

Child and Youth Sexualities, the Law and the Regulatory Apparatus of Child Protection Policies in Canada in the Early 21st Century

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Abstract

In the first decade of the 21st century, Canadian lawmakers have intensified legal regulation in the arena of child protection, primarily with Bill C-2, an omnibus bill that increased the basic age of consent in Canada from 14 to 16 and placed tighter restrictions on child pornography. I seek to understand how the regulatory scope of legal and governmental discourses, especially as represented by the age of consent statutes and child pornography laws, draws on conceptions of the child at risk from sexual malfeasance as a pre-eminent way of envisioning child protection today. Drawing on the work of Foucault and others, I seek to understand the social organization of governmental practices and legal regulation as they pertain to safeguarding the young from sexual danger. I investigate how these laws (and the discussions surrounding them) serve to construct objects of thought about the child as a site of social regulation that draws on normative conceptions of bodies, sexualities, gender and families and shifting relations between the law, the state, expertise, and policing practices. This paper aims to uncover how discourses of child/youth sexualities and the social, psychological, and sexual/erotic dimensions of experience have become a discursive formation that is constitutive of an intensification and reach of regulatory power into the lives of children and youth. My paper provokes questions pertaining to the ethical substance and discursive practices that attend to how the child becomes an intensified site of social and sexual regulation and the costs of pursuing such governmental strategies.

Key Words: Age-of-consent, youth, sexuality, governmentality, Foucault, sexual regulation.

1. Introduction

This paper focuses on the age of consent debates surrounding the most recent round of legislative activity in the years 2006-2008 in Canada. These years saw a series of public discussions, media reports and intensified activity of the legislature, House and Senate committees that produced an imperative for child protection tied to the age of consent to sexual activity represented by the eventual passing of Bill C-2 on February 2008. A

centrepiece of the governing conservatives led by Canadian Prime Minister Stephen Harper, Bill C-2, entitled, 'Tackling Violent Crime,' sought to increase the age of sexual consent in Canada from 14 to 16 years, the first formal increase since 1890.¹ This paper seeks to understand how configurations of governmental practices, legal regimes, and expert and popular knowledge constitute specific political rationalities that assemble political technologies that take youthful sexualities as an object of governance.

2. The Age of Consent as a Problem of Governance in the 21st Century

I draw upon Foucault's work on governmentality and its elaboration with law as I employ a discourse analysis of government documents represented by the Justice Committee Minutes for Bill C-22 (Age of Consent) and Bill C-2. I seek to uncover how a set of governing concepts and discursive strategies articulate specific ways of enabling law, youth and adult subjectivities as a field of governable objects that construct child and youth sexuality as it mandates specific interventions. Knowledge of populations and subpopulations, mediated primarily through expert discourses, constitute an aspect of governing identifiable populations through specific political rationalities. These discussions are embedded in a culture of liberal democratic governance represented by professional bodies ranging from social workers, child welfare administrators, legal council, police officials, members of Parliament, statisticians and autonomous citizen's groups. These groups produce the construction and reproduction of the problem of child and youth sexuality as a governable problem. Although politicians from across the mainstream political spectrum have mobilized the issue of child protection in public discourse for the past 20-30 years in Canada, the recent campaigns to raise the age of consent represents a shift in the social and moral regulation of adolescent sexuality.

3. Governmentality and the Production of Ethical Subjects

My analytical approach in this chapter will draw from Michel Foucault's studies on 'governmentality' (1991) and its development by others, mainly Dean (1999) and Rose (1999). These studies have become an important analytical tool used to investigate a complex terrain of discourses and practices that produce and reproduce relations of governing and patterns of domination. A governmentality approach enables a focus on the specific knowledge producing practices that construct specific truth claims regarding the nexus of age, gender and sexuality.

