

Queering Public Policy: A Canadian Perspective

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Canada is in the forefront of lesbian and gay rights in the world. It is one of the few countries that systematically ban discrimination against lesbians and gay men in areas such as housing and employment while, at the same time, extending recognition to same sex couples. Same sex marriage is on the Canadian policy agenda and is fast becoming a legal fact across jurisdictions. Lesbian, gay, bisexual and transgender (LGBT) struggles over the last twenty years have centred on litigation. Drawing on the powerful template of rights discourse, a discourse that is deeply rooted in Canadian society, the LGBT movement has claimed the rights of citizenship on equal terms with heterosexuals. This article argues that the quest for legal rights is only one stage of LGBT struggles and that, as legal recognition and protection is increasingly extended to lesbian and gay citizens and as the drive for legal equality reaches its apex with the legal recognition of same sex marriage, the policy agenda of the lesbian and gay movement will increasingly focus on advancing queer identities and interests within social institutions such as the education system, the health care system and broader fields of social policy. As the lesbian and gay movement moves beyond the drive for legal citizenship, many of these struggles will focus on overcoming the social stigma that still attaches to LGBT identities as well as the myriad social practices that reinforce this stigma. These struggles will highlight the heteronormative organization of social life and, by extension, the heteronormative organization of public policy and of the policy process itself. The term heteronormative refers to the ways in which heterosexuality is treated as an often unstated social norm. For example, social policies are often based on a heteronormative concept of the family (opposite sex partners and their children). At the same time as the contemporary LGBT movement sets out to challenge heteronormative forms of policy and practice, the

prospective policy agenda in the lesbian and gay sector promises to reinforce a liberal and state-focused citizenship.

This article sets out to define this policy terrain and to suggest the ways in which LGBT people are currently organized into (and out of) the policy process. The first section of the paper explores the LGBT public policy issues that have been put forward by LGBT activists and advocates including: anti-discrimination measures, relationship recognition, parenting rights, hate crimes/hate speech, sexual regulation and social policy (health, education and housing). The balance of the paper situates these concrete policy debates within the broader concept of sexual citizenship. In doing so, the paper highlights the extent to which public policy is organized around profoundly heteronormative assumptions about the nature of Canadian economic, social and political life. LGBT citizens have been organized into the policy process in ways that reflect and reinforce a liberal model of sexual citizenship. This model of liberal sexual citizenship has yielded tremendous ‘advances’ in LGBT legal rights and recognition in Canada; yet, this model of citizenship restricts LGBT interests and issues in ways that forestall a more profound excavation of the project of a queer public policy. By drawing on burgeoning studies of sexual citizenship, this analysis follows many other analysts of queer politics in pointing to the complex ambiguity of the project of inclusion and recognition (for example, Epstein, 2003; Gotell, 2002; Herman, 1989; Rubin, 1984).

Lesbian, Gay, Bisexual and Transgender Public Policy Issues: An Overview

In November 2003, the email list of the main Canadian LGBT public advocacy group, Egale, had a debate over the future of LGBT public policy issues. In the wake of court decisions in favour of same sex marriage, one contributor to the list suggested that there were few lesbian

and gay (as opposed to transgender) issues left to be dealt with on the political agenda, except the question of the higher age of consent for anal sex (18 vs. 14 for vaginal intercourse). In response, Egale board member Stephen Lock, an activist from Calgary, pointed out that sexual regulation of queer people was still very much a live issue in the wake of bar and bath raids in Montreal and Calgary in 2003. These raids, undertaken under the federal criminal code bawdy house laws, resulted in the arrest of eight people and, according to Lock, constituted an “attack on gay space.” Lock went on to say, “The most basic issue of our equality is not whether we can marry or not marry. Our sexuality is the most basic issue upon which we continue to be vilified and attacked” (Lock, November 3, 2003). This debate demonstrates the different views of LGBT public policy issues that are held even among the politically active segment of the LGBT community. To begin then, we will survey the most common types of public policy issues that have been raised by the Canadian LGBT movement.

