

The ages of consent: gay activism and the sexuality of minors in France and Quebec (1970-1980)

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As in many other countries, “*les années 68*” were in France and Quebec characterized by a proliferation of protest movements championing diverse causes and demands.¹ The impetus for most of these movements came from young people who rejected the norms that embodied dominant and authoritarian forms of behavior regulation in familial, productive and repressive institutions. These movements considered “intolerable” the relegation to socially “minor” status of individuals who, on the basis of their age, class, sex, gender or sexual orientation, supposed origin or assigned status (students, prisoners, the hospitalized, etc.), were subjected, legally or otherwise, to various forms of corporal discipline and everyday privation.² When this relegation related to age, its denunciation focused on the legal definition of thresholds of access to majority status, whether the context was civil (the right to vote), matrimonial (legal age of marriage) or sexual (the age of consent, *i.e.* the age at which it was permitted for sexual relations to take place between individuals, one of whom might be of minor – civil – status). As a political issue, the question of sexual majority (the age of consent) overlapped with another front in the struggle of “*les années 68*”. For at

¹ On France, see, for example, Artières & Zancarini-Fournel 2008; on Quebec, see Warren 2008.

² On the shifting frontiers of the “allowable” and “non-allowable” in “*les années 68*”, see the work of Dominique Memmi (2008).

the time there was not *one* legal age of sexual majority but *several*, their definition being closely linked with the repression of homosexuality.

In France, an ordinance of 2 July 1945 fixed the general age of consent at 15. Reproducing a decree adopted by Vichy in 1942, however, Article 331-3 of the Penal Code (331-2 in 1980 until its repeal in 1982) penalized any “sexual relation against nature” with a minor³ (defined until 1974 as anyone under 21, thereafter, anyone under 18). In Canada – and thus in Quebec Province – the definition of the age of consent relating to sex and sexual practices focused on two distinct principles more explicitly formulated than in France, and intended to safeguard marriage and the family: the need to protect girls’ chastity against untimely seduction, and the need to protect boys’ morality against homosexual “perversion”. The 1892 Criminal Code had thus set the age of consent, which at the time exclusively applied to girls, at 14, and simply defined sodomy as a crime, a legacy of English law. It is true that the 1969 Omnibus Bill decriminalized sodomy as well as what were known as acts of “gross indecency”,⁴ but it restricted (Article 158) these practices to “a husband and his wife” or “two consenting individuals aged 21 or older”.⁵ While a (federal) reform lowered this age of consent to 18 in 1998, it took a (provincial) court ruling in Quebec to repeal the “double standard” in regards to sexual majority there. By revisiting the history of French and Québécois gay movements, this article proposes to examine the emergence, over the course of the 1970s, of a political space in which the age of consent and its relationship to sexual orientation could be debated.

³ Marchant 2006: 180.

⁴ Acts of “gross indecency” were defined as non-violent (in order to distinguish them from sexual assaults), non-penetrative (in order to distinguish them from sodomy) sexual acts that ran counter to morality. Until 1955, this description was legally reserved to male homosexuals.

⁵ In Quebec, the civil majority was 21 years of age until 1971, when it was lowered to 18. In contrast to the French definition, this lowering of the civil majority had no direct consequence for legal thresholds of sexual majority. While establishing the threshold of civil majority was in effect a matter of provincial competence, establishing thresholds of sexual majority was for its part a matter of federal competence.

In the early 1970s, French and Québécois gay movements thus inherited a comparable legal issue: the age of sexual majority. Set higher for homosexuals, it raised the question of the sexual liberty of (legally defined) minors who might even be classified as children or early adolescents.⁶ Yet the definition of sexual majorities was not the only area in which homosexuality was subject to repression at the time. In France, Article 330-2 of the Penal Code forbade “indecency in a public place”, for which the minimum sentence was in 1960 doubled in the case of homosexual relations. The Canadian Criminal Code, for its part, made it illegal for a man to sexually assault “another male individual”. In both cases, the offenses were vaguely defined, clearing the way for the arrest and prosecution of homosexuals, particularly in bars and public places. Moreover, while the frequency of prosecution of these offenses varied from one period to another, they were always marked by greater severity in the case of relations between an adult and a minor.⁷

These laws were part of a larger social and medical normative ensemble that constructed homosexuality as a “perversion” from which, more than any other form of sexual contact, children and young minors must be protected.⁸ In this context, to challenge the age discrepancy in access to sexualities was to critique the perception of homosexuality as a threat to youth. As such, it was part of a larger movement seeking to normalize homosexuality. At the same time, the politicization of the subject of the age of consent led to controversial positions: refusing to limit their demands to the sexual liberty of young minors and the repeal of the double standard within definitions of the age of consent, some activists called for the sexual

⁶ These various categories, which have fluctuated over time, achieved more definite form in the postwar years with the lengthening of transitions to adult age. In this article, we will exclusively refer to minors over age 15 as “young minors”, minors between age 12 and 15 as “early adolescents”, and minors under 12 as “children”. However, these relatively arbitrary thresholds must not be essentialized.

⁷ Hurteau 1993; Tamagne 2000; Corriveau 2006.

