

FAITH, POLITICS, AND SEXUAL DIVERSITY IN CANADA AND THE UNITED STATES

Edited by David Rayside and Clyde Wilcox



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Dedicated to those who build bridges at the
intersections of faith and sexual diversity

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Preface

Each of us comes to the ideas contained in this volume through a distinct and personal path.

Clyde's roots in rural West Virginia included a family life deeply imbued with evangelical faith and a community shaped by traditional religiously based values. They were kind and generous people, even if their conservatism included opposition to gay rights. But Clyde was also strongly influenced by the social and political activism of the 1960s and 1970s, and he wanted his own children to learn respect for diversity. In the process of blending these two currents, he has tried to write respectfully about the role of evangelical Christianity in American politics and to argue against over-simplification in characterizing the political beliefs of born-again Christians. He has also taken seriously the political claims of sexual minorities and sought to write about them knowledgeably at a time when few political scientists were doing so.

David's roots lie in the urbanized and largely secularized anglo-Montreal of the decades after the Second World War. Like Clyde, David was politically shaped by the social and political activism of the 1960s and 1970s, in his case during the dramatic period of Quebec's "Quiet Revolution," when religious traditions were being challenged at every turn. It took some time for him to come to terms with being a gay man, but by the mid-1980s he was deeply engaged in community activism on lesbian/gay rights and

was beginning to teach and write in the area. His extensive work on sexual diversity since then has required understanding religiously based opposition to lesbian/gay/bisexual/transgender (LGBT) rights claims in Canada, the United States, and Europe, eventually leading to the introduction of a new undergraduate course on religion and politics.

We each knew of the other's work but first encountered one another through David's contribution of an article to a book co-edited by Clyde on gay rights politics in the United States. Then, in January 2007, Clyde served as the F. Ross Johnson Visitor to the University of Toronto's Centre for the Study of the United States. At the core of his intensive two-week stay was his participation in a conference entitled "Religion, Sexuality, and Politics in Canada and the United States," organized by David and principally sponsored by the Mark S. Bonham Centre for Sexual Diversity Studies, which David directed at the time.

During that visit we agreed that Canada and the United States were ripe for more comparative treatment of these issues and that an edited collection drawing from several of the contributions to the conference and additional submissions would help to stimulate interest in that comparison. The collection is predicated on the belief that the comparison between the United States and Canada inevitably points to instructive differences but has suffered from some exaggeration of contrasts. Sweeping claims portray the United States as dominated by religious conservatism and Canada as untouched by it. These claims imply that the United States is resistant to LGBT claims, while Canada has undergone a political and legal revolution and now embraces them fully. They are all misleading. These two countries are distinct, to be sure, but there are also more parallels than is widely appreciated. Each covers a large territory in which regional variations are important. In each we see complex questions about the way in which faith and religious diversity can and should be accommodated. And in each we continue to see conflict over the extent to which sexual diversity should be publicly recognized.

We are both committed to moving beyond stereotypes in assessing political claims based on sexual diversity and faith, recognizing that they are often in conflict but often are not. Each of us knows of religious leaders who have been strong advocates of LGBT rights or who are genuinely struggling over the reconciliation of their faith with a respect for sexual diversity.

Communities of deep religious commitment are often little understood from the outside, just as sexual minorities are still subject to stereotype or

oversimplified generalization. We also realize that, in societies built upon multicultural realities, the accommodation of difference often requires new approaches and potentially uncomfortable compromises.

Both of us recognize the importance of the borders that separate populations from one another. Americans and Canadians have many similarities, but the 49th parallel separates out distinct patterns of religiosity, politics, culture, and the public play of sexual diversity. Within each of these countries, regional borders also count. And within every state or province and locality, there are important segments of the population that live in worlds that are starkly differentiated along lines of religion and sexuality.

And yet we also recognize important similarities between Canadian and American patterns as well as across regions. We also see growing signs of bridges being built between people of faith and members of sexual minorities and indications that acceptance of sexual difference is expanding even among those who embrace relatively traditional forms of religious belief.

We have much to be thankful for in the completion of this volume. We first acknowledge the thoughtfulness and work of our many contributors, who showed great patience in travelling the long road with us since early 2007.

The original conference benefited from the support of several academic units at the University of Toronto and especially the Centre for the Study of the United States (directed by Elspeth Brown), the Department of Political Science (chaired successively by Rob Vipond and David Cameron), the Office of the Provost, the Faculty of Arts and Science, and the School of Public Policy. Dr. Richard Isaac, a good friend of the Bonham Centre, provided additional support. Robbie Morgan was inimitable and indispensable throughout all stages of conference planning.

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David Rayside, Toronto

Clyde Wilcox, Washington, DC

INTRODUCTION

1

The Difference that a Border Makes The Political Intersection of Sexuality and Religion in Canada and the United States

DAVID RAYSIDE AND CLYDE WILCOX

Religion and sexual diversity issues are intertwined. Any discussion of homosexuality or gender identity will inevitably evoke a response from religious conservatives. Debates over the relationship between religion and the public square frequently settle on sexuality issues as critical tests.

The contentiousness of lesbian and gay marriage in recent American elections demonstrates the extent to which religion and sexuality are entangled. In the 2008 election, when the urgency of other issues swept almost all else aside, four states had anti-gay ballot measures, and in California only the presidential race garnered more resources and visibility than did the referendum to roll back same-sex marriage.

And yet, within six months, the number of states that had extended civil marriage to same-sex couples jumped from two to five. A few additional states established full or partial domestic partnership regimes, bringing to seventeen the number of states that wholly or partially, directly or indirectly, recognized same-sex relationships. And, beyond that, such couples had secured at least partial parenting rights in close to half of the American states at a time when European governments were just beginning to grapple with the issues associated with lesbians and gays having children.

Both presidential campaigns featured regular avowals of Christian faith – on the Republican side through the campaigning of Sarah Palin, on the Democratic side through Barack Obama's repeated professions of faith. And

yet we are also seeing evidence of young evangelical Christians' growing disillusionment with their elders' preoccupations with anti-gay campaigning.

Canada, too, had a national election in the fall of 2008, but religion played a very different role there than it did in the United States. No major party leader in recent history has made more than passing reference to a personal faith. Even Stephen Harper, current leader of the Conservative Party and an evangelical Christian, has remained largely silent on his religious beliefs.

