



Protecting Cisnormative Private and Public Spheres: The Canadian Conservative Denunciation of Transgender Rights

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ABSTRACT *The public sphere has been seen by conservatives as an arena for safeguarding private relations. Private power relations (in the family, religion, community and economy) could be threatened by newly recognized social groups that make claims on the state for justice and equality. Therefore, conservatives have been concerned about who can speak and exist in public and who can thereby make demands on the state. In the debates over transgender rights in Canada, social conservatives and neoliberal forces have merged in complex and impactful ways. Analyzing House of Commons and Senate debates and committee proceedings for Bill C-279 (2015) and Bill C-16 (2016–2017), I examine three conservative arguments that illustrate attempts to maintain private power relations and hierarchal gendered divisions by ensuring that transgender and gender nonconforming people are not allowed to exist, speak or make claims in public: first, the assertion that gender identity and gender expression are not definable identity categories for claims-making because transgender people are deceptive and can change their gender based on their feelings; second, the targeting of public facilities, and particularly public bathrooms, as sites of contention, danger and necessary gender segregation; and third, the attempt to delegitimize rights claims by criminalizing transgender people in relation to cisgender women and children.*

KEYWORDS transgender; human rights; conservative; Canadian politics; public and private spheres

Introduction

Canadian conservative social movements, federal parties and politicians have had an acrimonious relationship with 2SLGBTQ communities and people.¹ Steeped in cisnormative and heteronormative ideology, social conservatives

¹ 2SLGBTQ is an acronym for Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer.



rebuke 2SLGBTQ people and compel federal conservative party members to vote against government efforts that support and enhance gay and transgender rights.² Conservative politicians have responded to this pressure by championing purportedly neutral policies of austerity (Brodie, 2007), which have had marginalizing effects on 2SLGBTQ people. However, progressive conservatives have simultaneously tried to downplay and impede social conservative influences in federal conservative parties for fear of alienating moderate supporters and 2SLGBTQ voters.

Over the past decade, all federal parties, conservative included, have tried to court 2SLGBTQ votes, with varying degrees of success. For example, in 2016, the Conservative Party of Canada (CPC) voted to revoke their policy against same-sex marriage but stopped short of officially supporting its legalization.³ Moreover, CPC leader Andrew Scheer (2017-2020) voted against same-sex marriage and refused to march in a Pride Parade but advocated for gay people in Russia and supported the Liberal government's 2017 apology to 2SLGBTQ Canadians. In response to this ambivalent approach to the 2SLGBTQ community, LGB members of the CPC advocated for the party to improve its appeal by celebrating gay conservatives at Blue Tent convention events and forming within-party LGB groups such as *LGBTory* (Boily & Robidoux-Descary, 2019).⁴ In another positive move, CPC interim leader Rona Ambrose (2015-2017) supported Bill C-16, which added both gender identity and gender expression to the Canadian Human Rights Act and the Criminal Code's hate crime section. In 2016, the CPC caucus was free to vote on this bill as they chose, and 52% of CPC Members of Parliament voted against the expansion of rights to transgender people (40 opposed, 38 in favour). As Parliament debated transgender rights, several CPC MPs and conservative senators employed fear-based and violent discourse against transgender people. Thus, while the CPC's relationship to 2SLGBTQ people appears to be incoherent and divided by long-simmering tensions between social conservative, neoliberal and progressive conservative wings of the Canadian conservative movement, a majority of CPC MPs in the end voted against transgender rights. How does this opposition to the

² I use transgender and trans as umbrella terms for diverse gender identities and expressions including but not limited to transgender, trans, intersex, Two-Spirit, non-binary, gender nonconforming and gender queer.

³ The CPC formed in 2003 through the merger of the Progressive Conservative Party (1942-2003) and the Canadian Alliance (2000-2003). The Progressive Conservative Party was one of two main governing federal parties (along with the Liberal Party of Canada) throughout the second half of the 20th century. The Canadian Alliance formed out of the Reform Party (1987-2000), which was a conservative populist party born from a western Canadian regional sense of alienation. I trace the historic and ongoing relationships between these conservative parties and 2SLGBTQ people, paying particular attention to the relationship between the CPC and transgender people and issues.