⁸ In *Les Anormaux*, Michel Foucault stresses that, since the second half of the nineteenth-century, childhood – a period during which the sexual instincts can be regulated or instead flow into abnormality – has been “one of the historic conditions for the generalization of psychiatric knowledge and power” (Foucault 1999: 297).

liberty of children and early adolescents to be recognized, going so far as to call into question the very existence of any age of consent at all.⁹

Sources

The present article draws upon two sets of sources, requiring that a word first be said regarding the scale of comparison. The first corpus is one produced by the activists themselves: mainly gay activist magazines from the 1970s and early 80s, as well as, to a lesser degree, published books. This material allows one to compare the activist positions expressed in France and Quebec, respectively.¹⁰ Our second corpus consists of governmental and legislative sources produced in connection with reform of the age of consent in the 1980s. Since penal law is a federal prerogative in Canada, however, our discussion alternates between the Québécois and Canadian scales, in particular observing the manner in which the gay movements of Quebec positioned themselves vis-à-vis federal legislative developments. Why have we limited ourselves to Quebec in this framework? There are at least two reasons. The first is pragmatic, and stems from the need to keep our investigation within manageable limits. The second has to do with the unusual position of gay activism in Quebec and, specifically, Montreal, the history of which is linked, not only to that of its counterparts in English-speaking Canada, but also to the circulation of ideas – facilitated by linguistic proximity – between France and Quebec.¹¹

The question of female homosexuality and lesbian movements is a blind spot of our study. This lacuna stems, not just from the nature of our first set of sources (the gay movement archives), but also from the fact that the political stances adopted by lesbian movements do not feature in them. This absence doubtless has to do with what Anne Revillard has called “lesbian invisibility”. In the campaigning context, this invisibility was due, in particular, to the “conflictual articulation

⁹ Ambroise-Rendu 2013.

¹⁰ I would here like to warmly thank the team of the Quebec Gay Archives for their helpful and welcome advice.

¹¹ Despite this circulation of ideas, it must not be forgotten that, as Pascale Dufour has stressed in regards to more contemporary activist movements, Quebec and Canada constitute two, relatively distinct activist spaces (2013: 37-38).

between feminism and the homosexual movement” which has been a feature of the history of lesbian movements.¹² Thus, regarding the question at hand, women’s activism appears to have been identified with feminist campaigns against sexual violence, which condemned paedophile demands regarding child sexuality. This invisibility was also a characteristic of public spaces, where homosexual meeting places and pick-up joints were for the most part occupied by male gays. And historically, campaigns about the age of sexual majority had developed precisely around cases of repression in public spaces. This difference affected the structural composition of protest movements: “In contrast to the open repression to which gays were subjected, [lesbian invisibility] made it more difficult to express the victim position that usually legitimates political action.”¹³ While these invisibility dynamics are doubtless at work in our sources, this does not mean that a history of the relation between sexual majority campaigns and lesbian activism is impossible or not worth attempting. For the moment, however, we lack the resources to address it.

This article is divided into two parts. We will first discuss the manner in which critiques of the sexual majority “double standard” developed in the gay movements of France and Quebec in the 1970s, in some cases resulting in radical challenges to the very idea of sexual majority. We then turn to consider the French and Canadian legislative revisions of the 1980s that responded to these demands in a context in which attention had come to focus on a new figure of danger: the paedophile.

The 1970s: gay activism and the sexuality of minors

In the early 1970s, the legal sexual majority in France and Canada had a comparable structure. The law set a general age of consent (15 in France, 14 in Canada) and provided for a special regime in the case of homosexual relations (21 in both cases). Seen as a threat to youth and morality, homosexuals were stigmatized in both countries. In 1960, the French National Assembly adopted the Mirguet Amendment,

¹² Revillard 2002: 175. On the tensions between feminism and lesbianism in Quebec since the 1960s and 70s, see in particular Lamoureux 1998 and Chamberland 2002.

¹³ Revillard 2002: 176-177.

which classified homosexuality as a “social scourge” and placed it in a list of “scourges”, including alcoholism, tuberculosis and prostitution. Several months later, this amendment was followed by a doubling of the sentences incurred for public indecency “when it consists of an act against nature with an individual of the same sex”. A 1954 reform of the Canadian Criminal Code expanded the category of those suffering from “sexual psychopathology” to include individuals sentenced for “gross indecency”, thereby rendering them liable to an indeterminate period of detention in keeping with a 1949 law.¹⁴ In the early 1970s, the first gay political mobilizations attacked these legal norms, the social representations that legitimated them and the repressive practices in which they resulted.

Experimentation groups

In France and Quebec, the emergence of gay activist movements followed a very similar chronology. In France, a group of feminists and gays founded the *Front homosexuel d'action révolutionnaire* (FHAR; Revolutionary Action Homosexual Front) in early 1971. While it continued to meet until 1974, it was most active between 1971 and 1974.¹⁵ In Quebec, the *Front de libération homosexuel* (FLH; Homosexual Liberation Front) had a more short-lived existence.¹⁶ Founded in April 1971 around the review *Mainmise*, the leading counter-cultural publication of its day,¹⁷ it was dissolved in the summer of 1972, following a police raid on its offices. These first groups were close to, yet stood apart from, other radical political groups, whether France's Trotskyite and Maoist organizations or the separatist and revolutionary movement that developed around the *Front de libération du Québec* (FLQ; Quebec Liberation Front). In both countries, homosexual groups attacked the tendency towards machismo that characterized these movements and their refusal to treat sexual matters as political issues. On a small handwritten note conserved in the Gay Archives of Quebec, a FLH activist

¹⁴ Hurteau 1993: 60.

¹⁵ Sibalis 2010.