Freedom from discrimination. As for other marginalized groups in Canadian society, a basic area of LGBT public policy concerns freedom from discrimination based on sexual preference in areas such as employment and housing. Freedom from such discrimination was a central goal of the gay liberation movement from its inception in the early 1970s and was the subject of many of the struggles of the early movement. In the 1970s, activists pushed forward challenges to the exclusion of sexual orientation as a prohibited ground of discrimination in human rights legislation at the federal and provincial levels. These struggles were largely unsuccessful in securing basic human rights protections, except in Quebec where the provincial human rights code was amended to include sexual orientation in 1977.

The entrenchment of the Charter of Rights in 1982 was an important turning point with respect to the inclusion of sexual orientation in federal and provincial human rights legislation. In many provinces, the spectre of Charter litigation moved the policy debate toward the inclusion of sexual orientation in human rights legislation over the course of the eighties and nineties, beginning in Ontario in 1986 (Rayside, 1988). Early litigation such as that by Graham Haig over discrimination against gay and lesbian members of the Canadian Forces established that sexual orientation had to be included in the federal Human Rights Act (*Haig v. Canada*), even though the Act itself was not formally amended until 1996. Jim Egan and Jack Nesbit's 1995 case (*Egan and Nesbit v. Canada*) established that sexual orientation was included in the ambit of the Charter's equality rights clause. Delwyn Vriend's 1996 Charter challenge established the primacy of the Charter's equality rights provisions over provincial human rights legislation, forcing Alberta to include sexual orientation in its human rights legislation as a prohibited ground of discrimination (*Vriend v. Alberta*). By 2003, when Nunavut passed its human rights legislation, sexual orientation discrimination was prohibited in every province and territory, as well as in federal jurisdiction. The most important outstanding issue in this area is that of transgender (trans) discrimination or discrimination based on gender identity. Some court and tribunal decisions have indicated that trans people are protected under the rubric of sex discrimination in federal, provincial and territorial human rights legislation. Yet, as advocates for trans people have argued, *de facto* protection is not as useful for marginalized groups as explicit and visible protections as the prohibition against discrimination based on gender identity. Therefore, many trans people would prefer explicit human rights protections.

Relationship recognition. The second major area of LGBT public policy concerns claims for relationship recognition such as the right to receive same sex benefits in the public and private sectors, the right to adopt, the right to receive support upon breakdown of a relationship, and the right to marry. Relationship recognition can be characterized as freedom from discrimination in the sense that lesbians and gay litigants and advocacy organizations are demanding that lesbian and gay relationships be treated in the same way as straight relationships under law and public policy. However, spousal and parenting rights potentially involve a much deeper level of recognition of LGBT people as citizens. Relationship recognition is controversial in the lesbian and gay male communities in ways that the first type of equality-seeking is not. Within the communities, there are some who oppose relationship recognition as a co-optation of the original goals of the gay liberation movement – sexual freedom – and as marking the conservatization of the movement (Hannon, 1999). Others have called attention to the feminist critique of family as a patriarchal institution and wondered if relationship recognition will radicalize and transform the heterosexual family (Cossman, 1994; Herman 1989). Increasingly, relationship recognition and same sex marriage are viewed as mechanisms for the inclusion of LGBT citizens on terms that reinforce neoliberal citizenship (Gotell, 2002; Boyd and Young, 2003, Smith, 2005).

If judged by their actions and political effort, the main organizations of the lesbian and gay rights movement at the federal level currently view relationship recognition as the main goal of their political activism. Although such organizations recognize that there are lively debates on the legitimacy of relationship recognition within the gay male and lesbian communities, in general, rights based organizations are caught up in a political dynamic which demands the articulation of a clear-cut, almost ‘ethnic’ identity in order to make their

rights claims legible to the Canadian public, the media, the courts, the governing caucus and policymakers. In a similar vein, LGBT organizations usually present an equality rights argument that is based on the moral and political equation of lesbian and gay male couples with straight couples.

