

Private Delivery of Public Social Policy in Canada's Most Socially Conservative Province

Explaining Gay and Lesbian Adoption Policy Development in Alberta

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ABSTRACT

Why were gay and lesbian Albertans able to adopt children in 1999? Despite being identified as Canada's most socially conservative provinces, notably for lagging behind other Canadian jurisdictions on issues of gay rights (Smith, 2008), the province was among the first to allow gays and lesbians to legally adopt children. Given the existing literature on gay and lesbian politics in Canada, this outcome makes little sense. This research re-examines this issue from another perspective: the public-private dichotomy. In examining this as a specific policy issue, this paper accomplishes three things. First, it demonstrates that policies create legacies over time and interest groups may emerge to take advantage of and support their maintenance (Hacker, 2002; Klein, 2003; Beland, 2008). Second, it demonstrates that private and non-profit agencies may in fact promote equality, rather than inequality. In this case, an historically marginalized group was able to take advantage of a policy to gain access to that which the public system would not grant them. Finally, it demonstrates that the public-private dichotomy is insufficient to explain adoption policy outcomes in Alberta; we must also consider the non-profit sector.

RESEARCH QUESTION

Why, despite Alberta's reputation as the most socially conservative province, were gay and lesbians able to legally adopt children in 1999, in some cases years ahead of many other provinces?

DEFINITIONS

Adoption – the placement of a child (the adoptee) with an approved applicant or applicants, granting them permanent legal guardianship.

Private (Non-Ward) Adoption – any adoption within Canada that is not arranged by a public agency. These can be arranged by private agencies, nonprofits, or non-government agents.

Open adoption – adoptions involving some kind of interaction between a prospective birth mother and adoptive parents.

CASE SELECTION AND METHODS

Table 1: LGBT Adoption Regime Types

	Province	Precipitating Case	Governing Party (#Seats)	Opposition Party (#Seats)	Public Adoption	Private Adoption
Progressive Adoption Regimes	British Columbia	N/A	NDP (51)	Liberal (17)	1995	1995
	Saskatchewan		NDP (42)	Liberal (11)	1998	N/A
Reactive Adoption Regimes	Ontario	M. v. H [1999]	PC (59)	Liberal (35)	1995/1999	1999
	Manitoba		NDP (32)	PC (24)	2002	2002
	Quebec		PQ (76)	Liberal (48)	2002	2002
	Newfoundland		Liberal (32)	PC (14)	2002	N/A
	New Brunswick		PC (28)	Liberal (26)	2004	N/A
	Nova Scotia		PC (30)	Liberal/NDP (11/11)	2001	N/A
	Prince Edward Island		PC (26)	Liberal (1)	2001	N/A
	Alberta		Vriend v. Alberta [1998]	PC (63)	Liberal (18)	2007

Deviant case – table 1 indicates that Alberta does not fit neatly into this adoption regime typology (Minnett Watchel, 2016), justifying examining developments within the province as a case study. To examine these developments, I use historical process tracing, expanding the time frame analyzed beyond that typically examined by LGBT politics scholars (typically the 1990s to mid-2000s) to include the province's entire adoption policy history. Doing so allows for the expansion of the number of observations, and to be sensitive to specific period effects without missing any overarching patterns or variables (Steinmo, 2008). These may offer the most compelling theoretically and empirically important dependent variables once the study is concluded.

In order to gather the necessary and relevant information, this research relies on elite interviews conducted with former elected officials, including government cabinet ministers, opposition members, and adoption workers. In addition to these accounts, I draw on secondary literature, media (both digital and print), and primary documents including legislation and various court decisions.

ANALYSIS AND FINDINGS

Strong-Boag (2009) identifies three periods of adoption policy development common across the Canadian provinces, organized by patterns found in institutional arrangements, policy goals and characteristics, and social trends. For the purposes of this study, neoliberal developments in the third period, taking place from approximately 1960 to the present and characterized by governments' attempts to interpret and enforce what they consider to be "the best interests of the child" are most important in explaining why gay and lesbian Albertans were able to adopt in 1999. During this period, the state plays an overtly interventionist role in protecting children, often removing them from families deemed "unfit" based on criteria such as location, race, and other perceptions of fitness. This research identifies six key developments, the first two of which were previously unidentified:

1. Bill 35 – *Child Welfare Act* (1985): specified that any adult could make a direct application to the court for an adoption order; removed requirement that director of Child Welfare be notified of private placements
2. Bill 55 – *Child Welfare Amendment Act* (1988): introduction of open adoptions; required private agencies be licensed to perform home studies; provided additional responsibility for birth mothers to decide future of unborn child

ANALYSIS AND FINDINGS (CONTINUED)

3. Vriend v. Alberta [1998]: Supreme Court decision "reading in" sexual orientation as a protected ground under Alberta's human rights code
4. Cabinet committee designed to fence off policy implications of Vriend decision finds "no province-wide policy on the placement of children in same-sex parented homes" (Rayside, 2008)
5. Bill 46 – *Miscellaneous Statutes Amendment Act* (1999): changes 'stepparent adoption' to 'spousal adoption' without defining spouse
6. Private adoption agency, Adoption Options, declares it welcomes same-sex applicants and expectant mothers actively choose gay and lesbian couples as parents

CONCLUSION

This research identifies two previously unknown developments proving key to understanding why Alberta, despite its reputation as the most socially conservative province, allowed gays and lesbians to adopt in 1999: removing significant government control over private agencies and allocating additional responsibility to expectant mothers. These developments, occurring prior to those examined by Rayside, do not refute his findings but ultimately reinforce and add empirical support for them. However, one modification to his work is required. Alberta's early extension of adoption rights to same-sex couples should not be described as a shift towards neoliberalism. Instead, we should more accurately describe it as the unintended result of earlier neoliberal policies.

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