And while the legalization of same-sex marriage had been hotly debated only three years before, when the Conservatives angrily denounced it and threatened to overturn it, there was now nothing being said about it. The party that had succeeded in attracting more religiously conservative votes than any other party in recent Canadian history was disciplining its local candidates to avoid discussing morally conservative issues on the grounds that such issues were electorally hazardous.

How could these neighbouring systems, with so much shared economic life and so many shared social patterns, display such different political patterns? And are the contrasts as great as these electoral snapshots would suggest? When we take a broad comparative view, are we more struck by the difference the border makes or by the power of bridging connections that sustain similarities?

There are important similarities across the international border in the claims pressed against state authority on religious and sexual issues. In Canada as well as in the United States, the 1970s marked a dramatic increase in the visibility of political demands based on one or another form of queer sexuality. In both countries, in part as a response to gains secured by lesbian, gay, and feminist activists, social and religious conservatives mobilized large-scale resources for political intervention in defence of what was argued to be "traditional family values." In both countries, such mobilization led the adherents of such values to shift towards major parties of the right – the Republicans and the Conservatives, respectively.

All this was occurring in the midst of continuing uncertainties in the public at large regarding where and how faith and political action intersected. These uncertainties were bitterly fought out in courts, in legislatures, and in the mass media. And yet, at the same time, we find dramatic shifts in popular beliefs towards more acceptance of sexual diversity, even among those who attach importance to their faith. In looking at each of these countries, then, are we most drawn to political opposition across deep cultural and social chasms or to indications of bridge building?

For all these similarities, cross-border differences still leap out. Questions about religion and the public square have been posed more unrelentingly and contentiously in the United States than in Canada. In so many respects, the American case is an unusual one – in the resources marshalled for Christian advocacy, in the strength of religious conservatism and its organizational presence, and in the persistence of raucous debate over the role of faith in the public arena. For decades, the front line of what some would call a culture war is defined by debates over public recognition of sexual diversity.

Canada seems so different from the United States on these fronts. Despite major controversies over three decades, many claims to public recognition of sexual minorities have been politically settled. All parties at the federal level have essentially turned the page even on marriage – that most contentious of issues. On questions about religion and the public sphere, there continue to be flare-ups, for example over state support for religious schools or the “accommodation” of religious differences. But these tend not to persist as elements in a continuing struggle over core political or constitutional principles.

An exploration of similarities and differences between Canada and the United States in how such issues and debates get played out requires nuance. The Canada-US comparison is so obvious and yet so often neglected. Stereotypes abound, of course, on both sides of the border – either about how completely alike the two societies are or about how completely different they are. More careful observation reveals similarities in areas where most casual observers most notice contrasts, and contrasts in areas where they most notice similarities.

Speaking to Broader Analyses of Canadian-American Differences

An exploration of politics at the intersection of religion and sexual diversity gets to the heart of debates over the extent of cross-border contrast in values and policies. In fact, the character of political struggles over such issues as lesbian/gay rights, abortion, and the death penalty, or the policy outcomes of those debates, are frequently cited in the media of both countries as key illustrations of a growing divide between the two countries or as symptoms of American exceptionalism.

There are roughly three schools of thought on what, if anything, differentiates the Canadian and American cases. The first is that there are sharp differences in values and political outcomes across a wide range of issues. Seymour Martin Lipset (1990) was the most enduring proponent of the argument that

there are major distinctions in the core political cultures of the two countries and that those differences are congealed at crucial foundational moments (Hartz 1964). The United States was born of revolution and of an intense individualism suspicious of state authority. It was also born with a population of fervent Christians, most of whom rejected the idea of an established church but still took their faith very seriously and viewed the new republic in moralistic terms. Canada (both English and French) was founded on counter-revolutionary principles, more focused on public order than on individual freedom, more dependent on an interventionist state than on a less regulatory one, more open to group rights than to individual rights, more likely to adhere to traditional religious denominations than to non-traditional ones, less fervent in both religion and politics than its southern neighbour, and more mosaic than melting pot.

A variant of this approach is just as emphatic with regard to socio-cultural-political contrasts but is less focused on explaining them through origins. Here we might place Michael Adams (2003), who uses survey data to argue that there is a growing divergence in values, particularly on questions of morality, gender, and family, and that this is driven, in part, by religious differences and by lower levels of social anxiety in Canada than in the United States.

Another variant of the argument for contrast is one that emphasizes not so much differences in public beliefs as the role of political and legal institutions, which creates more room in Canada than in the United States for the advocacy of minority rights. This argument is most clearly advanced by Miriam Smith (2008), but it is also evident in those parts of Alexander Smith and Raymond Tatalovich's analysis of moral conflicts that point to contrasting outcomes (2003; see also Tatalovich 1997).

On the other side are analyses that emphasize similarities and, in some cases, convergence. Comparative political economy usually places Canada and the United States in the same category, sharply distinguishing the two cases from the more state-interventionist welfare states of Europe (Hall and Soskice 2001; Coates 2005). Canadian writers in this vein usually emphasize the pressures towards neoliberal convergence that operate on a Canadian economy already so tightly connected to the American economy (Brodie 2003; Bashevkin 1998). On social and cultural fronts, any visitor to Canada and the United States from far away is invariably struck by the economic, social, and cultural similarities between the two countries. After all, most Canadians buy merchandise or obtain services from American-owned companies. Anglophones are more likely to watch American film and television

drama than Canadian, and they are much more likely to tune in to CNN than in to CBC's news channel during times of crisis. In broad cultural terms, Quebec and the American South are justifiably seen as somewhat apart, though perceptive observers will often comment on just how distinctly North American they are.

As to political values, Neil Nevitte (1996) has directly challenged the Lipset view by pointing to similarities in public beliefs on such core values as deference. His more recent work with Chris Cochrane and Steve White challenges the view that "post-industrialism" leads to value convergence, but it still shows strong similarities between the Canadian and American cases, for example in the relationship between religious faith and attitudes towards moral issues (Nevitte and Cochrane 2006). Fletcher, Russell, and Sniderman (1996) also show as many similarities as differences in Canadian and American beliefs on questions of individual rights. Jeff Reitz and Raymond Breton (1994), exploring the experience of immigrant groups and policies towards them, challenge the "illusion of difference" between the two countries, a point also made by Tamara Palmer Seiler (2008). Donley Studlar's (2002) work on tobacco regulation points to more parallel than divergence in policy evolution, despite important contextual differences.

