

NO PLACE FOR THE STATE

The Origins and Legacies of
the 1969 Omnibus Bill

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Introduction

CHRISTOPHER DUMMITT AND
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The reforms that Prime Minister Pierre Elliott Trudeau’s Liberal government made to the *Criminal Code* in 1969 still matter today, lending credence to the argument that 1969 might be Canada’s “1968” because of the year’s “high-profile events and confrontations that nevertheless were part of much broader processes of contestation and change with deeper roots and reverberations into the future.”¹ Even in the late 1960s, it was clear that the Omnibus Bill – that large series of reforms to the code, officially known as the *Criminal Law Amendment Act* – was taking on issues that would not simply go away after the passage of the bill. Fifty years later, reactions to the bill range from celebration to disappointment. Some praise the legislation as the hallmark of a new age of individual liberation in the private realm, a dramatic instance in which prejudices in law began to be dismantled. Conversely, others insist that the bill is an example of the limitations of *Criminal Code* reform – and the new kinds of legal restrictions it put into place. They would suggest that it actually heralds an era of neoliberal moral regulation. One thing is certain: the bill struck a nerve in ways that can still be felt.²

This collection of essays seeks to explore some of the convoluted origins and legacies of the most controversial parts of the Omnibus Bill of 1969 – those relating to the legal regulation of human sexual behaviours. These included changes regarding the laws on abortion, birth control, and homosexuality. The sexuality-related provisions of the bill generated the most argument and proved to have a lasting and complicated impact on

Canadians. The bill did much more, however. At nearly 126 pages long and containing almost as many clauses, it also made modifications to the *Parole Act*, the *Penitentiary Act*, and the *Prisons and Reformatories Act* as well as the *Combines Investigations Act*, the *Customs Tariff*, and the *National Defence Act*, and touched upon such areas as gambling, drunk driving, animal cruelty, and gun control. Yet it was the reforms related to human sexual behaviour – and especially to the regulation of abortion and homosexuality – that proved incredibly tumultuous at the time, and since. The changes relating to birth control were less contentious at the time, if equally significant in the long run.³

The roots of omnibus bills can be traced to the 1880s. Although critics decry their negative impact on the parliamentary process, omnibus bills offer sitting governments undeniable advantages, among them saving time, shortening legislative proceedings, and “diluting highly controversial moves within a complex package, some parts of which are quite popular with the public or even with opposition parties themselves.”⁴ The impetus for the *Criminal Code* amendments came from the proposals put forward in 1967 by Justice Minister Pierre Elliott Trudeau. After arriving in Ottawa two years earlier as a first-time member of Parliament in his mid-forties, Trudeau quickly made a name for himself as a fresh, young, confident minister in Lester Pearson’s second Liberal minority government. Trudeau, along with Jean Marchand and Gérard Pelletier (the trio, all from Quebec, were nicknamed the “three wise men”), was supposed to channel the views of federalist-leaning Quebecers within the government. When he was made minister of justice, Trudeau became heavily involved in discussions about the constitution, but he also envisioned an updating of Canada’s *Criminal Code* to make it reflect more accurately what he saw as the needs of a modern Canada in the year of the country’s centennial commemoration. In drawing up the Omnibus Bill, first introduced as Bill C-195 in December 1967, Trudeau’s ministry had relied on an ongoing series of debates and proposals from within government and from outside professional associations and individual Canadians across the country. In parliamentary committees and petitions to Parliament, as well as in personal letters of protest, a variety of Canadians had been calling for changes to the criminal law. The Liberal government sought to take what it saw as the best of these proposals and present a thorough overhaul of Canada’s laws.

As justice minister, Trudeau took ownership of the changes himself and presented them as the first of a series of reforms that would not end with

this single bill. Trudeau explained his vision to journalist Peter Newman, saying that the Department of Justice “should be regarded more and more as a department planning for the society of tomorrow ... Society is throwing up problems all the time – divorce, abortions, family planning, pollution, etc. – and it’s no longer enough to review our statutes every 20 years.”⁵ There had been earlier attempts to clear up the ambiguities in the *Criminal Code*, particularly as they applied to sex acts between persons of the same sex.⁶ However, Trudeau’s futuristic vision coincided with the emergence of a new generation of activists who sought to operate within a broader framework of human rights that included the protection of minority rights.⁷ Politics in the 1960s was increasingly shaped by social movements urging radical reform of the law, and of social and moral standards, in everything from the treatment of prisoners, people with disabilities, and Indigenous peoples to issues like women’s liberation, student power, gay rights, racial discrimination, anti-war protests, and Quebec nationalism. Although the histories of the era tend to focus on this politics of the streets,⁸ in fact the Pearson and then the Trudeau governments passed a series of bills that sought to amend statutes to reflect more liberal contemporary moral standards. In areas such as divorce, suicide, and even capital punishment, governments moved to an individualistic approach to regulating moral issues, coinciding with a general turn from a legalistic to a medico-scientific framework in tackling crime.⁹ The Omnibus Bill was part of this broader liberalizing reform trend.

