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CHAPTER 9

On the Weighing of Protections: “Exerting Power and Doing Good” with Child Sexual Abuse Legislation

Christopher Greco and Patrice Corriveau

For all its advantages, communication technology “has encouraged different forms of anti-social behaviour” (al-Khateeb and Epiphaniou 2016, 14). At the turn of the twenty-first century, child sexual abuse (CSA)—a body of offensive, technologically adaptive acts linked to later life dysfunction (van Gijn-Grosvenor and Lamb 2016)—was among the most despised of these forms, and child luring, or the use of a means of telecommunication to facilitate the commission of a sexual offence against a child, among the most contemporary.¹

While, as a field of academic inquiry, luring is often contextualized with reference to offline or “traditional” offending (Black et al. 2015; Ioannou et al. 2018), study of the phenomenon remains focused on commission-related factors or typologies (Greco 2019; Quayle et al. 2014; see also Aitken et al. 2018; Gámez-Guadix et al. 2018). Little attention is paid to how lawmakers speak of the offence or its place in the “relationship between human values and the market” (Zelizer 1981, 1036). This is of little surprise. Twentieth-century shifts in the emotional valuing of children have produced a distaste for questions that disrupt the “cultural process of sacralization” (Zelizer 1981, 1038) and the related claim of an “economically ‘worthless’ but emotionally ‘priceless’ child” (Zelizer 1981, 1037). If, however, we hope to move beyond discourses of insecurity and exclusion in the marketing of justice as legal policy, citizens of capitalist states must understand the cost of their values and how that cost is weighed by members of Parliament.²
With the above in mind, we ask in this chapter if the needs of Canada’s economic system can be seen to outweigh the preservation of childhood or the protection of children from sexual abuse by exploring how members of the Parliament of Canada’s Senate and House of Commons discussed and responded to the threat of child luring. Following a contextual note on capitalism and a review of our methodological approach, we offer an analysis of parliamentary debates related to the introduction of, and the amendment to, Criminal Code section 172.1 (luring a child), which included the decision to allow Internet service providers (ISPs) to “self-police” their response to the discovery of images that depict—and in turn facilitate (Babchishin et al. 2015; Berson 2003; Plummer 2018)—child sexual abuse. Our analysis of the claims of parliamentarians and the decisions to which they are adjoined finds that the needs of Canada’s economic system outweigh child-protection efforts. The chapter ends with the suggestion that attempts to prevent sexual abuse are best understood by adopting a capitalist logic and a valuation or worth of childhood within the same frame of reasoning.

Canadian Capitalism

As part of his writing on childhood, Daniel Cook (2004) opposes the invasion theory of commodification and, like Karl Polanyi (2001 [1944]), situates culture, ethics, or morality as the corrective aid to capitalism’s blind eye and invisible hand. Karl Marx’s (1970, 20) description of society’s “real foundation” and superstructure is thus flipped, allowing for the monetary quantification of persons, their parts, and materials (Resnik 1998; Sharp 2000), or stages of development to be understood as a reflection of society’s cultural base and not a symptom of capitalist perversion. Here, capitalist economies “only exist” (Polanyi 2001 [1944], 72) in capitalist societies or those “in which a relatively small number of individuals own and control the means for creating goods and services, while the majority have no direct ownership stake in the economy and are paid a wage to work for those who do” (Krahn et al. 2011, 3).

Despite its use of government intervention to help “set prices, restrict the flow of finance” (Mueller 2012, 2), and manage public capital (Macdonald 2008), Canada employs an economic system that is capitalist (Choudry and Smith 2016; Fitzsimons 1950; Ornstein and Stevenson 1999). Acceptance of this position requires we in turn
support the claim that “Canada is a capitalist state” (Satzewich 1991, 298) or “capitalist society” (Poland et al. 1998, 793), be it the result of a culturally grounded calculation or the development of “material forces of production” (Marx 1970, 20). Though the distinction is beyond semantics, the outcome is the same: Governments differentiate between lawful and criminal conduct in ways that do not offend the principles innate to the functioning of a capitalist economic system or those able to bring the “economy to its knees through capital strike” (Phillips 2003, 29). Framed differently, “business governs the economy and elected governments cannot ignore this” (Cornwall and Cornwall 2001, 264)—even when debating the importance of protecting children or, perhaps more appropriately stated, protecting the innocence perceived to denote the period of development known as childhood (Smith and Woodiwiss 2016) from sexual abuse.