We find ourselves drawing from all these analytical threads, weaving a portrayal of responses to debates over religious and sexuality rights that points both to sharp differences and sometimes to surprising similarities. Whether born of foundational principles or more recent circumstances, there are indeed value differences across the border, even taking into account the variations within each of these vast and regionalized countries. Crucial to these differences is the unusually strong religious faith in the United States and the exceptional strength of evangelical Protestantism. In the United States, this in itself produces more continuous political combat over even the most basic of rights for sexual minorities than occurs in Canada. The stakes in American struggles over these issues are raised by highly politicized debates over the appropriate degrees of separation between church and state.

But we also know that contrasts across the international border are not uniform. Yes, on lesbian/gay marriage, there is a major difference – with 55 to 60 percent of Canadians and 40 to 45 percent of Americans supportive of the inclusive position. About 60 percent of Canadians view homosexual behaviour as morally acceptable; about 40 percent of Americans do so. However, when asked if they support protections against discrimination in employment, Canadians and Americans are about equally (and

overwhelmingly) in support, and when asked about adoption rights they are about equally (and evenly) divided. There is almost no survey evidence on attitudes towards transgender issues, but we suspect that there would not be major differences in the views of Canadians and Americans and that popular responses would display considerable anxieties about identities and behaviours that cross gender lines.

In both countries, LGBT minorities are highly visible, and, increasingly, people of faith – especially young ones – know friends, work associates, or family members who are part of those communities. Contact with minorities does not invariably lead to tolerance or full acceptance, but with sexual minorities the evidence points in that direction. More and more religious communities are struggling collectively towards a more positive attitude towards sexual minorities, with strong parallels across the border. For these and other reasons, we are not convinced that the United States is nearly as beset by a “culture war” as is often argued by observers both inside and beyond American borders.

As to the role of political and legal institutions, here, too, we find mixed evidence. The complexity of the US political system privileges the status quo and reduces the likelihood of sweeping change. Populist mechanisms such as referenda also create openings for Christian right opponents to enact barriers to LGBT rights, further slowing the pace of change towards inclusion for sexual minorities. Contributing to further distinguishing the two systems are the constitutional provisions governing rights protection – affording more robust protections for both sexual and religious minorities in Canada than in the United States.

The institutionalist argument, though, can be easily overdone. Very different institutional orders have produced some strikingly similar policies, as Studlar (2002) shows in respect to tobacco regulation and Smith and Tatalovich (2003) report on abortion – a “morality” policy area where we would expect to see contrast. One reason for the similarities lies in the role of courts in regulating conflict over religion and sexual diversity. These are two very similar countries in the extent to which courts have the right to review legislative acts (in Canada more recently than in the United States). And while the national constitutional frameworks in which courts operate have crucial differences, particularly with respect to LGBT rights, many US state courts have moved in much the same direction as have Canadian courts in responding to relationship and parenting claims by same-sex partners (Pierceson 2005; Rayside 2008). The “exceptional” American institutional setting,

in other words, has allowed for more change than is generally appreciated by comparative analysts.

The two national party systems used to be categorically different in the extent to which the major parties differed on questions related to either religion or sexuality. There is still very strong pressure towards centrism for national parties in Canada, particularly on these issues, but party realignment in Canada over the past decade has narrowed the gap between the party systems.

To what extent are debates over sexuality and religion part of a distinct category of “moral” conflicts? We are not sure how useful this category is. No doubt, the public recognition of rights claims based on religious faith, sexual orientation, and gender identity elicits strong assertions of “deep-seated moral codes” (Smith 1975; Mooney 1999, 2000; Smith and Tatalovich 2003). They are generally not focused on material distribution or redistribution, and, for some writers, this entails a form of “post-materialist” politics centred on issues of recognition that do not easily admit of compromise (Inglehart 1977; Gutmann 1992; Fraser 2003; Taylor 1992). Christopher Mooney (1999) argues that, because they are based on core principles, they are highly salient to the general public.

But these are slippery categories, and, even if there are particular issues that are framed by some protagonists as tied to core moral principles, they are open to very different frames (e.g., about equality). Political battles over redistributive issues like taxation and social welfare have often enough had strong moral currents. Policy initiatives once framed largely in moral terms (liquor regulation, heterosexual marriage, and divorce) have moved towards more utilitarian considerations. And, as for salience, issues related to the public recognition of either religion or sexual diversity vary enormously over time in their salience. Even in the United States, public ratings of high-priority political issues rarely include same-sex marriage – that most controversial of current issues related to sexual diversity.

Some writers argue that, because morality policy, especially in North America, is so often left to the courts, decisions are regularly out of tune with majority sentiment (Morton and Knopff 2000; Smith and Tatalovich 2003). We believe that there is no evidence that systematically differentiates the proportion of “majoritarian” outcomes on moral issues from those in other policy realms (Fletcher and Howe 2000, 2001).

We therefore do not believe that we are helped much or at all by treating the issues at stake here as part of a distinct policy category. As a result, we

believe that the comparative lessons to be drawn from an examination of the intersecting politics of religion and sexuality have broad application, complicating important currents of received wisdom about each country.

In laying the foundation for a more detailed comparative exploration of the political debates over religion and sexual diversity, we begin with a comparison of the religious landscapes of the two countries and the patterns of mobilization around issues of faith and sexuality. We then return to a discussion of the crucial constitutional and institutional contexts within which political action occurs in Canada and the United States.

Religious Landscapes

The fact that the relationship between religion and politics is so continuously debated in the United States derives significantly from the large numbers of Americans who consider religion important, the high proportion of them with traditional or literalist interpretations of scripture, and the size of the groups representing conservative moral positions in policy debates. These characteristics distinguish the American case from the Canadian case, but they also distinguish it from almost all cases in the liberal democratic West.