¹⁶ Higgins 1996 and 1999.

¹⁷ Warren 2012.

commented on the *Manifeste du FLQ*, criticizing it for describing Canadian Prime Minister Pierre-Elliott Trudeau as a “fairy”. An account of a demonstration published by the activist paper *L’Antinorm* shows that this desire to overturn customary forms of insult was also to be found in France: “The leftists have their own anti-cop insults, one of which is ‘enculés’ [= faggots]. So, with my friends from the FHAR, I shouted: ‘It’s great to be a faggot!’”¹⁸ These early groups sought to link political liberation and class struggle with the defense of homosexuality. In Quebec, an article that appeared in *Mainmise* under the title, “L’homosexualité est-elle une arme politique?” [“Is homosexuality a political weapon?”], stressed that “the bourgeoisie has never tolerated that one freely dispose of one’s body vis-à-vis anyone else, particularly among minors”.¹⁹ In France, a FHAR article entitled “Les pédés et la révolution” [“Fags and the revolution”] examined “sexual exploitation” as an integral part of the operation of the capitalist system.²⁰

The sexuality of minors – including the youngest among them – occupies a prominent place in the stances taken by these “revolutionary homosexuals”.²¹ In France, a *Front de libération de la jeunesse* (Youth Liberation Front) was created within the FHAR. Contesting the age of sexual majority, it chose “Minors want to be fucked!” as its protest slogan.²² Such experiments were less pronounced in Quebec. Indeed, FLH membership was reserved to individuals who had reached the age of sexual consent. In this context, the case for the sexuality of minors was mainly made in publications like *Mainmise*.²³ In 1973, another Québécois review, *Omnibus*, reported the controversial stance taken by the writer Jean Simoneau, who openly declared himself “in favor of pederasty” and love with “little boys” from the ages of 10-12.²⁴

¹⁸ *L’Antinorm*, n°1, December 1972 – January 1973. [Translator’s note: in French, the retort was: “Ah que c’est bon d’être enculé!”]

¹⁹ *Mainmise*, n°10, January 1972.

²⁰ *Tout!*, n°12, 23 April 1971. Reprinted in FHAR 1971: 51 *et seq.*

²¹ Le Derff 1974; Hocquenghem 1972.

²² Girard 1981: 105.

²³ *Mainmise*, n°6, September 1971.

²⁴ *Omnibus*, vol. 2, n°8, March 1973.

Together with far left movements, these first gay movements shared a desire for radical change. Yet they did not conceive of it in terms of a seizure of power. In this respect, they were similar to the revolutionary experimentation groups, whose dynamism had more to do with collective practices than with a structure intended to achieve political reform. In France, FHAR meetings gradually became places to get together, without any explicit political objective. As Paul-François Sylvestre explained of Quebec, “in the absence of a precise objective, the FLH was rapidly depoliticized.”²⁵ It was in this context that the police raided its offices in force in 1972, an event from which the organization never recovered.

The denunciation of discriminatory laws

In the second half of the 1970s, gay movements clarified their demands, which now focused on the fight against repression. In Quebec and, more particularly, in Montreal, 1976 was a watershed moment from this point of view. With the approach of the Olympic Games, the repression intensified: the number of police raids on saunas and gay bars increased, including the arrest of 89 people in a raid on *Sauna Neptune* in May 1976. This event was the starting point for a reorganization of gay activism in Quebec: in May 1976, the *Comité homosexuel anti-répression* was created (CHAR; Homosexual Anti-Repression Committee), several months later renaming itself *l'Association pour les droits des gai(e)s du Québec* (ADGQ; Quebec Gay Rights Association). In an article published in 1981, the former coordinator of CHAR, Ron Dayman, stressed that, with the creation of the ADGQ, the idea of a global liberation struggle uniting all oppressed groups was set aside, replaced by that of constructing an “autonomous gay movement based on the democratic struggle for gay rights”.²⁶ As soon as it was created, the ADGQ had chosen its first battle: the modification of the Quebec Charter of Human Rights and Freedoms. Enacted by the Liberal government in 1976, the Charter failed to mention sexual orientation as a motive for discrimination. Change was only to come after another police

²⁵ Sylvestre 1979: 53.

²⁶ *Le Berdache*, n°20, May 1981.

roundup. On 21 October 1977, the police arrested 144 men in the *Truxxx* and *Le Mystique* bars. In two nights, this event, which some have described as “Quebec’s Stonewall”,²⁷ led to spontaneous demonstrations and received widespread media coverage. Six days later, the ADGQ presented a memorandum seeking a modification of the Charter. There followed a series of political reactions, leading to the long-awaited reform, which was adopted on 15 December 1977.

Yet the fight was far from over. It concerned, in particular, Articles 155 and 158 of the 1969 Omnibus Bill, which set the age of consent for sodomy at 21. As Ron Dayman emphasized, while “these articles may apply to heterosexuals in principle [...] in practice, (male) homosexuals [are] virtually the only victims of these archaic laws”.²⁸ The fact that the threshold for civil majority in Quebec – a matter of provincial competence – was lowered to age 18 in 1971 made this measure all the more unacceptable. Published between 1976 and 1977, *Gay Montréal*, a “major magazine” of the gay movement of the mid-1970s,²⁹ embodied activists’ new focus on the gay cause.³⁰ In particular, the paper endeavored to deconstruct the notion that homosexual relations with young people were “perverse”. At the same time, it regularly warned its readers of the risks involved in such relations. In the “Readers’ Mail” column, a 25-year-old man thus told of how his 13-year-old nephew slept in his room in summer and seemed to be making advances to him. Given his nephew’s young age, the paper recommended that he show the greatest prudence: his nephew might make a scene or blackmail him.³¹ Writing in *Le Berdache*, a magazine created in 1979 on the initiative of ADGQ activists and a few former writers for *Mainmise*, Paul-François Sylvestre accused the 1969 Omnibus bill of being a “double-edged

²⁷ Sivry 1998: 243.