After introducing the bill in Parliament in December 1967, Trudeau took questions from reporters, asserting that it constituted the “most extensive revision to the Criminal Code” since the 1950s. It was here that he voiced the memorable phrase (borrowed from *Globe and Mail* journalist Martin O’Malley) for which he and the bill itself have become famous: legal reforms were needed, Trudeau argued, notably those related to homosexuality, because “there’s no place for the state in the bedrooms of the nation.” He elaborated on this point, saying, “What’s done in private between adults doesn’t concern the Criminal Code.”¹⁰ Trudeau’s comments captured his notion of a liberal “Just Society” that would protect the civil liberties of those interacting with the state. The idea of the Just Society was sometimes nebulous, though it did generate a great amount of attention at the time, especially in the 1968 election and its immediate aftermath. And the Omnibus Bill reforms were the most tangible expression of what Trudeau meant by it. Trudeau himself claimed that it was about allowing individuals to achieve personal fulfillment, and to do this “without being bound up by standards of

morality which have nothing to do with law and order but which have to do with prejudice and religious superstition.”¹¹ Regardless of whether Trudeau’s reforms actually enacted this principle in practice, the rhetoric about private sexual matters as exempt from the long reach of the *Criminal Code* was powerfully attractive. In effect, Trudeau was announcing that the state must allow Canadians more personal sexual freedom. When Prime Minister Lester Pearson stepped down and Trudeau ran for the Liberal leadership in 1968, his stance on the need for the state to step back from regulating sexual behaviour played a weighty role in marking Trudeau as a new modern political leader for a new modern sexual age.

In the midst of the handover from one Liberal government to another, the first version of the bill died on the order table. But after the 1968 federal election, the newly re-elected Liberal government, this time with Trudeau as prime minister and the similarly youthful John Turner as minister of justice, reintroduced essentially the same bill in the House in December 1968, this time as Bill C-150. The Trudeau government had a strong Liberal majority and could expect to pass its legislation relatively easily – though not without strenuous debate that would make headlines in newspapers across the country. They faced a Progressive Conservative Party that had lost seats in the 1968 election but still held seventy-two seats in Parliament. The New Democratic Party (NDP) under Tommy Douglas of Saskatchewan held twenty-two seats and could be expected to support most of the reforms in the Omnibus Bill, usually pushing for even more liberal measures. The most strenuous opposition came from fourteen Ralliement des créditistes MPs under the leadership of Réal Caouette. While the Social Credit Party was wiped out in English Canada in the 1968 election, it surged in popularity in largely conservative rural regions of Quebec. The *Créditistes* were a thorn in the side of the Trudeau government. They had caused problems in the election by stirring up rumours that Trudeau himself was a homosexual – a claim that ran counter to his growing reputation as a “ladies’ man,” and one that he was forced to address in public meetings in the province.¹² All the parliamentary seats were occupied by men, save one. NDP member Grace MacInnis, from Vancouver-Kingsway, was the only woman elected. She devoted herself to issues of poverty, housing, and consumer protections and was an ardent supporter of improved access to contraception and abortion.¹³ This was the House that met in 1968 and 1969 to address the new version of the bill.

What were the exact changes proposed, and how did these differ from the previous legal regime? On the subject of birth control, the law had long been

ambivalent. The *Criminal Code* of 1892 rendered illegal the actions of someone who “offers to sell, advertises, publishes an advertisement of or has for sale or disposal any medicine, drug or article intended or represented as a means of preventing conception or causing abortion.” The Omnibus Bill had more to say in the case of abortion, but when it came to contraception, the changes made were simple. The amendments to the bill simply omitted any reference to “preventing contraception,” thereby decriminalizing it by taking it out of the *Criminal Code* altogether.

Tracing the history of Canadians’ use of birth control is a tricky task. Indigenous peoples’ birth control practices ranged from the spiritual and ceremonial to the ingestion of plant mixtures that acted as abortifacients. Yet in-depth knowledge is lacking for several reasons, among them the undermining of Indigenous bodies of knowledge in settler societies, and the development of scholarly narratives that have foregrounded the experiences of white, middle-class women.¹⁴ In the mid-nineteenth century, when birth rates in general were very high, and varied depending on the age of marriage, birth control was considered a private affair. Indeed, later in the century, when doctors tried to make public pronouncements about – and largely against – birth control, they confronted a wider sense that it was not something to be discussed publicly. Nevertheless, women relied upon many forms of birth control, including douches, pessaries, periodic abstinence from sexual intercourse, male condoms, coitus interruptus, plus a range of potions and tablets that might also act as abortifacients, all of which had varying efficacy.¹⁵