⁴ *LGBTory* was founded in 2015 and characterizes itself as a "network of LGBT Canadians from all walks of life and diverse identities, but we all share a belief in the fundamental conservative principles of individual liberty, personal responsibility, reward for hard work, a free-market economy and democratic government" (*LGBTory*, 2017).

expansion of transgender rights reinforce deep-rooted cisnormative and heteronormative ideological tenets within the Canadian conservative movement?

In this paper, I argue that through their engagement with transgender rights, the majority of CPC MPs and many conservative senators remain interested in protecting the cisnormative and heteronormative forms and functions of the private sphere by narrowing who can speak and gain representation in the public sphere, and by seeking to regulate which issues are appropriate for public debate and ultimately state engagement.⁵ In parliamentary debates over transgender rights, social conservatives and neoliberal forces in conservative politics have merged in complex and impactful ways. Neoliberal policies supported by conservative interests have employed the dual tactics of denying difference and inequality between social groups and narrowing avenues through which people can make social justice claims on the state. Iris Marion Young (1990) claims that recognition of social group difference at the state level is an essential aspect of social justice. Marginalized social groups and the individuals who comprise them need to be acknowledged and incorporated as members of the political realm, so they are able to influence state decision-making processes and outcomes that affect them, to name and challenge domination and oppression and to make claims for resources, rights and protections (Young, 1990). Social conservatives use a neoliberal narrowing of recognition, inclusion and claims-making to argue that gender identity and gender expression are not legitimate justice concerns worthy of state protection, and that transgender people should not have access to public space (including public bathrooms and political institutions) because their gender nonconformity represents a public threat to the equality and safety of cisgender women and children.

In the first part of the paper, I provide the recent historical context for this argument, tracing conservatives' preoccupation with maintaining cisnormative and heteronormative hierarchal power relations in the private sphere. While scholars have mapped and traced the ideological commonalities and tensions among various wings of conservatism in Canada in relation to gender and sexuality, they have yet to consider Canadian conservatism's relationship to transgender people and issues, a gap that this research addresses. In the second part of the paper, I explore how conservative preoccupations with protecting a normative private sphere have shaped conservative parties' engagement in debates over transgender rights. I do so by employing a discourse analysis of House of Commons and Senate debates and committee proceedings for Bill C-279 (2015) and Bill C-16 (2016-2017), the transgender rights bills. I specifically analyze parliamentary

⁵ Although Senators are not required to affiliate with a party, there is a Senate caucus of the Conservative Party of Canada. In this paper, I analyze the debate statements of Senators who are officially identified as conservative. While some Independent and Un-affiliated Senators have opposed trans bills, I only include their comments if they were officially affiliated with the conservatives at some point in their Senate tenure.

debates to understand how members framed their arguments within the public space of parliament, unfiltered by press and social media analysis. My discourse analysis process unfolded by conducting a general survey of all the documents to identify recurring themes that are related to my research question and theoretical framework, including discussions of the public and private spheres, transgender identity, rights, protection/safety of transgender people, and the presence of transgender people in public spaces. I then identified the discursive strategies and frames deployed by CPC MPs and conservative senators, as well as the contradictions in their language or arguments, to expose potential discrepancies and divisions among them. Finally, I identify and examine three main conservative arguments that attempt to maintain cisnormative private sphere power relations and hierarchal gendered divisions by impeding social justice and ensuring that transgender people's public lives, voices and claims-making are delegitimized: first, the assertion that gender identity and gender expression are not definable identity categories for claims-making because transgender people are supposedly deceptive and can change their gender based on their feelings; second, the targeting of public facilities, and particularly public bathrooms, as the site of contention, danger and necessary gender segregation; and third, the attempt to delegitimize rights-claims by criminalizing transgender people in relation to cisgender women and children.

Canadian Conservatism in Public and Private Spheres

Conservative Attachments to the Private

To contextualize Canadian conservatives' engagement with transgender rights, this section considers how conservatives delineate who can and should exist, speak and be represented in the public political sphere. Corey Robin (2011) argues that conservatism is not defined by a commitment to individualism; rather, it is fundamentally concerned with maintaining and reasserting hierarchal power relations in both public and private spheres of social life. Robin asserts that conservatives view the power relations that organize the private realm as foundational to and constitutive of the proper functioning of social and political life. The private and public are not separate but rather mutually reinforcing; those who command authority in private – be it the home, church or business – are to likewise engage in the public and political sphere as leaders (Robin, 2011). This assertion is predicated on the historical cisnormative and heteronormative divisions between the public and private wherein the public sphere is framed as civilized, rational, emotionless and masculine, and the private as natural, irrational, emotional and feminine.

