THE WORST OF THE WORST?

queer investments in challenging sex offender registries

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13 Carlin DeGuerin Miller (March 24, 2010). "'Sexting' Teens Are Being Labeled Sex Offenders, Lawmakers Look to Change That." CBS News. Retrieved online at: http://www.cbsnews.com/8301-504083_162-20001082-504083.html

14 Canada recently became the first country to lay charges of first-degree murder (as well as the first to secure a conviction) for HIV non-disclosure.

15 Ruth Wilson Gilmore. (2002). "Race and Globalization." In R. J. Johnson, Peter J. Taylor, Michael J. Watts, (Eds)., Geographies of Global Change: Remapping the World. Malden, MA., Blackwell Pub., 261.

16 Eric Rofes "The Emerging Sex Panic Targeting Gay Men." Speech given at the National Gay and Lesbian Task Force's Creating Change Conference in San Diego, November 16, 1997.

17 Roger Lancaster. (2011). Sex Panic and the Punitive State, University of California Press, 77.

18 Rose Corrigan. (2006). "Making Meaning of Megan's Law." Law & Social Inquiry 31, 276.

19 Wayne A. Logan. (2009). "Knowledge as Power: Criminal Registration and Community Notification Laws in America." Stanford University Press, 2009; FSU College of Law, Public Law Research Paper No. 387, 99.

20 Cindy Struckman-Johnson and David Struckman-Johnson. (2000). "Sexual Coercion Rates in Seven Midwestern Prison Facilities for Men." The Prison Journal December 2000 vol. 80 no. 4: 379-390

21 See for example, recent work by Dany LaCombe including "Consumed with Sex: The Treatment of Sex Offenders in Risk Society" in The British Journal of Criminology Vol. 48, Issue 1, pp. 55-74 (2008).

22 Lee Edelman. (2004). No Future: Queer Theory and the Death Drive. Durham, Duke University Press Books, 28.

23 Roughly translated, PIAMP stands for Support Project for Minors Practicing Sex Work.

Organizational Resources

Challenging Male Supremacy Project:
http://www.leftturn.org/experiments-transformative-justice

Critical Resistance:
http://www.criticalresistance.org

Generation Five:
http://www.generationfive.org

National Center for Reason and Justice:
http://ncrj.org

Prisoner Correspondance Project:
http://www.prisnercorrespondenceproject.com

Projet d'Intervention auprès des Mineurs-res Prostués-ées:
http://piamp.net

Storytelling and Organizing Project:
http://www.stopviolenceeveryday.org

or to 1986. However, by "2004, 44 states had supermax prisons" (Daniel P. Mears. March 2006). "Evaluating the Effectiveness of Supermax Prisons," Urban Institute p. ii, www.urban.org/UploadedPDF/411326_supermax_prisons.pdf). These institutions – which keep people incarcerated in solitary confinement cells from 22 to 23 hours a day – were made possible through public discourses about the "worst of the worst," criminals thought to constitute an imminent public danger.

4 The registry was new, but increased surveillance of those categorized as sexual predators was not. In 1997, Bill C-55 was implemented to allow the imposition of long-term supervision orders on offenders who are considered "likely" to re-offend but who do not meet the criteria for a "dangerous offender" designation. This had the effect of encompassing many convicted of lower level sex offenses within SO surveillance.

5 Currently, the Canadian registry differs from its US counterpart in a few significant ways: a) the Canadian registry is accessible only to law enforcement officials and not to the general public, b) law enforcement officials may only access it for investigative purposes (i.e. only after a crime has been committed), and c) the decision to add an individual onto the registry is not automatic but instead comes at the request of the Crown Counsel during sentencing.

6 Canadian crime rates, including violent crime rates, have been decreasing steadily every year. In some provinces, the crime severity index in 2008 decreased by as much as 14 percent (Statistics Canada, 2011).