Of the 50 percent of the US population that is Protestant, 20 percent belong to evangelical denominations, 19 percent to mainline denominations (some of which are evangelical), and 11 percent to black Protestant churches (most of them being evangelical). Twenty-five percent of Americans are Roman Catholic, 2 percent Mormon, 3 percent Jewish, between 1 and 2 percent Muslim, and 2 to 3 percent other religions, the rest mostly declaring no religion. Many more white Americans than Canadians belong to conservative evangelical Protestant denominations, and, in their conservative approach to sexuality, they have many allies in mainline Protestant denominations among Roman Catholics (Latino/as and others), African Americans, and other faiths. Mormons constitute only 2 percent of the population, but their capacity to mobilize and raise money to oppose gay rights was dramatically influential in the campaign against same-sex marriage in the California election of 2008.

In the United States, most evangelical Christians disapprove of homosexuality and strongly oppose same-sex marriage, even if we can see important shifts away from categorical rejection of all rights claims based on sexual diversity. Despite such change, most religious right groups have white evangelical Protestants as their largest core constituency, and they constitute the vanguard of political opposition to LGBT advocates. Though bridges

between white evangelical Protestantism and African-American churches have been difficult to build, the strength of opposition to lesbian/gay marriage is similar in both sets of faith communities (Boykin 2005; Cohen 1999; Jones and Cox, this volume).

Mainline Protestant churches in the United States have slowly moved towards a more positive view of sexual diversity but often only in small steps and with much conflict. Of the major denominations, the United Church of Christ has moved the furthest on such issues as ordination and blessing of same-sex unions. Some Episcopal dioceses or archdioceses have taken similar steps but in the face of even stronger resistance from within the American faith community and the broader Anglican communion. American Catholics in general are not distinctly conservative on questions of sexuality, though the Latina/os among them are somewhat more so than is the average American. Non-Christian faith communities have not been highly visible in public policy debates over sexual diversity, but survey evidence indicates that Jewish Americans strongly support LGBT rights claims (Wald, this volume). Most Muslims and adherents of other faiths oppose them, though they generally do not ally themselves with evangelical Protestant groups on other issue fronts.

Canada has far fewer evangelical Protestants than does the United States, fewer in separate evangelical churches, and their views on a range of public policy issues are at least a little less conservative than are those of their counterparts in the United States. By any of the several measures used to gauge the strength of religious conservatism among Protestants, the proportion of evangelicals in Canada is less than half that in the United States. In the whole population, religion is seen as important among half as many Canadians as Americans, and both regular church attendance and biblical literalism are half as prevalent (Reimer 2003; Stackhouse 2000; Hoover 1997; Hoover et al. 2002; see also Bibby 2002).

The influence of Catholic voices in Canadian public debate is not as strong as their numbers (43 percent of the population) would suggest. This is partly a result of the distinctiveness of Quebec. Catholics constitute an overwhelming majority in that province but rarely attend church; anti-clericalism is noticeably stronger in Quebec than in other provinces; and the church's political influence is negligible (Lefebvre and Breton, this volume). The strong stand taken by Canadian bishops against lesbian/gay marriage appears to have only modest impact on Catholics in the English-dominated provinces and much less in Quebec.

As in the United States, most mainline Protestant denominations in Canada have taken up sexuality issues and have moved towards more inclusive positions. Here there are striking similarities between the path taken by the United Church of Canada (the largest of the mainline denominations) and the United Church of Christ and by the Anglican Church of Canada and its American Episcopal counterpart. In both countries, Jewish minorities have stood out as adopting policies and supporting measures inclusive of sexual minorities. Muslim organizations have more recently acquired a political profile, and, while most are preoccupied with challenging Islamophobic stereotypes, the largest Canadian Muslim groups echo a conservative approach that rejects the public recognition of sexual diversity (Hussain and Rahman, this volume).

In both the United States and Canada, substantial “social justice” currents exist within most faith communities, though they are less visible than are religious conservative interveners in political debate. Conservative organizations are larger, and media coverage regularly pits LGBT advocates against conservative faith-based groups who frame their claims as representing all believers. Equity claims in some sense return the favour, rarely encouraging the use of religious frames in their calls for inclusion. Even in Canada, where there have been such strong voices of social justice coming from Catholicism and Protestantism (including evangelicalism), religiously based political activity is widely assumed to be conservative on issues related to gender and sexuality.

Political Advocacy

It is no surprise that faith-based political intervention in the United States is dominated by a conservative chorus, with evangelical Protestants the dominant voices within. In Canada, religious conservatism is more fragmented, in part because of the smaller numbers of evangelical Protestants and the larger proportion of conservative Catholics in the religious right.

In the United States, political mobilization by conservative evangelicals became more prominent in the 1970s, largely as a result of legal and policy gains secured by pro-choice feminists and gay rights advocates (Adam 1995). Their strength was enhanced not only by the high rates of church attendance and the availability of congregations attentive to the delivery of mobilizational messages but also by the wide reach of conservative media. Gay rights issues, particularly same-sex marriage, have provided religious conservatives with a wedge that has energized their evangelical base and created bridges to other moral conservatives.

Canadian religious conservatives did not have nearly the numerical strength of their American counterparts, nor did they have the incentives to mobilize continuously. Until the mid-1980s, groups representing evangelical Protestantism were small, with a very modest national presence in either the media or the federal political system. Their visibility increased somewhat in the late 1980s, in response to gains by feminists and lesbian/gay rights advocates, and then more so in the early 2000s, when same-sex marriage moved to the front burner (Stackhouse 2000; Malloy, this volume). The patterns of mobilization, and the arguments used, have been heavily influenced by American evangelical Protestant groups. Many English-speaking conservative Christians also have ready access to American religious broadcasting. Still, none of the political intervention in Canada has been on the scale that has become routine for the American Christian right, and none of it has had any lasting visibility. At points where major claims by lesbian and gay advocates were prominently debated, conservative Catholic voices joined in the campaigning against challenges to traditional family values, but this never produced a sustained alliance with evangelical Protestants.

Queer activism is markedly similar in Canada and the United States – in the timing of surges, the development of policy agendas, the strategies deployed, and the frames used to articulate claims (Adam 1995; Rayside 1998, 2008). In both countries, the 1970s witnessed a significant wave of activism and a broadening of the agenda for change. The 1980s spread of AIDS and the emergence of a “baby boom” among same-sex couples (particularly lesbians) were major stimuli to a new wave of activism and to the inclusion of relationship issues in the agenda. The late 1980s and early 1990s also created new openings in national and regional politics on both sides of the border, reinforcing the development of skills and resources applicable to mainstream political intervention.