An increasingly important subset of relationship recognition concerns parental rights, especially on custody and adoption (Rayside, 2002). Some of the earliest legal cases that were covered by the gay press in Canada during the seventies were custody hearings, most commonly those in which lesbians lost custody of their children upon the break-up of their marriage. This was an important issue around which lesbians organized during the late seventies and early eighties. As the baby boomer generation of “out” lesbians and gay men settled into mid-life in the eighties and nineties, some members of this group were either partnered with women and men who had a children from a previous heterosexual relationships or decided to have children of their own, through adoption or through the use of new reproductive technologies or other private arrangements. Because of the lack of accurate census data about the LGBT population and families, there is no firm estimate of how many such families exist in Canada. However, such families are certainly an important political constituency within the LGBT community in Canada and have shaped the recent politics of the movement. To the extent that lesbians and gay men have done more organizing together over the last twenty years, this has happened in some measure because of the growing importance of LGBT couples with children, a change which opened up a new political space between lesbians and gay men around human rights issues.

These new forms of family gave rise to new sets of political issues including the rights to legal adoption, both for same sex couples wishing to adopt children, and for same

sex couples wishing to adopt each other's biological children. Families headed by same sex couples have also challenged the two-parent assumption of Canadian law by arguing that children should have the right to three parents, a legal issue that arose in an Ontario case in which two lesbians were raising a child together with the biological father of the child, who did not live in the house. All three wished to be the legal parents of the child and were denied by an Ontario court (Cossman, 2003). Another issue in the parenting area concerns access to new reproductive technologies for lesbians (Lüttichau, 2004). Lesbians played an active role in the Royal Commission on New Reproductive Technologies in pushing for the right to access these technologies and some tensions arose between lesbians and other feminists, who were more sceptical of the new technologies and their implications for women (Fortier et. al. 2003).

Recasting Canadian public policies and law in such a way as to recognize same sex couples in other areas is complicated because of the fact that the heterosexual family has been the cornerstone of civil society and the dominance of this family form underpins Canadian law, public policy and social practice, as in other Western countries. Everything from registering a motor vehicle to going to the dentist potentially involves recognition of heterosexual spousal relationships in law, practice and policy and, thus, the recognition of same sex relationships entails a wholesale restructuring of these policies in both the public and private sector. However, over the last twenty-five years, there has been a strong push from common law straight couples for recognition of their relationships on par with relationships between heterosexual legally married Canadians. In law and social practice, the firm distinction between legally married and common law or *union de fait* relationships has been weakened, with Quebec leading the way in the decline of legal marriage and the rise of

long-term non-married partnerships between heterosexuals, including heterosexuals raising children. Opposite sex couples who lived together “common law” in the provinces governed by English common law or *union de fait* in Quebec, governed by the civil code, indirectly contributed to the social, political and legal weakening of the special status of legal marriage, creating political opportunities for same sex couples to claim recognition.

Advocacy organizations and trade unions have played a key role in pushing for relationship recognition. Since the advent of the Charter, many LGBT organizations, most notably Egale at the federal level as well as trade unions such as the Canadian Union of Public Employees, have undertaken political work around the project of Charter litigation and have intervened in court and tribunal cases concerning relationship recognition. These efforts have resulted in consistent court decisions in favour of same sex relationship recognition, by far the most important of which is the case of *M v. H*, an Ontario case in which a lesbian sued her former partner for spousal support upon the break-up of their long-time relationship. As in common law heterosexual partnerships, M had contributed to building H’s business and claimed that H’s income in part depended on her labour, both in the household and in the business. M. claimed that this relationship had been based on financial interdependence, an interdependence that had to be recognized at the end of the relationship, just as it would have been for a straight couple, living “common law” or married. The Supreme Court of Canada agreed. The federal government and many of the provinces responded to this decision with an overhaul of their legal regimes with respect to relationship recognition. Of these initiatives, those which affected the greatest number of Canadians were the federal government’s 2000 *Modernization of Benefits and Obligations* bill, which amended sixty-nine federal laws and regulations so that any provisions affecting

spousal benefits and obligations; Quebec's 1999 legislation that re-defined the term 'spouse' in thirty-nine provincial laws and regulations and Ontario's *Act to Amend Certain Statutes Because of the Supreme Court of Canada Decision in M v. H.* (Bill 5), which amended sixty-seven Ontario laws ranging from *Estates Act* to the *Land Transfer Tax Act* (including the *Family Law Act*, the specific statute at issue in *M v. H.*).