**Approach**

If we define markets as spaces for the purpose of trade (Polanyi 2001 [1944]), the Parliament of Canada is a market of contextualizing services. Issues of governance are framed, sold, and bought for public consumption, and the value of and reasons for protecting persons and things weighed through amendments to the *Criminal Code*. Much of this exchange is captured in the official transcripts of upper- and lower-house debate, which in turn help formulate and answer the question posed here: When analyzing Senate and House of Commons debates on the introduction of and amendments to section 172.1 of the *Criminal Code*, can the needs of Canada’s economic system (i.e., the conditions that appease those who own the means of production) be seen to outweigh the preservation of childhood or the protection of children from sexual abuse?

To be clear, we are not interested in assessing whether the position adopted by members of Parliament should be considered “right” or “wrong.” Nor are we attempting to assess decision-making processes that are external to the aforementioned public setting. Instead, while acknowledging the provocative nature of our question, our concern is transparency in argumentation and the weighing of public parliamentary claims and the decisions to which they are adjoined. Our decision to use the development of section 172.1 as a focal point of analysis has two bases: Luring is seen to “represent a very real threat” (Hillman et al. 2014, 687; see also Whittle et al. 2013) or a threat...
that impacts “a significant number of children” (Lorenzo-Dus et al. 2016, 40; see also Kloess et al. 2014), and its occurrence is adjoined to telecommunication services that, in Canada, are often privately owned and operated for profit (CRTC 2017; Winseck 1997). In other words, legislative attempts to address the phenomenon of child luring are likely to affect or be seen to affect those who own the means of production and, in turn, force parliamentarians to weigh child protective efforts against the wider economic system or parts thereof.

To weigh the claims of parliamentarians, transcripts of Senate and House of Commons debates related to section 172.1 were accessed through the Library of Parliament’s online (LEGISinfo) database. The result is an assessment of five bills related to child luring—C-15 (2001), C-15A (2001), C-277 (2006), C-2 (2007), and C-10 (2011)—by way of a method that reworks Michael Reisigl and Ruth Wodak’s (2009) discourse-historical approach and Norman Fairclough’s (2009) dialectical-relational approach around three texts (Fairclough 1992, 2001a 2001b). The method may also be represented by the following steps or stages: (1) the identification of an issue and object of research; (2) the collection of evidentiary work or data, and the rules that governed its formation; and (3) the contextually sensitive assessment of content and discourse. The inconsistency of age restrictions across sexual behaviours governed by the Criminal Code led, in cases where categorical labels were absent, to an operational definition of “children” as persons who have not yet reached the legal age of sexual consent.

Findings

Presented as an “overdue” (Toews 2001, 3644; MacKay 2001b, 5330) attempt to “safeguard children from criminals on the Internet” (McLellan 2001a, 3581) and “address what has been reported as a growing phenomenon,” (McLellan 2001a, 3581), Bill C-15’s clause 14, aimed to amend the Criminal Code and introduce child luring to the list of behaviours for which one could receive a term of imprisonment “of not more than five years” (Bill C-15 2001, 9). Though the omnibus bill would be divided, so as to highlight the provisions parliamentarians “would look pretty stupid opposing,” (Gagnon 2001, 5384; see also Laframboise 2001, 5367) references to luring were reintroduced as part of the “good stuff” (Lunney 2001, 5385) in bill C-15A. Amid calls “to do more to protect our children” (Owen 2001, 6313) and a lone supportive questioning of the provision’s necessity
(Cadman 2001, 5332), royal assent was granted in June 2002. Five years later, and following a campaign that characterized the move as an “overdue” (Fast 2006a, 1314), “significant … step in protecting our vulnerable children against” (Fast 2006a, 1314) an “increasingly more common” (Warawa 2006, 3455) and “abhorrent behaviour” (Eggleton 2007, 2334; see also Maloney 2006, 3451) bill C-277 would double the maximum custodial sentence.

