>73</sup>

Despite complaints the DRI received concerning coerced sex, when Millbrook opened to accept those homosexuals who were a discipline problem, van Nostrand continued to single out effeminate men for transfer. “It must be clearly understood that they will include only actual Homo Sexuals and not those caught at some indecent act with another prisoner or those charged with such by the Courts.”<sup>74</sup> However, superintendents of other prisons continued to transfer ‘wolves’ to Millbrook, forcing van Nostrand to admit that while previously these inmates were “only petty annoyances”, they were now “considered major trouble-makers”.<sup>75</sup> van Nostrand had little choice but to accept them, and prepared a new directive to reflect the policy change. Those who have had “homosexual experiences in which he takes the ‘male role’ but whose preferred sex

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<sup>73</sup>RG 20-16-2-0-60.4 Guelph – Inmates 1952-53. Psychologists Report, 24 July 1952. (AO).

<sup>74</sup>Ibid., Minutes of Meeting held February 18, 1957.

<sup>75</sup>RG 20-16-2-0- 200.10 Millbrook – Inmates – Removal Warrants, 1960-61. 9 Feb 61. (AO).



object is a woman” should be classified as a Group I (discipline problem) inmate.<sup>76</sup>

Aggressive homosexuals were not seen or treated as sex deviants but rather men with limited options. So long as they “appeared” to remain in the “man’s role”, wolves were a discipline problem, and not subject to psychiatric treatment. Nor were they incorporated into any medical theories of sexuality. Instead, the wolf was understood exclusively in gendered terms that assumed masculinity as inherently (hetero)sexual and naturally dominant, two important qualities that the prison environment thwarted. When called to the nearby Terre Haute Federal Prison to assist with managing the sex problem there, Kinsey Institute researcher Wardell Pomeroy explained to prison officials, “The usual way a man asserts his masculinity is to have heterosexual sex,” If an inmate “can create a fiction with a person who appears to be feminine, it helps him assert his lost manliness.”

Remarkably, Pomeroy, van Nostrand and a host of other mental health and sexological experts gave virtually no consideration to the prison punk despite the fact that throughout the twentieth century it was precisely this type of situation that concerned anyone with an interest in prisons and reform. In 1951 the Ontario DRI received an anonymous letter in which the author claimed to have “personal information of the shocking things that go on in some of our so called places of correction for one, namely Guelph Reformatory.”

I understand there is quite a number sleep in one big room [sic] and there is young boys their [sic] made to submit to the lowes[t] possible form of sexual intercourse

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<sup>76</sup>RG 20-16-2-0-200.10 “200.10 Millbrook – Inmates – Removal Warrants, 1960-61. (AO).

and no one dare complain or they would be beaten up so badly it wouldn't be funny.... I understand there are boys from 16 yrs. to men 60 and over together. What chance has a young boy to come out better, better for that boy if he were to face total extermination [than] that a living hell.... Pleas do something about this... Isn't it a shocking situation in a Christian Country...<sup>77</sup>

For the most part, prison superintendents and wardens denied the coercive element in these activities. An American warden complained that the problem was that older inmates told the younger ones that sex between men in prison was "perfectly normal." What they needed, he argued, was sex counseling to inform them otherwise.<sup>78</sup>

In the post-WWII era, sex education was widely regarded as one of the most important weapons in the fight against sexual deviation.<sup>79</sup> Prison psychologists and social workers often interpreted sexually deviant behaviour, including incest, as a knowledge problem, and sex education was sometimes the only thing prescribed to help bring an inmate's behaviour patterns in line with social norms. To suggest that young punks were engaging in sexual activities with older prisoners because they were misinformed about what was normal and what was not demonstrates either a remarkable level of ignorance or an inability or refusal to challenge male sexual privilege, even when it was at the expense of the sexual 'rights' of other male inmates.

Aside from the threat of rape and the coercive dynamic that over-determined inmate relations, "fish" were often profoundly needy young men who had spent most of

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<sup>77</sup>RG 20-16 45.13 Guelph – Inmates 1951-52, Anonymous, n.d., to the Ontario Inspector of Prisons, received May 16 1951. (AO).

<sup>78</sup>Comment from unidentified audience member. Pomeroy, "Sex in Prison".

<sup>79</sup>Mary Louise Adams, *The Trouble With Normal: Postwar youth and the making of heterosexuality* (Toronto: University of Toronto Press, 1997).

their lives cut off from familial and other traditional nurturing and caretaking relationships. According to a prisoner writing in 1964, most inmates grew up in and out of institutions which he described as “pretty loveless place[s].” Wolves, he claimed, offered a punk his prestige and his protection, “but most of all his love.”<sup>80</sup> Punks paid a tremendous price for the love a wolf offered. They were kept in positions of subordination sexually, socially and economically. Those who learned that they had something valuable to offer sometimes set themselves up as prostitutes and offered sex in exchange for contraband. For example, shoes at one prison in the 1960s were worth 12 packs of cigarettes. Oral sex sold for one pack and a “trip around the world” for 3 packs.<sup>81</sup> But punks who attempted to sell their sexual favours suffered a low status within the prison social system comparable to female prostitutes in the outside world. That different social values were placed on those who were “owned” and those who took ownership of themselves shows us that sex, gender and power operated in prison in much the same fashion as it did in the outside world. To suggest that masculine men were simply “substituting” punks for women overlooked the way power relations were organized through the prism of masculinity and femininity.

The refusal to relegate core masculine values like aggression to the dustbin of social convention defined the limits of mental health and sexological experts’ ideas about sexual behaviour. An increasing interest in the psychology of masculinity in the 1960s was evident in Canadian psychologist F.R. Wake’s 1959 study of cruelty among

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<sup>80</sup>Anon. “Homosexuality in Prison”, 1964. (KIA).

<sup>81</sup>31- Prison Inmate letters, Federal Bureau of Prisons. (KIA)

institutionalized boys.<sup>82</sup> Wake posited that delinquency was the natural byproduct of a society that inculcated and rewarded male aggression. “The growing boy”, Wake claimed, “learns that aggressive behaviour is a requirement if he wishes to feel, and to be seen as a man.”<sup>83</sup> Though young men were also taught the limits of acceptable aggressive behaviour, Wake suggested that we should not be surprised to discover that while the majority might learn to live within the bounds of convention, some would fail to live up to the masculine ideal and some would over-perform. In a modified version of the Kinsey scales, Wake suggested that delinquency studies should abandon the focus on finding a single cause of criminal behaviour and look at delinquency across a scale. For example, delinquency varied in degree, he argued, “such as the theft of a few pennies from a church to robbing a bank and from tentatively suggesting sexual intimacy with a like-aged female to rape a three year old child.”<sup>84</sup> Society must either decide that “upholding the present concept of masculinity is not worth the price” and “de-value the characteristic of aggression” or

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<sup>82</sup>Wake’s interest in questions about gender and sexuality was well-established. In the mid-1950s he undertook research for the Royal Commission on the Criminal Law Relating to the Criminal Sexual Psychopath, and he went on to create Canada’s infamous “fruit machine”, a psychological exam aimed at identifying homosexuals through a combination of masculinity and femininity tests and visual response to erotic stimuli. See Gary Kinsman and Patrizia Gentile, ““In the Interests of the State”: The Anti-gay, Anti-lesbian National Security Campaign in Canada: A Preliminary Research Report.” Laurentian University, 1998; Daniel J. Robinson and David Kimmel, The Queer Career of Homosexual Security Vetting in Cold War Canada,” *Canadian Historical Review* 75 no. 3 (1994): 319-345.

<sup>83</sup>F.R. Wake, “Normal Aggression and Delinquency,” *Bulletin of the Maritime Psychological Association* 8 (1959): 50-59 [52].

<sup>84</sup>Ibid., 55.

“concentrate on teaching better methods of control.”<sup>85</sup> Wake chose the latter.<sup>86</sup> Whether the issue was aggression, sexual activity or especially a combination of both, postwar sexologists and mental health experts refused to relinquish certain masculine rights and privileges. Even when the element of harm was unavoidable, experts like Wake voted in favour of improving mechanisms of control and containment, and, as we shall see in the next section, creating ‘normal’ outlets.

### **Conjugal visits**

Despite more than a decade of open discussion about the sex problem, in 1962 US corrections officials admitted that little had changed in the way it was managed. Speaking at the annual Federal Warden’s Institute at the University of Colorado, the warden of the federal prison in Terre Haute, Indiana, described sex as “the biggest problem in any institution,” including his own. It affected all areas of prison management including discipline, work assignments and “crack ups”. Terre Haute officials called upon the nearby Kinsey Institute for help. Wardell Pomeroy responded and convinced them that their ideas were based on “myth and folklore, not fact”.<sup>87</sup>

Kinsey’s approach to understanding sexuality did not immediately lend itself to the

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<sup>85</sup>Ibid., 57.

<sup>86</sup> “[S]ocietal guilt, rather than looking for someone to blame, or some impersonal economic system to make responsible, can be turned to a stronger, more determined effort to reduce the number of errors involved in the teaching of aggression...” Ibid., 58.

<sup>87</sup>Wardell Pomeroy, “Sex in Prison” Speech given during Federal Warden’s Institute at the University of Colorado, sound recording, 26 June 1962, KIA.

demands of most prison settings, which depended on coercive mechanisms of control. Kinsey accepted all forms of sex “outlet” as “natural”, and agreed only that they occurred at variable rates among different groups of people, rates which he tracked along his infamous “scale”. One of the more controversial of his findings was the number of American males who had engaged in homosexual activity. Without a doubt Kinsey would have found any policy aimed at 100% suppression of homosexual activity untenable, and had little to offer by way of control mechanisms.<sup>88</sup>

Pomeroy departed from the Kinsey tradition of refusing to psychoanalyse or moralize on questions regarding human sexual behaviour.<sup>89</sup> In an effort to address the need to manage its inmates, the late Dr. Kinsey’s colleague and research associate worked together with the Terre Haute officials to try and find ways to encourage men toward heterosexual outlets, and in so doing reinforced homosexual activity as objectionable behaviour. The prison’s persistent efforts to eliminate sex had consistently failed because homosexual men who tried to change their sexual activity by just giving it up only became tense, nervous, and upset, he argued. On the other hand, those who replaced it with a “positive program toward heterosexual adjustment” such as dating the opposite sex could “make their way down the Kinsey scale [i.e. from an almost exclusively homosexual 5

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<sup>88</sup>Alfred Kinsey died in 1956.