One of the key changes in attitudes to birth control seems to have arisen from the demographic transition that accompanied industrialization in the later nineteenth and early twentieth centuries. Birth rates had always varied depending on economic pressures and the economic usefulness of having more children. The onset of industrial capitalism coincided with the decisions of many white, middle-class women to limit the size of their family. This aspect became wrapped up in a host of anxieties over the “race suicide” of Anglo-Saxon Canadians, women’s growing socio-political independence, and a rise in non-Anglo-Saxon immigration.¹⁶ Medical professionals were, on the whole, reluctant to provide their patients with information about contraception and abortion, likely because they shared these eugenic fears and also because they sought to stave off economic competition from “irregular” medical sects.¹⁷ It was in this environment that Canadian lawmakers compiled the *Criminal Code* in 1892 and spelled out strict sanctions against birth control under “Offences Against Morality.” Some of the other offences

grouped under this category included sodomy, incest, immoral literature and theatrical performances, and prostitution. The 1892 code, though, did have an exception clause. It allowed that birth control could be legal if determined to be in the “public good.” Ultimately, this *pro bono publico* clause would allow for some leeway on the regulations, though its use was not pushed by first-wave feminist activists. They championed “voluntary motherhood,” preferring to educate children and adults about the importance of total sexual abstinence before marriage, and favoured periodic sexual abstinence for married couples who wanted to avoid repeated pregnancies.¹⁸

In the 1920s and 1930s, a more vigorous Canadian birth-control movement took off. It was largely fuelled by eugenicist race- and class-based fears about over-reproduction among those whom the advocates considered to be the least desirable parents. Many prominent feminists, politicians, and doctors supported forced sterilization, a practice that was signed into law in British Columbia (1928) and Alberta (1933), and which targeted the putative unfit, namely poor, disabled, racialized, immigrant, and Indigenous individuals.¹⁹ A noteworthy legal decision was provided in the trial of Dorothea Palmer, a public health nurse, in 1937. Palmer had worked for the Parents Information Bureau, a birth-control organization founded by the Ontario industrialist and prominent eugenicist A.R. Kaufman. Palmer was arrested for spreading information about birth control in Eastview (now Vanier), Ontario, a poor French-Canadian neighbourhood in Ottawa. Her defence, which focused largely on the public good exception in the *Criminal Code*, emphasized the importance of limiting the number of children born to poor families. Although her acquittal signalled a potential opening up of the laws against birth control, the provisions against birth control remained on the books, and prosecutions against those who broke the law were not unknown into the early 1960s, even if they were uncommon.²⁰

The development of the birth-control pill in the 1950s and its entry into the Canadian marketplace beginning in 1961 complicated matters. Initially prescribed for reasons other than birth control (such as regulating menstruation) and praised as a means of population control to address racially charged global anxieties about overpopulation in developing regions, the pill changed the landscape within which public discussion about birth control and its legal regulation took place. Significantly, some presentations to the Parliamentary Standing Committee on Health and Welfare, which was struck to consider proposed reforms to the *Criminal Code* regarding birth control and abortion, pointed to widespread disregard for laws dealing with contraception and also to the fact that the Canadian government supported

programs to curtail population numbers overseas. By 1967, when the Omnibus Bill amendments were first proposed, thousands of women across the country were using the pill for contraceptive purposes, but conditions of access varied widely, especially for young, single women, and the advertisement and sale of birth control remained officially illegal. The changes to the bill meant that doctors could openly advise patients and the public about birth control, but single women still had some difficulty accessing prescription contraceptives like the pill, and the drug's negative side effects, which were seized upon in the popular media, discouraged some women from taking it.²¹

On the other two sex-related provisions of the Omnibus Bill – abortion and homosexuality – the Trudeau government stepped into even more provocative territory. As soon as the bill was passed, critics claimed that its most controversial sections, relating to abortion and homosexuality, would result in little change for Canadian women and gays. The legal regulation of abortion had been more extensive than the regulation of other forms of birth control, and the Omnibus Bill reforms dealt with it in a more elaborate fashion. This was not to be simply a case of decriminalizing abortion, as the bill had done for contraception. Rather, the reforms sought to liberalize abortion, extending the legal grounds under which the procedure was available.