In both countries, the 1990s saw an important increase in activism focused on transgender rights, with uneven success in broadening the agenda of mainstream groups ostensibly committed to full inclusion. Much energy was focused on health care issues and on the right to have changes made to official documentation registering gender. The relative fragility of the organizations making transgender political claims has been especially marked on the Canadian side, where national and provincial groups of any sort are harder to maintain; however, on both sides of the border the social and economic marginality of trans-constituencies has represented a major challenge to collective LGBT mobilization.

The growth of mainstream organizations focused on sexual orientation has been on radically different scales in the two countries. LGBT groups in the United States have far greater access to resources than do their Canadian counterparts as well as much stronger incentives to organize continuously. Egale Canada remains on its own at the national level, with a permanent staff varying from between two and five. Provincial groups, where they exist at all, rely almost entirely on volunteers. In contrast, the Human Rights Campaign in Washington, DC, has over 140 permanent staff working out of its handsome Washington headquarters.

Substantial advocacy for LGBT equality in both countries has taken place within faith communities. For decades, networks and formalized groups have developed among Roman Catholics, all of the mainline Protestant denominations, some evangelical churches, each of the major currents in Judaism, and, more recently, Muslim communities. This work has often been isolated from other parts of the queer activist movement, which has tended towards highly secular language. But it has contributed importantly to shifts in popular response to homosexuality and (perhaps) to claims based on gender identity.

Constitutional Framework

The constitutional framework governing the role of religion in the public square and the place of sexuality in equality rights law is quite different in Canada than it is in the United States. These differences have widened the cross-border contrast in public recognition of sexual diversity since a good deal of that recognition has been boosted by court rulings. Courts have played extremely important roles in both countries, but from the 1990s onward they were especially critical in shifting public policy towards greater acceptance of lesbian/gay rights, narrowing the capacity of religious conservatives to roll back the clock (see Appendix A and Appendix B).

Both the US and the Canadian constitutions guarantee freedom of religion. The American Constitution's First Amendment stipulates that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The guarantee of "free exercise" is broadly similar to that in Canada, though more regularly contested. Canadian non-Christian minorities may well have been more successful than their American counterparts in securing accommodation of their religious practices (Moon 2008). In 1990, the US Supreme Court seemed to narrow the constitutional reading of "free exercise" in disallowing the religiously

grounded use of a hallucinogenic substance (*Employment Division v. Smith*), though it did not give governments free rein to interfere with faith practices that cause no harm or to favour one religion over another. In the protections offered to faith practices, much is left to federal and state law and to state courts (Greenawalt 2006).

Where there seem to be sharper differences are in current and historical treatments of the question of “separation.” In the United States, the “establishment” clause has been interpreted in a variety of ways, seen by some as a clear stipulation that church and state must be completely separate, by others as a declaration that the state cannot privilege just one faith or denomination (Jelen 2000; Wald and Calhoun-Brown 2006; Wilcox and Larson 2006). In some rulings, the court has seemed to lean towards the first interpretation, but in others it has allowed for the display of faith in public institutions – not least in the retention of “in God we trust” on coins. Political and legal challenges regularly arise to assert the full range of positions on these questions.

The Canadian Charter of Rights and Freedoms, in section 2, sets out “freedom of conscience and religion” as fundamental, alongside freedom of thought and belief, peaceful assembly, and association. In addition, section 15 of the Charter includes “religion” in its declaration of non-discrimination rights. The Canadian political system was not forged by a strong current of anti-clericalism or disestablishmentarianism (Lipset 1990). In what is now Quebec, the Roman Catholic Church long benefited from state support, and elsewhere in Canada Protestant and, to some extent, Catholic churches enjoyed various forms of state recognition. Gradually (and much later in Quebec), most visible forms of state recognition receded, though Catholic school funding remained in place in several provinces, as did tax concessions to other religious schools. Quebec – that most anti-clerical of provinces – has now reorganized its schools along language rather than religious lines, but it continues to provide supports to faith-based and other private schools. A crucifix still hangs over the Speaker’s chair in the National Assembly – this in a province with extremely low rates of church attendance. Across the country, then, discussions of the public role of faith and the intersection of state and religious authority occur within a history of fluid compromise.

Constitutionally based challenges have been directed at Canadian public institutions privileging a single faith (e.g., by opening council meetings with the Lord’s Prayer). The courts, however, have leaned towards a view that official recognition of religious belief is possible as long as it does not

discriminate between faiths. At the same time, they have provided no opening for a challenge to the provision of state funding to Catholic schools since guarantees for at least some such support are embedded in the Constitution.

The constitutional treatment of sexual diversity seems to mark out the United States as clearly distinct from Canada and, some would say, from most of the Western liberal democratic world. The latter claim is most surely exaggerated, but there are in fact strong contrasts with Canada (Smith 2008; Richards 2005; Pierceson 2005; Anderson 2005; Pinello 2003; Mezey 2007). Section 15 of the Charter lays out specific grounds on which discrimination is prohibited, but it does so with open-ended language. So while sexual orientation is not named, the courts have now declared unequivocally that it is an “equity” ground fully analogous to those named and is therefore covered. This interpretative clarity emerged gradually through several judgments in the 1990s, ending with the 1999 *M. v. H.* declaration that same-sex couples could not be denied rights extended to heterosexual couples (Smith 2008).

None of these decisions touched on parenting, but by the mid-1990s it had been the subject of an influential court ruling in Ontario, which ruled against discrimination. Restrictions based on marriage had long been removed, allowing individuals and de facto heterosexual couples to adopt across the country. With the *M. v. H.* ruling, no one doubted that discrimination against same-sex de facto couples would fail to survive constitutional scrutiny. *M. v. H.* did not address marriage; however, starting in 2003, appeal courts in one province after another ruled that civil marriage rights had to be extended to lesbian and gay couples.

The public recognition of individual civil rights for lesbians and gay men, and of family-related rights for same-sex couples, “took off” during the 1990s, widening the gap in policy and law between Canada and the United States (Rayside 2008). Section 15 has not yet been interpreted definitively to cover transgender rights, though some rulings by lower courts and human rights tribunals have accepted claims under the “gender” rubric. Provinces have their own human rights codes, but they are tightly bound to court interpretation of the Charter, which effectively requires the inclusion of sexual orientation in such codes across the country.