A governmentality approach seeks to connect questions of power, politics and a wide range of enabling practices to the space of lives, self-fashioning and subjectivity. Importantly, this concept of governance concerns

the shaping of human conduct that posits the individual as a locus of freedom of action. In addition, liberal modes of government are exemplified by trying to work through the freedom and capacities of the governed.² As such, a de-individualizing perspective on governance focuses on relations of force and assemblages of practice, rather than identities or value-orientations. In my ensuing analysis of youth sexualities in law, this approach is very useful for uncovering another perspective on the movement of power and knowledge in the social organization of sexual regulation, as it circumvents the tendency to relate questions of legal regulation solely to moral claims about the character and telos of identity claims and the production of harm. This approach focuses on the epistemological battle over identity claims and its normalizing solicitude vis-à-vis youthful sexualities as an aspect of the strategies of governance.

4. Making Youth Sexualities an Object of Governmental Knowledge

Key questions that guide my reading of my empirical data include: how is it that sexuality and age relations are made a subject of calculable knowledge in the arena of governmental relations? What can the discursive productions of a 'knowable' population of children and youth reveal about the nature of governing relations in the early 21st century in Canada? What can a close reading of the text of the committee discussions reveal about the claims to truth and the calculative reasoning that are employed in the technologies of government that take child protection as field of governmental action?

My research uncovered three sets of interlocking domains of discourse that framed the issue of youthful sexualities, gender, families, parenting and law in Canadian society. Together they form a template of permissible discourses given authoritative scope within the committee proceedings, setting parameters on legitimate knowledge and the ethical substance and authority of the person who is positioned to make claims to truth. These three identifiable regimes of discourse are:

- a) parent-child relations and the government of familial space
- b) securitizing hegemonic child/youth and adult/parent identities
- c) the figure of the dangerous sexual 'other'

A. 'Give power back to the parents': Parent-Child Relations and the Intensification of Sovereign and Normalizing Power

Calls for the protection of children are produced as fundamental to the reproduction of social and national life, where the maintenance of normative family arrangements becomes a cipher for the reproduction of the

nation cast as a universal social good. Part of the government's strategy of manufacturing social consensus on the issue is to frame its legislation under the new moniker, 'age of protection', in an attempt to forestall potentially divisive political discussions attendant on the legal category of 'consent', which exists as evolving case law in jurisprudence.³

We witness a shift in the relations of power that constitute family formation as a mode of regulating the public and private spheres. Along with an intensification of parental authority tethered to criminal law, comes a corresponding dispossession of both young people and parents' autonomous or discretionary patterns of relating. Criminal legal sanctions become an adjunct to parental authority, as the state furthers its reach into the discretionary 'private' arena characteristic of parenting. Some Members of Parliament interpret the change in law in tones that imply 'giving power back to the parents' as simply a self-evident claim of a state of affairs in which the 'stable' configuration of authoritative relations in family life has gone awry.

In the neo-liberal era, the family is increasingly regarded as a privileged site for the social economy and for the proper reproduction of norms fitted to a new economy of lean production and restraint. Seen as a generative centre of social harmony, the family's task was enacted by 'forming a partnership that is at once consensual and tutelary between the family and social expertise'.⁴ The intensification of power at the micro-site of parent and child relations tethered to sovereign power can be read as a symptom of the self-regulating family undergoing transformation. The intensification of power is embodied by socio-legal changes that permit a kind of 'outsourcing' of criminal/legal practice that deputizes parents as authoritarian agents of state power under the law.⁵ In this sense, the government of the middle-class family is undergoing a shift in its biopolitical organization, once a site of self-regulation and normalizing expectations, to one that now includes the sharp end of sovereign power. Thus what Rose refers to as a 'therapeutic familialism',⁶ a form of self-regulatory normalizing process that aligns itself with experts, is now giving way to what can be described as 'biopolitical familialism' where practices, closely tied to a dispersal and intensification of norms, function as adjuncts to sovereign power and its normalizing patterns reflected in criminal law.

Although parents are able to exercise a form of augmented sovereign authority linked to legal sanctions, young people's ability to develop autonomous decision-making practices suffers from a further retrenchment vis-à-vis legal, state-based and normalizing authority. This functions paradoxically to centre both the parent and the law as the absolute guarantor ('protector') of the young person's sexuality, while evoking the figure of the non-familial adult as the 'predator', with the result of dispossessing the young subject of desiring capacities. When they do appear,

youthful desires are rendered irrelevant and perhaps dangerous to social order.