Abortions are difficult to trace insofar as the records of abortions performed are inadequate – it was a procedure usually kept hidden. Historians have shown that only a tiny number of abortions ever became part of the official record, almost always because something went wrong and the woman became very ill or died as a result of the procedure. Yet not even all botched abortions were recorded nor are they reflected in reliable statistics. Nonetheless, it is clear that many women in early Canada sought out a means of terminating their pregnancy as a back-up method of birth control. They ingested chemicals and infusions of traditional remedies, resorted to vigorous exercise, drank large amounts of gin or other alcohol, and, if these didn't work, inserted sharp objects into the uterus to interrupt the pregnancy. They could also approach someone else, a doctor or a layperson, who appeared to be able to help. Although, as a profession, physicians before the mid-twentieth century usually spoke out strongly against abortion.²²

Legally, Canada followed British jurisprudence in regard to abortion. The first English law dates from 1803, and several colonies in what would become Canada followed suit. These early laws distinguished between abortions performed before the point of “quickening” (roughly the first sixteen

to twenty weeks, before mothers could normally feel the fetus moving inside their bodies) and those performed after, with the law applying harsher penalties for the latter. By the time of confederation in 1867, such distinctions had been done away with in most colonies, and the consolidated *Criminal Code* of 1892 made no such distinction. Although doctors could safely perform abortions by the turn of the century, they remained very reluctant to do so even in cases where abortion was allowed legally – to save the life of the mother. Women regularly approached doctors for help in terminating their pregnancies, and a few doctors did offer clandestine assistance. But the notoriety given to instances where the abortion went wrong, and the woman either died or some public accusation was made against the doctor, made the provision of abortion a dangerous matter.²³

The years after the Second World War saw more groups calling for a reform of the law, not least of which were doctors who wanted their own legal status clarified to avoid possible prosecution.²⁴ A family planning movement emerged in 1960s Canada, sparked in part by the founding of Canada's first Planned Parenthood organization in Toronto in 1961. A number of individuals and groups went further, calling for changes to abortion laws as well, moved not just by sympathy for married and single women facing an unwanted pregnancy, but also by the health risks of illegal clandestine abortion and, in a eugenical sense, of the birth of children whose limbs were deformed in utero by the drug thalidomide. Others, motivated by their religious beliefs in regard to fetal life, refused to accept any liberalizing of the abortion laws. Placing a divisive item like abortion law reform into the enormous Omnibus Bill was a tactic on the part of a government anxious to project its support for pluralism and, consequently, differences of opinion.²⁵

Several Standing Committee discussions of proposed reforms to abortion allowed that the procedure should be liberalized on the grounds of rape or incest, fetal abnormality, and threats to the mental and physical health of the pregnant woman. Critically, they cautioned against the legal imposition of hospital-based committees with the power to grant or deny abortions, predicting that it would wrap access to abortion services in unnecessary red tape. Instead they urged that abortion be treated as a matter between a pregnant woman and her doctor alone.²⁶ Regardless, the final version of the Omnibus Bill positioned hospital-based therapeutic abortion committees (TACs) at the centre of abortion law reform, formalizing the ad hoc peer-consultation process in which doctors already engaged before providing small numbers of abortions to save the lives of pregnant

women. TACs, made up of a minimum of three doctors, would decide on a case-by-case basis whether continuation of the pregnancy endangered the woman's life or "health." However, "health" remained undefined. A specific clause for rape, incest, or fetal abnormality was absent, and no appeal procedure existed. Neither was there a guarantee that hospitals would establish TACs nor a provision for the kinds of abortion clinics later envisaged by Dr. Henry Morgentaler, who regularly flouted and challenged the law.²⁷ Pointedly, the bill parted ways with the recently enacted 1967 *British Abortion Act*, which required agreement between two doctors before an abortion was approved and had a comparatively expansive range of conditions under which a legal abortion was permissible. However, both sets of abortion law reforms turned the regulation of abortion over to the male-dominated medical profession and smacked of its paternalism.²⁸ Writing for the popular women's magazine *Chatelaine*, Mollie Gillen called abortion law reform in Canada "our do-nothing new abortion law" and suggested that while it might help protect doctors who performed abortions from legal prosecution, it did little to help women in need.²⁹

Although the Omnibus Bill permitted legal access to abortion, and the number of legal abortions tracked by statistics afterward rose (likely simply bringing into the legal realm abortions that would previously have been done illegally), the question of access to safe, legal, and affordable abortions for all Canadian women desiring them became a hot-button issue and split Canadian public opinion between those who wanted to expand access and others who believed that abortion constituted the murder of a human being in utero. Far from completely legalizing abortion, the bill incited decades of political and legal battles, with some provinces making end runs around the 1969 law.³⁰ The Trudeau government wanted to find a compromise between easily accessible abortion services and the views of more conservative Canadians who saw any change to the law as too extreme. The government consulted closely with clerical leaders, especially those from the Catholic Church, to find what they saw as a workable solution – although, in fact, the Omnibus Bill almost instantaneously spurred the rise of a religiously backed anti-abortion movement. By 1975, the government was regularly receiving petitions to prevent access to abortion, including one with more than a million signatures.³¹ Simultaneously, calls to repeal the new abortion law or decriminalize abortion rang out loud and clear. Some women's liberationists, including those in the 1970 cross-country protest of the Abortion Caravan, insisted on "free abortion on demand" and, later, "freedom to choose," although women's health movement activists were quick to