The “equal protection” clause of the American Constitution’s Fourteenth Amendment has not been interpreted to create anything like the protective umbrella created for lesbian and gay rights in Canada. Racial discrimination

has been unequivocally prohibited, as, to a substantial extent, has gender; but sexual orientation and gender identity claims have been less positively and consistently embraced. There have been important victories in the US Supreme Court, most notably in the 1996 ruling on *Romer v. Evans* (on an anti-gay ballot measure in Colorado) and in the 2003 decision in *Lawrence v. Texas* (striking down that state's sodomy law), but largely on grounds other than gender identity or sexual orientation (e.g., privacy). Transgender claimants have won some cases in the federal court system, but they have done so under the gender rubric (e.g., in cases related to harassment).

On the other hand, American states have constitutions, and state court systems have more autonomy than do their Canadian counterparts. In the absence of unambiguous direction from the US Supreme Court that discrimination based on sexual orientation or gender identity warrants higher levels of constitutional "scrutiny" than it has so far received, state courts have room to move in quite varied directions and are the ultimate arbiters of state constitutions. In some cases, they are able to rely on state constitutional prohibitions on anti-gay discrimination or on expansive jurisprudence on "equal protection" provisions. In several states this has opened up space for claims from lesbian and gay couples seeking recognition for either their relationships or their parenting rights. Particularly striking is the success of parenting claims by lesbian and gay couples in courtrooms across about half of the states. In Massachusetts, Connecticut, and Iowa, courts have ruled in favour of same-sex marriage (in Iowa, the ruling was unanimous).

Policy Legacies

There is a long history of Canadian state provision of supports to religious institutions – as part of a legacy of blurriness in church-state relations – and little invocation of language equivalent to the Jeffersonian "wall of separation" except, to some degree, in Quebec. Some provinces have in practice moved substantially towards full secularism, for example in school policy, yet have also encouraged a discussion of religious diversity in the name of multiculturalism.

Exaggerated contrasts are routinely drawn between the Canadian cultural "mosaic" and the American "melting pot" – exaggerated because each country has important elements of the characteristic associated with the other (Reitz and Breton 1994). Nevertheless, the official federal Canadian policy on multiculturalism does seem to have provided an important rhetorical framework for the acceptance of religious diversity. The slow but

steady incorporation of multiculturalism into English Canadian identity – and, to some extent, into Québécois identity – is at least partially rooted in the decades-long formal policy commitment to the recognition of difference. The incorporation of ethnic diversity into national identity has also, to some extent, spilled over into the recognition of sexual diversity.

Quebec has some distinctiveness in policy approach and public response to questions of the recognition of religious minorities. Policy recognition is more likely to be framed as “interculturalism” than as “multiculturalism,” with explicit expectations laid out for immigrants to integrate into Quebec society (and to adopt French as their *lingua franca*). There is also more public antipathy in Quebec than in English Canada to the recognition of minority faith practices. Still, the actual differences in public policy are subtle, where they exist at all, and the daily accommodation practices by state and private institutions are not dramatically different in Quebec than elsewhere in Canada in most arenas.

In daily American practice, there is much institutional recognition of multiculturalism, but there are still more heated public debates than in Canada over, for example, school instruction in languages other than English. There are also highly visible claims that the United States is a Christian country and that public policy should reflect that. Across the country there is debate and conflict over what degree of state recognition of religion is appropriate, most of this pitting Christian activists against those defending the separationist view. In the United States, then, multicultural arguments over the recognition of religious difference regularly get swamped by more basic culture wars.

The depth of the racial division in American society, and the dreadful history of slavery associated with it, shape more general debates about equity and rights. The long struggle over civil rights led to important gains in public policy and constitutional interpretation, and it provided inspiration to claimants who focused on other rights questions. On the other hand, the specific legacies around racial struggles, and the continuing depth of social and economic divisions based on race, contribute to a treatment of African-American civil rights claims as distinct. This may well limit the transportability of rights frameworks from race to other issues. The race-based fears and anxieties that permeate American political life may also fuel opposition to all human rights claims. In Canada, no single set of rights claims rises so prominently above the others or provides a master frame. Gains on one front, therefore, are more likely to encourage gains on others.

Much research has pointed to the importance of an orderly progression of rights associated with sexual minorities – namely, to the potential for early gains on fundamental rights to provide a platform for later gains (Wintemute and Andenaes 2001; Waaldijk and Bonini-Baraldi 2006; Wald, Button, and Rienzo 1996). The decriminalization of homosexual activity eases arguments about the legitimacy of prohibiting discrimination in the workplace. The acquisition of individual rights protections then eases claims based on relationships, and, if those are successful, parenting rights flow more readily. Much of this literature is aimed at explaining variations across American states, but it has some relevance cross-nationally. The fact that the criminal law in Canada was amended in 1969 to partially decriminalize homosexual activity helped prepare the ground for later rights claims, which were then successful first on individual claims and then on relational ones. In the United States, most criminal law is lodged within state jurisdiction, with the result that decriminalization of homosexual activity had to proceed state by state. Several reforms were enacted at around the time of the change in Canada's criminal code, but it took the 2003 US Supreme Court ruling in *Lawrence v. Texas* to complete the job.

Another area in which historical legacy distinguishes the two countries is in family policy. As much as in any Western liberal democratic country, Canadian public policy and law have provided recognition to and support of de facto conjugal relationships (Rayside 2008). From the 1970s until the mid-1990s, Canada and most of its provinces substantially narrowed the differential treatment of formal marriage and heterosexual cohabitation. This contrast arguably reduced the resistance to according gay and lesbian couples the right to marriage, especially after cohabiting same-sex couples had gained policy equality in comparison to de facto heterosexual couples in 1999.

There are jurisdictions in the United States, particularly on the west coast, in which legislators and courts have shifted towards a recognition of cohabitational rights, and this no doubt helped ease the way for same-sex claimants. However, the gap between marriage and cohabitation has not been narrowed anywhere in the United States as much as it has been in Canada.