7 William Eskridge. (2008). Dishonorable Passions: Sodomy Laws in America. New York: Viking, 82.

8 Eskridge. Dishonorable Passions: Sodomy Laws in America, 81.

9 This case, and Tommy Douglas and Pierre Trudeau's stance, led to the 1969 decriminalization of homosexuality. (Kirkby, Gareth. 2006. "35 Years and Counting." Extra West. Retrieved online at: http://www.xtra.ca/public/National/35_years_and_counting-2303.aspx).

10 HALO (the Homophile Association of London, Ontario) with CLGRO (the Coalition for Lesbian and Gay Rights in Ontario). ON GUARD A CRITIQUE OF PROJECT GUARDIAN. September 1996 (HALO, 1996). Retrieved online at: www.clgro.org/pdf/On_Guard.pdf

11 Maria-Belén Ordóñez. (2010). "Taboo: Young Strippers and the Politics of Intergenerational Desire." p. 179 in Sex, Drugs & Rock and Roll: Psychological, Legal and Cultural Examinations of Sex and Sexuality, edited by Helen Gavin and Jacquelyn Bent. Oxford, UK: Inter-Disciplinary Press.

12 Particularly for youth, state definitions of interpersonal and sexual violence are often complicit in the reproduction of heteronormativity. Through this alignment, anything external to gender conforming and heteronormative standards is framed as in need of regulation, punishment, and ultimately, containment. This contradiction is not new; state sponsored violence, marginalization, and criminalization has often been legitimated by claiming to offer "protection" to women and (white) womanhood.

Over the past 30 years, Canada and the United States have afforded select gays and lesbians more rights, both symbolic and substantial. Simultaneously, most mainstream gay and lesbian organizations have disengaged from the issues of prisons and policing. Resisting police brutality, pushing back against the criminalization of non-heteronormative sexualities, and fighting carceral expansion have disappeared from queer rights organization's ostensible agendas. Given that most queers are no longer viewed as the "worst of the worst sexual offenders," mainstream gay and lesbian organizations have disengaged from questions of criminalization in order to "move on" to other issues like marriage and military inclusion. Meanwhile, sex workers, the HIV positive, barebackers, and other sexually marginalized groups have become increasingly isolated. With carceral expansion becoming an important priority for Canada's governments, and with "sex offenders" increasingly being used to legitimate "tough on crime" policies and prison growth, intersectional interventions on prison issues that include a queer analysis are needed now more than ever.

Federal and provincial governments in Canada are currently set to expend massive amounts of capital to enlarge the carceral apparatus by constructing new prisons and expanding existing ones. This development is accompanied by increased policing, new surveillance technologies, post-release reporting and registration requirements, and other punitive tools that activists and academics have described as a "soft extension" of the prison industrial complex into everyday life. "Sex offenders" and public notification systems have played a pivotal role in bolstering demands for increased surveillance of public places, extensive post-release requirements, and – at times – community notification. The anxieties propogated by "sex offenders" intensify the policing of sexually marginalized

people, increase the number of charges and convictions, and lengthen prison terms. These fears also spur electoral campaign promises, moral panics that collude with racialized and heteronormative agendas, and persistent punitive requirements that require various levels of government to appear "tough on crime." In turn, these responses lead to demands for new prisons. As notification technologies shift from print to online databases, offender information has begun to circulate increasingly rapidly and widely. Activists attempting to counter misinformation are often shut out from these platforms and potential roles for a critical independent media are circumvented. The potential for broader-based community mobilizations is thus limited.

Although there has been some opposition to "tough on crime" social policy in Canada over the past few years, the organized Left has been largely silent on this particular front; even activists traditionally critical of "crime and punishment" approaches have allowed themselves to be seduced by the state's ideas about the "sex offender."