<sup>89</sup>In fact, Kinsey was probably turning in his grave. In a letter to friend and colleague Manfred Guttmacher, Kinsey argued that the army’s new policy to control homosexuality “appear[s] to be inspired by moral and traditional considerations, rather than by a desire to maintain and improve the efficiency of the Armed Forces.” He was adamantly opposed to the policy, and one can imagine he might have felt precisely the same way with respect to prisons. Correspondence Files, Letter to Manfred Guttmacher, 1 Dec 54. (KIA).

toward an almost exclusively heterosexual 2] and achieve near full heterosexual adjustment.” The problem, he claimed, was that in prison, there is no opportunity to develop heterosexual relationships, so such programs were impossible to implement.

Pomeroy offered his audience a few suggestions as to how wardens could re-direct the attention of their inmates toward heterosexual attachments. Citing the example of a girls’ reformatory that allowed its wards to go out on dates with boys so as to permit “normal” heterosexual development, Pomeroy advocated the system of home visits implemented in some Scandinavian countries. Unlike conjugal visits which benefitted only married men who constituted less than a third of the total inmate population, home visits allowed *all* men a day pass. This, Pomeroy argued, would enable both single heterosexual and homosexual men opportunities for sexual contact.

Although permitting unmarried heterosexual men and homosexual men to leave the prison for the express purpose of having sex took the concept of the conjugal visit a great distance further than most of its advocates intended, none of Pomeroy’s proposals represented anything new in the field. In the 1930s both Joseph Fishman and Samuel Kahn dismissed sublimation as a viable option, as did virtually all of the experts that followed them, and the system of one-day visits was advocated by Fishman 30 years earlier. “The existing puritanical attitude dealing with all matters pertaining to sex,” he argued, “causes us to do many curious and contradictory things, namely we say that we need to keep the family together yet we keep them apart by limiting the number of visits and by preventing physical contact during visits.”<sup>90</sup> Fishman cited the Russian system as his model for the

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<sup>90</sup>Fishman, *Sex in Prison*, 174-5.

conjugal visit. Post-WWII advocates notably refrained from mentioning the Soviet Union and instead advanced the Latin American example. In the postwar period, the wall began to come down, literally. On a visit to San Quentin in 1950, Kinsey noted with approval that the glass partition between prisoners and their visitors was removed.<sup>91</sup>

In 1960s Canada, official support for the conjugal visit widened. In 1965 Arnold Peters, a New Democratic Party Member of Parliament, publicly advocated the concept, and even argued in favour of permitting prostitutes. Prostitution is normal in society, he argued, citing a “cat house” that existed in Kirkland Lake for 20 years. “There were a lot of single miners,” Peters explained. “It’s better than having them raping your daughters.” He also recommended organized periodic visits by female prisoners to “cut down on homosexuality.”<sup>92</sup> Reverend John Griffin, a United Church Minister and graduate student in psychology, urged the government to allow wives and prostitutes to visit men in prison “as an alternative to sex with other males... [M]any fights were over homosexual rights to new prisoners,” he said.<sup>93</sup> That fall the Federal Commissioner of Penitentiaries, A.J. MacLeod, reported that he was allowing “compassionate” 72-hour passes for men to return home to visit their wives and families, and to “mow the lawn.” According to a report in the *Toronto Telegram*, he felt it helped to eliminate homosexuality.<sup>94</sup> The 1969 Report of the Canadian Committee on Corrections agreed that prison was conducive to

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<sup>91</sup>Notes on Visit to San Quentin, April 1 1950. Unprocessed material. (KIA).

<sup>92</sup>*Toronto Telegram*, 10 June 1965.

<sup>93</sup>*Toronto Telegram*, 14 June 1965; *Toronto Daily Star*, 14 June 1965.

<sup>94</sup>*Toronto Telegram*, 2 September 1965, A-14.



homosexual behaviour and that homosexuality was not considered abnormal by many inmates.

For the mature prisoner with a history of reasonably adequate heterosexual functioning outside prison, adaptation to the heterosexual deprivation of prison is generally reversible. On his release he usually finds opportunity for heterosexual relationships to which he can adjust. For the immature, or the sexually inadequate, however, the homosexual emphasis of prison life frequently integrates into his habit pattern a practice of deviance or sexual malfunction which is difficult to reverse when he is released.<sup>95</sup>

While the Committee felt that conjugal visits might create more trouble than it would solve, it was an experiment that "should be tried where possible."

In the 1960s Mississippi was the only American state that permitted conjugal visiting. Retired San Quentin warden Clinton Duffy argued other states should follow suit.<sup>96</sup> Duffy claimed that since its inception, Mississippi had not had a prison riot "of significance" despite the fact that it was considered "one of the least progressive states.... All a man needs is an hour a month alone with his wife. I can't understand why this privilege isn't used to help keep order in prison and to effect rehabilitation later," he complained.<sup>97</sup> Duffy made it clear that his position had nothing to do with the rising civil rights movements in the 1960s. Citing the 1962 example of Lawrence C. Garner who requested that he be allowed two hours with his wife before his execution, Duffy saw no

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<sup>95</sup>Report of the Canadian Committee on Corrections. *Toward Unity: Criminal Justice and Corrections*. (March 31, 1969), 315.

<sup>96</sup>Columbus C Hooper, *Sex in Prison: the Mississippi experiment with conjugal visiting* (Baton Rouge: Louisiana State University Press, 1969).

<sup>97</sup>Clinton T. Duffy, *Sex and Crime* (New York: Doubleday & Company, 1965), 174-6.

value in granting the request. "I must admit", he wrote, "that permitting conjugal visits to condemned men would serve no good purpose."<sup>98</sup> By permitting conjugal visits, the state was not acknowledging the "sexual rights" of prisoners but rather deploying the wives of inmates as a deviance-distractor, a calming mechanism and a management tool. With public support behind them, small home-like cabins began dotting the corrections landscape in the 1970s.<sup>99</sup>

The notion that heterosexuality was essential to creating and sustaining normativity was extended beyond the simple idea of conjugal visits. As we saw in chapter four, some treatment experts advocated provisions for heterosexual contact for incarcerated sex deviants so that they might put into practice some of the therapeutic ideas they were exposed to. However, in the 1960s creating more opportunities for heterosocial contact seemed like a good idea for all inmates. Department of Reform Institutions Minister Allan Grossman described how Home Economic students from MacDonald Institute for Domestic Science at Guelph were attending organized dances at the nearby Brampton Ontario Training Centre for "reformable" young offenders.<sup>100</sup> Inmates will develop "adequate social relationships and healthy attitudes towards members of the opposite sex,"

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<sup>98</sup>Ibid., 180.

<sup>99</sup>Ironically, prisoners in Canadian penitentiaries currently enjoy the right to same-sex conjugal visits as a result of the Human Rights protections enshrined in the Canadian Constitution. However, they are not extended this privilege if their 'spouse' is another inmate. *Globe and Mail*, 4 September 2000, A-6.

<sup>100</sup>The Macdonald Institute for Domestic Science opened in 1903 on the campus of the Ontario Agricultural College (OAC) in Guelph, Ontario. Established by Adelaide Hoodless, it provided training for domestic science and home economics teachers. <http://www.mala.bc.ca/homeroom/Content/PostSec/macinst.htm> Accessed June 25, 2001.

he argued. But it wasn't to stop there. The DRI was exploring the possibility of opening co-ed training schools for delinquents.<sup>101</sup>

### **The Rape Problem**

In the late 1960s two major events would facilitate the shift from a medical to a social justice discourse as the paradigm through which the prison sex problem was articulated. In 1967 John Herbert's play, *Fortune and Men's Eyes*, opened to critical acclaim. First run off-Broadway, *Fortune* was based on Herbert's own experience as a 'fairy' who served time in Ontario's Guelph Reformatory in 1947. The play, quickly made into a feature film, followed the ill-fated story of Smitty, a young man whose only link to the outside world was a coveted photograph of his girlfriend. Smitty shared his cell with three others: Queenie, a classic, high-camp fairy who provided comic relief, moral guidance, and a rebellious spirit; Mona, a meek and diminutive young man whom we soon learn is little more than a repository for the aggressive sexual demands of a group of gang-bangers, and finally Rocky, a young but experienced tough, and the most "manly" of the bunch.

Rocky quickly befriends Smitty, the new "fish", with an offer of friendship and protection from the gang-bangers, who gleefully rape Mona while the prison guards stand by and do nothing. Astonished at what he sees, Smitty turns to Rocky and asks why no

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<sup>101</sup>Allan Grossman, Brief to the Select Committee on Youth, *Toronto Telegram*, 21 October 1965, 9. Again, Ontario was not alone in this venture. In the US, a number of federal prisons experimented with "cocorrections" in the 1970s. See John Ortiz Smykla, *Cocorrections: a case study of a coed federal prison* (Washington: University Press of America, 1978).

one, including the guards, intervenes. "Ain't no one gonna mess with a man givin' his oats," Rocky replies. Smitty wastes no time in accepting Rocky's offer for protection, but he soon learns that it comes at a price. After an initial period of resistance, Smitty is soon acting not only as Rocky's punk, but also his houseboy. Forced to make Rocky's bed, roll his cigarettes and polish his shoes, Smitty is completely and utterly debased, stripped of his masculinity, his independence, his sexuality. In exchange, Rocky gives him a chocolate bar and keeps the other "wolves" at bay.