These changes formed the background to the issue of same sex marriage which was a natural next step after changes signalled by *M v. H.* If common law couples and couples living in *union de fait* have rights in federal, provincial and territorial law that are similar in many ways in those of married couples and if same sex couples were accorded similar rights to such couples in the wake of *M v. H.*, then it is only logical that same sex couples should have the right to access legal marriage as the final measure of legal, political, social, economic and symbolic equality. In important respects, non-marital heterosexual relationships are no longer stigmatized. To the extent that heterosexual marriage is no longer as important as it was, one might ask why militant heterosexual activists in the evangelical Protestant organizations, the Roman Catholic Church and the Reform/Canadian Alliance party are so keen to continue to restrict access to legal marriage and why gay and lesbian couples are so eager to get it.

For many same sex couples, the solution lies in the idea of full equality. Even if the differences in practice between marriage and common law partnership are relatively trivial, especially outside of Quebec, there is still an important symbolic dimension to the public and legal recognition of a sanctified relationship. By the same token, this is why a political counter-movement of heterosexual militancy on the marriage issue has emerged. Further, legal marriage still confers some specific benefits that are not available to common law

couples. These vary by provincial and territorial jurisdiction but some of the most important are the fact that same sex couples face formidable complexities in sponsoring their partners for immigration to Canada, barriers that are not faced by married heterosexuals. A series of court decisions in 2002-03 in B.C., Ontario, and Quebec led the federal government to propose legislation that would recognize same sex marriage and to refer the question of its constitutionality to the Supreme Court of Canada. As of 2005, same sex marriages were being performed in most provinces and territories in response to court rulings and federal legislation to legalize same sex marriage across Canada was under consideration by the Martin government.

Hate crimes/hate speech. Another important area of public policy for LGBT citizens has been that of combating violence and hatred (Janoff, 2005). Despite legal recognition and anti-discrimination measures, LGBT people are often the victims of violence and hate speech, ranging from the bullying and teasing of school-aged children through to gay-bashing and murder, motivated by hatred of LGBT people. In some cases, young men who are thought to be gay have been attacked by peers. A series of murders of gay men in Montreal in the early nineties led to a human rights inquiry by the Quebec human rights commission while the murder of Aaron Webster, a gay man, in Vancouver in 2001 led to a new campaign to stop anti-gay violence (Matas, 2001). Transsexuals have also been targeted as in the cases of three young transsexual sex trade workers who were murdered in Toronto in 1996 and the more recent murder case of a transsexual sex trade worker. Ki Namste has argued that those who break with normative gender/sex identities are most likely to be targets of violence (1996) as the perpetrators use violence to police their own self presentation. Because of the central importance of gender identities in this type of violence, Namaste's

analysis suggests that it must be understood as much more than simply “gay bashing” and that men, women, and transsexual citizens have different experiences of violence (1996). Grass roots organizing in the LGBT community on anti-violence increasingly recognizes these differences.

In public policy terms, anti-gay violence has translated into a number of initiatives in federal politics, the most important of which have been the amendment of the Criminal Code to include sexual orientation as a named ground in sentencing for hate crimes (passed in 1995) and the Bill C-250 on hate speech (passed in 2004), which would include sexual orientation within the ambit of the Criminal Code’s definition of hate propaganda, making it a criminal offense to incite hatred against an identifiable group based on colour, race, religion, ethnic origin or sexual orientation. These measures were both undertaken after substantial public debate, including the mobilization of the Christian Right against the bills. The hate sentencing provisions were strengthened in 2003 by NDP MP Svend Robinson’s private member’s bill to amend the criminal code amendment on hate propaganda in order to add sexual orientation to the list of prohibited grounds. Although the amendment was opposed by the Canadian Alliance Party, it was supported by MPs from other parties and passed into law just prior to the 2004 federal election (Dunfield, 2003).