Linking the targeting of homosexuals in the past to contemporary sex offender registries should not be mistaken for a romantic appeal to celebrate outlaw sexualities. Nor do queer peoples' histories of being labeled "sex offenders" guarantee an automatic political affinity with those who are currently being criminalized.[1] However, these histories are intertwined with contemporary carceral growth. While select queers are no longer explicitly targeted by public policies, new "sexual offender" legislation does increase queer vulnerability and queer exposure to imprisonment. Meanwhile, the most significant forms of sexual violence (intimate and familial violence) become obscured by the state's focus on "stranger danger" and "dangerous sexual offenders." Equally obscured are the endemic rates of sexual (and other forms of) violence to which incarcerated people – overwhelmingly poor, Indigenous, and people of colour – are subjected within prisons. Most importantly, the state's response to "sex offenders" does not address persistent interpersonal sexual violence, which is perpetrated largely by men, and which largely harms women and children.

ence. By examining the sites and sources of sexual violence, these projects offer tools for survivors, elaborate frameworks that connect interpersonal violence to state violence, and develop responses outside of the frameworks of state punishment. These responses are intended to be transformative for survivors, "bystanders," and those that perpetrate harm.

3. Case support, individual advocacy, and direct support for individuals convicted under SO provisions. This work is currently being done by groups like the National Center for Reason and Justice in Boston and the Prisoner Correspondence Project in Montréal. The advocacy of these organizations challenges the myth that criminalization actually functions to "catch" the "worst of the worst." Work of this nature exposes how the punitive structures of the carceral state do little to address persistent sexual and gender-based violence. It also shows how socially sanctioned practices of vilification and scapegoating often increase sexual and gender violence through overexposure to imprisonment.

These organizations offer us models for imagining and building a cross-community coalitional politics to confront claims that imprisonment is an effective response to sexual violence. They build processes that contend with sexual and intimate violence while rejecting how the state "sees" and responds to violence and conceives of sexual "crimes." Together, they offer us various points of departure from which to imagine and build abolition futures.

Notes

1 Despite its history as a generally white and classed referent and its implication in the erasure of transgender and transsexual identity, we use the term "queer" to encompass not just gay, lesbian, bisexual, and transgendered identities but other non-heteronormative and non-gender nonconforming identifications as well.

2 For information on Canadian carceral expansion see Justin Piché's work, including his website updates at http://prisonstatecanada.blogspot.com and his 2010 report "Moratorium Needed on Punishment Legislation" available at the Canadian Center for Policy Alternatives website, http://www.policyalternatives.ca/publications/monitor/moratorium-needed-punishment-legislation

3 A 2006 study by the Urban Institute charts the rarity of super-max prisons pri-

izing against prison expansion requires that we identify the ways in which queers are still being harmed by "sex offender" panics and analyze how sexually-related offenses are still being mobilized in the service of the carceral state. Organizing must also support the self-determination of survivors of violence and build accountability for perpetrators without encouraging carceral expansion. Below, we highlight three themes around which to organize these struggles. We believe they offer clear sites for organizing a broader and more effective movement against sexual and state violence. There is other work happening; this list is neither representative nor comprehensive but comprises an assemblage of different models. We learn from a number of organizations doing pieces of this work, and we argue that linking these pieces together can provide a framework for transforming bankrupt notions of state "protection."

1. Direct support for youth (and others) doing sex work. This work is currently being done by groups like Projet d'Intervention auprès des Mineurs-res Prostués-ées (PIAMP)[23] in Montréal and the Young Women's Empowerment Project in Chicago. These organizations support sexual and other forms of self-determination and autonomy, interrupt multiple violences faced by youth criminalized or otherwise marginalized, and challenge the ideas of "predatory sexuality" and childhood innocence that fuel prison expansion. Recognition of youth as potential sexual actors and broader support for youth sexual self-determination disrupts the state's mobilization of childhood innocence to legitimize further violence and sexual regulation in the name of "protection."