Social conservatism has championed the role played by the cisnormative heteropatriarchal family in the proper functioning of private and public

realms. Brenda Cossman explains that according to conservatives, “individuals are first and foremost members of communities, united by common morals, values and traditions. Within this vision, the family is the basic unit of society, forging individuals together through its moral authority, instilling children with moral values and traditions” (2005, p. 433). In social conservative ideology, moral values and traditions are to be based on a cisnormative gender binary wherein people are divided into the mutually exclusive sex categories of male or female, and have accordingly been assigned opposite and complementary cisnormative gender markers and roles. They also conform to a heteropatriarchal model in which cisgender women and children are dependent, passive and vulnerable, thus requiring cisgender men (and the state) to protect and provide for them.

Even though neoliberals and social conservatives have differing opinions on how the state should influence the private sphere, they agree it should be protected by limiting who can exist and speak in public; what issues are worthy of public consideration; and who should be protected by the government. Public speech can constitute a challenge to normalized power relations when marginalized people make claims on the state for social equality and participation in decision-making processes. As Christina Foust (2010) explains, transgressions against norms and hierarchies expose the fluidity and fragility of a system of power, ultimately weakening the legitimacy of authority structures.

Indigenous women, women of colour, queer people and transgender people have long understood the family (biological and chosen) and the private sphere more generally to be a site of regulation but also empowerment and resistance, and have accordingly sought changes in the public realm by rejecting and rebelling against imposed Western, colonial, cisnormative heteropatriarchal family and gender norms. Recognizing transgender people in both realms is a social justice-based challenge to the primacy and legitimacy of cisnormative and heteropatriarchal roles and models, which subverts and unsettles the ostensibly natural sex binary and its attendant cisgender norms and power relations in social and political life (see Stryker, 2008). The following section traces how Canadian conservative parties have conceptualized and reacted to challenges to their cisnormative heteropatriarchal public/private model.

Canadian Federal Conservatism and Personal Issues

“Personal issues,” such as divorce, abortion and homosexuality, were first brought into formal federal political debate through a Joint House of Commons/Senate committee report on divorce law reform in 1967 and the Liberal Party’s Omnibus Bill to amend the Criminal Code of 1968-1969 (Hooper, 2014). In line with Robin’s (2011) definition of conservatism, James Farney (2009) argues that at that time the Progressive Conservative

(PC) party viewed such issues as personal and moral, and therefore beyond politicization.

Social conservatives in the PC party, however, saw these debates as opportunities to “use political means to promote traditionalist notions of correct sexual behavior and family structure” (Farney, 2009, p. 243). Since the 1960s, social conservatives have warned that the cisnormative family and the private sphere have been attacked by identity groups who have been bolstered and armed through public sphere interventions: divorce laws that enable heterosexual couples to abandon marriage; labour rights through which women have gained economic independence; and gay rights campaigns that denigrate marriage. Social conservatives have accordingly sought state intervention into the private realm to strengthen and promote the cisnormative heteropatriarchal family through various policies relating to marriage, healthcare, reproductive rights, public education, immigration and welfare provisions. Forgoing divisions between the state and civil society, social conservatives have argued that the state could access and regulate citizens’ private gender and sexual lives through society’s most foundational institution – the family (Dauda, 2010). Despite these efforts, between the 1960s and 1990s social conservatives were not able to exert much influence in the PC party, which “rejected the notion that abortion and same-sex rights were appropriate topics on which to take a partisan stand,” and sought to avoid political dispute over the issues by arguing that they should be left for private deliberation (Farney, 2009, p. 250). The PC practice was to enable private structures and relations to regulate such changes in gender and sexuality relations by shielding the issues from public scrutiny and debate.

Although social conservatives have jostled for a position in Canadian conservative politics, neoliberalism has been the dominant current of conservatism in Canada since the 1980s. As Janine Brodie states, successive Canadian governments have “abandoned the vision of social citizenship, social security, and social justice, offering in their place a new social imaginary that pinpoints the market, one buoyed by the logics of neo-classical economics, as the primary, if not ‘natural’ source of both individual wellbeing and freedom, and political legitimacy” (2007, p. 99). Neoliberalism thus bolsters private power relations by abolishing or privatizing particular social welfare programs; positioning the market as the natural system for economic and political activities; idealizing individuality and personal responsibility; narrowing political recognition and curtailing avenues for political participation; and delegitimizing claims to rights and social justice (Brodie, 2007). Canadian governments have impeded recognition and justice claims-making to absolve themselves from acknowledging, much less addressing, structural inequality and injustices as people are disciplined to deny “identity markers” that differentiate them from the norm, to “rise above systemic barriers,” and to take personal responsibility for their successes and failures in the natural and equal market (Brodie, 2007, p. 104).