Sexual freedom and moral regulation. Sexual freedom was the central characteristic of the gay liberation movement which, in itself, was inspired by the youth revolt and sexual revolution of the sixties. Sexual freedom continues to be a live issue in lesbian and gay politics. For some, sexual freedom is the main goal of the movement and a key dimension of lesbian and, especially, gay political identity. The freedom to engage in “various forms of sexual practice in personal relationships” is a central feature of sexual citizenship

(Richardson, 2000: 108). In concrete policy terms, in the Canadian context, this area has included issues such as censorship of lesbian and gay bookstores, pornography, criminalization of anal sex, police attempts to regulate public sex, and age of consent laws. These policy issues sparked the first waves of gay liberation organizing in the 1970s. Many gay and lesbian communities were on the receiving end of police repression and violence and the counter movement against policing practices in many cities was an important component of queer politics, especially in urban centres. The Toronto bath raids of 1981, the policing of a string of gay murders in Montreal in the early nineties and the murder of Aaron Webster in Vancouver in 2002 (a victim of gay-bashing) are cases in which policing has been politicized in the lesbian and gay communities. Censorship of lesbian and gay reading materials by Canada Customs has been the subject of a string of court challenges, led by Little Sisters bookstore in Vancouver (Fuller and Blackley, 1995).

In the earlier period of its history, Egale was less interested in such issues, both because the relationship between the police and the gay community has usually been treated as a local concern and because of the fear that such issues would tarnish their public image and drive away potential supporters (Griffin, 2000). As a public policy issue, sexual freedom tends to emphasize differences between lesbians and gays on the one hand and straights on the other hand while the first type two types of issues - freedom from basic forms of discrimination and relationship recognition - tend to emphasize the similarities between queers and straights. Sexual freedom issues have the potential to challenge openly the line between “good sex” and “bad sex,” and between sexual order and sexual chaos, in Gayle Rubin’s terms (Rubin, 1984). Fighting for relationship recognition, parenting rights and same sex marriage suggests that lesbian and gay couples fit into an acceptable ‘family’ model

(precisely the point of the feminist and gay liberationist critiques of ‘family’ in the lesbian and gay communities), the political issues around sexual regulation and sexual freedom threaten this cozy picture of middle class and monogamously-coupled respectability, by pushing at the line between ‘good’ and ‘bad.’ Advocacy organizations are often caught up in the dynamic of presenting the ‘good’ face of the community to those outside of it. This dynamic has been well documented in other communities as well. For example, Cathy Cohen’s work on AIDS and African American political organizations shows how marginalized peoples often produce advocacy organizations that seek accommodation and assimilation with dominant economic, political and social models (1999).

Social policy. A fourth area of public policy for LGBT citizens concerns the provision of social services to queer communities and the ways in which the interests of LGBT people are represented in social services and social service delivery. This issue is most often raised by urban LGBT nonprofit organizations who work on the front lines with marginalized subpopulations within the LGBT community such as youth. This policy area is the least well understood and the most neglected, yet has the most potential to lead to the project of “queering” public policy, which is, questioning and contesting the heteronormative organization of public policies. This heteronormative organization of public policy is particularly visible in the area of social services in which policies are predicated on the heterosexual nuclear family model. Struggles around relationship recognition, LGBT parenting, and same sex marriage were long thought to have the potential to contest the traditional definition of the family. Yet, much of the discursive construction of queer rights in these areas has been based on the idea that same sex couples or LGBT people are the same as heterosexuals and wish to access the same rights and obligations as straights on a level

playing field. In contrast, what is being recognized in public policy is what is different about queer people. This same dynamic applies in the broader area of social service provision; as with sexual regulation by the state, the policy issues here highlight what is different about LGBT people and hence rests on claims for the recognition of specific identities. Moreover, the complexities and diversities of the LGBT population mean that there are a broad range of issues that arise. The health needs of bisexual citizens are not the same as the health needs of transsexual citizens. Hence, these policy areas pose a deeper challenge to conventional policy processes and policy analysis than the simple inclusion of LGBT citizens as an undigested group, defined by “sexual orientation”; rather, they question the heteronormative organization and assumptions of the policy process and assert distinctive LGBT identities, needs and interests.