2. Engagement with sexual violence without turning to the state. This work is currently being done by groups like Generation Five and the Storytelling and Organizing Project in Oakland and the Challenging Male Supremacy Project in New York. These organizations are working to build community-based reconciliation and develop mechanisms and practices of accountability for those that perpetrate harm. Specifically, they strive to build collective responses to harm that are rooted in queer, anti-racist feminism and that don't create or reproduce vulnerability to state and sexual viol-

As justice organizers, educators, advocates, abolitionists, and (in some cases) survivors of violence, we engage in an analysis of the state's response to sexual and gendered violence with care. We view this moment of carceral expansion as an opportunity to map overlaps between queer and abolitionist politics and to support community-based responses to state and interpersonal sexual violence.

Sex Offenders and Carceral Expansion

Over 2.3 million people are now incarcerated in prisons and jails across the US. This works out to one in every 99.1 adults. Compared to all other nations, the US has the highest rate of imprisonment and the largest number of people locked behind bars. Disproportionately, they are people of colour and poor people. Since the 1970s, incarceration rates have increased – not because of rising levels of violence or crime but because of (among other things) "three strikes" laws, mandatory minimum sentencing, and the war on drugs.

Canadian prison expansion has followed a similar trajectory. In 1986 – just days after a similar announcement by Ronald Reagan – Prime Minister Brian Mulroney announced Canada's own war on drugs. Prison populations exploded, necessitating the construction of new penal institutions across the country. Decades of overcrowding in the provincial and territorial systems also led to the construction of new prisons and additions to existing facilities. The criminalization of the survival economy accounts for an ever-growing proportion of the offenses for which individuals are incarcerated: in 2008-2009, over 90 percent of incarcerated women were serving time for prostitution, small theft (valued under $5,000), or fraud. Under the federal Conservatives, the Correctional Service of Canada's (CSC) annual budget has increased by 1.385 billion (86.7 percent), almost doubling since 2005-2006. As of June 2011, various provincial and territorial correctional authorities have announced plans for additions to existing facilities and the construction of twenty-two new prisons.[2]

Prison expansion in the US and Canada is increasingly marketed as a response to the "worst of the worst" – those who commit acts of violence (generally sexual) against the "most innocent," white children. Over the last two decades, sex offender registries (SORs) and community notification laws have been one of the most visible fronts in the expansion of the US carceral state. Public fears about "sex offenders" (SOs) during the 1990s coincided with the construction of supermax, or control-unit, prisons.[3] Although there is no evidence that these registries and notification systems reduce persistent sexual violence against children and women, the policing of public spaces like parks and school grounds have increased along with people's anxieties.

Throughout the 1990s, the US federal government passed laws requiring states to develop SOR's, to increase community notification systems, and to integrate and standardize processes for tracking and identifying those convicted of sexual offenses. In 1996, in response to the abduction and murder of twelve-year-old Polly Klaas (1992) and seven-year-old Megan Kanka (1994) by two men with prior convictions for violent sexual crimes, the federal government passed Megan's Law. The law established a publicly accessible national sex offender registry that circulated information about known "sex offenders" across the nation; it also coordinated the then-emergent state registry systems.

SORs restrict employment, housing, and mobility – particularly in public and private spaces where children congregate. These laws have been tested in and supported by the courts, and more punitive measures continue to be introduced; upheld by the US Supreme Court in a 2005 decision, civil commitment laws have given law enforcement the power to incarcerate those convicted – even after the completion of their formal sentence. Encouraged by media coverage of child abductions, restrictions on convicted sex offenders increase despite the fact that most perpetrators of sexual and other forms of violence against children are family members.