communicate the limitations of “choice,” especially for poor, immigrant, and racialized women.³² Ultimately, it was the Supreme Court, in *R v. Morgentaler*, and not Parliament, that decided the matter, striking down the 1969 legislation on abortion on January 28, 1988. Since then, abortion access has greatly improved, and while both surgical abortion and medical abortion (in the form of an abortion pill) are available currently, abortion access is still uneven across the country, raising broader concerns about regional inequality and reproductive justice.³³

A similar impact can be seen in the way the Omnibus Bill reformed laws concerning same-sex acts. In Western countries, these acts have often been “prosecuted by the state, condemned by the Church and pathologized by science,” and in Canada, according to sociologist and social activist Gary Kinsman, are wrapped up in sexual regulatory practices and strategies endemic to colonization and state formation.³⁴ A month after the bill came into effect, author Jack Batten published an article in *Saturday Night* magazine in which he reported a conversation with “a friend” who said that, for gay men, the Omnibus Bill was “nothing but a hoot” because it wouldn’t change a thing: “after the new law is passed the police, the cops will still be busting the same queers they go after today – the poor souls who are caught quietly stroking someone else’s penis in a public washroom or a park or some other place.”³⁵ There is a good deal of evidence to back up this assessment. The bill, which did not mention the word “homosexual,” decriminalized certain homosexual acts but only when done in private between two consenting adults over the age of twenty-one. For anyone wanting to engage in homosexual activities with more than two adults, or for those who visited bathhouses or sought out sexual encounters in public, the criminal law still could, and did, enforce a restrictive morality. Technically, the decriminalization applied to men, but lesbians could be charged with indecency or corruption of a minor.³⁶

Homosexuality as such was never a category defined in the *Criminal Code*. The legal regulation of same-sex sexuality had instead always been focused on particular acts. Canada followed the British model of criminalizing such acts as buggery, sodomy, and gross indecency – the latter a vague concept but one which, until a legal change in the 1950s, clearly implicated sexual acts between men. In the 1892 *Criminal Code*, under the “Offences Against Morality” section, Parliament made it an indictable offence, subject to life imprisonment, to commit the “unnatural offence” of buggery. Similarly, the code made it an indictable offence for a man to commit an act of

“gross indecency” with another man, and made the penalty up to five years in prison or whipping. This section of the code also dealt with laws relating to incest, prostitution, and procurement.³⁷

After the 1955 *Criminal Code* reforms, the law continued to criminalize buggery or bestiality as well as gross indecency. Moreover, during the period of the Cold War, the Royal Canadian Mounted Police identified gays and lesbians in the civil service as national security threats vulnerable to Soviet blackmail, an approach that did not change with the Omnibus Bill reforms because of the continued stigma against homosexuality.³⁸ Also, in 1948, Canadian lawmakers added a section on “criminal sexual psychopaths” to the *Criminal Code*. This section allowed certain offenders to be held “indefinitely” if they were deemed to fit this category. Initially the law excluded buggery and gross indecency from the offences that could cause an offender to be labelled a criminal sexual psychopath, but in 1953 the law was changed in such a way that being convicted of these offences could trigger a designation of someone as a criminal sexual psychopath. The question of whether this ought to have been the case became part of a Royal Commission established in 1954 to examine the way this legislation affected sentencing. Although in 1960 the designation of criminal sexual psychopath was changed to deal with what were called “dangerous sexual offenders,” the same problem remained. And although the Royal Commission recommended that simply being convicted of homosexual offences should not result in an individual being labelled a dangerous sexual offender, the law was still written in such a way to leave open this possibility. A controversy over exactly this designation helped spur the Trudeau government to reform that part of the *Criminal Code*.

The controversy centred on the case of Everett George Klippert, an Alberta man who was convicted of gross indecency and served four years for this conviction. In 1965, Klippert was again arrested for having sex with other men and convicted of gross indecency. This time, though, the Crown and police attempted to have him labelled a dangerous sexual offender, using the argument that he was likely to reoffend. Lower courts agreed with this assessment, and Klippert faced spending an indefinite amount of time in jail for essentially engaging in consensual sex. The case gained some notoriety and went, on appeal, to the Supreme Court. Although a minority on the court found Klippert’s acts not to be violent and therefore not “dangerous,” the majority court decision upheld the dangerous sexual offender label. The ruling left open the question of whether the law should be changed, as the justices noted that changing the law was not up to the court.³⁹