Over the last ten years, the recognition of LGBT parents and their children in the school system has emerged as a political issue in diverse communities across Canada. These issues centre on the recognition of the needs of LGBT youth in the school system as well as the recognition of families with same sex parents (Rayside, 2003). In British Columbia, the strength of the evangelical movement has produced challenges to the use of gay/lesbian-positive reading materials in the elementary school classroom (the Surrey book banning case) as well as debates over the evangelical campus codes that condemn homosexuality and their relationship to teacher training for public schools (the Trinity Western University case) (Smith, 2004). In Ontario, high school student Marc Hall sparked an ongoing legal battle when he sought to take his boyfriend to the prom at his Catholic high school. In addition to these high profile cases, there has been organizing in school boards across Canada on the issue of combating homophobia in the school system, providing support and resources for

LGBT students and families and on designing and implementing equity policies for public schools.

Like education, LGBT activism in health policy is longstanding. The AIDS crisis of the eighties sparked critically important challenges to the expertise of doctors, scientists, governments and corporations. The LGBT communities were in the forefront of AIDS organizing and pioneered new forms of social movement organizing through the theatre and direct action of groups such as ACT UP! The LGBT movement across the medical professions worked hard to remove the equation of queer sexuality with mental, sexual or medical deviance. In the course of so doing, the LGBT community was one of the key actors – along with the women’s movement – in challenging medical and scientific expertise in policy-making in the health care field. The questioning of the dominant expertise of the medical community by AIDS activists is echoed by the contemporary health movement among LGBT activists. The newly-established Canadian Rainbow Health Coalition has brought together health practitioners and stakeholders and to push for more recognition of LGBT health needs in the health care system.

Health policy is particularly important for transgender people, especially for transsexuals who may wish to undergo surgical reassignment. Increasingly, surgical reassignment surgery (SRS) is defined as the most important human rights issue in the trans communities. Recent struggles over trans inclusion within Egale and other organizations have highlighted the double marginalization of the transgender communities, whose interests and identities have often been submerged and marginalized within the broader spectrum of gay and lesbian politics (see Broad, 2002). The emergence of trans health as a human rights issue builds on a long tradition in LGBT politics in which health has been politicized.

Another emerging social policy area is that of housing and social assistance policies. Although these are usually not defined as LGBT issues, these policies are particularly important for LGBT youth. The ongoing stigmatization of LGBT youth in their families, schools and communities is at the core of this set of issues as LGBT youth are more likely to be rejected by their families and to face bullying and harassment in school and community settings. Because of these factors, such youth are more likely to suffer from mental health problems leading to suicide and more likely to migrate from smaller communities into large cities such as Toronto, Vancouver and Montreal where they may encounter homelessness, street life and the sex trade. Social assistance and affordable housing are critically important for queer youth and yet the specific needs of LGBT youth are not taken into account in the design of housing and social assistance policies, which are predicated on the heterosexual model of family and intimate relationships (Grundy, 2003).

Queering Public Policy: Sexual Citizenship

The LGBT policy area entails much more than simply a question of recognizing or granting rights to LGBT citizens. As this survey of policy issues has demonstrated, LGBT political issues are not restricted to formal-legal citizenship rights such as relationship recognition or anti-discrimination measures. Drawing on the interdisciplinary literature on sexual citizenship and gender, this section presents an analysis of the distinctive means by which public policy can be “queered.”

Feminist analyses of public policy and citizenship offer important guidance for understanding LGBT political dynamics. Feminists fought for formal-legal equality, measures and similar treatment for women on issues such the right to vote, the right to hold

property and the right to education. However, feminists also fought for differential treatment that would produce equality of results for women such as the right to maternity leave. While some feminist claims focused on how women should be treated in the same way as men, other feminist claims focused on the recognition of difference. Similarly, in analyzing LGBT claims, we can differentiate between claims that focus on the similarity of treatment between LGBT people and straight people (for example, non-discrimination measures, relationship recognition, same sex marriage) and those that focus on treating LGBT people differently in the name of equality of results (for example, parenting rights, access to new reproductive technologies). The perils and pitfalls of engagement with the state for LGBT people are paralleled in the experience of women's organizations. The dilemmas of feminist engagement have been well documented in Canada (Bashevkin, 1996; Dobrowolsky, 2000; Findlay, 1996; Young, 2000).