Over the past ten years, there has been a steady push for a more aggressive national sex offender registry in Canada. Initially intro-

health education, and as pregnant teenagers are pushed out of school, it's clear that "protection" is unevenly accessed. The laws across the US that protect young children from sexual violence – Megan's Law, Jessica's Law, The Adam Walsh Act, the Amber Alert – almost uniformly refer to white children. Almost by definition, constructions of mythic sexual innocence make queers into threats (even in contexts where individual lesbians and gays may be protected). Poll after poll demonstrates that the public perceives pedophilia to be the greatest threat to childhood safety. This perception is intimately linked to fear of the queer. As queer theorist Lee Edelman put it, "the sacralization of the child thus necessitates the sacrifice of the queer."[22] In a heteronormative culture that valorizes sexual innocence, non-normative sexualities are suspect, contagious, and thought to pose risks.

Queer Futures / Abolition Futures

SORs and the moral and political anxieties they foster are central pathways enabling carceral expansion. The Harper government's recent "tough on crime" legislative changes focused on sex offenses provide yet another example of carceral expansion being enabled by "sex offender" anxieties. Coalitions between queers and prison abolitionists are needed now more than ever as lesbian and gay mainstream organizations restrict their focus to marriage and the military (in the US) and sentencing enhancements for those convicted of hate crimes against gays and lesbians (in Canada). The state's focus on "sex offenders" opens a new front in the regulation of sexual deviance. Proceeding under a banner that effectively inspires loathing and fear, the state obscures the historical links between its stated objectives, homophobic social policy and state violence. Elaborating these links is particularly urgent in the face of current efforts to expand the Canadian carceral state. Most importantly, prison expansion that includes US-style SORs does nothing to make our communities stronger or to reduce or eliminate sexual violence.

Resistance to carceral expansion and SORs must come from a variety of institutional, community, and organizational forces. Organ-

these registries. By challenging mythic and manufactured sources of sexual violence, we are forced to confront sexual violence in its most widespread, everyday, and intimate forms.

The Carceral State

An increase in criminalization means that those most vulnerable – including queers, those involved in survival economies like the sex and drug trade, people living with HIV, and those who challenge age of consent laws – will be caught up in the criminal justice system. More people in the system means more people subjected to racist, gendered, and homophobic judicial proceedings. Conviction means detention and confinement in institutions predicated on gender normativity, compulsory heteronormativity, and colonial and racial oppression. More people will become isolated from communities of affinity and origin and more will be exposed to epidemic rates of HIV and Hepatitis C in prisons that withhold the resources necessary for survival. Expansion of the carceral state also means increased exposure to state and structural violence through interlocking punitive systems like child protection services, immigration enforcement, psychiatric intervention, and related medical violence.

This deepened exposure to state violence also increases vulnerability to sexual violence. According to one US study, 20 percent of inmates in men's prisons are sexually abused at least once while serving their sentence.[20] Among women at some US prisons, the rate is as high as 25 percent. Violence also occurs in ineffective sexual offender "treatment" programs.[21] Not only does the state's claim to offer protection fall terribly short, it actively produces an array of new possibilities for gender and sexual violence.

Mythic Children

SORs are part of the carceral state's push toward a culture of child protection almost wholly focused on sexual innocence. Across the US, as select brown and black boys are moved into juvenile detention centers at age 11, as queer youth are denied meaningful sexual

duced as a provincial initiative in 2001 by the Harris Conservatives in Ontario, Christopher's Law was the political response to the rape and murder of an 11 year-old boy by a man on statutory release.[4] Under pressure from the provinces, the federal government followed suit in 2004 by establishing the National Sex Offender Registry. In 2007, a 62,000-signature petition was presented to the National Assembly in Québec demanding a province-wide and publicly accessible database. Tied to broader "tough on crime" policy shifts, the Conservatives introduced Bill S-2 (Protecting Victims from Sex Offenders Act) in the spring of 2010. The bill includes provisions that would make registration mandatory, give police preventative access, and require those recently registered to provide DNA samples. The stated purpose of Bill S-2 is to "strengthen the National Sex Offender Registry and the National DNA Data Bank by enabling police in Canada to more effectively prevent and investigate crimes of a sexual nature." A federal attempt to coordinate emerging provincial registries, the National Sex Offender Registry has yet to solve a single crime.[5]