The intervention of legal and criminal sanctions in the context of the failure of normalizing restraint highlights the way securitization of generational identities and hegemonic parent-child relations are undergoing intensification and transformation. The ensuing shift in the familial economy of relations between parents and children is constituted by the ramifying effects related to discounting the needs, voices and agency of those aged 14- and 15-years-old and now placed under constitutive ban: 'We don't take consent into account anymore'.⁷ Practices and discourses that criminalize specific relations between a youth and adult that exist outside the immediate family circle disproportionately affects the lives of young females, queers and racialized others as subjects whose choices are disproportionately scrutinized as they fall outside of gender and sexuality norms.

B. Securitizing Hegemonic Childhood and Generational Identities through Scientific Discourse

Under intensive consideration in the age of consent debates are the dispositions, capacities and erotic activity of an age group bounded by just a few years, being from 14 to 16 years of age. Our knowledge of this age group with respect to their social and erotic life comes to us through increasingly specific channels of professional and popular discourse that shape our understanding of the conduct of life of subject populations. For example, the committee considers an avalanche of statistical analyses that frame incidence rates for sexual assault and victim ages, along with the 'psy' discourses marking out the developmental stages whereby teens are deemed to reach an 'age of reason'. These expert discourses govern discussions of youthful sexualities as 'factual' accounts purporting real and material limits of youthful agency.

Patterns of discourse that variously privilege biological science, psychiatry, statistics, individual pathologies, and normalized family and gendered relations converge in discussions of child sexual abuse. The practical and symbolic field of age relations is colonized through a configuration of the presumptively heterosexual adult responsabilized as parent. These parental identities are configured as mature, competent, rational thinkers and responsible caretakers of childhood, deputized within normalized bounds of acceptable behaviour reproducing the normative relations of authority between adults and youth. A certifiable adult/parent is one in a hierarchical position of institutionalized authority with a youth; other relations that may exist between adults and youth are deemed automatically suspect. Discussions about the legal parameters of competent action, and the domain of legal protection attendant on the young, mark out specific available subject positions with respect to child, adult and parent identities

and draws upon discourses that impute a form of ethical subjectivity to adult actors produced as mature, responsible and presumptively heterosexual parents.

Committee discussions reveal that representations of private child-parent relations come to colonize public discussions reproducing normative models of family life and youthful sexualities. Adult identities are reiterated through these patterns of interactions that obtain between adults hegemonized as parents and young people signified exclusively as 'children' through the meanings assigned to the privileged private sphere of the family.

C. 'To Catch a Predator': Producing the Hegemonic Man-monster⁸

The social reproduction of the discourse of the 'predator' is a governing principle and a powerful symbolic lever for the direction and shape of social policies in an era of neo-liberal governmentality. The power of criminal legal sanctions replace the ability for pedagogical relations where the subtle art of discriminating relations are preempted and made a police matter, where discretionary relations become colonized by criminal law. In the arena of parenting, the tendency toward an increasing criminalization of non-normative behaviour is evident. Whereas the 'unusual friendships'⁹ and non-normative practices that young people exhibit would, at one point be considered merely socially unacceptable or perhaps inappropriate, now they are deemed criminal. These kinds of distinctions between moral/ethical norms and determinations of harm evince a curious ambiguity during the committee proceedings. What with one breath is described as an abominable practice of child abuse and predatory behaviour is, in another context, narrated in as undesirable or merely unusual, a form of rebellious or unseemly behaviour. Fourteen and 15-year-old youth are discussed as being capable of entering into consensual relationships (albeit ones that parents may vehemently abjure) and at other times young teens are cast as vulnerable children who are victims of unscrupulous men. A sliding signifier of threat is conjoined with an admitted discomfort with what is seen as 'unusual friendships', the result of 'poor choices', and/or defiance to parental authority. These images of a grudging recognition of agency in youth compete with ones that locate youth as dupes, whose subjectivity is colonized by the rapacious behaviour of a predator. Consequently, parents are never depicted as subjects capable of abusing their power, or as capable of exerting undue influence on the minds and bodies of their children.