Political Institutions

In the United States, the complexities of the legal environment in which religious and sexual rights are debated are matched by the complexity of the political structure. It was designed to fragment political authority and to

impede radical change. The federal system splits jurisdiction over issues relating to both religion and sexuality between national and state governments. Executive leverage over the legislature is regularly compromised, and, within the legislature, party leaders have far less control over the policy agenda than do their counterparts in parliamentary systems. This fragmentation translates into a comparatively permeable political system, though one that privileges social movements and interests willing and able to play the complex tunes associated with mainstream politics. By providing so many veto points, the political system also advantages advocates of the status quo. It provides unparalleled opportunities and incentives for social movements and interest groups to intervene continuously, but it also presents huge challenges to effecting major change.

The Canadian system concentrates much more agenda-setting power in the hands of the executive at the federal and provincial levels and, specifically, in the hands of the prime ministers or premiers. Few regimes in the Western liberal democratic world give heads of government as much control as does Canada to federal and provincial first ministers. This provides social movement groups with only occasional opportunities to exercise influence, which is entirely a function of the specific policy openness of the party in power. Major leverage may be possible with the right party and leadership in power, perhaps even with modest mobilizational resources, but otherwise it is next to impossible. And, if the governing party at one level or another wishes to duck an issue by letting courts take the lead, as is so often the case on religious and “moral” issues, this avoidance is hard for opponents to challenge.

Party Systems

During the 1980s the American party system became more polarized on religious and sexual issues. Christian conservatives established themselves as a crucial element in the Republican coalition, increasing their influence over state parties in the 1980s and 1990s (Wald and Calhoun-Brown 2006; Wilcox and Larson 2006). This has reinforced anti-gay positions on a range of issues in the national party and most state parties. The 2004 platform of the Texas Republican Party offers a particularly dramatic illustration in the following passage:

The Party believes that the practice of sodomy tears at the fabric of society, contributes to the breakdown of the family unit, and leads to the spread of dangerous, communicable diseases. Homosexual behavior is contrary to

the fundamental, unchanging truths that have been ordained by God, recognized by our country's founders, and shared by the majority of Texans.

There are countervailing pressures. Another important Republican constituency is made up of business representatives and their allies, who advocate lower taxes and other corporate-friendly policies. Many of these advocates are either indifferent to the moral agenda of religious conservatives or fearful that it will distract policy makers from more important issues. There are also well-educated and youthful voters whom the party must attract, and many of them would be deterred by an overemphasis on such issues as abortion and gay rights. Sarah Palin was not shy about her faith and her opposition to same-sex marriage during the 2008 election campaign, but she still spoke in favour of equality on fronts other than marriage during the vice-presidential debate.

The long-term impact of evangelical Christians on public policy during periods when Republicans have been in power is open to debate, even during the administration of George W. Bush. The rhetorical commitment to conservative Christian positions was clear and was backed by policies enacted on, for example, abstinence-only education and international AIDS funding. But the policy legacy of the Bush administration fell significantly short of the expectations of many Christian right leaders, and the same is true in many states in which Republicans have ruled.

The Democrats gradually moved towards an embrace of LGBT claims from the 1980s on, though at every step there was a vocal minority objecting. Marriage remains a major stumbling block at the federal level and in most state parties, largely due to the weakness of popular support. And Democrats know full well that Republican strategists remain eager to exploit their division or to play on the most insidious stereotypes in campaigning against Democrats who support LGBT equality on other fronts. Further complicating the Democratic commitment on these issues is the fact that the party has recurrently pitched appeals to the Christian faithful – no more so than in the campaigning of Barack Obama.

Both parties are “federalized.” National election campaigns have been more and more centred on the presidential candidates, but for both Republicans and Democrats relatively autonomous state parties still constitute important organizational foundations. This produces important variations across regions in the way that issues of sexuality and faith are taken up by each party during national campaigns and, even more so, in state-level policy debates.

Still, the Democrats and Republicans as a whole do represent distinct religious constituencies, and though there are signs of a shift among some Republicans on issues apart from marriage, the two parties do represent very different positions on sexual diversity. There is a readiness for election campaigners at the national level, and in most states, to present pitches to their core electorates that are more starkly contrasted than we could find in the vast majority of elections in recent Canadian history.

The Canadian party system is even more federalized than the American, with party systems in several provinces being entirely distinct from the federal level. The federal party system has also undergone a radical shift in the past two decades. Until the 1990s, the political landscape was dominated by two “catch-all,” or “brokerage,” parties – the Progressive Conservatives (centre-right) and the Liberals (centrist or centre-left) – alongside a smaller social democratic New Democratic Party (NDP). Now there is a Conservative Party that is more clearly on the right; a Liberal Party that is much the same as before but somewhat reduced in size; a sovereigntist Bloc Québécois; and the NDP. Like the Republicans, Conservatives are driven primarily by a neo-liberal critique of the interventionist state. Moral traditionalists are an important constituency and are more prominent than ever, but their views are downplayed in the party’s platform and, to some extent, in its policy making within government.

The Liberals came to support gay rights positions at least as slowly as did the US Democrats, during the 1990s and 2000s. Ultimately, they supported lesbian/gay marriage but only after the courts made it clear that not doing so violated the Charter. The NDP has a longer history of support for equity and has made a difference in a couple of provinces when it has been in power. The sovereigntist Bloc Québécois has strong progressive currents, and like its provincial counterpart, the Parti Québécois, it developed a commitment to equity comparatively early on.

At the provincial level, there are still brokerage-style parties on the centre-right and others more clearly dominated by neoliberalism. Most do not make explicit appeals to Christian right constituencies, except (at times) for the Conservatives in Alberta. When in power, parties on the right have not kicked up too much fuss when courts have ruled in favour of gay rights claims.

At present, then, all major Canadian political parties avoid taking high-profile positions on issues of sexual diversity. They also avoid questions related to religious diversity or faith in general. This has not prevented electoral appeals specifically targeting faith communities, but they are kept

as quiet as possible. Declarations of personal religious belief remain largely out of the partisan mainstream.

An Outline of the Book

Comparative political analysis frequently positions Canada between the United States and northwestern Europe – whether the focus is on social policy, economic management, political parties, or media culture. An exploration of the politics of religion and sexuality may well position Canada somewhat closer to the European pattern, but the contributors to this volume, taken together, warn against any overgeneralized view.