The year after Herbert's play opened, a Philadelphia court investigated the allegations of a man who claimed he was sexually assaulted within moments of arriving at the Philadelphia Detention Center for a pre-trial evaluation. In the final report, the District Attorney described sexual assault in the prison system as an "epidemic". Prison staff and the warden admitted that every new inmate "of slight build" will be approached within two or three days of admission, and that those who do not seek the protection of a wolf would be gang-raped.<sup>102</sup> One inmate reported that he screamed for over an hour while he was gang-raped and the guards did not come to his aid. All told, the investigators interviewed 3304 inmates who had been in the system between June of 1966 and June of 1968. They estimated that 2000 assaults took place. In that time period, only 156 were documented, only 64 were mentioned in the prison records and only 40 of those resulted in internal discipline against the aggressor.

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<sup>102</sup>Alan J Davis, "Sexual Assaults in the Philadelphia Prison System and Sheriff's Vans," *Trans-action* (December 1968): 8-16. Davis was a main investigator on the Report. See United States District Attorney (Philadelphia Eastern District) *Report on Sexual Assaults in the Philadelphia Prison System and in Sheriff's Vans* (1968).

Much like Herbert's description of prison life in *Fortune and Men's Eyes*, the Philadelphia report described a typical set up in which a new inmate was offered food, cigarettes, blades, or candy.<sup>103</sup> Another method was to involve him in gambling. Sex was demanded to either return the "gift" or repay the debt. The report accused staff of being quick to label these sexual encounters as consensual. Moreover, they found that staff were willing to permit favoured inmates the opportunity to seek out sex with punks or prostitutes. Even worse, some inmates had been put in a position to select participants for financially lucrative experiments using test products like medication, sun tan lotion and shaving creams. The inmate given the power to make these selections used his position to "acquire sexual partners".<sup>104</sup>

Reports of similar incidents in Ontario prisons revealed the same pattern. In a 1954 internal investigation into an inmate's claim that he had been forced to submit to sex with two other inmates, it was revealed that the perpetrators used a combination of threats of violence and bribery to buy the complainant's silence, suggesting that so long as inmates did not make a formal report of sexual assault, the institution did not act on it.<sup>105</sup> A decade later the *Peterborough Examiner* revealed that some inmates were forced to give "desserts, sexual favours" to some of the "older racket bosses". "I feel sorry for any young man going into Guelph," said their informant. "You can't beat that place."<sup>106</sup>

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<sup>103</sup>Davis, "Sexual Assaults", 13.

<sup>104</sup>Ibid., 14.

<sup>105</sup>RG 20-16-2-0-75.3 "Inspections" Sworn Statement. (AO).

<sup>106</sup>*Peterborough Examiner*, 7 September 1965.

In the US, even racial tensions were put in the service of the system of sexual exploitation. For example, one African-American inmate in a US federal prison told folklorist Bruce Jackson that blacks usually gang-banged whites. Astonished, Jackson asked why the whites did not intervene. His informant replied that the whites were also beneficiaries: after the assault, one or another of the white inmates would step in and offer “protection”.<sup>107</sup>

Most striking to the investigators was the fact that the “typical sexual aggressor does not consider himself to be a homosexual, or even to have engaged in homosexual acts. This seems to be based upon his startlingly primitive view of sexual relationships,” they continued, “one that defines as male whichever partner is aggressive and as homosexual whichever partner is passive.” They interpreted inmate expressions “such as ‘fight or fuck’, ‘we’re gonna make a girl out of you’ and ‘we’re gonna take your manhood’” as not about sex, but “akin to ancient customs in which the vanquished are bugged and/or castrated by the conqueror.”<sup>108</sup> Like Wardell Pomeroy, they saw rape as the “primary and only way to maintain one’s masculine identity,” but they went one step further by concluding that these were not “acts of sexual deprivation as is often thought”, but were expressions of “anger and aggression”.<sup>109</sup>

In his own report on sex in prison in 1971, US inmate Edwin declared, “[t]here is

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<sup>107</sup>Interview conducted by Bruce Jackson, April 1962, sound recording. (KIA). Edwin Johnson describes the same dynamic in “The homosexual in prison”, 89.

<sup>108</sup>Davis, “Sexual Assaults” 15-16.

<sup>109</sup>Ibid., 17

absolutely no protection in society for the homosexual who is raped by force... Prison officials generally feel that "faggots" are getting what they deserve."<sup>110</sup> If rape was as common as Herbert's play and the Philadelphia report suggested, the idea that segregation was for the protection of prisoners became increasingly suspect. Instead, prison guards and administrators and mental health experts imposed their own system of punishment and sense of morality on convicts by allowing certain inmates to roam freely, other inmates to spend the majority of their time in a cell and still other inmates to become the unwilling victims of sexual predators. Moreover, prisoners' keepers also participated in the sexual exploitation of some prisoners. After the Philadelphia report, the Ontario Department of Reform Institutions opened a file on "Incidences of Homosexuality". Almost all of the reports involved staff having sex with inmates, not inmates "preying" on each other. Although in the previous two decades various guards, prison staff, and at least one Minister were formally investigated and charged with having sexual relations with prisoners, this was the first time the Ministry thought to collect all of these complaints into a single file, indicating that the Philadelphia and similar reports that followed changed the DRI's role from one that discouraged deviancy to one that made them potentially liable for assaults on prisoners.<sup>111</sup>

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<sup>110</sup>Edwin Johnson, "The homosexual in prison," *Social Theory and Practice* 1 no. 4 (Fall 1971): 88.

<sup>111</sup>Official reports of any kind of violence or assault were rare, but over the quarter decade under study here, two notable cases appeared outside of the "Incidences" file. See RG 20-16-2-0- 45.13 "Guelph - Inmates, 1951-52"; "152.2 Guelph - Inspections (1) 1958-59". (AO).

### **Taking it like a man**

Prisoners were unlikely to report sexual assault for a number of reasons. First, the ability to endure hardship boosted one's status and prestige among other inmates. Roger Caron's immersion in prison-tough masculinity upon entering the Ontario Reformatory in Guelph at the age of 16 began with grim determination to conceal his fear. He learned that calling a guard when under attack was considered "unmanly", and thus against the inmate code.<sup>112</sup> Prisoners sentenced to receive the strap commonly succumbed to the punishment and "beg[ged] for mercy". Those who managed to maintain their composure earned the respect of other inmates; conversely, those who lied about enduring the punishment without "breaking" were "contemptible cowards."<sup>113</sup>

Prisoners who were raped quickly learned to submit without complaint. Other inmates demanded their silence, even when the assailant was a member of the staff. In a case cited earlier, a young inmate learned that the Minister was known as a "sex pervert" from two other inmates who told him that they permitted the Minister to play with their penises in the hope that it would get them an early parole. When the inmate revealed this information, it made them susceptible to institutional punishment in order to ensure their silence, and it also jeopardized their hopes for an early parole. The inmate was removed to solitary confinement to protect him from other inmates as well as to silence him.

In 1973, Dan, also a young inmate at Guelph, decided to attempt an escape after

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<sup>112</sup>Roger Caron. *Go-Boy! Memoirs of a Life Behind Bars* (Toronto: McGraw-Hill Ryerson Limited, 1978), 21.

<sup>113</sup>*Ibid.*, 70.



his dorm captain laughed off his complaint about a guard's sexual advances, and instructed him to keep his mouth shut. When he was captured some days later, he reported exactly what happened. A prison guard had attempted to have sexual relations with him in the kitchen. A sexual assault survivor, he was overcome with tremendous fear. The guard later told him that he would arrange to get him out of the institution and over to his house to do some repair work for a few days. The inmate knew what was in store, and decided he would rather escape than endure three days of coerced sex. Upon his capture, the prison administration was wise enough to know not to return Dan to the Guelph Reformatory. They were certain he would be brutally beaten by the other inmates for "squealing."<sup>114</sup>

Those bold, desperate or stupid enough to complain were hard pressed to find a sympathetic ear. Prisoners were considered untrustworthy, a stigma that worked in favour of the wardens and superintendents who were keen to avoid negative publicity. Thus prisoners who were victims of sexual assault had no one to whom they could complain, and of the few who attempted to seek redress, prison administrators quickly dismissed their criticism as sour grapes. Moreover, the prison could mobilize its resources to effectively silence them. Though there were a number of methods at their disposal, the medical and treatment staff became part of the machinery of oppression. For example, as per the Ontario Department of Reform Institutions procedure, an investigator set up interviews with prisoners interested in filing a grievance after the 1945 riot at the Guelph

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<sup>114</sup>RG 20-8 "Incidences of Homosexuality, 1973-74." Report of 11 July 1973. (AO).

Reformatory. The investigator submitted the complaints of 23 inmates. Heaslip, the prison superintendent and a medical doctor, dismissed 11 of them on the grounds that the complainant was either a “moron” (still then a formal diagnosis) or a “psychopathic” or “borderline” personality. Two examples are especially illuminating. One inmate reported that “the bullies are stealing tobacco and desserts, and suggested that the victims should be protected by placing them by themselves and that inmates should have someone to confide in other than the Superintendent and Sergeant.” Heaslip responded to the report: “Recidivist and psychopathic personality. No further comment.” An inmate from C-3, the section for “perverts”, told the investigator that for the previous two months the guards refused to take him and others in his block out for exercise. Heaslip wrote “a psychiatric patient in the army and is under treatment. Suffers from hallucinations and has had corporeal punishment here for gross indecency and will be transferred to Ontario Hospital [as a psychiatric patient] if necessary.” The threat of psychiatric treatment, either in the prison hospital or by means of a transfer to a mental hospital, was real for all prisoners, but was especially of concern for homosexuals since at least the 1920s.<sup>115</sup>

Heaslip’s dismissive tactics were employed by his successors as well. In 1954 one inmate’s family physician was horrified to see his patient return home from the Guelph Reformatory in a “starved and beaten condition”. The inmate claimed he had been gang-raped repeatedly, especially in the shower area. A year later a physician at an Ontario

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<sup>115</sup>Samuel Kahn’s 1920s study of homosexuals revealed that many of them feared being “bugged” when they were being examined for their homosexuality. Kahn, *Homosexuality and Mentality*, 24. Other reports of inmates being threatened with electroconvulsive therapy and other psychiatric treatments can be found in Roger Caron’s *Go-Boy!* and “Charles” Interview by Bruce Jackson, tape recording, 1962. (KIA).

hospital made a written enquiry to the DRI concerning a patient who described the brutal treatment he endured at Guelph. In both cases, Deputy Minister G Hedley Basher went to great lengths to describe the “risks” inherent in running a prison, and managed to convince both physicians that the complaints are “not in keeping with the facts and grossly exaggerated” and, moreover, that the inmate had engaged in homosexual activity and was trying to “justify his own unnatural behaviour.”<sup>116</sup> Victims of sexual assault and those who were punished for engaging in consensual sex - in addition to the non-homosexual sex offender population who was routinely harassed, assaulted, abused and isolated - had no channel through which they might gain a fair hearing.