²⁸ *Gay Montréal*, n°16, 2 November 1976.

²⁹ Giguère 2012: 1.

³⁰ In a review of *Homolibre* by Jean Le Derff, a defender of “global revolution”, the magazine expressed its disagreement with the idea that all power must be deconstructed and highlighted the fear of the revolutionary excesses of 1971 (*Gay Montréal*, n°6, 15 June 1976).

³¹ *Gay Montréal*, n°2, 4 May 1976.

sword”, asking “is it possible that love between two individuals of the same sex requires greater maturity?”³²

At the same time, a similar process of conversion was underway in France. Having formerly linked sexual liberation with the class struggle, gay movements shifted towards a specific struggle against repression.³³ In 1978, a tract published by the *Groupes de libération homosexuelle* (GLH; Homosexual Liberation Groups) thus mentions a “context of generalized police harassment of all homosexual meeting places in French cities”.³⁴ It was in this context that, in the summer of 1979, the *Comité d’urgence anti-répression homosexuelle* (CUARH; Homosexual Anti-Repression Emergency Committee) was created. This “emergency” was particularly championed by Claude Courouve and the *Association laïque pour l’étude du problème de l’homosexualité* (ALEPH; Secular Association for the Study of the Problem of Homosexuality), which had been founded in 1975 to overcome “the division between reformists and revolutionaries” and unite activists around precise legislative demands.³⁵ In November 1980, an “open letter to presidential candidates” was published in the first number of the CUARH newsletter, *Homophonies*. Among other things, the letter demanded repeal of Article 331-2 of the Penal Code, which was responsible for the “double standard” between homosexual and heterosexual ages of consent.

Campaigns for the liberation of the sexuality of minors

In the 1970s, these critiques of discrimination in the definition of ages of sexual consent were coupled with more diffuse – but also more radical – stances targeting the sexual liberation of minors, including the youngest among them. In particular, these stances were expressed in the publications of writers engaged in the defense of sex with children (referring to themselves as *paedophiles*) or early adolescents (referring to

³² *Le Berdache*, n°3, September 1979.

³³ Bérard 2014a.

³⁴ BNF, pamphlet, “Contre la répression des homosexuels”, 11 October 1978, Groupes de libération homosexuelle (France), collection. Information documents, 1974.

³⁵ ALEPH Information Center, *Contre-nature? La répression judiciaire de l’homosexualité*, 1978, brochure.

themselves as *pederasts*). In France, the writer Gabriel Matzneff, whom the *Magazine littéraire*³⁶ in 1974 described as “a significant literary figure”, proclaimed his “pederasty” and denounced the tendency to associate “the love of kids” with “the idea of violence”.³⁷ Also in 1974, Tony Duvert, who had been awarded the Prix Médicis a year earlier, penned a virulent essay attacking, not just the old model of the “patriarchal family”,³⁸ but also the progressives who, he claimed, acknowledged child sexuality but refused to admit that it can be expressed at all ages. In what was a sign of the circulation of these stances between France and Quebec, in 1980 Duvert was invited to contribute to a special issue of *Le Berdache* devoted to “pederasty”. Evoking his childhood love of adults and grownup love of children, he explained that his whole life had been spent as “a depraved kid, a delinquent minor and a criminal adult”.³⁹

In the late 1970s, the Jacques Dugué affair and the reactions to which it gave rise illustrated the extent of these stances, which for a time caught the attention of the French media and public sphere. Arrested for having engaged in sexual relations with minors and accused of pimping by the far-right paper *Minute*, Dugué made the front page of the newspaper *France-Soir*, which spoke of “a sickening sex case” in which a “so-called educator is said to have supplied masses of kids for international prostitution”.⁴⁰ Created in 1979, the magazine *Gai-Pied* denounced “the coalition against perverts formed between traditional France and our bureaucratic, anonymous and self-righteous censors”.⁴¹ As the trial approached – the defendant was ultimately sentenced to 6 years in prison – the magazine of the CUARH, *Homophonies*, stressed that force had been used against no child, claiming that “the law does not care about consent”.⁴² This affair is symbolic of a period in which possibilities had opened up for

³⁶ Marc de Smedt, “Matzneff et la bisexualité”, *Le Magazine Littéraire*, n°94, 1 November 1974.

³⁷ Matzneff 1974: 40.

³⁸ Duvert 1974: 17.

³⁹ Tony Duvert, “Pédéraste, ou pédophile”, *Le Berdache*, November 1980.

⁴⁰ *France-Soir*, 13 January 1979.

⁴¹ *Le Gai-Pied*, n°13, May 1979.