Despite a 30-year low in Canadian crime rates and little to no evidence of any rise in violence in Canada, the federal Conservatives introduced a schedule of reforms in 2010 that mirrors failed US criminal justice policies: mandatory minimum sentencing, further criminalization of drug offenses, the elimination of pre-trial "two-for-one" credits, and new prison construction. Child "protection" against alleged sexual predators is a central component of current criminal justice reforms in Canada.[6] Bill S-2 and Bill C-22 (Protecting Children from Online Sexual Exploitation Act, which passed first reading in May 2010) are offered to allegedly protect select children. Meanwhile, proposed changes to the Youth Criminal Justice Act will punish more young people. As always, the state's "protection" measures constitute after-the-fact responses and afford no prevention measures. We are thus compelled to question the intent and design of this kind of social policy.

As in the US, public fears of the "sex offender" have been leveraged to build the Canadian carceral state. After the Bloc Québécois voted en masse against Bill C-268 (which would impose a mandat-

ory minimum sentence for those convicted of child trafficking) in 2009, the federal Conservatives mailed flyers to every resident in each Bloc Québécois riding. Under the headline "Your Bloc MP voted against the protection of children" (in French), the flyer depicted a dark, shadowy man leading a white child from a playground. Concurrently, other print advertisements suggested the Bloc was "soft on pedophiles." In the spring of 2011, the Ontario Progressive Conservatives promised that – if elected – they would make sex offenders wear GPS trackers and make the entire Ontario SOR publicly accessible online. Alberta has already implemented a similar GPS tracking pilot project. These moves demonstrate the extent to which public opinion is amenable to highly punitive surveillance and policing where "sex offenders" are concerned. Campaigns for increased criminalization and prison expansion continue to succeed by framing the opposition as "soft" on crime, insensitive to the safety of children, and indifferent to the realities of sexual violence.

In the US, opposition to publicly accessible SORs (limited though it is) has been sparked by instances of vigilante violence against accused or convicted sex offenders, targeted harassment and outings, cases of mistaken identity, and limited but detailed investigative journalism that has chronicled the explicitly punitive restrictions on SO movement post-release. In Canada, notable opposition from either the institutional or grassroots Left has yet to materialize. This is in large part due to the non-public nature of the Canadian registry, which has allowed it to enact much of the everyday surveillance and restriction of the US registry while avoiding public debates and opposition. By monopolizing mobilizations of disgust and pity, the Canadian state has effectively regulated and managed opposition to how sex offenses are criminalized and administrated.

Queer Investments

The push for public registration of "sex offenders" evokes familiar queer histories. Many of the frameworks and strategies currently being used to detain, surveil, and punish "sex offenders" are well known by queer activists who have spent decades battling the poli-

Designation and registration of sex workers as "sex offenders," criminalization of sexual non-disclosure of HIV status, and appeals to highly punitive surveillance technologies to contain, monitor, and track known "sex offenders" all resemble the historical ways in which queer sexuality has been policed and managed. While gay and lesbian communities may no longer be targeted explicitly, these communities continue to be subject to state violence and "sex offender" panic as sex workers, as HIV-positive people, and as those to whom the "sex offender" designation has been applied.

Erasure

Registries function to obscure the real sources and sites of sexual violence. Overwhelmingly, the perpetrators of sexual violence against women and children are not strangers. The focus on "stranger danger" functions to displace attention from the real harms: poverty, colonialism, and heteropatriarchy. As anthropologist Roger Lancaster summarizes, "a child's risk of being killed by a sexually predatory stranger is comparable to his or her chance of getting struck by lightening (1 in 1,000,000 versus 1 in 1,200,000)."[17] Despite this reality, US legal scholar Rose Corrigan points out that feminist organizers were largely silent during the implementation of national registries in the US and Canada. In her estimation, "the most threatening aspects of feminist rape law reform – its criticisms of violence, sexuality, family, and repressive institutions– are those that supporters of Megan's Law erase in rhetoric and practice."[18] If there is a "worst of the worst," it is to be found in our own patriarchal families and neighbourhoods.