How much sex was going on in male prisons is impossible to ascertain. By the mid-1950s most estimated that anywhere from 25 to 35% of the inmate population engaged in sexual activity of some sort, but there is little reason to think these estimates were accurate. In the 1960s, members of the Kinsey Institute conducted a series of interviews with the sex offender treatment staff at Norwalk, a controversial program located in a California state hospital. There, homosexual activity was not only permitted, but inmates were actively encouraged to talk openly in therapy about their sexual encounters with other program participants. Even in this setting, staff estimates of the number of inmates engaging in homosexual activity ranged from as low as 10 per cent to as high as 90 per cent.<sup>117</sup> It is difficult to comprehend how there could be such extreme

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<sup>116</sup>RG 20-16-2-0-90.2 “Guelph – Inmates 1954-55” ; 105.6 “Guelph – Inmates 1955-56.” (AO).

<sup>117</sup>SO-1 Folder 2, “Prison Staff Interviews”. (KIA).

disparity between staff perceptions, but it well illustrates the difficulty in trying to ascertain the level of sexual activity in prison, or for that matter, anywhere. However, in the 1950s and 60s most Canadian prisoners as well as treatment staff acknowledged that there was “a great deal of sex play among the Inmates.”<sup>118</sup> US ex-prisoner Edwin Johnson reported that all inmates fell into one of three categories: “those who do, those who watch, and those who observe and occasionally participate.”<sup>119</sup>

As inmates and prison staff brought with them their sexual beliefs and values, so too did the social organization of race inform the way prisoners interacted with each other. In a letter from a black inmate responding to a white fairy, the prisoner expressed his uncertainty about becoming involved because of his inexperience with “White women”. Explaining why he ignored the initial attempts to get his attention, he wrote:

I have a strong desire for a good woman, and because I do not know about White women, I could not stand the attraction you forced on me, so takeing [sic] into consideration, I have never had a white woman, I have hope that you will be different.<sup>120</sup>

Another inmate, born in Texas but incarcerated on the north side of the Mason-Dixon line, insisted in his own journal writings that “I am from the south, I’ll not fuck a niger at all [sic], of any kind.”<sup>121</sup> Maybe not, but according to most reports whether written by observers or participants, inter-racial couplings in US prisons were ubiquitous after WWII

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<sup>118</sup>RG 20-42-3 Millbrook Case Files MQN, #692. (AO).

<sup>119</sup>Edwin Johnson, “The homosexual in prison,” 87.

<sup>120</sup>80-T I, Inmate letters, n.d. 1960? (KIA).

<sup>121</sup>JS Inmate Journal, 46 - Prison Indiana. (KIA).

even though most prisons did their best to keep the races separate in order to reduce tensions between different and competing social groupings.<sup>122</sup> First-hand accounts about this aspect of male sexual culture in prison are scant. Although many of the prisoner writings in the 1960s made mention of inter-racial coupling, few explicated the dynamics – assuming there were any beyond race. However, an early 1970s study inspired by the civil rights movement claimed that in inter-racial couples, the white man was always the submissive or feminine partner, which was consistent with the earlier description of inter-racial gang-bangs being committed by black men on white men. When asked why the black man was always in a dominant role, the inmate speculated that it was the black man's way of exacting retribution for centuries of racism in the outside world.<sup>123</sup>

Less is known about the way racial configurations organized social relations in prison in pre-1970s Canada, but the prison population here was much more homogeneous than in the US. The clear majority of prisoners were white and native-born; in Ontario this group accounted for close to 80% of the prison and reformatory population, a figure that remained constant from the time statistics were first collected up to 1970.<sup>124</sup> Of the

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<sup>122</sup>Fishman claimed that inter-racial coupling was common in women's prisons but uncommon in men's. It is possible that this was the case in 1930s New York but not elsewhere. Hopefully American historian Regina Kunzel's current research into sex in prison will yield more detailed information about this important aspect of the organization of prison life.

<sup>123</sup> Leo Carol, "Race and Sexual Assault in a Maximum Security Prison" photocopy, 1974. (KIA).

<sup>124</sup>RG 20-40-1 "Guelph Prison Registers RG 20-42-1" and "Millbrook Prison Registers". (AO). Information collected on each inmate included race, birthplace and religion.

minority, few – in Ontario less than 5% – were of non-white heritage. Natives were disproportionately represented in the prison system, particularly in the prairie provinces.<sup>125</sup>

A complex network of relationships, most based on sexual domination and submission, was an integral part of the social organization of Canadian and American prison inmate cultures. Behind the walls of virtually every institution, prison toughs befriended, bribed, seduced, intimidated, cajoled, coerced and strong-armed young, inexperienced inmates – known as “fish” – into becoming their sexual property and domestic handmaidens. Since the release of *Fortune and Men’s Eyes* and the Philadelphia investigation, few could think about prison and *not* think about sex.

However, while these events did much to raise awareness about sexual violence in male prisons, still less is known about non-coercive relationships. Men in prison sought out the companionship and camaraderie of their peers, and some formed intimate bonds that included physical affection and intimacy. Ironically, it was these bonds that prison administrators most strenuously discouraged. Men who had sex might be perverted, but men who fell in love were dangerous.

### **All cats are grey in the dark**

If one needed a reason to have sex, prison was generous in providing them.

Sensory deprivation, colloquially known as “prison stupor”, was considered a serious

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<sup>125</sup>The politicization of minority groups in the 1960s did have an impact on the prison population in Canada, particularly among First Nations people. See Robert Callihoo and Robert Chalifoux, “A Native Viewpoint,” Drumheller Institution, 1972. RG 20 Series 8-4 File 18.2 “Indians”. (AO). More research needs to be done in Canada to draw out these important relationships.

psychological problem.<sup>126</sup> Emotional isolation and loneliness led many prisoners to engage in self-mutilation.<sup>127</sup> Sykes, a leading post-WWII sociologist, described these problems as “the pains of imprisonment.” Sex was widely regarded as a way to ease those pains. For example, one inmate in a US federal prison who had spent most of his life in and out of institutions wrote in his journal “I have to get out of here. I am going crazy. If I stay here much longer I’ll be a killer.” He obsessed over the girlfriend he left behind, and worked himself into a jealous rage, threatening to rape and kill her in front of her husband once he was released. One of the ways he got his mind off his problems was to acquire a punk (clearly familiar with prison culture, he complained that there were no women, i.e. fairies, there, only “boy-girls”). He claimed to have asked a passing kid who owned him. “No one”, the kid replied. “Well I do now,” he said. From that day after he reported “taking care of Jones” on a near daily basis. On d Days he was unable to get sex he described as “doing hard time.”<sup>128</sup> Sympathetic sociologists described sex between inmates as “a substitute for baseball and marriage and movies and bragging and friendship and success, a substitute for anything and everything that makes life worthwhile.”<sup>129</sup>

For many, wolf and punk couplings were emotionally satisfying relationships.

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<sup>126</sup>George D. Scott, *Inmate: The Casebook Revelations of a Canadian Penitentiary Psychiatrist* (Montreal: Optimum Publishing International Inc., 1982).

<sup>127</sup>RG 20-16-2-0- 227.3 Memo to Potts from Sanderson, June 28 1961. (AO). See also Roger Caron, *Go-Boy!* 160 and George D. Scott, *Inmate*, 111.

<sup>128</sup>JS, *Prison Letters*, 1951, KIA.

<sup>129</sup>Devereux, George and Malcolm M. Moos, “The social structure of prisons, and the organic tensions” *Journal of Criminal Pathology*, V IV, October 1942, (306-324): 317.

Roger Caron described these particular relationships as a “marriage of convenience”:

the wolf will protect his sweet kid with his life and an intimacy and friendship so loyal as to defy belief can spring up between the two whom society has rejected as losers. They feel that it’s just the two of them against the prison jungle and they help each other to survive and share each other’s loneliness and hopes for the future. The kid’s ol’ man will make all sorts of sacrifices in order to provide the boy with little gifts and extra food. More than anything else he will make very certain that the kid stays out of trouble. Because it has a steadying effect guards usually leave this type of relationship alone.<sup>130</sup>

One wolf, who had a reputation as a sexual predator, tried to win the affection of a “fish” with a “story about sexual companionship in prison”:

Now I am sure that you have heard the guys say “Doc don’t be good to these young boys for nothing.” “Old Doc will suck a young boys dick and fuck him too.” Yes, I am sure you have heard those words too, but don’t let that frighten you at all. We are in prison, and most anything is expected to be said concerning sex relations between we inmates ow, baby, don’t get me wrong, I am not hitting on you to let me fuck you in the ass. I do not try to make a girl out of a young boy, lest he is for it. That are many more ways to get sex satisfaction with one without fucking him in the ass. Of course the ass is a very choice cut. But... [o]ne can not be too choicy [sic] in a place like this.<sup>131</sup>

Doc’s effort to win a punk by persuasion was evident in his adamant promises to keep the relationship private and personal, “My Darling Sweet Baby” he beseeched, “Anything did to us, or between us, would be done free-willingly.”

Even though wolves had a reputation for using coercion to win their punks, the above overtures did not violate the tenets of the wolf-punk relationship. However, when near the end of his letter he asked, “Won’t you fuck me some time?”, “Doc” stepped outside of the bounds of the traditional masculine-aggressive sexual role. In most “expert”

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<sup>130</sup>Caron, *Go-Boy!*107.