⁴² *Homophonies*, n°2, December 1980.

the public expression of paedophilia. In an editorial published by the daily *Libération*, a fortnight after the *France-Soir* article appeared, Dugué acknowledged his responsibility for the acts of which he was accused and more generally attacked the tendency to “consider children like half-men, dependent and irresponsible”.⁴³

Although paedophile and pederast demands did not receive the same media coverage in Quebec as they did in France, they nevertheless cut across the Québécois gay movement. Much like *Gai-Pied* was to do in France,⁴⁴ from its earliest days *Le Berdache* showed solidarity with the Toronto magazine *The Body Politic*, which was involved in a series of trials provoked by the publication in its December 1977-January 1978 issue of an article entitled “Men Loving Boys Loving Men” by journalist and activist Gerald Hannon.⁴⁵ The writer Jean Simoneau was the most prominent figure to take up this cause in Québécois intellectual circles. In *Berdache’s* special “pederasty” issue, Simoneau discussed the sexual habits of ancient Greece, defending the “educational value” of what he called “lovejoy” [*l’amourajoie*]: “I have not known any young persons who weren’t happier after our encounters, except one who, on account of his parents’ reaction and the lawsuit they insisted on bringing, fell into a depression.”⁴⁶ For Simoneau, in short, it was the reactionary nature of society that was responsible. A few pages later, the psychologist Alain Bouchard analyzed the “child’s trauma” at being commanded to “abandon his shameful, depraved, monstrous practices, which are disliked by daddy, mommy and baby Jesus”.⁴⁷ As in France, the moral order was denounced as a bourgeois family order, preserved by a few “specialists” of childhood, educators and psychiatrists. For the poet and essayist Paul Chamberland – cofounder in 1963 of the political and cultural review *Parti-Pris* – these latter participated in “a vast and complex system of *surveillance*.”

⁴³ *Libération*, 21 January 1979.

⁴⁴ *Gai-Pied*, n°2, May 1979; *Gai-Pied*, n°90, October 1983.

⁴⁵ For a discussion of the review *The Body Politic*, see Connors Jackman 2011.

⁴⁶ Jean Simoneau, “De la ‘chute des anges’”, *Le Berdache*, November 1980.

⁴⁷ Alain Bouchard, “Les dramaturges du sexe”, *Le Berdache*, n°15, November 1980.

familialism, educational imprisonment, pedagogy”.⁴⁸ In Quebec, campaigners also targeted Catholics. Since the cultural and political emancipation of Québécois society had rendered their position weaker, Simoneau charged, Catholics were seeking in compensation to preserve order and tradition in a “marriage of convenience” with “the Anglophone, colonizing establishment”.⁴⁹

In the 1970s, gay activist movements in France and Quebec followed a similar trajectory. After an initial moment of radicalism and experimentation, there followed a period marked by the establishment of organizations seeking to achieve more targeted legislative change. It was in this context that the question was raised of the “double standard” applied to the age of sexual majority – and, in some cases, that of the very idea of a sexual majority. In the 1980s, this politicization of the issue of sexual majority led legislators in both countries to adopt a new legal framework.

The 1980s: the age of sexual majority is reformed and reaffirmed

As in Quebec and, more generally in Canada, the age of homosexual consent in France was revised downwards over the course of the 1980s. In both countries, this reform was part of a more general legal redefinition of sexual assault, and, in part, a response to feminist campaigns seeking to draw attention to the gravity and scale of sexual violence.⁵⁰ While the feminist activists who worked to raise awareness about this issue were conscious of the fact that thresholds of sexual majority are subject to debate, they widely objected to the idea, endorsed by paedophiles, that one might altogether dispense with the notion of sexual majority. In her 1975 book, *Against Our Will: Men, Women and Rape*, Susan Brownmiller thus held that, while the age one chooses is partly arbitrary, defining such a limit – she mentions age 12 – is a necessary compromise to protect children against sexual assault.⁵¹

⁴⁸ Paul Chamberland, “Le massacre des innocents”, *L'Éberdache*, n°15, November 1980.

⁴⁹ Jean Simoneau, “La répression sexuelle des jeunes”, *L'Éberdache*, n°9, April 1980.

⁵⁰ On the French case, see Bérard 2014b; on Quebec, see for example the activist texts gathered together in Dumont & Toupin 2003: 549-569.

⁵¹ Brownmiller 1975.

The legal transformation of the rules of sexual consent took markedly different paths in the two countries. While legal discrimination (between heterosexuals and homosexuals) regarding the age of sexual majority was abolished in France as early as 1982, it was not until 1988 that Canada acted on the issue, first attenuating and then, in the case of Quebec, once and for all doing away with it in 1998.

In France: towards the repeal of the discriminatory law

In the late 1970s, the demands of French gay movements began to win a hearing in political parties and legislative bodies. Published in 1978, the Common Program of the Socialist and Communist parties adopted several of the activists' demands. These were also picked up by Radical Party (PRG) Senator Henri Caillavet. In February 1978, this parliamentarian, who had prepared the committee report on laws affecting abortion and divorce by mutual consent, submitted a bill seeking, among other things, to decriminalize homosexual relations with minors over age fifteen. In June 1978, during the debate over the law on rape, brought in as a result of feminist campaigning, the Senate adopted a government amendment partly integrating Caillavet's bill. In April 1980, however, the conservative *député* Jean Foyer, the most tenacious opponent of the homosexual movement, had the controversial article restored. The protests that followed changed nothing: the Senate "made a U-turn"⁵² and ultimately refused to repeal the article. Socialist members of the National Assembly took the matter to the Constitutional Council, which in December 1980 rejected their appeal.⁵³ The sole victory: the article of the Penal Code that had doubled the minimum sentence for public indecency in the case of homosexual relations (the Mirguet Amendment) was repealed.