In addition to the reality that perpetrators of violence targeting children are rarely strangers, there is no evidence that registries and community notification systems protect children. In Canada, where SORs are non-public and used overwhelmingly to investigate crimes that have already been committed, they cannot – by their own logic – prevent any crime. Criminologists who study these registries have argued that there is no evidence that they have been successful; on the contrary, SOR expansion has been "based on a mere verisimilitude of empirical justification."[19] Creating safer and stronger communities requires that we challenge the expansion of

of pornography) did not warrant felony charges, which would require registration as a sex offender if convicted.[13]

The increasing criminalization of HIV non-disclosure in Canada also demonstrates the uneven and violent application of the "sex offender" classifications.[14] Since 1998, a slate of charges – ranging from sexual assault to first-degree murder – were brought against HIV positive individuals for having failed to disclose their HIV status. These charges have been overwhelmingly laid against immigrants, men of colour, sex workers, and (increasingly) gay men. Their names and photographs are routinely published in newspapers, even prior to conviction. In 2008, Vancouver police blanketed the downtown core with posters featuring the picture of a sex worker who was merely suspected of having transmitted HIV. In Winnipeg in August 2010, police published a Canada-wide arrest warrant for a Sudanese man suspected of transmitting HIV to two women. And in Ottawa in May 2010, police issued a public warning about a gay man accused of non-disclosure during consensual sex and explicitly labeled him a "sexual predator." Many of the charges brought against HIV positive individuals for not disclosing their status during a sexual encounter – sexual assault, aggravated sexual assault, etc. – are grounds for registration on the Canadian SOR. While the extent to which individuals criminalized for non-disclosure will actually be added to the registry (as many of the cases are in progress) remains to be seen, recently proposed reforms threaten to add almost all of those facing conviction under HIV-related prosecutions.

The trajectory of HIV criminalization – and, in particular, the tactics of public notification and shaming – reveals how recent legal shifts are firmly rooted in broader historical constructions of the "sexual predator." HIV criminalization exacerbates what geographer Ruth Wilson Gilmore has called "group-differentiated vulnerabilities" to criminalization and imprisonment and premature death.[15] In this way, it mirrors prior public panic about sex offenders and homosexuals, which was characterized by public naming, scapegoating, and widespread social vilification.[16]

cing and surveillance of street sex workers, bars and clubs, bathhouses, and other public sexual cultures. Policing in Canada has historically targeted queer people and continues to target sexually marginal and marginalized groups. When select white and affluent gays and lesbians ceased to be the overt targets of policing, and queer organizations moved on to other issues, anti-prison communities lost a formidable ally. As public memory of queer resistances to criminalization evaporated, our communities lost their critical assessment of what constitutes "dangerous sexual behaviour." How are these designations made? And who is all this "protection" for?

Gay, lesbian, bisexual, and especially transgender, transsexual, and gender nonconforming communities continue to be overrepresented in the Canadian and US criminal justice system, though this vulnerability is no longer (or rarely) the result of explicitly homophobic state violence. Today, prison justice and abolition activists – and queer organizers – struggle with both the implications of relentless prison growth and our diminished capacity to name, identify, and resist the social processes that underwrite this expansion. Because gay and lesbian community organizations have widely disengaged from criminalization, queers are less equipped to contend with shifting patterns of state violence and new articulations of "sex offenses."