However, feminist experience also suggests that political claims may go beyond the similar/different debate to a recognition of the existence of patriarchy as an organized set of political, economic, social structures that oppresses women. In this area, feminists have mounted a wholesale challenge to the existing structures of citizenship and public policy in liberal democracies, arguing that liberal citizenship is fundamentally gendered and that public policies, taken as a whole, rest on the assumptions of a patriarchal society. In policy studies, these forms of feminist analysis have led to important critiques of the traditional welfare state model or failing to understand social policy as a gendered project. The work of Bashevkin (1996), Mahon (2001) and Jenson (1989) demonstrates how the comparative welfare state literature has failed to account for gender and has given rise to a new comparative analysis and classification of welfare states in terms of gender equality.

Similarly, the moves towards the gendering of policy analysis and the policy process reflect analyses that are based on an understanding of systemic gender inequality. In these approaches, women are not simply a homogenous and unitary category, dealt with as one of many stakeholders in public policymaking. Rather, gender is treated as a set of power relations that is central to policy analysis.

The project of queering public policy is analogous to these projects of gender analysis. Heteronormative social organization is an analogue to patriarchy, although its structural power has not been theorized fully in terms of its implications for social policy and political economy. Lesbian feminists in particular have emphasized that heteronormativity is intimately tied to the reproduction of patriarchy because of the importance of controlling sexuality and reproduction in setting the terms of gender relations. In the ferment of the late sixties and early seventies, many of the early gay liberation and lesbian feminist activists emphasized the important of the links between feminism and gay liberation, arguing that patriarchy was inherently heteronormative and highlighting the common interest of feminists, bisexuals, gay men and transgender people in fighting state regulation of sexuality and dominant social norms of sexual orientation and gender identity. This argument has recently been restated in the analysis of the recent evolution of U.S. policies on lesbian and gay rights recognition, which have taken a very different track to Canada's. Anna Marie Smith argues that the campaign in defense of heterosexual marriage in the U.S. is linked to the attempted sexual regulation of single mothers by welfare reformers (2001). Smith argues that U.S. welfare reform has focused on the "poor single mother" who is "explicitly expected to marry her way out of poverty, both for her own sake and for that of her children." As Smith argues, "patriarchal heterosexual marriage is more than a moral category; it is an institution that is

supposed to replace the state's obligations towards the poor. The promotion of patriarchal heterosexual marriage...is therefore integral to the post-welfare state regime" (Smith, 2001: 315). This is an important example of potential links between feminist and queer analyses of social policies.

Just as some feminist policy analysis has suggested that gendering public policy must mean more than simply "add women and stir," so too the project of queering public policy entails bringing a queer perspective to bear in all areas of policy analysis. At a simple level, this means that queer advocacy groups must be included as policy stakeholders across all sectors of public policy from tax policy to housing and health. On issues of policy process such as citizen consultation, citizen engagement, and state policies towards the voluntary sector and advocacy organizations, LGBT groups would be included, rather than excluded (Smith, forthcoming). In other words, queer people and their issues would no longer be ghettoized in the bailiwick of Charter-based equality rights, but would become policy "citizens" (Grundy and Smith, forthcoming).

This project of formal inclusion is similar to that demanded by feminist organizations in the 1970s and its importance is underlined by recognizing the extent of the current exclusion of LGBT organizations from the policy process from the local to the federal levels of government. LGBT citizens are far behind other groups in terms of their formal inclusion. For example, LGBT organizations are not routinely consulted in exercises on citizenship engagement or the voluntary sector and LGBT interests are not systematically taken into account in health, education, and housing. The first steps towards inclusion, then, are based on claims of sameness, i.e. LGBT groups should be included as are organizations representing other groups in Canadian society. However, when LGBT organizations and

perspectives are included, claims based on differences immediately arise. For example, LGBT perspectives on health policy emphasize the distinctive needs of LGBT citizens, distinctive needs that arise out of the specific effects of social marginalization for some segments of the LGBT community or that reflect specific interests of the community. The specific experiences of LGBT people with depression, suicide or breast cancer are not the same as straights and specific policies are needed to deal with these difference. Stephen Epstein, in discussing LGBT health activism in U.S., refers to this as the “inclusion-difference” dynamic, meaning that, once LGBT people are ‘included’ in the policy process, their ‘difference’ from heterosexuals becomes the primary focus (2003).