As neoliberalism deteriorated the public sphere, social conservatives feared that the public and political influence of the church and communal traditions, as well as the family, would weaken and disappear. These same institutions, however, were enrolled to assume the responsibilities and tasks of the gutted neoliberal state, and thereby gained new forms of influence in people's lives. Neoliberalism accepted the family as an economic unit. Hetero and cisgender white individuals and families were structurally positioned to succeed in the neoliberal fair market, much to social conservative approval.

The birth of the populist Reform Party provided social conservatives an opportunity to engage with and influence a federal party, to leader Preston Manning's discontent. Social conservatism and populism came together largely through gay rights and same-sex marriage, which were framed as threats to the primacy of heterosexual marriages. Social conservatives' influence in the party waned once same-sex marriage was legalized, and they lost their major policy preoccupation (Farney, 2012).

Under Stephen Harper, the party avoided boasting about its anti-2SLGBTQ initiatives, while social conservatives continued to attempt to use the state to strengthen and promote the cisnormative heteropatriarchal family and gender relations by maintaining a homophobic age of consent (Dauda, 2010) and restricting welfare services, public education curriculum, immigration (Gaucher, 2018), international maternal health programs and abortion access (Saurette & Gordon, 2016). These goals were cautiously pursued. Social conservatives' success in bringing social issues into conservative party debate rendered social conservatives' issues vulnerable to the whims of the larger conservative movement and party (Farney, 2012), and thereby threatened their ability to use the public forum to maintain and bolster their ways of life.

At the same time, Canadian federal conservative parties covertly implemented neoliberal legislation to entrench gender and sexual hierarchies. As the next section examines, this tactic of restraint was tested when the NDP and then the Liberals introduced legislation to protect transgender rights, which reignited social conservatives' willingness to risk reinserting the private into public debate, to ensure that transgender people's voice and claims-making would be delegitimized.

Transgender Rights and Conservative Panic

In response to years of advocacy by transgender people and organizations, NDP MP Bill Siksay introduced a bill that proposed adding gender identity and gender expression to the Human Rights Act, which went through three iterations, in 2005, 2007 and 2009. In its final form, Bill C-279 was introduced by NDP MP Randall Garrison in 2011 but permitted to die on the order paper when government Senate leader and PC Claude Carignan deliberately delayed debate on its passage (Baglow, 2015). Transgender activists were angered by years of bigoted and hateful debate about the bills

(Gothoskar, 2015). In 2016, the Liberals introduced Bill C-16, which proposed adding both gender identity and gender expression to the Canadian Human Rights Act (CHRA) and the Criminal Code's hate crime section. The bill passed in 2017 with full Liberal, NDP and Green support, while 40 CPC MPs and 11 conservative senators voted against it (Mas, 2016).

Not all CPC elected officials were against these transgender rights bills, yet there remained resistance and tension among CPC and conservative members in the House of Commons and the Senate.⁶

As many trans activists pointed out, inclusion in the CHRA and hate-crime policies was only one of numerous priorities for their communities and movement, which were dealing with under-representation in political institutions; systemic and daily violence; poverty and homelessness; the systemic lack of transgender competence in physical, mental and addictions health services; inadequate legal and social services for trans refugees and immigrants; and anti-transgender and racist policing, criminal legal and carceral systems. They argued that exercising one's rights in the CHRA and hate-crimes policies is complicated and costly. Trans activists and academics further noted that relying on the police and criminal justice system for protection through hate-crime provisions bolsters anti-trans, anti-Black, colonial institutions that target and criminalize trans and street-involved people, sex workers, Indigenous persons, Black people and people of colour (Vipond, 2015).