The case elicited a fair amount of debate and generated a sense of the need for legal reform. In part, it did so because it added a new layer to a series of arguments for legal reform that had been building over the course of the 1950s and 1960s. Individual activists and homophile associations like the Association of Social Knowledge, as well as professional groups of doctors and lawyers, had come to the conclusion that the criminal law as it related to same-sex acts needed to change. This was the stimulus and background for the changes laid out in the Omnibus Bill. The cabinet minutes for December 5, 1967 (immediately before the first bill, C-195, was introduced in Parliament) specifically noted that “the sense of public outrage, following the Klippert case made it desirable to take some urgent action on dangerous sexual offenders and possible homosexuals [sic].”⁴⁰ But even those MPs who spoke for or against the Omnibus Bill reforms were at pains to put on the record their own personal disapproval of – and, indeed, distaste for – homosexuality. Some of their exhortations were based in Judeo-Christian sexual morality, while others were expressed in the language of psychiatry and modernity. Former prime minister John Diefenbaker, who was instrumental in the passage of a Canadian Bill of Rights in 1960, framed his concerns as a national security consideration: “I have read the entire Wolfenden commission report backward and forward. I know there is no individual more subject to intimidation and threat by the U.S.S.R. as it endeavors to obtain information detrimental to the security of Canada than those who are believed to be homosexuals.”⁴¹ The 1957 report of the United Kingdom’s Wolfenden Committee on Homosexual Offences and Prostitution relied heavily on psychiatric experts and had recommended decriminalizing sex acts between consenting males conducted in private. The report had broad transnational influence.⁴²

However, the precise meaning of the Omnibus Bill changes remains a matter of debate.⁴³ Once passed, the new statutes left on the books the sections criminalizing buggery and gross indecency. The bill did add a further section which stated that the law did not apply to acts performed in private between a husband and wife or between two consenting adults, each of whom was the age of twenty-one or above. Each of these specifications would become momentous: decriminalization affected only those sex acts done in private, the age limit was higher for homosexual than for heterosexual sex acts, and there were curbs on the number of people who could be involved. In the decades after the passage of the Omnibus Bill, gay protest would centre on these kinds of activities, pushing back against police raids of gay bathhouses, bars, and clubs; organizing for

equal rights; and building a strong sense of community in both big cities and small towns.⁴⁴

One early commentator on the Omnibus Bill hoped that it would “signal the commencement of a complete revision of the Code and not an end to the consideration of the glaring defects evident in Canadian criminal law.”⁴⁵ Yet the narrowness of the reforms shaped subsequent politics in profound ways, although this does not imply that they carried no significance in their own right. The precise meanings of “liberalization” and “decriminalization” were contested in 1969 and for decades after. Indeed, many of the debates about the changes to laws related to abortion, homosexuality, and birth control focused then, and now, on how radical (or not) the reforms really were. Did the post-Omnibus Bill statutes legalize certain sexual behaviours? When, where, and for whom? Increasingly, it was the details that counted. Clearly, the sexual reforms of the Omnibus Bill were and remain a complex business.

This book is divided into four sections, dealing with 1) the meaning of the bill in its historical era and the uncertainty of what kind of change it represented; 2) the responses of Canadians, especially abortion and gay activists, to the bill; 3) the wider political and social issues that were connected to the reforms; and 4) the often multifaceted and unintended consequences of the bill in Canadian politics and society.

Collectively, the chapters in the first section, “Regulation, Rupture, and Continuity,” suggest that any evaluation of the Omnibus Bill’s sexual reforms at the end of the 1960s has much to do with who one pays attention to, the background in which one situates the analysis, and what use one wants to make of the historical evidence. Christopher Dummitt begins with an examination of the parliamentary debate. What did the Omnibus Bill mean to the Canadians who debated it in Parliament in 1969, and what kinds of arguments did they think would resonate with a broader Canadian public? Dummitt argues that an important lesson can be learned by paying attention to the social conservative resistance to the bill, and by examining what such critics felt they were losing with its passage. In particular, the arguments for and against the bill show a changing moral language in 1960s Canada, with an older conservative Christian morality losing ground against a new morality rooted in ideals of the authentic self and individual rights.

The chapter by Bruce Douville, Katrina Ackerman, and Shannon Stettner follows up this study of 1960s moral reasoning with a survey of the views of Canada’s most liberal mainline church, the United Church. It was in these years, the authors suggest, that the United Church shifted its position from

a conservative to a more liberal view of abortion. This shift was the result of the active leadership of key individuals within the church. The authors follow the United Church debates about abortion in the context of the Omnibus Bill reforms and show that they mirrored broader social conversations surrounding the bill. Notably, a vocal group of lay people criticized the official church position, which they saw as influenced by a radical liberal church leadership that had pushed the church away from its earlier and more conservative positions.