Unlike bills C-15A and C-277, the effect of bills C-2 and C-10 on section 172.1 was less direct. Both bills amended the Criminal Code’s luring provision by addressing the wider issue of CSA. The narrative used to lobby for the amendments, however, did not change. Bill C-2’s move to increase the age of sexual consent—from fourteen to sixteen—was sold as an overdue (Nicholson 2007, 1277) attempt “to better protect young people against adult sexual predators” (Nicholson 2008, 8). Bill C-10’s inclusion of mandatory minimum sentences—one year in cases of child luring—helped introduce overdue (Adams 2011, 1598) measures to “protect” (Goguen 2011, 1316) or “better protect children and youth from sexual predators” (MacKenzie 2011, 1584). It also re-emphasized the categorization of children as persons of value.

**Making Cents**

If we equate the attribution of value to behaviour defined as protective, then the royal assent of bills C-15A, C-277, C-2, and C-10 can be read to support children as persons of value. Members of Parliament repeatedly “sold” and “purchased” (passed) legislative initiatives framed as child protective measures.

Though children were described as a danger to adults (Carstairs 2008, 47; Angus 2012, 157), their depiction as “vulnerable” (Fast 2007c, 75), “innocent” (Butt 2011, 1501), “precious” (Fast 2007c, 76; Fast 2007b, 8069), and in need of “special attention and protection” (Fast 2007c, 74) was almost opaque. Supporting Nils Christie’s (1986) notion of the ideal victim, those who abused them were described as “predators” (MacKenzie 2007, 74; Stratton 2007, 382; Fast 2007d, 1471) or persons “everyone is against” (Joyal 2008, 857) and whom “we all want to punish” (Dyck 2008, 855). And while these characterizations may be the by-product of the sacralization or the emotional pricelessness of the child (Zelizer 1981), the language used by parliamentarians suggests a more mercantile reading: “Our children are
among the most important resources we have” (Fast 2007b, 8069); they are “our most precious possession” (Schmidt 2002, 10737; see also Fast 2007c, 72), “commodity” (Maloney 2006, 3452), “resource” (Spencer 2002, 10686); “we can ask any parent or grandparent, including me, and they will tell us that no resource is more precious than our children” (MacKenzie 2007, 74); “I can think of no higher calling than to be able to participate in substantive legislative changes that better protect our most precious resource, our Canadian children” (Findlay 2011, 3908).

With children (or Canadian children) presented as a valued commodity, possession, and resource, the enactment of legislation to protect them reads as the rational act of a cultural order that serves or is serviced by a capitalist economic system. Even the description of children as “the wealth of society” (Boisvenu 2011, 834) can be read to support this point and allow for a challenge that would be at odds with the statements made by the “knowledgeable” persons or “witnesses” (Senate of Canada 2013: para. 3).

Heads and Doyens

When bills are considered for passage through houses of Parliament, legislation review committees are able to invite witnesses “to help them understand the proposed legislation and its potential impact” (Senate of Canada 2013, para. 3). Appearances by these persons are recorded as part of the publicly available evidence or minutes of debate and, in the case of bills C-15 and C-15A, one name is of particular importance: Jay Thomson.

Speaking before the House of Commons Standing Committee on Justice and Human Rights, and on behalf of companies that “provide approximately 80 percent of the Internet connections in Canada.” (Thomson 2001a, 0915h para. 18), Thomson—President and CEO of the Canadian Association of Internet Providers—expressed concern over the wording used in bill C-15:

It’s a pleasure for me to be here this morning, along with our colleagues from CCTA [Canadian Cable Television Association], with whom we’ve worked quite closely on this particular file, to offer our general support for the provisions of Bill C-15, which deal with child pornography and child-luring on the Internet. At the same time, I’d like to highlight for you our real concern
that these provisions could have serious but clearly unintended consequences for ISPs and the Internet. (Thomson 2001a, 0920h para. 1)

Later, and in support of the CCTA's call on the government to clarify its use of the words “transmitting” and ‘making available’ child pornography” (Assheton-Smith 2001, 0925h para. 15), he framed his position in economic terms:

We are aware that the Minister of Justice has assured members of this committee, as well as the Commons committee studying Bill C-15A, that the bill is intended to target child pornographers and predators, and not ISPs. Those are indeed welcome comments, however … the bill still does not clearly state that. Instead, we fear that the language used in the bill remains so broad that it could permit a court to hold ISPs liable for criminal acts of others over which they have no knowledge or control … The costs of defending such a charge could put many of my members, our smaller ISPs, out of business.