<sup>131</sup>31-Prison, Inmate Letters, Federal Bureau of Prisons, KIA.



assessments of predatory sexual behaviour in prison, there was no recognition of the wolf as sexually “passive” or of the relationship as reciprocal.<sup>132</sup> However, inmates readily acknowledged the elasticity of the wolf-punk relationships. The Terre Haute inmate interviewed in 1962 recognized that some wolves sexually pleased their punks. Being the “passive” partner in anal sex might have been pleasurable, but it was considered in much the same way sexual intercourse with women was: the “passive” partner’s pleasure was not always the goal or the focus of the encounter. In other words, this model only recognized the penetrator as taking an active role, and did not recognize the myriad ways the person being penetrated actively participated in the act. Some men give “the bald-headed champ” to their punks, he explained, but as far as he was concerned, “when you do that the punk is controlling you, not you controlling the punk. It’s not natural.”<sup>133</sup>

For that particular inmate, “punks” were kids one kept with cigarettes and candy bars, but for other men, these relationships were much more emotionally intimate. In one letter, for example, an inmate explained to his new partner how he was going to take care of him. Describing his lover’s ex-boyfriend as a “gorilla,” he reassured him that he would not have to hustle (prostitute) for drugs anymore. “Because honey, when I dig a woman I go all out for her, and take very good care of her. That’s the way it should be, and that’s

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<sup>132</sup>Two important exceptions include George W. Henry’s study of homosexuals on Rikers Island, New York, in which he claimed that wolves “submit to a feminine role in sex play, but never among their intimates, before whom they must preserve the appearance of masculinity.” See “The Homosexual Delinquent,” *Mental Hygiene* 25(3) July 1941: 423. See also Pomeroy, “Sex in Prison”, 1962 (KIA) who described “swapping out” – meaning an equal exchange of sexual positions – as more common than the wolf-punk relationship.

<sup>133</sup>“Inmate”, interview by Bruce Jackson, sound recording (April 1962), KIA.

the way it is with me.”<sup>134</sup> Men who prided themselves on their ability to be a good provider often signed their letters “Daddy”, indicating an emphasis on the care-taking aspect of their role in a relationship. Like a father, the “Daddy” took a deep and personal interest in his “kid”. In this way, the relationship was organized around two poles of difference: masculine and feminine *and* provider and dependent.

Just as ideas about natural and unnatural sex varied, so too did models of masculinity. Like Doc, some “wolves” were known for preying on young inmates, and others literally attacked in packs. But as in the outside world, some men were more Don Juan than caveman. For them, masculinity was predicated on one’s ability to charm and treat a “lady”. “Its So Easy To Find Something Wearing a Dress,” wrote an inmate incarcerated in one of the toughest US prisons. “But Its So Hard To Find The Right Dress. With A Real Woman In It. I Don’t Pretend To Be A Lover But I Do Know How To Love A Real Woman Such as I Class You. My Sweet.”<sup>135</sup> Winning the affection of a fairy was a high-status accomplishment and “made an impression” on the inmate population.<sup>136</sup> To be sought out by a “submissive” was one of the signs that a man has “arrived”, that he has achieved a high masculine status. An offer from a fairy to be one’s lover “represents a token of high prison flattery.... and boosts the male ego.” How a masculine prisoner declined these offers impacted his status. “A quick and unkind rebuff

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<sup>134</sup>Prison 80- Inmate Letters [1960?] KIA.

<sup>135</sup>Prison Letters, n.d. [1950?]. Diaries Collection, KIA.

<sup>136</sup> Sex in Prison interview, Bruce Jackson, 1962. KIA.

will reduce his stature; he must diplomatically explain that he is already attached."<sup>137</sup>

Sex might have served a range of practical functions, but it could also be an intensely emotional experience. In letters strikingly similar to an interaction we might imagine between any courting couple, inmates reassured their partners that they were not just in it for the sex.

Honey you asked me ... if I was just going with you for sex reasons only. Well honey I'll tell you this if I wanted only to have some one to go on a skat with me or to cell with me just for sex reasons only I could get them a dime a dozen out here on the yard. ... my love for you is not just a pen[itinary] love it is a love that I am proud of and one that I know I'll always carry in my heart our side in the free world or in the pen ... a lot of guys in here fall in love with other persons because they have nothing else to love but there love stays here in the joint when they leave that is not the way it is with me. Your not filling in for someone else while I am in the joint.<sup>138</sup>

Separation and the intense competition for a good "Daddy", the best-looking fairies and punks or a partner with access to valuable contraband like tobacco or food heightened feelings of insecurity. The "male" partners were often called upon to reassure their lovers of their emotional commitment:

You're not just another woman to me. Damn whether you are or have been a whore or what not in your life..... Baby I really don't know what or how to say it to make myself plainer except to say that I love you I want you and J I need you. I have never in my life released myself to a woman the way I have on you J simply because I never felt this way about it with them.<sup>139</sup>

This was especially the case with "fairies" and their lovers in the general population. Many watched their partners walking, talking and flirting "in the big yard" from their windows in

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<sup>137</sup>Johnson, "The homosexual in prison," 90.

<sup>138</sup>11 October 1950. 48-B Prison - SQ - Inmate letters, Diaries Collection, KIA.

<sup>139</sup>80-TI n.d. [1960?] Diaries collection. (KIA).

segregation, and the gossip chain was equally effective in learning about infidelity. At least one “fairy” accepted that her “husband” was having sexual relationships with “punks”. So long as they both loved each other, he reasoned, they were both free to have sex with other people.<sup>140</sup>

For some men, the way to really show his commitment was to get married. Marriages were common in prisons, and as research into other same sex communities has shown, were typical in other contexts as well.<sup>141</sup> Like heterosexual marriage, the declaration of such a bond between two inmates served two primary functions: the first to celebrate the emotional commitment of the pair. Second, by making a public declaration, other inmates were expected to respect their vows and not interfere with the couple. In a community in which sexual competitiveness was highly prized, “marriages” functioned like a talisman warding off other rivals.

Marriages were often formed when one partner, usually the masculine partner, asked the other to marry him. For example, “Mr Lover” sent his proposal in a letter:

I wont tell you how lovely you are until I am sure of your love and sure of my self however I will pay you a compliment. my Dear you are very lovely and charming and sweet I like you very much and your shape is just out of this world. and am I realy your lover do you love me or should I say can you love me. if so from hence forth your name shall be Mrs. G— and here is a kiss for you (Kiss Kiss Kiss) I should have said three (ha ha).<sup>142</sup>

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<sup>140</sup>“DD”, unprocessed inmate letters. (KIA).

<sup>141</sup>See Mooie, T Dunbar, Ndatske, Vivienne and Sibuyi, British, “Migrancy and Male Sexuality on the South African Gold Mines,” *Journal of South African Studies* 1998, 14 (2): 228-256.

<sup>142</sup>48-B Prison Letters, Diary Collection, 13 June 1951. (KIA).

Once married, men referred to their partners as “Mrs.,” and regularly reminded them that their maiden name had changed to that of their husband.

Sometimes inmates arranged to have a formal wedding. Weddings were significant events among the particular in-group, explained one ex-prisoner, and “only prominent people would be invited”. Guests were expected to offer gifts, “the union would be legalized, complete with certificate. Following the ceremony, there would be a honeymoon, which culminated the process that was easily as important as any outside event for those who ‘counted’.” Many prisons had a printing press which was used to make embossed invitations. A marriage certificate was drawn up, and sometimes they listed marital responsibilities, all in conformity to the wider cultural roles assigned to husbands and wives. A couple then “set up house.” “As on the outside,” he explained, “the marriage demonstrated stability within the inmate society.”<sup>143</sup>

Married couples in prison faced unique challenges. Aside from sexual competition, inmates were constantly threatened with separation by the prison administration. Additionally, it was almost always the case that inmates would complete their sentences at different times. Some arranged to wait for the other, but this was complicated by the fact that parole conditions prohibited inmates from associating with anyone who had a prison record. Getting together on the outside meant risking going back to prison. Some inmates were so distraught over being separated that they reoffended for the express purpose of

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<sup>143</sup>Johnson, “The homosexual in prison”, 86.

getting back in.<sup>144</sup>

If a marriage ended, an inmate might give his partner divorce papers. One surviving letter details why the writer felt she had no choice but to call it quits after a year. A primary reason for her decision was their forced separation as a result of being placed in two different parts of the prison. "I cannot think straight anymore for you are on my mind to strong daily and not being able to be with you it is hard on both of us....", she wrote. More than that, however, her husband was carrying on an affair with another inmate. "I cannot bear this penitentiary love" she complained. However, she added that she had made a new friend who was younger, brighter, more passionate, and stable. "See darling," Mrs. Clarence T wrote, "love making on paper is alright for a while but letters have no arms."<sup>145</sup>

For the prison administration, a quiet divorce was the best of all outcomes, but in many instances inmates did not go quietly. During a research stint in Alabama, sociologist Malcolm M. Moos documented a case in which the prison transferred one of two inmates who had fallen in love. The one left behind expressed his grief and rage by destroying \$400 worth of machinery in the wool mill.<sup>146</sup> It was common knowledge among inmates that unpublicized disturbances were often the result of the separation of a couple, whether by the prison staff, by the release of one prisoner or by the choice of one of the partners.<sup>147</sup>

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<sup>144</sup>George Devereux, and Malcolm M. Moos, "The social structure of prisons, and the organic tensions," *Journal of Criminal Pathology* V IV (October 1942): 306-324.

<sup>145</sup> 48-A Prison, SQ – Inmate Letters. (KIA).

<sup>146</sup>Devereux and Moos, "The social structure of prisons", 306-324.