The question of just what changed with the Omnibus Bill is critical to Gary Kinsman's study of how the bill has been interpreted in the years since. Kinsman argues for an interpretation of the bill from below and not from above, a view that highlights resistance to the new kinds of sexual regulations that he believes emerged in the bill. Kinsman warns against a "neoliberal queer history" that erases from our memory the activism preceding the reforms and following on from them in the 1970s and 1980s. The chapter suggests that the bill was in fact "part of a new liberal strategy of sexual regulation based on public/private and adult/youth distinctions."

The second section, "Activist Responses," turns to a range of activists who were dissatisfied with the extent of the legal reforms in the Omnibus Bill and, over the 1970s and 1980s, pushed for what they saw as more adequate legal and social changes. In his chapter, Tom Hooper shows how queer perspectives were marginalized in the actual debates over the bill. However, the rhetorical promise that the state would stay out of the bedrooms of the nation was taken up seriously by queer activists in Toronto. Hooper follows the work of the Right to Privacy Committee, which highlighted the many ways in which the state continued, intrusively, to police queer lives and queer sex after the passage of the Omnibus Bill. In particular, Hooper shows how queer activism centred on issues of what was considered private and public, and on the heterosexist assumptions built into the way these distinctions were policed. Many of these dilemmas surfaced in the Toronto police bathhouse raids and in the activists' demands that the government live up to the more liberatory potential of the bill.

Scott DeGroot helps to structure more broadly the transnational gay liberation movements of the era, including those in Canada that engaged with the Omnibus Bill and its limitations. DeGroot suggests that we need to reorient how we see the activism of the gay liberation movement, recognizing that it was more open and less ideologically cohesive than is often presented. The chapter looks to gay liberation activist responses to the bill, including the "We Demand" protest of 1971, articles in *The Body Politic*,

and the work of two central thinkers from the era, as examples of the ways in which activists were sometimes revolutionary and sometimes happy to engage with the liberal state and its reforms.

The Omnibus Bill also encouraged early second-wave feminist activism in response to the limits on women's access to abortion. Christabelle Sethna and Steve Hewitt describe abortion access as a defining issue for at least one women's liberation group, the Toronto Women's Caucus (TWC). Sethna and Hewitt come at their study through declassified state security records compiled by the RCMP Security Service, which spied on the group throughout its existence, as it did with the women's liberation movement as a whole. The authors illustrate how the abortion fracas became central to the TWC's internal debates about which matters the group should prioritize, and to conflicts between Trotskyists within the group. Sethna and Hewitt reveal the astonishing range of surveillance undertaken by the Security Service and its capacity to follow women's liberation activities in the wake of the Omnibus Bill reforms. Ultimately, they demonstrate that the women activists' responses to abortion law reform and the opposition to the bill would become central to abortion politics in Canada.

The third section, "Beyond the Omnibus Bill," addresses a series of related legal and political debates that frame the wider circumstances in which the sex-related provisions of the Omnibus Bill reforms were debated. Jessica Haynes's chapter looks at the bill's removal of birth control from the *Criminal Code*, but in particular she addresses a little-studied topic: What was the situation of women who were married or engaged? Did they have access to birth control? And did the Omnibus Bill reforms really change the issue of access for them? Haynes notes that we know about single women's access to oral contraception after it was introduced into Canada, before birth control was officially decriminalized by the Omnibus Bill, but we know far less about the experience of married women. Basing her chapter on an extensive oral history project, Haynes shows that the officially illegal status of birth control before 1969 mattered little to married women or women engaged to marry; in fact, many were unaware of its illegality. For married women, access was mediated by their relationships with doctors, their religious beliefs, and the financial cost of birth control, rather than by its legal or illegal status.

Karen Pearlston tackles the 1968 *Divorce Act*, placing it aside the Omnibus Bill as part and parcel of the legislative social reforms of the 1960s. Pearlston's concern is the relationship of "gross indecency" to the *Divorce Act's* introduction of a "homosexual act," which a husband could use to divorce his wife. Whereas gross indecency was presumably gender-neutral,

reference to a “homosexual act” gave judges an opportunity to define lesbian sex, a definition that Pearlston contends developed alongside the gay liberation movement and heightened public visibility of lesbians.

Using several court-related primary sources, Isabelle Perreault juxtaposes abortion laws, as configured by the Omnibus Bill, with the decriminalization of attempted suicide in 1972. Perreault is ostensibly concerned with the biopolitics of both abortion and attempted suicide and their convoluted histories under the law. In comparison to the arguments surrounding abortion, there was comparatively little parliamentary debate about the decriminalization of attempted suicide. Yet as they came within the purview of politics and the courts, both attempted suicide and abortion ended up being seen less often as criminal acts needing punishment. Rather, they were increasingly understood as episodes related to mental health, to be managed by the medical profession.