Queer Histories

Historically, queers have been the targets of criminal persecution and registration. In many jurisdictions, non-reproductive homosexual sexual acts were by definition sex offenses and used to restrict access to employment, social benefits, parenting, immigration, and citizenship. Queer historican William Eskridge has reported how, in 1947, the California legislature "unanimously passed a law to require convicted sex offenders to register with the police in their home jurisdictions." Chief Justice Warren requested that this law be extended to include those convicted of "lewd vagrancy" to ensure that as many homosexuals as possible were included. In 1950, the FBI collected information – including fingerprints – for

those charged with sodomy, oral copulation, and lewd vagrancy to create a "national bank of sex offenders and known homosexuals."[7]

However, homosexuals and other "sex offenders" were not uniformly targeted. As Eskridge notes, "in the 1930s, when only six percent of its adult male population was non-white, 20 percent of New York City's sex offenders were black," revealing who was – and continues to be – most vulnerable to policing and sexual surveillance.[8] In a 1965 case that received national attention in Canada, a man from the Northwest Territories named Everett George Klippert was charged and convicted on several counts of gross indecency for having consensual sex with several men. In his sentencing, he was deemed to be "an incurable homosexual" and therefore a "dangerous sexual offender" who was to be placed in indefinite preventative detention.[9]

These historical practices have become central to SORs and are also apparent in contemporary policing of marginal and marginalized sexual cultures. This is especially evident when considering how public notification and shaming – often under the guise of public (and, particularly, child) "safety" – are used to target and police sexually marginal social spaces and public sexual cultures. Throughout the early 1980s, hundreds of men in Canada and the US were publicly outed after being caught having sex in public bathrooms, bathhouses, and other sites. Following the Toronto bathhouse raids of 1981, The Toronto Sun published the names of men present during the raid while police contacted their employers. After targeting a group of underage sex workers and their clients in 1994, police in London, Ontario held press conferences to expose a "sex ring" that "passed around boys." In response, the Homophile Association of London Ontario accused the police of unfairly accusing men, engaging in double standards for gay sex, and promoting exaggerations, distortions, and fear-mongering.[10] Bar and bathhouse raids during the early 2000s (of which there were many) played out similarly.

Public notification and shaming are often legitimated by claims that

they protect youth from sexual violence. Nevertheless, for youth engaging in sex work and often for queer youth, protection is negated by the very mechanisms that purport to "protect" youth from sexual exploitation. In 2003, 40 Montréal police officers raided Taboo, a gay club featuring stripping and frequented by sex workers and those interested in purchasing non-heterosexual sex. Police arrested and laid indecency charges against four customers and 23 young male strippers (including one seventeen year old). Raids of bars frequented by sex workers, or that provide space for public sexual cultures, are not exceptional in Canada; however the raid at Taboo is significant because it constituted what Maria-Belén Ordóñez, a Toronto-based anthropologist, has called a "homophobic response that is mainly tied to young sex workers catering to older gay men."[11] The raids, their rationale, and the court proceedings that followed demonstrated how legal enforcement mobilized to protect youth in fact criminalized young people.[12]

Flexibility of the "Sex Offender" Category

Under Canadian law, the formal "sex offender" designation has gradually been dropped from many sexual practices associated with queers; however, other non-normative sexual practices continue to be designated in this way. Sexually deviant archetypes that represent "predatory" or "irresponsible" sexuality – often non-hetero-patriarchal and always deeply racialized – continue to be targeted for state regulation. These include the "welfare queen," the teenaged mom, the HIV positive person who "willfully infects" others, and the sex worker. While "homosexuals" may no longer be the central targets of social policies enforcing sexual normativity, many continue to feel the effects of this policing, including queers.

In the US, the criminal "sex offender" category is applied inconsistently. In 2010, sex workers in New Orleans were charged under a state-wide law that makes it a crime against nature to engage in "unnatural copulation" (committing acts of oral or anal sex). Conviction meant registration as an SO and having the words "sex offender" stamped on one's driver's license. Meanwhile, out of concern for the futures of young people, the Third US District Court of Appeals in Philadelphia ruled that "sexting" (distribution