<sup>147</sup>Guy Richmond, British Columbia's Oakalla Prison doctor, described three separate instances in which inmates attempted suicide – two were successful – in response

The latter instance was probably the worst case scenario. Inmates regularly battled over fairies and punks. "Experts" blamed these encounters on the fairies for provoking them, and, as we saw in the Philadelphia example, on wolves for being 'naturally' violent as an effect of their masculinity.<sup>148</sup> So long as these relationships were regarded as merely a substitute for the real thing, the emotional component of prisoners' relationships were neither recognized nor validated.

Men who were neither wolves, punks nor fairies but who formed relationships with other men were largely invisible, even to other inmates. According to Wardell Pomeroy's data from the Kinsey histories, these relationships were by far the majority.<sup>149</sup> Some gay men rejected the feminine-masculine dyad and instead embraced each other as equals. In a tender and passionate letter to "my darling Bob", Bill explained his homosexuality. He knew he was gay from the time he was nine years old, he wrote, but he never considered himself a female, and found that he usually "played the male part. Continuing my honesty, I have sucked and been sucked, fucked and been fucked. It always depends on who the other person is and how much I care for him."

Bill rejected the term husband and wife for two gay men, preferring instead "my

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to the loss of or separation from a partner. *Prison Doctor: One man's story that must be told in Canada today* (Surrey, British Columbia: Nunaga Publishing, 1975), 101-2.

<sup>148</sup>Ibid., 317; and Caron, *Go-Boy!* 107.

<sup>149</sup>Pomeroy worked in a prison before he joined the Kinsey Institute, and was astounded to discover how forthcoming inmates were with the Kinsey interviewers compared to how secretive they were with regular prison staff. For this reason he felt that the statistics they compiled were highly accurate. Wardell Pomeroy, "Sex in Prison", audiotape, KIA.

other half.” His ideal was to have a committed relationship and to live a comfortable middle class urban existence. In his long letter to Bob he fantasized about the martini dinners, the concerts and long drives in a convertible they would share together. His description of “a perfect weekend” included “waking up with you by my side, kiss you awake - Get up and make coffee - Shower (with you) have breakfast - feed the dog (must have a dog) clean up house while other one works in yard.” Later, friends would drop by and they would invite them to stay for dinner and perhaps a movie. “I realize that everything I’ve said is California living,” he wrote, “but that’s all I know.”<sup>150</sup> Bill made it abundantly clear that he was looking to live the good life with a friend and companion who would share with him not only the comforts of home and the conviviality of friends, but the warm and gentle passion of a shared bed.

Fairies were notorious for refusing to accept the meanings sexologists and treatment experts attempted to graft on their sexual practices, but even “masculine” inmates could be dismissive of complex theories that sought to explain, contain or quantify the sexual practices of men in prison. In his 1933 autobiography, Victor Nelson explained, “To the man dying of hunger and thirst it makes very little difference that the only available food and water are tainted. Likewise it makes little or no difference to the average prisoner that the only available means of sexual gratification are abnormal.”<sup>151</sup> Or, as one black inmate put it almost thirty years later, “all cats are grey in the dark.”<sup>152</sup>

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<sup>150</sup>80 - TI, 1960-61, Diary Collection. (KIA).

<sup>151</sup>Cited in Fishman, *Sex in Prison*, 27.

<sup>152</sup>“Charles,” Interview by Bruce Jackson, tape recording, 1962. (KIA).



Historians George Chauncey and Steven Maynard have both argued that medical ideas about sexuality had only a limited influence on the lives of working class homosexual men in the first half of the twentieth century.<sup>153</sup> But how can we account for the preservation of the wolf-punk-fairy erotic system in the late 1960s and beyond? Maynard offers us a better way to understand how, as he puts it, discourses *work*. We need to see that “medical discourse was a series of concrete practices generating relations of power and knowledge in local settings.”<sup>154</sup> Thinking of discourses as practices rather than solely as ‘texts’ contained in professional journals and books requires an examination of their deployment in the various settings in which they were used and ultimately, gained legitimacy. This provocative model allows us to better understand the preservation of a sexual system that in the outside world, barely exists.

Though it is true that prisoners bring with them the values and beliefs of the outside world to inform the prison inside, for some reason this was not the case with respect to the sexual culture that governed the behaviour of most inmates – including those rendered invisible for their unrecognizability in the wolf-fairy-punk system – across the US and Canada. There, medical discourses clearly didn’t “work”. Moreover, unlike the outside world, the middle-class majority who accepted mental health experts’ model of human sexuality was not hegemonic. Inside prisons the masculine working and street class

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<sup>153</sup>Chauncey, *Gay New York*, and Steven Maynard, “On the Case of the Case: The Emergence of the Homosexual as a Case History in Early Twentieth Century Canada,” *On the Case: Explorations in Social History* (Toronto: University of Toronto Press, 1998), 65-87.

<sup>154</sup>Maynard, “On the Case of the Case,” 81.

prisoner stood in the clear majority. Aided by a disciplinary system that was unable and/or unwilling to recognize homosexuality separate from gender and by a culture that linked masculinity, sexual aggression and violence, and that accepted these characteristics as “natural” – albeit excessive– prison culture continued to organize *itself* according to the values and meanings of an erotic system that no longer “worked” on the outside.

### *Conclusion*

The 1934 Welfare Island scandal cleared the way for a more open dialogue about sexual activity in male prisons. In the 1950s and 1960s, treatment experts brought with them different models for understanding homosexuality, and some offered treatment programs to help them find their way back to heterosexuality, but even the most committed psychologists agreed that “true” homosexuals could not be changed. In Canada their legacy was a successful campaign in support of the conjugal visit (but only in federal institutions where the sentence length exceeds two years), the loosening of restrictions against physical contact during family visits as well as granting inmates the freedom to hang “pin-up” posters in their cells. Beyond these few innovations, little changed with respect to sexual activity in prison.<sup>155</sup> Though masturbation is no longer regarded as objectionable, men are still prohibited from making sexual contact. Policies such as these prevented prisoners from accessing condoms and therefore from practising safe sex, a

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<sup>155</sup>In some ways it is worse in that rape is now an accepted part of prison life, used even to “scared kids straight” in the variety of anti-crime programs that have developed recently. On the coercive use of rape as a part of modern prison management in the US, see Christian Parenti, *Lockdown America: police and prisons in the age of crisis* (New York: Verso, 1999), 182-193.

problem which has been overcome in Ontario only in the past decade. "The paddle" no longer exists, but segregation, solitary confinement, rape and sexual coercion continue as notable features of prison life.

Sex in prison was a primary source of emotional and physical stimulation. It was also a principal way to assert one's masculinity, either through brute force or through gentle courtship. Additionally, sex was part of the internal economy of prison culture, a means for prisoners to trade and access goods in exchange for the pleasures of their own bodies or those of another. The fairy-wolf-punk system was not displaced inside prisons because it worked so well, and masculine inmates continued to maintain that they were not "really" homosexual. If prisoners were not willing to change their view, the administration could. But in order to impose this new sexual order they would have to get rid of the old. No longer would just "fairies" be placed in segregation, but all men engaging in homosexual activity. This was an impossible proposition. First, there were too many men engaging in homosexual activity, and second, masculine men protested against being placed with the "Queens". The only alternative was to release the fairy population into the general population, as did Keating in the Vacaville Medical Facility. This was not an option in prisons. Releasing the fairies was too dangerous in most places, and it would be like giving permission to the inmates to have sex. So long as the fairies were seen as true or at least more homosexual, the prison structure would continue to uphold the fairy-wolf-punk system.

Masculinity continues to be premised on a gendered system of dominance and submission, and so long as it functions as a marker of power, men in prison (and

elsewhere) will continue to dominate other men, “feminising” their victims in the process. Relationships based on mutual affection were less public, partly because they might be more stigmatized, but also because so long as they are only about pleasuring the other and not about enhancing the status of one or the other (and here the punk needs the relationship to be public too so as to keep other wolves away) it serves no purpose to be “out” or “visible” as a gay couple. So long as they do not come to the attention of the authorities, who surely would break them up, and so long as treatment professionals did not register anything that was not built on gender disparity as “homosexual”, some male couples could live out their institutional lives in relative calm.

The failure to place any value on the emotional bonds prisoners formed seems incomprehensible and tragic. Even when medical and mental health experts began to recognize the psychological toll of incarceration, few were able to see the affection. Instead, they reinforced stereotypes about male sexual aggression as natural and homosexual ‘passivity’ as female-like deviant behaviour. As long as homosexual activity was regarded only as a deviation from normal, in the eyes of medical experts the relationship between two inmate lovers could never be more than “depraved and loathsome”.<sup>156</sup> Which was all the more reason for treatment experts to do what they could within the limited space they had to help men direct their sexual desire toward heterosexual outlets.

Sociologists who looked at the structure and the social organization as an organic

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<sup>156</sup>RG 20-16-2-0-105.6 “Guelph – Inmates 1955-56” G.E. Jacobs to Chief Inspector, 26 May 1955. (AO).

community were better able to draw out those elements of community, intimacy and emotional needs. Not concerned with understanding sexuality, and informed by the anthropological tradition of engaging a culture on its own terms, sociologists were able to understand sex and even the feminine behaviour of the “fairy” as serving specific social functions. Still, few offered new interpretive schemes for understanding sex in prison, and some even offered up their own set of “solutions”.

Sex, of course, is never just about sex. The complex intersections between race, gender identity and age, between meanings on the ground and meanings literally in the tower and between those with formal and those with informal power all converge in the prison setting. Systems of power “make sense” to those who enforce them. The wolf-punk-fairy triad worked well for the prison wolf who could exert control over other prisoners and satisfy his sexual longings in the process without compromising his identity as a heterosexual man. It also worked for the fairy who, given the prison’s refusal or at the very least their failure to protect them from physical harm, segregation allowed them the freedom to retain their identity as a pansy and to take refuge from those who would harm them. Punks, who enjoyed almost no protection whatsoever, were perhaps its greatest victims.