Not only would this be unfair and unjustified, it would run contrary to the approach taken by other democratic countries with similar criminal law principles, namely the U.S. and the European Commission, and it would place Canada at a competitive disadvantage in its efforts to be a leader in the Internet economy. (Thomson 2001b, para. 149 and 152–53)

The threat of criminal liability and capital loss were also related to apprehensions, expressed by members of Parliament, that changes to the enforcement of child pornography legislation “would require … Internet service providers … [to] be able to police sites and access information” (MacKay 2001a, 3654). While it was argued “steps have already been taken to do just that” (MacKay 2001a, 3654) (i.e., “service providers hire staff to take complaints from their users” [MacKay 2001a, 3654] and “monitor Internet chat rooms and supply information to the proper authorities if they have reason to believe these nefarious activities are taking place” [MacKay 2001a, 3654]), the Minister of Justice and Attorney General of Canada made note of a need to protect ISPs in the government’s decision to promote self-regulation: “I also want to clarify that the bill does not create additional obligations for Internet service providers … The bill does not
require them to monitor the material going through their servers. Doing so would raise significant privacy issues in relation to Internet users and place an excessive burden on ISPs ... It is important in this area to provide them with the opportunity to self-regulate before we, as legislators, would contemplate anything further” (McLellan 2001b, 1640h para. 1–2).

### Competing Roles

Allowing ISPs to “voluntarily police themselves” (McLellan 2001c, para. 84–85) or the manner in which they address the issue of online CSA highlights a divide in what are here competing parliamentary roles: (1) the “job” (Fast 2007b, 8069) or “duty” (Solberg 2007, 68; Lunn 2002, 10630; Moore 2006, 1801; see also Comartin 2006, 1800) “to provide our justice system with the legal tools to keep sexual predators away from our children” (Fast 2006b, 3459; Fast 2007a, 3; Fast 2007b, 8069) and (2) to protect “what matters most to Canadians, jobs and economic growth” (Hoback 2011, 1241; see also Flaherty 2011, 1242; McLeod 2011, 1325; Menzies 2011, 1339; Albas 2011, 1343; Gourde 2011, 1242; LeBreton 2011, 968). Even if ISPs have “shown themselves to be responsible” (McLellan 2001b, 1720h para. 13; see also McLellan 2001b, 1720h para. 3), concern over their interest dilutes calls to “not worry about affecting anyone else but the young people”, and not worry about “ruining anyone’s lives except those of the young people” or “making people suffer except the young people” (Bailey 2002, 10637). It shifts, in the absence of circular logic, focus away from “our most precious resource” by reworking the questions for which answers are sought, toward the following: “How do we protect the industry and get at the real perpetrators?” (Andreychuk 2002, 10); “How can we protect them [ISPs] and ensure the way we create the infraction does not include them en passant?” (Nolin 2001, para. 72); and “How can we ensure that service providers are protected?” (Nolin 2001, para. 73). In the case of the only bills whose child luring provision was met with industry concerns—C-15 and C-15A—it appears “the government carefully examined how this [the proposed sexual abuse legislation] would affect the [ISP] industry” (Pearson 2001, 1610). As such, when analyzing the public claims of parliamentarians and the decisions to which they are adjoined, it appears the needs of Canada’s economic system outweighed the
preservation of childhood or the protection of children from sexual abuse.

Conclusion

Within the capitalist framework that characterizes Canada’s economic system and ensures government officials “conduct the nation’s business at a reasonable cost” (Rempel 2011, 3772), the above reads as it should: Parliamentarians spoke of children in economic terms, expressed concern over the effect child-protective measures could have on the economy, and—when passing bill C-15A—appear to have tempered their efforts so as not to offend or endanger Canada’s ISP industry. The reading also suggests the value of childhood may be expressed monetarily. And while the mathematical exercise is beyond the scope of our work, if capitalists hope to move beyond discourses of insecurity (related to disruptions or breaks in the logic of legislative initiatives) and exclusion (where fault is a distinctive feature of the “Other”) in the marketing of justice as legal policy or child luring–related legislation, the calculation is inescapable. It is only by completing a valuation of childhood within the logic of capitalism—the logic of those who govern our capitalist state—that legislative attempts to prevent CSA may be weighed against “the essence of a humanistic civilization: to exert power and to do good at the same time” (Cohen 1985, 114). Phrased differently, this exercise represents a crude turn toward the freedom afforded by capitalism, assuming, of course, that transparency is a condition of freedom—which is a condition of doing good or the ability “to do something” (Simmel 1990, 400) good—and that “humanity will only achieve freedom when it knows what its ideals cost” (Polanyi as quoted in Dale 2010, 19).