In the run-up to the 1981 presidential elections, CUARH appealed directly to the candidates. While all candidates on the left proved receptive to the organization's demands, Jacques Chirac and Valéry Giscard d'Estaing did not respond.⁵⁴ Following the election of François

⁵² *Le Gai-Pied*, n°20, November 1980.

⁵³ Constitutional Council, Decision n°80-125, 19 December 1980.

⁵⁴ *Homophonies*, n°6, April 1981.

Mitterrand, *Gai-Pied* ran the headline “Seven Years of Happiness”.⁵⁵ Among other groups, the amnesty law adopted by the new majority applied to those sentenced for homosexual intercourse with minors over age 15.⁵⁶ On 6 August 1981, 156 people imprisoned for this reason were freed. Legislative review of the repeal law got under way in the course of 1981. Following the Assembly’s first vote in January 1982, *Homophonies* ran the headline “Homosexuality is no longer a crime” and “Long live 15-year-old homos!”⁵⁷ On 27 July 1982, the repeal law was adopted, leading *Gai-Pied* to announce: “He’s 15, he’s free”.⁵⁸

A portion of the activists refused to consider this victory as an end in itself. Denouncing both the right’s attacks and the government’s excessive caution, *Gai-Pied* thus listed “the shortcomings of the repeal”, explaining that “it is quite likely that this liberal measure, which was never anything other than the elimination of a scandalous inequality, will in fact become a confinement fence for paedophilia, if that is not already the case.”⁵⁹ Joining *Gai-Pied* in this desire to go further was the CUARH and the activists who came together in the *Groupe de recherche pour une enfance différente* (GRED). In the first number of its newsletter, *Le petit gredin*, the latter organization denounced among other things the criminalization of relations with minors under age fifteen.⁶⁰ While in 1982, Simone Iff, as advisor to the Ministry of Women’s Rights, stated that discussions continued within the government, she nevertheless indicated that the issue was not among its priorities.⁶¹ Minister of Justice Robert Badinter and Gisèle Halimi, a feminist activist turned Socialist deputy, for their part reaffirmed that the legal arsenal regarding the age of sexual majority was useful in their eyes.

In October 1982, what was known as the “Coral Affair” broke into the open, putting an end to the prospects for public expression

⁵⁵ *Le Gai-Pied*, n°27, June 1981.

⁵⁶ *La criminalité en France d’après les statistiques de la police judiciaire*, Ministry of the Interior, DGPN, Central Agency for the Study of Delinquency, 1981.

⁵⁷ *Homophonies*, n°15, January 1982.

⁵⁸ *Le Gai-Pied*, n°42, September 1982. On this point, see also Idier 2013.

⁵⁹ *Le Gai-Pied*, n°34, January 1982.

⁶⁰ *Le petit gredin, journal du Groupe de recherches pour une enfance différente*, n°0, 1981.

⁶¹ *Le Gai-Pied*, n°37, April 1982.

of paedophilia that had been (briefly) opened in the late 1970s. The “Coral” was a place that symbolized the practices of “*les années 68*”. Since the mid-1970s, it had provided shelter to vulnerable people, including children and adolescents, in the aim of providing assistance without recourse to the disciplinary practices of traditional halfway houses and institutions. *France-Soir* daily published what proved to be far from entirely accurate revelations concerning the supposed sexual practices of the center’s staff: these ranged from the rape of children to their disappearance and the organization of a sexual exploitation network involving staff members from the Socialist government’s ministries. While the affair quickly gave way to less sensational claims, it nevertheless marked a widening gap between the Socialist government and gay movements. Denouncing these “rumors” and the press’s precipitation to run with the story, *Gai-Pied* described “the government’s panicky embarrassment over this affair”.⁶² In January 1983, the magazine *Homophonies* reported that the slim hopes for a general reform of the age of consent already appeared very distant.⁶³ In November 1982, *Gai-Pied* explained that “in relations with an adult, the child’s free choice is far from being as obvious as pederast theoreticians claim”.⁶⁴ The debate gradually drew to a close, with the left all the more eager to move on, given the right’s use of paedophilia to drum up media attention around the issue of insecurity. As Tony Duvert lamented in 1982, it thus tended to become “the crime par excellence”.⁶⁵

Increasingly, the defenders of paedophilia found themselves isolated. This was also the case vis-à-vis feminist activists, who condemned paedophilia as part of a more general denunciation of sexual violence. Leïla Sébbar thus attacked paedophiles who, like the “father, doctor, teacher, parish priest, educator, psychiatrist, judge, cop [and] political commissar”, are kidnapping the child’s body from its mother.⁶⁶

⁶² *Gai-Pied Hebdo*, n°45, 27 November 1982.

⁶³ *Homophonies*, n°27, January 1983.

⁶⁴ *Gai-Pied Hebdo*, n°45, 27 November 1982.

⁶⁵ Tony Duvert, “L’inceste ou la prison”, *Gai-Pied*, n°39, June 1982.

⁶⁶ Sébbar 1980: 15.