While the importance of including gender identity and gender expression in the CHRA and hate-crime policies was contested by many transgender activists, it became a flashpoint for debate and anti-trans fearmongering among a substantial group of federal conservatives. My analysis of House of Commons and Senate debates and committee proceedings for Bill C-389 (2009), Bill C-279 (2015) and Bill C-16 (2016-2017) demonstrates that opponents presented many arguments, including religious beliefs about the divine form of cisnormative heteropatriarchal families; the unfounded assertion that certain immigrant groups may not be accustomed to transgender people and therefore inadvertently discriminate against them; the fear that recognizing more than two genders may be confusing for children's sports teams; and the claim that free speech would be violated if people were compelled to use transgender people's pronouns, starkly pitting certain people's free speech rights against other people's dignity, safety and public existence. This free speech argument garnered media attention, fueled transphobic speech and acts at universities and public protests and in online

⁶ The Canadian parliamentary system, Miriam Smith (2008) argues, makes it difficult for controversial or extremist views or issues to gain traction within parties and among the electorate because MPs tend to be subject to dominant leaders, and usually need party approval to introduce bills and ask questions. Senators, conversely, are not subject to the same partisan expectations, as they are unelected. As these debates on transgender rights demonstrate, several conservative senators used decidedly more aggressive and discriminatory language and arguments in their opposition to the proposed bills.

fora, and demonstrated that these reactions to violations of cisgender norms permeate Canada's society and are perpetuated in popular discourse.

In what follows I explore three main arguments developed by conservative Senators and CPC MPs that received less media and popular attention than the free speech debates, but that also attempt to maintain cisnormative dominance and reinforce the notion that only certain people should be represented in public and protected by the state. Their discourse on transgender rights attempts to delegitimize transgender identity claims, restrict public space through the "bathroom bill," and criminalize transgender people in relation cisgender women and children.

Delegitimizing Transgender Identity Claims

Common and dangerous tropes – that transgender people are deceptive, lie about their gender and change their gender on a whim – have long been used to unsettle and delegitimize transgender people's claims to identity, representation, rights, protections and ultimately social justice. Kristen Schilt and Laurel Westbrook explain that,

These ideological collisions between those advocating transgender rights and those who insist on sex at birth determining gender, and the ensuing panics, put into high relief the often-invisible social criteria for 'who counts' as a woman and a man in our society. (2015, p. 29)

In defence of the assertion that gender is anchored in a biological sex-binary, transgender rights opponents deny that people can legitimately identify as and express genders other than and/or beyond the sex and gender they were assigned at birth. Accordingly, opponents to transgender rights argue that there is no basis for a claim to group identity, no undue inequality experienced by transgender people and therefore no justification for a request for group protection against discrimination and violence.

Throughout parliamentary debates, several opponents of transgender rights doubted gender identity and gender expression were legitimate categories for protection, especially compared to other identity categories. Conservative Senator Betty Unger argued that the category of transgender, as stated in the bill, was too broad and therefore vulnerable to "imposters who would abuse this protection" (Bill C-16, March 2, 2017). CPC MP Cathay Wagantall stated the following during a debate on Bill C-16:

The labels for this population are continually morphing and evolving, and the numbers that identify with this population are somewhat dubious at best. In our zeal to want to be seen as fair and open-minded, we seem to have forgotten the faces of those whose equal rights also exist. If we are in fact prepared to pass this law and let everyone do whatever they want on any given day or whim, do we not have a responsibility to ensure that we are not now discriminating against the

larger population's health, safety, and quality of life? (Bill C-16, October 18, 2016)

Here, Wagantall's description of transgender identities as "morphing and evolving" – changeable not just "on any given day" but also by "whim" – renders trans identities unstable and undefinable. Moreover, she stated that the precarity of transgender identities threatens "those whose equal rights also exist," referring to cisgender women who supposedly fit into a definable, stagnant and yet vulnerable identity category. Conservative Senator Donald Neil Plett expressed his comparable doubts even more starkly:

Further to the case of some people not being known as what they are, the fact of the matter is that is exactly one of the problems I have. The Human Rights Commission has very clearly ruled on transsexuals. Transsexuals I understand, but transgender is saying, 'Today in the morning I feel like one thing, and tomorrow I might feel like something else,' and innocent victims are impacted by that. I will always yield to the innocent victims, especially if they are children. (Bill C-279, May 23, 2013)

Later I discuss the claim that transgender people are a threat to cisgender women and children's safety. For now, note that while many transgender activists and advocates had pushed for a more open understanding of gender as complex and dynamic yet meaningful and identifiable, Wagantall, Plett and the like misrepresented this call to challenge the strict gender binary by portraying transgender people as indecisive, flippant and threatening.