Members of the committee and various witnesses invoke their own positioning as a parent of a child in that age group as a way of securing a speaking authority and personal urgency to the matter at hand. Their imaginings of youthful sexualities, being wholly caught up in the parent-child relation, excludes the possibility that intergenerational sexualities may function as mutual and reciprocal relations.¹⁰ Their proximal relation as a

parent to the adolescent age group is cited as an undisputable grounding for moral/ethical claims to speak the truth of protection, thereby naturalizing the threat that the older non-familial partner presumably represents. The frequency with which this wide age gap is invoked belies a deep sense of unease or dread that the predator and the parent may not be such mutually exclusive figures after all, and also points to how 'private' parenting relations radically attenuates the ability to imagine the social organization of childhood and youth as public issues that relate to wider questions of citizenship and democratic participation.

5. Concluding Thoughts

The formal public discussions that attend the age of consent continue to reveal a deep unease with the idea of the expansion of autonomy to young people. These discussions reveal a tightly weaved set of discourses pertaining to the status of families and parental authority, gendered power, the reach of the law, policing practices, medicine and the 'psy' discourses in setting out conceptions of age relations and the social and legal status of young people. These regimes of discourse function as disciplinary narratives enforcing normative parameters on gendered age relations, sexuality and the status of families, parenting and criminal law.

The shape of governmental relations in the arena of child protection discussed here is constituted, in part, by moral disciplinary regimes productive of the child in need of protection as an object of social and scientific knowledge in service of national security. Ways of comprehending youth sexualities are driven by a set of assumptions and value orientation that come to constitute a certain measure of force, regulating the permissible, the said and unsaid, and the untellable narratives of youthful sexualities in the culture.

My investigation outlines the dissemination of sovereign and normalizing power within a nexus of familial relations organizing relations between young people and adults/parents. Relations of governmental power advance along the fault line created by traditional lines of authority maintained between parents and children. In an era of the contraction of social services and child welfare programs this shift represents the criminalization of social relations and the intensification of governmental power within a greater sphere where relations of trust, pedagogical practices and autonomous decision making by youth are deemed variously as insufficient, risky or inadequate.

The intensification of governmental power into everyday social life and sexual behaviour is marked by effects that harbour social and psychic consequences for youth and the regulation of sexuality. It further distances young people from a potential to develop and augment social and erotic skills, intensifies gender, sexuality and age discrimination, and lends itself to

a social and political agenda that legitimizes a radical disregard for questions pertaining to children and youths' democratic participation, sexual rights and citizenship.

Notes

¹ Bill C-22, *An Act to amend the Criminal Code (age of protection) and to make consequential changes to the Criminal Records Act*, was introduced into the House of Commons on June 22, 2006. It was referred to Justice Committee on October 30, 2006 where hearings continued into March and April 2007. Bill C-22 failed to pass before the end of the first session of the 39th Parliament in September 2007. It achieved three readings in the House of Commons and was heading for a third and final reading in Senate before this session of Parliament was prorogued. It along with five other separate pieces of crime legislation was reintroduced on October 27, 2007 during the next Parliamentary session as the omnibus Bill C-2, 'Tackling Violent Crime.'

² M Dean, *Governmentality: Power and Rule in Modern Society*, Sage, London, 1999, p. 15.

³ It is interesting to note that the first person to suggest that the bill embody this shift in terminology from 'age of consent' to 'age of protection' was Detective Sergeant Paul Gillespie of the Toronto Police Force.

⁴ N Rose, *Powers of Freedom: Reframing Political Thought*, Cambridge University Press, Cambridge, 1999, p. 178.