## **Chapter VI**

### **Conclusion**

On October 22, 1953, 18 year old Theodore Steele pled guilty to an attempted rape charge. This was not the first time he was in trouble with the law. Steele's record showed a number of previous convictions for sexual assault, all involving girls between the ages of six and 11. He also exposed himself to two girls, aged four and a half and five. He was, it seemed, precisely the type of offender Canada's criminal sexual psychopath law was aimed to capture. The presiding judge sentenced him to five years for the charge of attempted rape and an indefinite term as a sex psychopath, in spite of the observation by one of the psychiatric witnesses that "treatment is sadly lacking." Repeated attempts by Steele to be released on parole were denied because he had not received treatment. When he was finally presented with the opportunity to apply to a newly established sex offender treatment program at the British Columbia Regional Medical Centre, Steele was rejected by the assessment team who concluded:

The sad fact is that this individual, who is barely able to cope with the normal demands of society, has already spent nearly twenty-one years of his life behind bars as a D.S.O. [dangerous sex offender] for two offences, both of which involved female victims, and both of which were bungled. Perhaps, if years ago, he had been given some guidance in making normal social-sexual contacts, his behaviour might have been different. Now, I believe, it is probably too late in his sentence for him to benefit much from our sexual-offenders programs. The fellow remains inadequate.

Steele was denied admittance to the treatment program, but this and subsequent psychiatric reports strongly urged that he be released on parole. By 1990, the National Parole Board continued to refuse applications for his release because he had not received

treatment, and a Supreme Court challenge was launched charging that Steele's continued incarceration constituted "cruel and unusual punishment." Though the Supreme Court ruled against a finding of cruel and unusual punishment, it concluded that the National Parole Board had misruled, and that Steele should be released.<sup>1</sup>

Steele's case was not extraordinary. A study by Cyril Greenland reveals that as of December 1980, only 51 per cent of those convicted as criminal sexual psychopaths or dangerous sexual offenders were released on parole.<sup>2</sup> In 1970, Anthony Marcus, one of the earliest psychotherapists to organize and administer treatment for a group of dangerous sexual offenders, argued that "the present state of scientific knowledge regarding the causes and alleviation of sexual psychopathy is so very limited, and the hazard to the community of a wrong or precipitate decision to release such an offender is so great, that it is rarely indeed that treatment personnel or parole authorities can decisively recommend release. They are not insensitive to the position of the dangerous sexual offender, but responsibility to the public, plus sheer lack of knowledge, makes their caution inevitable."<sup>3</sup> The criminal sexual psychopath occupied a sort of nowhere land, a criminological limbo between the mad and the bad. So long as his incarceration was

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<sup>1</sup> Warden of Mountain Institution v. Theodore Steele, File No.: 21878. [1990] 2 S.C.R. 1385.

<sup>2</sup>Cyril Greenland, "Dangerous Sexual Offender Legislation in Canada, 1948-1977: An experiment that Failed," *Canadian Journal of Criminology* 26(1): 1-12.

<sup>3</sup>Anthony Marcus, *Nothing Is My Number: An Exploratory Study With a Group of Dangerous Sexual Offenders In Canada* (Toronto: General Publishing Ltd., 1971), 8. Similar concerns were raised in Group for the Advancement of Psychiatry. Committee on Psychiatry and Law. *Psychiatry and sex psychopath legislation, the 30s to the 80s* (New York : Group for the Advancement of Psychiatry, 1977).

expressed as a humanitarian effort to cure him of his mental defect (as opposed to every other criminal whose fixed sentences were clearly intended as punishment), it was unlikely that anyone would rise up to protest his unending incarceration.

A more recent case illustrates the important changes that have taken place in the 50 years since the passage of criminal sexual psychopath legislation in Canada. In 1998 Eric Clarke, convicted of molesting 20 boys between 1967 and 1992, was found by a judge to be a dangerous offender and sentenced to an indeterminate term. The defense lawyer argued against the dangerous offender application on the ground that Clarke was showing a positive response to treatment, but the judge made his determination based on the testimony of the prosecution's expert witness, Dr. Richard Hector, the clinical director of the Oak Ridges division of Penetanguishene's Mental Health Centre. Hector testified that treatment outcomes for pedophiles were so poor that his own facility no longer provided it. Ironically, Clarke was deemed a dangerous offender not so that a cure could be effected, but because it was decided that treatment was not effective, demonstrating that the original intent of the law had made a full turn in the opposite direction. In order to be released, Clarke must prove he is no longer a danger to society. Currently inmates like Clarke are entirely dependent on psychiatrists to make that assessment, but given that most experts still adhere to a pathological model and many have abandoned their treatment prospects, it seems unlikely Clarke or other dangerous offenders will ever be released.

Canada's experiment with criminal sexual psychopath legislation formally came to an end in 1977. Based on the 1969 recommendations of the federally-appointed Canadian



Committee on Corrections, dangerous sex offenders considered at high risk for re-offending would be subject to the same legislation as any other criminal whose crimes pose a serious danger to society and who are deemed likely to re-offend. The few men, and now women, that fall into this category are currently considered 'dangerous offenders', a classification that evolved from the criminal sexual psychopath's twin brother, the 'habitual criminal', who was also subject to 'preventative' sentencing, but without the treatment. In either case, the criminal and not the crime is subject to the assessment of a psychiatrist and the ruling of the Crown.

Though criminal sexual psychopath and dangerous sexual offender legislation was eliminated, the construction of the sex offender as a mentally diseased predator was not so easily extricated from the cultural imagination. On its own the law had only a minimal impact on the way sex offenders were dealt with by the criminal courts and in the carceral system in Canada. However, the postwar expansion of forensic sexology had a much greater and more lasting impact through the medicalization of sexuality, the mental health construction of 'normativity' and the pathologization of deviant behaviour, all of which continues to inform how we think about human sexual behaviour and especially how we understand criminal sexual behaviour, particularly when it involves offences against minors.

The notion that most sex offenders are amoral recidivists and unamenable to treatment is grounded in a pre-WWII middle class medical assessment of homosexual men who refused to be ashamed of or to stop participating in urban gay cultural life, even at the risk of arrest and tremendous personal humiliation. From the earliest post-WWII statistical

studies to the most recent “meta-analysis” of recidivism, the notion that sex offenders have a high rate of re-offending has never been substantiated. In the 1950s psychiatrists repeatedly stated that only a very small minority – perhaps less than five per cent – are sexual psychopaths. More recently, five massive studies tracking sex offenders over an extended period of time, four conducted in the United States and one in Canada, show that among first-time sex offenders, the rate of recidivism ranges between 10 and 20%. An average of the five studies indicates a 13.7% likelihood of re-offending.

Part of the construction of the sex offender as intractable is the commonly held notion that sex offenders do not take responsibility for their crimes and lack empathy for their victims, characteristics that treatment experts ‘discovered’ and continue to perpetuate. Yet neither one of these qualities were unique to this particular criminal constituency, but rather they are common to most men who had assimilated into prison culture. Sociologists and criminologists who studied prisons as organic societies (rather than studying the pathology of individual criminals) in the 1960s argued that the only way to break down the “us and them” dynamic that perpetuated inmates’ refusal to take personal responsibility was to limit the size of institutions to less than 200 inmates. Yet in the 1970s Canadian and American corrections went in the opposite direction; prisoners are now more likely to be confined in even bigger institutions holding more prisoners in smaller cells with a greater emphasis on punitive measures.

This is not to say that we should not be concerned about repeat sex offenders nor to suggest that the psychopath is a ‘mere’ construction: clearly persistent sex offenders who seem immune to the consequences meted out by the criminal justice system are of

legitimate concern. That 80 to 90% of men convicted of a sex offence are never again convicted of a sex crime does not address the fact that there are some who do fit the psychopathic profile. The postwar effort to classify and quantify sexual deviation and criminal sexual activity has shown that the likelihood of a sex offender reoffending increases in direct proportion to the number of re-convictions. Obviously, it is these offenders that draw the attention of the media and, in turn, the public. But the tendency to forge new legislation in response to these exceptional cases amounts to little more than “a symbolic attempt to appease community outrage over sensationalized but relatively infrequent incidents of predatory violence against children than a demonstrably effective instrumental effort to reduce the incidence of serious harm to the community.”<sup>4</sup> Indeterminate sentences might be the only plausible solution for ‘hard core’ offenders, but special legislation has a number of ill effects, including ineffectively distributing funds to programs that serve only a very small proportion of the offender population and diverting attention away from the more common type of sexual assault: that which occurs within families and by perpetrators known to the victim.

Feminists were quick to draw attention to this important fact when they launched a challenge to the way Canadian and American experts treated sex crime, including their perpetrators and their victims. After the homosexual, feminist and anti-psychiatry

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<sup>4</sup>Michael Petrunik, Criminology Department, University of Ottawa, “Models of Dangerousness: A Cross Jurisdictional Review of Dangerousness Legislation and Practice,” Policy Branch, Ministry of the Solicitor General of Canada (1994): 44.

movements' denunciation of psychiatric "treatment" in the 1970s, feminist critiques of the way women were treated as little more than receptacles for male lust converged with other victims rights advocate's concerns.<sup>5</sup> In Canada, the controversial 1984 Report of the Committee on Sexual Offences Against Children and Youth chaired by Dr. Robin Badgley captured some of the concerns articulated by feminists with respect to the way society and the courts were failing to address the problem of sex crime, making the controversial claim that more than 50 percent of Canadian women and one-third of Canadian men reported experiencing some form of unwanted sexual activity. Women's groups and feminist intellectuals argued that sex crimes were violent crimes, not the product of a deviated or over-blown male sexuality. The point was made most effectively by emphasizing the traumatic impact sexual assault had on its victims, countering some of the myths perpetuated by medical science holding women and even female children partly, if not wholly, responsible for sexual assaults against them.<sup>6</sup>

The emphasis on victims rights, however, overshadowed other equally important critical insights, namely that the medical model focussed on the 'abnormal' sex offender to the exclusion of the 'garden-variety' rapist, and that sexual assault mirrored wider social issues regarding the sexualization of women's bodies and social inequality between men

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<sup>5</sup>Ibid., 43-44.