In this sense, the project of queering public policy eventually must move beyond the analogue of feminist analysis of public policy by recognizing the distinctive subcultures of LGBT life and ensuring that the state steps out of certain areas of regulation of sexuality and sexual practices. Raids on bathhouses in Montreal and Calgary in summer of 2003, police raids on the Toronto lesbian club the Pussy Palace in 2000, police attempts to regulate public sex in parks and washrooms, and the ongoing censorship of lesbian and gay erotic and reading material by Canada Customs entail the recognition of the distinctive cultural practices of LGBT communities. This aspect of the project of queering public policy is somewhat analogous to debates about racialization of public policy. Citizenship regimes that are based on the historically dominant English or French Canadian concepts of culture must take account of ethnocultural groups whose cultural and religious practices may be different from the historically dominant norm and whose histories of marginalization may give rise to distinctive interests and identities. Obviously, the recognition of cultural difference in citizenship practices is one of the most important public policy issues of our time in Canada,

as elsewhere (as we see in the French debate over the wearing of the hijab in school or the U.S. debates over bilingual education). The analogy here to heteronormative social organization is that, for LGBT communities, the history of marginalization and the nature of queer difference give rise to distinctive subcultural communities. The recognition of these communities may entail inclusion in public policy formation and public policy, but it may also entail policies that are tailored to respecting difference by rolling back the repressive role of the state in regulating queer sexualities.

A long and important thread of literature in queer theory and LGBT politics calls attention to the dangers of inclusion. Recalling Gayle Rubin's 'good sex', 'bad sex' distinction, inclusion based on assertions of sameness creates the 'good queers' and 'bad queers'. Those who settle down with partners and children are integrated into Canadian society with the rights and obligations of citizenship, while the 'bad queers' who live out sexual freedom through the sexual subcultures of urban life are criminalized. Inclusion in public policy may mean that lesbian and gay organizations are turned into agents of the state's project of investing in responsabilized citizenry for the knowledge economy (O'Brian et al., 2004). LGBT engagement in health policy debates may erase queer sexuality and identity, as Stephen Epstein (2003) has argued. Epstein traces the tensions in health policy for gay men between a sex-positive approach that celebrates gay sexuality and a medicalized approach that turns gay men into objects of biomedical expertise and that erases gay male identity from health policy (see also Kinsman, 1996).

These debates demonstrate the dangers of the policy process for LGBT communities. Being included – even with a difference – may eventually extinguish queer identity.

Conclusions

To date, most of the literature on sexuality, citizenship and public policy has focused on the myriad ways in which LGBT people have been excluded from the regime of liberal citizenship and most of the rights struggles of the last twenty years have centred on classic issues of formal-legal equality. In the areas of anti-discrimination and human rights legislation and litigation and the ongoing debates over relationship recognition, adoption, parenting rights and same sex marriage, LGBT claims rest on the assertion that LGBT relationships and families are the same as those of straights and that, therefore, LGBT relationships and families should be included in the regime of benefits and obligations that surround straight relationships and families. This article has argued that the formal-legal equality phase of LGBT political struggles is nearing its end and that the next phase will entail broader demands for the inclusion of LGBT interests and identities across the spectrum of public policy, especially in areas such as education, health care and social services. This expansion of focus will pose a serious challenge for LGBT organizations, which, reflecting the subcultural nature of the communities, are strongest and best organized at the local (especially urban) level. For this reason, organizational restructuring is to be expected in the LGBT area. Egale has already expanded its advocacy focus beyond discrimination and relationship recognition, has undertaken new policy initiatives on social policy, and has proactively sought to develop and reflect the diversities of LGBT communities through the establishment of caucuses within the organization that represent trans people, two spirit people and people of colour. From a policymaking perspective, it must be recognized that LGBT political interests extend beyond the area of Charter-based human rights. LGBT

activism in health care, social policy, housing and urban issues must be incorporated and recognized in the policymaking process.

Inclusion in the mainstream of public policy poses challenges and risks for queer citizens. Just as feminists have negotiated debates over the co-optation, so too, queer organizations, activists and citizens will face the challenge of retaining their distinctive identity and interests in the face of new opportunities for participation in Canadian public policy.

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