In Quebec and Canada: protecting youth becomes a priority

As in France, the question of the sexual majority in Canada was intimately linked to the redefinition of sexual assault. Tabled in January 1981, Bill C-53 followed up on a 1978 *Report on sexual offenses* by the Canadian Law Reform Commission, and clarified sexual prohibitions relating to children. Inspired by feminist campaigns, it more generally defined three levels of sexual assault according to their degree of violence, in order to expand the definition of “rape” to accommodate matrimonial rape. The bill also proposed reforming Article 158 of the Criminal Code by lowering the age of consent for acts of “sodomy” and “gross indecency” from 21 to 18. Although it maintained a discriminatory discrepancy, the bill was hailed as a step in the right direction,⁶⁷ but was ultimately never adopted. It was replaced by Bill C-127, which was adopted in October 1982. Of the measures presented above, only the three-tiered redefinition of sexual assault was retained. While this bill was a victory for the feminist movements, gay campaigners were angered by this reversal, which they perceived as indicative of the refusal of their demands. An article from the first issue of *Sortie*, (a magazine created by several former editors of *Berdache* which had ceased publication) particularly blamed the conservatism of “the right-wing ‘moral majority’”.⁶⁸ Increasingly, the most radical positions – pederast or paedophilic in nature – were challenged. Feminist activists made themselves heard, asserting that such positions are always defended from the point of view of adults, and conceal the fundamentally unequal nature of relations between adults and children.⁶⁹

Looking closer, several factors may account for the failure of Bill C-53. On the one hand, the Québécois and Canadian activists of the early 1980s lacked access to the type of influential political and media coverage enjoyed by their French counterparts. On the other, the question of the sexual majority in France was directly related to that of

⁶⁷ *Le Berdache*, February 1981.

⁶⁸ *Sortie*, n°1, p. 14.

⁶⁹ These critiques are presented, for example, in an article of *The Body Politic*, which reconsiders the objections made to Gerald Hannon’s text, “Men Loving Boys Loving Men”: Bearchell, Bebout & Wilson 1982.

the (de)criminalization of homosexuality. In Canada, by contrast, Article 158 only formally referred to *sexual practices* – sodomy, gross indecency – not *sexual orientation*. In this framework, debates regarding the reform of Article 158 fell under more general discussions relating to the protection of youth, which was the subject of multiple controversies in the early 1980s. According to the legal scholar Ian Wallace, these tensions and controversies largely explain the failure of Bill C-53. In order to avoid slowing the entire legislative process, Canada’s leading feminist organizations, which wielded particular influence in Ottawa, succeeded in having everything redrawn from Bill C-127 except what most mattered in their eyes: the redefinition of rape.⁷⁰

It was only with the publication in 1984 of the conclusions of a committee on sexual assaults against minors chaired by Professor Robin Badgley that the issue of sexual majority thresholds once again came up. In its report, the committee recommended that the following actions be condemned: any “sexual fondling” of a child, whether male or female, under age 14; “vaginal sexual relations” with girls younger than 16; “acts of sodomy” with any individual of either sex under age 18.⁷¹ Seeking to rule out any accusation of discrimination, the Committee specified that sodomy concerned both homosexual and heterosexual behaviors. Yet its presuppositions became clear several lines later, with explicit mention of “sexual orientation”:

A large part of the medical profession agrees that sexual orientation is determined from age 16. But contrary views exist [...]. The Committee will therefore not lower the age of sexual liberty to 16 in the absence of indisputable evidence that such a reduction will not bring about any risk to the development of sexual behavior.⁷²

Following an abortive attempt in 1986, these recommendations were partly adopted on 1 January 1988 in the framework of Bill C-15. The law abolished the distinction between boys and girls and defined 14 years old as the general age of consent. It repealed the category of “gross indecency” but retained a specific age for consent to sodomy, lowering it from age 21 to 18. Whereas Bill C-53 had provoked many

⁷⁰ Wallace 1988.

⁷¹ Badgley 1984: 23.

⁷² Badgley 1984: 21.

reactions seven years earlier, which were reported in *Berdache* as well as the first issues of *Sortie* magazine, the latter made no mention in 1987 or 1988 of the legislative process leading to the adoption of Bill C-15. This lack of interest was at that time of relatively recent date. In the run-up to the 1984 federal elections, the ADGP had used the pages of *Le Petit Berdache* – a short-lived successor to *Berdache* – to once again call upon the various political parties to state their positions regarding the age of consent.

In the early 1990s, the question was once again raised, in connection with a legal affair at the Québécois level. This was the trial of Henry Roy, first found guilty by the Court of Quebec in October 1994 for having had anal sexual relations with a minor four years earlier. Following Roy's appeal, on 15 April 1998 the Quebec Court of Appeal revised the first judgment and declared Article 159 of the Criminal Code unconstitutional, finding that it "prevents homosexual minors from engaging in habitual consensual, sexual activities in private before age 18".⁷³ Sixteen years after France, the "double standard" was thereby repealed.

The sexual order redefined: families under surveillance

These legislative trajectories reveal a striking similarity between France and Canada: the legal redefinition of the age of sexual majority was elaborated alongside the legal redefinition of rape. The joint discussion of these two issues, which were intertwined and then disentangled, makes them two sides of the same coin: the redefinition of a sexual order via abandonment of categories inherited from the nineteenth century. Prior to these reforms, the definition of rape as a non-consensual and illicit relation guaranteed that violence committed in a conjugal framework enjoyed impunity. The definition of the age of sexual majority, for its part, delimited the frontiers of the familial order by protecting the chastity of young women and the (heterosexual) morality of young men. Over the course of the 1970s, this familial order came under attack from activist movements involved in the defense of oppressed sexualities: the latter successfully demanded that the law define sexual violence without

⁷³ R.C. Roy, 1998, 12775 (QC CA).

reference to marital status and the age of consent without reference to sexual orientation.