This line of argumentation was further articulated through the focus on how transgender people feel about their gender. In this case, conservatives argued that transgender people's claim to an identity was subject to their feelings. In this vein, CPC MP Wagantall asked,

Will a new law protect people who have committed to and changed their identification, as well as those who want to change or think they want to change, or perhaps they have been thinking for the past couple of weeks they want to change, or in the last hour? It is a very broad spectrum we are asked to consider today, from 'I feel like a woman today' to someone who has completely committed to the process, changed him or herself, has gone through transformational surgery, and now wants protection from discrimination. (Bill C-16, October 18, 2016)

Wagantall claimed to support transgender people who "have completely committed to the process, changed him or herself through transformational surgery," but was drawing a line at those who "feel like a woman today." For Wagantall, a transgender person was only serious if they physically changed their body according to a medically-regulated binary gender category. Feelings, then, were constructed as irrational, undependable and therefore not genuine and the proper basis for a group identity claim. Certain emotions seem to have no place in the public sphere.

CPC MP Brent Rathgeber took issue with the definition of gender identity in one of the proposed bills, which stated, “‘gender identity’ means, in respect of an individual, the individual’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex that the individual was assigned at birth” (Canada, December 6, 2012). The phrase “deeply felt,” according to Rathgeber, was too vague and open for interpretation. Rathgeber acknowledged that, “these are serious matters, and the witnesses who have testified, especially those who have testified from the transgender community, all feel very deeply about their gender identity. They feel very deeply about their gender expression.” Nonetheless, he suggested that the government adopt an “objective analysis to give credibility to the claim that one has gender identity issues” (Canada, December 6, 2012). Yet he claimed that “a cursory look at the individual would likely tell the commissioner or the tribunal that the person in fact falls into a class of individuals that are afforded protection by race, sex, or ethnic origin,” but that option was not feasible for people who were challenging gender norms and expressions (Canada, December 6, 2012). As with Wagantall’s comparison between cisgender women’s identity and transgender people’s identity, Rathgeber claimed that race and ethnic origin are easily and visually identifiable categories – an assertion that is challenged by critical race scholars (see Smith, 2003) – but that gender identity and expression are too subjective, especially visually.

In sum, these opponents of transgender rights attempted to weaken and delegitimize transgender people’s identities and ability to make a claim on the state by arguing that their trans identities were ever-changing, often based on people’s subjective feelings and whims, and not solidly defined like race or ethnicity. Thus, conservatives argued that transgender people’s unstable and category-crossing genders not only rendered them illegible for state identity-based protections, but also, as I discuss next, rendered them a threat to gendered public spaces.

Public Gender Regulation and the Bathroom Bill

The question of who can and should exist in public spaces unfolded as a debate about whether or not the proposed bill would enable transgender people to use the public bathrooms associated with their gender identities and expressions. Transgender people have used public bathrooms and facilities for as long as there have been public, gender-segregated bathrooms, and they have continually experienced high rates of gender policing, harassment, sexual assault and violence in these spaces (Crawford, 2020; Cavanagh, 2010). Social conservatives and the CPC were not focused on these issues, however, until transgender people began campaigns to attain rights on the basis of gender identity and expression. As backlash to these rights campaigns, social conservative activists in Canada and the United States

declared bathrooms as the latest battle ground in their culture war, fomenting fear and hate toward transgender people. Given the conservative preoccupation with regulating private and public spaces, it seems congruent that CPC members focused on public bathrooms and other gender-segregated facilities as the primary battle grounds for these transgender rights “bathroom bills.” Sheila Cavanagh explains the significance of the bathroom and toilet in Canadian and American cisnormative society:

Much of what we cannot say in polite society surfaces in the toilet. The toilet, like the unconscious, is a dumping ground for unacceptable impulses, sexual practices, identifications, and desires. The vicissitudes of love and hate, desire and aggression are not only written on bathroom walls but enacted in real time. People die and have sex in toilets. Illicit messages are etched onto partition walls that span from the lascivious to the hate filled. People cry and vomit, bond and gossip, inject needles and illegal substances, learn about gay sex and birth control (thanks to condom dispensers and birth control advertisements on the back of cubicle doors); we do all kinds of things deemed imprudent, illegal, or vulgar in polite society. (2011, p. 18)

Public bathrooms exist with blurred boundaries between their public and private status and functions; they are claimed as public space yet represent so much of the “undesirable” elements of human existence and are treated as depositories for all things private, dirty and scandalous.