<sup>6</sup>For a classic feminist critique see Susan Brownmiller, *Against Our Will* (New York: Bantam, 1975). Linda Gordon offers a critical feminist assessment of incest in *Heros of Their Own Lives: The Politics and History of Family Violence, Boston 1880-1960* (New York: Penguin, 1989), 204-249.

and women.<sup>7</sup> The Report supported significant changes, such as the inclusion of rape as a violent crime subject to dangerous offender legislation, and it also recommended that the courts accept the uncorroborated evidence of minors. Feminist concern for the victims of sexual assault coincided with the more conservative community protection movement already underway. As was the case with the alignment of anti-pornography feminists and pro-censorship conservatives in the same period, the right-of-centre “law and order” agenda converged with the feminist demand for more meaningful sentencing of those who physically and sexually violate women and children. Unfortunately, the core values that informed the feminist critique of sexuality was not shared by other advocates of harsher sentences for sex offenders. Feminist demands for a massive overhaul of social values concerning women’s ‘proper role’ and the deconstruction of patriarchal power were eclipsed by calls for longer and more rigid periods of incarceration.

Whereas in the 1960s protestors carried signs demanding “Psychotherapy Not Cyanide”, today’s protestors call on the police to “Get the Pedophiles Out”.<sup>8</sup> After the 1970s the treatment model disappeared, and in its wake North American and British citizens have taken the victims rights movement of the 1980s and turned it into demands for “community protection”. The community protection model is not interested in either

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<sup>7</sup>Canada, “Models of Dangerousness”, 43.

<sup>8</sup>Over the past few years reports of local residents mobilizing to force released pedophiles out of their neighbourhoods have been reported with increasing regularity in the news media. The August 2000 resident’s campaign in Portsmouth, England received media attention in Canada. Shortly afterward a similar neighbourhood response was reported in Etobicoke, Ontario following the release of repeat sexual offender Peter Whitmore, whose two previous victims were aged thirteen and eight, in October, 2000.

treatment for offenders or justice for offenders, but in protecting the community *from* offenders, and in Canada it received a major boost after the Ontario Coroner's inquest into the 1988 sexual slaying of 11- year-old Christopher Stephenson by Joseph Fredericks, a violent pedophile offender who was out on mandatory supervision at the time of the offence.<sup>9</sup> The number one recommendation of the 1993 Stephenson Inquest was the enactment of community protection legislation modeled after Washington State's Sexually Violent Predators Act. The inquest also called for mandatory registration of sex offenders with the police and amendment of the definition of a serious harm offence to include any sexual offence against a child.<sup>10</sup> Similar recommendations were being considered at the federal level in response to other violent sexual slayings that occurred in the late 1980s and early 1990s. In January 2000 the Ontario Conservatives introduced "Christopher's Law," making it a crime for anyone charged with a sex-related offence to fail to maintain a current listing of their address with the local police force.<sup>11</sup> Though there is no law requiring police forces to notify local communities of a released sex offender's residence, some have initiated notification

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<sup>9</sup>A dangerous offender application had previously been considered for Fredericks after his last conviction for sexual assault of a child, but the application had been dropped when the victim's family did not agree to let him testify.

<sup>10</sup>*Ibid.*, 49.

<sup>11</sup>As was the case in the 1950s, calls for new legislation tend to be made following a local violent assault, usually involving a minor. The current trend is to name such laws after the victim. See Simon A Cole, "From the Sexual Psychopath Statute to 'Megan's Law': Psychiatric Knowledge in the Diagnosis, Treatment, and Adjudication of Sex Criminals in New Jersey, 1949-1999" 306.

programs on their own.<sup>12</sup> The Canadian Alliance Party continues to demand the creation of a national registry as part of its effort to “make Canadians safer in their homes and in their streets.”<sup>13</sup> Just like criminal sexual psychopath legislation, the community protection movement is heralded as panacea, dismissed as a red herring and opposed as a violation of individual civil rights.

Since at least the late nineteenth century Canadian reformers have looked south for new solutions to social problems. Despite Canada’s continued relationship with Britain, as a nation in formation, twentieth century Canada had much more in common with the United States. Geography did much to encourage the forging of ideological, social, political and professional links between the two countries; for psychiatry in the pre-WWII era, it was simply more practical to join the American Psychiatric Association than it was to form their own. After WWII Canadians felt less British and more North American. However, as much as Canada participated in the novel evolution of law and psychiatry in the United States, there are important differences between the way sex psychopath laws were put into practice. For example, studies have shown that in the states where such laws were passed, they tended to target men convicted of minor infractions rather than the few whose assaults were of a more violent nature. Conversely, the number of men convicted under criminal sexual psychopath legislation in Canada was much fewer. When dangerous sexual offender provisions were repealed in 1977, only 109 people - less than 3% of all convicted sex offenders - felt the full force of the postwar generation of sex offender and

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<sup>12</sup>Petrunik, “Models of Dangerousness”, 1994.

<sup>13</sup>Val Meredith (Surrey-White Rock-South Langley) *Hansard*, 25 March 1996.

preventative detention laws. Of those, most committed offences against children, and all had committed more than one offence.

At the end of the twentieth century, Canadian and American psychiatrists resumed their pre-WWII relationship with the body. For example, at the Oak Ridge Division of the Mental Health Centre in Penetanguishene, Ontario, where the criminally insane are incarcerated, researchers declared the 1960s experiments with “therapeutic community” a failure.<sup>14</sup> Staff are now looking for biological explanations for human behaviour, including sexual object choice. Psychiatrist Grant Harris has begun a research project exploring the possibility that a biochemical reaction during fetal development could interfere with “normal masculinization” and “something strange happens and the fetus develops into a person whose sexual antennae are oriented for something other than adult women.” Though it denies the environmental aspect of personality development that was central to the postwar sex psychopath era, Harris’s hypothesis remains lodged in forensic sexology’s tendency to privilege sexual object choice over the structure of human relations as the key determinant.

Biological explanations enjoyed a resurgence at the closing of the twentieth century, but in Canada, a modern version of psychotherapy remains the treatment of choice for Corrections Canada. At clinics and in prisons where sex offender treatment is offered, cognitive behaviour therapy distinguishes itself from behaviour therapy by attempting to restructure the way a person thinks rather than redirect one’s sexual

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<sup>14</sup>*Chatelaine*, June 1999, (61-64): 62.



interests. Part of that process, according to one of its key proponents, involves offender accountability and responsibility as a necessary precondition for an effective therapeutic experience, a standard which formalizes the longstanding recognition that an offender is not a good therapy prospect unless he engaged in the process voluntarily. Though the methods are somewhat different, the goals of contemporary treatment programs for sex offenders have changed little since the 1940s. Psychiatrists are still trying to “increase the feeling of moral sensitivity” by inspiring “lively feelings of guilt”, the prescription handed out by JD Griffin, the head of the Canadian Mental Health Association in 1947.

A feminist critique of human sexual relations also informs modern treatment programs which include the recognition and treatment of feelings of hostility some offenders harbour toward women. Other “cognitive distortions” that characterize offenders’ justification of their behaviour include the belief that children initiate sexual activity, that fondling does not constitute sexual abuse and that a women’s manner of dress is an indication of her sexual availability. Interestingly, in contrast to the early twentieth century claim that the perpetrators of sex crime have loose sexual morals, newer research indicates that violent sex offenders are often sexually conservative. Cognitive restructuring involves challenging unacceptable or outmoded values – both conservative and common – and replacing them with “more appropriate and adaptive ones” through role playing, role modelling and creating feelings of empathy for the victim.

Though ‘hard core’ sex offenders are not nearly as numerous as some politicians would have us believe, psychiatrists consider them the hardest population to treat. They deny responsibility for their crimes, they are marginalized within the prison population,

and they are heterogeneous in their therapeutic needs. But despite these and other barriers, including the general pessimism about the potential for meaningful treatment outcomes, most sex offender treatment providers publish modest results couched in an unflinching optimism about their work. Canadian treatment experts insist that though rates of recidivism are only marginally reduced with cognitive behaviour therapy, the social and economic cost of even one offender not re-offending is recuperated.<sup>15</sup> Fifty years after Canada's introduction of legislation that would pave the way for "some experimentation" in the psychotherapeutic treatment of sex offenders, treatment experts seem to be no closer to finding a solution, and yet most citizens continue to support, and even demand, that sex offenders be treated.

The contemporary notion that repeat offenders lack the ability to exercise control is a postwar construction grounded in a psychosexual model of development that pathologized both adult homosexuals and violent child rapists as similarly immature simply because their sexual object choice was not an adult female. It is a model divorced from the context of coercion that was of concern to parents then and now, a fact most evident in the purposeful exclusion of rape from the postwar treatment mandate. Contemporary ideas about how to manage men who have committed a sexual offence against a child are products of an age in which the mental health expert was the penultimate arbiter of social norms, reflective of and responsive to mainstream middle-class values, and champions of

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<sup>15</sup>W. Marshall and H. Barbaree, "The Long-Term Evaluation of a Behavioural Treatment Program for Child Molesters," *Behavior Research Therapy* 26 (1988) 499-511; W. Marshall and S. Barrett, *Criminal Neglect: Why Sex Offenders Go Free* (Toronto: Doubleday, Canada, 1990).

the importance of women's role as child-rearing homemakers. Eager to find humane and compassionate alternatives to punitive and retributive responses to complex social problems, middle-class parents were the mental health experts' greatest advocates.

For most middle class parents, modern sexology was not only easy to embrace, but it protected and legitimated their own cultural values, providing an illusory sense of stability and security. Rooted in familiar social expectations organized according to idealized male and female 'types', middle class parents heartily supported the extension of the normalizing influence of home and the school into the prison where treatment experts would re-parent boys gone wrong. By using the more subtle techniques of psychotherapy, treatment experts were to gently bring sex deviants safely in line with normative social (and legal) standards. Forensic sexology grew by leaps and bounds in the 1950s and 60s, even though its practitioners made few advances in the field. In place of advances in sex crime research, ideas about 'normative' sex and gender behaviour became more rigidly defined and closely regulated.

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