Public opinion is surveyed in the first major section of the book, and it includes two contributions, both of which remind us of important increases in popular acceptance of diversity. In Chapter 2, Shauna Shames, Didi Kuo, and Catherine Levine challenge some elements of the claim that the United States is deeply riven by a culture war. In Chapter 3, Amy Langstaff's historical treatment of Canadian public response to homosexuality provides an especially dramatic view of how much has changed in twenty years – a point that could be made with equal strength in the United States.

Evangelical Protestantism is the subject of five contributions in the next section, which indicates the central role that this constituency has played in opposing rights claims from sexual minorities. In Chapter 4, Samuel Reimer points to similarities between Canadian and American evangelicals as well as to differences in outlook and intensity of feeling around sexuality issues. In Chapter 5, Tina Fetner and Carrie Sanders compare the historical foundations of Christian right political organizing in the United States and Canada, pointing to a variety of factors impelling American conservatives to establish the kind of autonomous institutions that facilitated later political mobilizing. In Chapter 6, Clyde Wilcox and Rentaro Iida acknowledge the conservatism of US evangelical Christians but point out signs of dramatic shifts towards moderate views – particularly among the young. In Chapter 7, Robert Jones and Daniel Cox take a closer look at African Americans, who respond to most sexuality issues in ways similar to white evangelicals, even though they are not allies on other fronts. In Chapter 8, Jonathan Malloy acknowledges the considerable resources and alliances built up by Canadian religious conservatives during the time when the same-sex marriage debate was at its most intense, but he sees this as a temporary phenomenon and not one indicative of a longer-term convergence between Canadian and American patterns.

In the next section, the struggles over sexual orientation issues within mainline Protestant denominations are examined in three contributions. In Chapter 9, Pamela Dickey Young, one of several writers in this volume who focus on the debate over same-sex marriage, unearths core elements in the deliberations of Canada's largest Protestant denomination. In Chapter 10, Roger Hutchinson explores difficult debates over sexual orientation also within the United Church of Canada, detecting in them the possibility that those adopting contrasting positions on same-sex marriage might find common ground. In Chapter 11, Laura Olson, Paul Djupe, and Wendy Cadge marshal a variety of data (including those tapping the attitudes of clergy) to analyze struggles over this kind of issue within American mainline Protestant churches.

Roman Catholic responses to sexual diversity are the subject of two chapters. In Chapter 12, Ted Jelen points to important contrasts between the US Catholic hierarchy's position on these issues and the views of parishioners, particularly on issues like marriage. A similar point could be made about disconnection among Catholics in Canada, and, in Chapter 13, Solange Lefebvre and Jean-François Breton argue that this is even more starkly true in Quebec, where religious practice has dropped to dramatically low levels.

The following section deals with non-Christian responses to LGBT rights claims. In Chapter 14, Kenneth Wald examines American Jewish attitudes to lesbian/gay rights claims and leads us through an explanation of the persistence of positive responses to them. Much of what he claims about the US case could be applied to the Canadian Jewish community. Deciphering Muslim community reaction to such claims is harder, both because there is less survey evidence on them and because there have been fewer public debates within either Canadian or American Muslim communities about sexuality issues. In Chapter 15, Momin Rahman and Amir Hussain do draw from a range of sources to set out the challenges in taking up rights claims by sexual minorities, including those within their own communities.

The next section focuses on political parties, elections, and activist mobilization. In Chapter 16, David Rayside's analysis of the Canadian Conservative Party highlights the contradictory pressures faced by party leaders when dealing with sexuality issues within a national political setting in which such issues are increasingly difficult to campaign on. In Chapter 17, John Green mines data on both the general public and delegates to national party conventions at the time of the 2004 election in order to examine US

Republican and Democratic responses to the issue of same-sex marriage. These data show how alluring a strongly conservative position on the issue was for the Republicans but how difficult it was for the Democrats.

The next section focuses on rights claiming, and it features contributions by Richard Moon (Chapter 19) and Jason Pierceson (Chapter 20), which examine the distinctive features of the constitutional frameworks within which sexual minorities and religious groups have made legal claims. Moon focuses on issues in which claims from both sides have been at stake and finds an inconsistent response from the Canadian courts. Pierceson focuses on court responses to sexual diversity and, in doing so, flags some of the distinct features of US court readings of the relationship between church and state.

We find in these chapters evidence of divergence, convergence, and both simultaneously. Both countries show evidence of unresolved struggles over the way in which, or the degree to which, faith should influence political deliberation as well as over whether the state should support any particular faith, all faiths, or none. We also find continuing debates over the recognition of sexual diversity, admittedly fiercer in the United States than in Canada. These struggles often pit people of faith against LGBT activists, but, increasingly, they occur among people of faith. Courts, legislators, and officials navigate through these dangerous waters with a mixture of backgrounds, stereotypes, opportunistic instincts, and occasional wisdom.

PUBLIC OPINION

By showing broad trends in public opinion, the chapters in this section help set the overall context for the rest of the book. In Chapter 2, Shauna Shames, Didi Kuo, and Katherine Levine show a trend towards acceptance of sexual difference in the United States. They show variations across religious groups and regions but also that all religious groups have become more supportive of equality policies in the United States, a point to which a few authors in later sections return. Shames and her colleagues point to the need for more research on attitudes towards transgendered citizens, and we would argue that the same is true for bisexuality.

In Chapter 3, Amy Langstaff draws on proprietary survey data to show a dramatic liberalization of Canadian attitudes between 1987 and 2008. As in the United States, the public has become more accepting of sexual diversity over time, and differences in attitudes towards LGBT rights issues have become more partisan. She shows that recent immigrants are more conservative on these issues, especially marriage, a finding that undoubtedly has parallels in the United States.

Both chapters suggest that policy progress is enabled by changing attitudes as well as that changing policies help to create more egalitarian attitudes, though the relationship between court decisions, legislative action, and public opinion is complex. The lessons from Canada are that, even in a setting in which courts have played an important role in advancing equality rights for sexual minorities, judges have not been notably out of tune with public opinion on questions of sexual diversity. What we draw from the US case is that the slow spread of legal and policy inclusiveness has, in general terms, been lagging behind the dramatic shifts across religious communities in attitudes towards sexual diversity.

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