Notes

1 In their summary of bill C-15A (2001), David Goetz and Gérald Lafrenière (2002, 4) defined child luring as the act of communicating ‘via a ‘computer system’ with a person under a certain age, or a person whom the accused believes to be under a certain age, for the purpose of facilitating the commission of certain sexual offences in relation to children or child abduction.” The 2012 royal assent of bill C-10 replaced the words computer system with the more generic “means of telecommunication” (An Act to enact the Justice for Victims of Terrorism Act, 2012, p.14). It is worth
noting that both definitions are more limiting than Kenneth Lanning’s (2018, 11) use of grooming/seduction (i.e., “the use of nonviolent techniques by one person to gain sexual access to and control over potential and actual child victims”). They are, however, more inclusive than Patricia de Santisteban et al.’s (2018, 203) definition of online grooming or “the process by which an adult, using the means offered by Information and Communication Technologies (ICTs), enters into the dynamic of persuading and victimizing a child sexually, both physically and through the Internet, by performance or obtaining sexual material from the minor” (see also Lorenzo-Dus et al. 2016).

2 This position is built on Polanyi’s (2001 [1944], 262) note on the problem of freedom, which arises on two different levels: the institutional and the moral or religious. On the institutional level it is a matter of balancing increased against diminished freedoms; no radically new questions are encountered. On the more fundamental level the very possibility of freedom is in doubt. It appears that the means of maintaining freedom are themselves adulterating and destroying it. The key to the problem of freedom in our age must be sought on this latter plane. Institutions are embodiments of human meaning and purpose. We cannot achieve the freedom we seek, unless we comprehend the true significance of freedom in a complex society.

3 Though we recognize the divisibility of culture, ethics, and morality (Lukes 2008), as well as the added complexity of their commodification (Shepherd 2002), use of the terms as synonyms is here justified with reference to the following three descriptions: “The concept ‘culture’ is familiar enough to the modern layman. It refers to knowledge, beliefs, values, codes, tastes and prejudices that are traditional in social groups and that are acquired by participation in such groups” (Cohen 1955, 12); “Ideally, ethics is a code of law that prescribes the correct behaviour ‘universally’—that is, for all people at all times; one that sets apart good from evil once for all and everybody” (Bauman 1994, 2); and “Morality represents a set of culturally inscribed codes that exist external to any single individual” (Hier 2011, 11).

4 Stanley Cohen (1985, 103–4) presents a similar outline when discussing theories that “might be called ‘business as usual’ or ‘shuffling the cards’... Liberal democratic theory may assume a separation of the economic from the political and legal but, the argument goes, the state will hardly
operate to undermine its own economic base: all its operations will be
directed to maintaining the viability of the economic system. The state
will, thus, only create the type of crime-control system which in the long
run supports the existing division of labour.” Both Paul Phillips’s and
Cohen’s claims may be linked to Marx (1964, 225), who noted: “The indi-
viduals who rule under these [capitalist] conditions, quite apart from the
fact that their power has to constitute itself as a State, must give their will
as it is determined by these definite circumstances, a general expression
as the will of the State, as law. The content of this expression is always
determined by the situation of this class, as is most clearly revealed in the
civil and criminal law.”

5 According to the Canadian Radio-television and Telecommunications
Commission (CRTC), the country’s ISP industry—one of a number of
mass communication industries operating within Canada—had a total
revenue estimate of $1.7 billion and an average operating margin (i.e., a
ratio of operating income divided by net sales) of 12.9 percent in 2002
(CRTC 2002). Revenues in 2009, 2010, and 2011 were $6.5 billion, $6.8 bil-
lion, and $7.2 billion respectively (CRTC 2012).

6 A more detailed breakdown of the bills, by short titles, reads as follows:
C-15, the Criminal Law Amendment Act, 2001; C-15A, also the Criminal Law
Amendment Act, 2001 (S. Canada. 2002, c. 13); C-277, An Act to Amend the
Criminal Code (Luring a Child) 2006 (S. C, 2007, c. 20); C-2, Tackling Violent
Crime Act (S. C. 2008, c. 6); C-10, the Safe Streets and Communities Act 2011
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Bill C-10, An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and