The final section of the book, “Back to the Future,” traces various unforeseen aftereffects of the Omnibus Bill. Lori Chambers explains that the bill had an impact on the rise of international adoption by Canadians since the 1970s. The Trudeau government reforms did not target adoption, yet Chambers makes her case by putting the liberalized abortion policies into wider view. She argues that a unique assemblage of circumstances – including changing ideas about what kinds of babies were suitable for adoption, welfare reforms that increasingly made it possible for single mothers to contemplate keeping their children, and loosening attitudes regarding unmarried sex – collectively reduced the number of domestic babies available for adoption. These factors contributed to the rise of international adoption in the final decades of the twentieth century.

More directly connected to birth control and abortion, Rachael Johnstone’s chapter traces the concept of “medical necessity,” which was a major feature of the abortion law put into place by the Omnibus Bill. Although this meant that strict criteria had to be met in order for a legal abortion to be performed, and that doctors, rather than women, were charged with decision-making power in regard to abortion, Johnstone suggests that medical necessity has often been a conduit for smuggling non-medical criteria into decision making for the provision of abortion services and other medical procedures. Her chapter also explores the very language of medical necessity, which continues to be an ongoing factor in health policy, including in reference to the use of Mifegymiso, an abortion pill.

The residue of many of the issues raised in this collection lingers on. In 2017, Justin Trudeau, the eldest son of Pierre Elliot Trudeau, who was

elected prime minister in 2015, delivered an extensive apology for years of “state-sponsored, systematic oppression and rejection” against LGBTQ2 Canadians.⁴⁶ He has also taken on the challenge of removing some moral matters from the regulation of the *Criminal Code*. In fact, with the legalization of cannabis for recreational use in 2018, the government of Trudeau *fils* passed *Criminal Code* reforms that were debated during the era of Trudeau *père*, notably by the Le Dain Commission between 1969 and 1972. Such is also the case with the 2016 legislation on medically assisted dying, and the Trudeau *fils* government’s attempt to develop a workable solution. The controversy generated by these two new social provocations echoes the disputes the Omnibus Bill brought into play fifty years earlier. The past doesn’t repeat itself, but it does sometimes rhyme.

NOTES

- 1 Matthew Hayday and Mary-Ellen Kelm, “Reconsidering 1969: A ‘Turning Point’ for Canada?,” *Canadian Historical Review* 100, 2 (2019): 203, 204. In 1969, the Liberal government was involved in another two controversial reforms: the White Paper, intended to address the status of Indigenous peoples, and the passage of the *Official Languages Act*, making French and English Canada’s two official languages. See respectively, Sarah Nickel, “Reconsidering 1969: The *White Paper* and the Making of the Modern Indigenous Rights Movement,” *ibid.*, 223–38; and Marcel Martel, “The 1969 Official Languages Act: A Turning Point, but for Whom?” *ibid.*, 208–22.
- 2 Katarina Ackerman and Shannon Stettner, “‘The Public Is Not Ready for This’: 1969 and the Long Road to Abortion Access,” *ibid.*, 239–56; Tom Hooper, “Queering ‘69: The Recriminalization of Homosexuality in Canada,” *ibid.*, 257–73; and Robert Leckey, “Repugnant’: Homosexuality and Criminal Family Law,” *University of Toronto Law Journal*, forthcoming. The fiftieth anniversary of the Omnibus Bill has generated a vigorous “Anti-69” network of activist scholars and others who draw links among a wide range of legal reforms to the private lives of Canadians that date from this era. See “Anti-69: Against the Mythologies of the 1969 Criminal Code Reform,” <https://anti-69.ca/>. The anniversary has also inspired a play by Darrah Teitel, “The Omnibus Bill,” first produced in Ottawa by the Counterpoint Players, 2019.
- 3 Jay C. Prober, “The Criminal Law Amendment Act 1968–69 (Canada),” *British Journal of Criminology* 10, 2 (April 1970): 180–83.
- 4 Louis Massicotte, “Omnibus Bills in Theory and Practice,” *Canadian Parliamentary Review* (Spring 2013): 16.
- 5 Quoted in John English, *Citizen of the World: The Life of Pierre Elliott Trudeau, 1919–1968* (Toronto: Knopf, 2006), 439–40.
- 6 David Kimmel and Daniel J. Robinson, “Sex, Crime, Pathology: Homosexuality and Criminal Code Reform in Canada, 1949–1969,” *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société* 16, 1 (2001): 149–50.
- 7 Dominique Clément, *Canada’s Rights Revolution: Social Movements and Social Change* (Vancouver: UBC Press, 2008).

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