This redefinition of the sexual order in the 1980s occurred at a time of exhaustion for the gay movements of the 1970s, with the onset of the “AIDS years”, leading to a reconfiguration of their range of action and demands.⁷⁴ Their most radical positions, particularly those relating to the sexual liberation of early adolescents and even children, were completely de-legitimated, feeding the skepticism of a growing portion of homosexuals themselves. By contrast, the 1980s and 90s were marked by the emergence of an unprecedented media focus on the new figure of the “paedophile”, a predator exterior to the family space and the ideal-type of “stranger danger”. In her work on sexual deviance in Ontario (Canada), Élise Chenier examines the development of this new figure, who assumed the characteristic traits of the “sexual psychopath” of the 1930s and of “the homosexual” of the 1950s and 60s: arrested development, immaturity, uncontrollable and insatiable desire, corrupting influence, etc.⁷⁵ Yet this representation of “stranger danger”, which also informed the political and media framing of paedophilia in France⁷⁶ and Quebec,⁷⁷ nevertheless collided with the everyday reality of sexual violence as it had been revealed by various investigations and youth protection institutions: on both sides of the Atlantic, the sexual abuse of minors most often occurred within the family.

In more institutional terms, the problem of intrafamilial child abuse and, more particularly, sexual abuse within the family led, in the 1980s and 1990s, to a restructuring of youth protection policies in both France and Quebec. A summary of the Badgley report published in November 1984 by the Canadian government research service was already pointing out that, in the majority of cases, sexual abuse of minors is “committed by individuals already known to the

⁷⁴ Pierre Chéadé, “Mais où sont donc passés les militants des années 1970?”, *Sortie*, no. 51, September 1987, p. 14; *Gai-Pied Hebdo*, no. 94, 19 November 1983.

⁷⁵ Chenier 2008.

⁷⁶ Boussaguet 2008.

⁷⁷ For an examination of the manner in which the sexual abuse of children was treated by the Québécois daily *La Presse*, see Chamberland-Lajoie 2012.

victim (relatives or acquaintances) and often in the victim's home or nearby".⁷⁸ In response, whether in France, with its increasingly sophisticated social assistance policy for children (granted departmental status in 1984) or in Quebec, where youth protection institutions were reorganized, culminating in the creation of a unified institutional network of Youth Centers in the early 1990s, the institutional network of "family policing"⁷⁹ was at once extended and streamlined. Policy objectives, meanwhile, increasingly focused on the theme of "preventing" and even "predicting" risks – often within the family – which might hamper, if not threaten, the "appropriate development" of children and adolescents.

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In the 1970s, French and Québécois gay activist movements began to struggle against differently formulated laws. For a decade, however, the history of these movements exhibits striking parallels. Established with ties to revolutionary political movements, the gay movements criticized the latter's refusal to take the sexual dimensions of protest into account. In their first years, they shared a radical orientation that saw the sexual liberty of minors – including the youngest among them – as an end-product of campaigns intended to subvert the economic, social and patriarchal order. In the mid-1970s, the decline of radical activism led to the restructuring of the campaign context around targeted demands seeking to combat the repression to which homosexuals were subjected. In this framework, activists denounced the discrimination to which they were subject regarding the age of sexual majority. Their demands were recognized as legitimate and processes of reform were initiated.

These processes took rather different forms. In France, the change of government in 1981 brought about the adoption of a reform that continues to be seen as the symbolic moment when homosexuality was decriminalized. In Canada, partial reform was obtained only in 1988. In 1998, Québécois courts completed this

⁷⁸ Macdonald 1984: 3.

⁷⁹ In the words of Donzelot 1977.

process, discrediting the penalizing of “anal relations” with minors over age 14.⁸⁰ What these reforms had in common was the fact that they took place in a profoundly transformed political context. On the one hand, the existence of an age of consent specifically linked to sexual orientation or practices lost all legitimacy. On the other, the discourses of the 1970s that had sought a radical liberation of sex with children and young adolescents were totally discredited. In a context in which feminist movements worked for the redefinition – and expansion – of the perimeter of sexual violence, the establishment of an age limit, however arbitrary, was seen as a necessary compromise. By redefining rape and the age of sexual majority, the laws of the 1980s instituted a new distribution of what was sexually permitted and forbidden. By affirming a general norm of consent, they eliminated references to individual status, sex or sexual orientation. At the same time, by reaffirming a minimum threshold for reaching sexual majority, they ruled out all sexual relations before a certain age. It would not be appropriate to characterize this normative reconfiguration in terms of a contrast between the *liberation mentality* of the 1970s and a *return to moral order* in the 1980s. Both media representations of the sexuality of very young people and criminal laws are of course marked by “moral panics” relating to paedophilia. But the definition of the age of sexual majority and the idea according to which “the prime of adolescence should be without a sex life”⁸¹ is part of a longer-term transformation of the stages of life. For in a context characterized by the generalization of secondary education, childhood and early adolescence have increasingly come to be defined “as a period when young people are studying, while living at home with their family”.⁸²

Translated by Ethan RUNDELL

⁸⁰ It is to be noted that, in the framework of a Canadian conservative government law to fight violent crime, the general age of sexual majority was increased from age 14 to age 16.

⁸¹ Bozon 2009: 129-130.

⁸² Bozon 2009: 129.

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