⁵ On the intensification of power available to parents and the state under Bill C-2, we find a curious parallel in a text on the *ancien regime* that Foucault published with the French historian, Arlette Farge. In their work, *Le Désordre des familles: Lettres de cachet des Archives de la Bastille* (Gallimard, 1982) Foucault and Farge outline a practice where the absolute monarchy in France had made power available to parents, referred to as the *lettres de cachet*, which consisted of an appeal to the Royal Court to lock up family members who they considered to be leading a life of profligacy and debauchery. See D Macey, *Michel Foucault: Critical Lives*, Reaktion Books, London, 2004, pp. 136-7 and Macey, *The Lives of Michel Foucault*, Vintage, New York, 1993, pp. 453-456.

⁶ Rose, *Powers of Freedom*, p. 180.

⁷ R Nicholson, *Justice Committee Minutes*, Bill C-22, March 21, 2007, p. 20.

⁸ My subtitle refers to the NBC Dateline 'reality television' show of the same name, which popularizes the online vigilante group, Perverted Justice, who seek to entrap men by posing as underage minors online into sexual contacts. This show popularizes police entrapment techniques, valorizes vigilante justice and names and shames those who are alleged to seek sexual liaisons

with young people. See D McCollam, 'The Shame Game', *Columbia Journalism Review*, 45(5), (January/February 2007), pp. 28-33.

⁹ I borrow this phrase from Cohen's (1995) masterful biography of Charles Dodgson, nineteenth century Oxford Mathematics Don, more popularly known as Lewis Carroll the author of *Alice's Adventures in Wonderland*. Cohen approaches the topic of Carroll's 'unusual friendships' with children judiciously, referring to his passionate attachment to young girls in the context of the constraints and privileges of his class, which included his expansive social contacts and friendships, his social activities, photography, writing and his religious vocation and pedagogical practices.

¹⁰ There is a studied silence on qualitative studies on youthful sexuality and intergenerational sex that does not simply start from the assumption that cross-generational encounters are always and everywhere exploitative or abusive. There is never the suggestion that the committee consider looking at some of the social science research that considers intergenerational relationships outside of the dominant child abuse model. For examples of this research see: Sandfort, 1982, 1984; Leahy, 1992; Rind, Bausserman, Tromovich, 1998.

Bibliography

Canada. *Bill C-22, An Act to amend the Criminal Code (age of protection) and to make consequential changes to the Criminal Records Act*. Ministry of Justice, 2006.

Canada. *Bill C-2, Tackling Violent Crime*, Ministry of Justice, 2007.

Canada. *Standing Committee on Justice and Human Rights*, Proceedings on Bill C-22 (March-April). House of Commons, 2007.

Canada. *Bill C-2 Proceedings on the Standing Committee on Legal and Constitutional Affairs*. Senate of Canada. Chair: Joan Fraser, February, 2008.

Cohen, M.N., *Lewis Carroll: A Biography*. Vintage, New York, 1995.

Dean, M., *Governmentality: Power and Rule in Modern Society*. Sage, London, 1999.

Foucault, M., *The History of Sexuality, Volume One: An Introduction*. trans. R. Hurley, Pantheon, New York, 1990.

———, 'Governmentality'. *The Foucault Effect: Studies in Governmentality*. Chicago University Press, Chicago, 1991.

Hunt, A. & Wickham, G., *Foucault and Law: Towards a Sociology of Governance*. Pluto Press, London, 1994.

Leahy, T., 'Positively Experienced Man/Boy Sex: The Discourse of Seduction and the Social Construction of Masculinity'. *Australian and New Zealand Journal of Sociology*, 28(1), 1992, pp. 71-88,

Rind, B., Bauserman, R. & Tromovitch. P., 'A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples'. *Psychological Bulletin*. 124(1), 1998, pp. 22-53.

Rose, N., *Powers of Freedom: Reframing Political Thought*. Cambridge University Press, Cambridge, 1999.

Sandfort, T., 'Sex in Pedophilic Relationships: An Empirical Investigation Among a Nonrepresentative Group of Boys'. *Journal of Sex Research*. 20(2), 1984, pp. 123-142.

———, *The Sexual Aspects of Pedophile Relations*. Pan/Spartacus, Amsterdam, 1982.

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