Former conservative Senator Lynn Beyak argued that, “Pierre Elliott Trudeau got it right decades ago when he said there is no place for the state in the bedrooms of the nation. I would submit that holds true for kitchens, hallways, basements and bathrooms, too” (Bill C-16, February 28, 2017). Although Beyak may seem to have been arguing that the government should let public bathrooms be unregulated spaces, she is actually stating that the government should not change the status quo of binary cisgender segregation in bathrooms. She was seeking to use the government to protect the current structure and function of this public/private space. To regulate and erase the contamination of particular private and public acts in these public spaces, conservatives have sought to bring order, cleanliness and safety through the claim that bathrooms need to be segregated according to the cisgender binary. Doing so obscures but also intensifies the violence that is experienced by transgender people in public facilities, and it regulates who can perform private human functions in public spaces.

Conservatives blend the public and private by arguing that separate bathrooms are needed because cisgender women are weak and vulnerable in these public spaces, and men are either their predators or the protectors (Faktor, 2011). Violence is always assumed to come from an intruder coming into the bathroom. As CPC MP Harold Albrecht remarked, “I am concerned about the potential harm to innocent children and youth as a result of the possible invasion of their privacy” (Bill C-16, October 18, 2016). As Schilt

and Westbrook find in their media analysis of transgender rights in the United States:

Opponents worried about what transgender women, who they assume have penises, might do if they were allowed access to women-only spaces. Transgender women in these narratives are always anchored to their imagined ‘male anatomies,’ and thus become categorized as potential sexual threats to those vested with vulnerable subjecthood, namely cisgender women and children. (2015, p. 29)

As I have discussed, with supposedly loose definitions of gender identity and expression, transgender people are denounced as deceitful, threatening and in pursuit of identities, spaces and protections that they do not deserve. To protect against these threats, CPC MP Wagantall asked,

Is it prudent for responsible legislators to expand this umbrella so irresponsibly? To ask the majority of Canadians to give up their own rights to privacy and to gender identity and expression, and bear the cost for the same, is asking too much. I am confident that a good portion of our society agrees with this. (Bill C-16, October 18, 2016).

Senator Beyak argued further that the government should not be burdened with protecting transgender people within these spaces:

Millions of hard-working taxpayers who do not care what people do in their bedrooms and bathrooms, as long as they don’t have to pay for it. A perfectly reasonable position. I’m speaking today for John, and my other gay friends who feel exactly the same way and who have lived in quiet dignity together, celebrating 50-year anniversaries without expecting or getting a single thing from government. By living in quiet dignity, they have never had to face any kind of discrimination or uncomfortable feelings. I would assert that is how the vast majority of the LGBT community feels. Sadly, we only focus on the vocal minority. (Bill C-16, February 28, 2017)

Later in this speech, Beyak reiterated her opposition to the bill’s potential cost to taxpayers: “For what? To appease a very small and vocal minority against whom, quite frankly, the clear majority of Canadians do not discriminate” (Bill C-16, February 28, 2017). She claimed that Bill C-16 would duplicate the Canadian Charter of Rights and Freedoms and therefore place monetary burdens on the government and taxpayers for court challenges, sign enforcement and information campaigns. Beyak used the neoliberal tactic of denying inequality and difference to justify restricted government spending. She argued that if a “vocal minority” wants to avoid discrimination and discomfort, they should live their lives quietly in private; their concerns should not be brought to the public and the government should not pay to protect them.

The bathroom, accordingly, is a public space where cisgender women and children (who are all assumed to be cisgender) should be granted privacy

(which is usually reserved for private spaces) from potential threat, leering and violence that comes with intruding outsiders. Thus we see how conservatives stoked fear in their attempt to limit transgender people's access to public spaces. Next I analyze how conservatives built on this denigration of transgender people to deny their requests for public safety and state protection.

Who is Worthy of State Protection?

In tandem with delegitimizing transgender people's identities and regulating their existence in public bathrooms and facilities, opponents have also worked to villainize and criminalize transgender people. Paul Amar argues that the state "'hypervisibilizes' raced, classed, and gendered bodies as sources of danger precisely to render the political nature of hierarchy invisible" (quoted in Seikaly, 2015, p. 343). This construction of particular people as threatening and dangerous obscures their social marginality and vulnerability. Thus, marginalized people's inequality is ignored, and they are subject to harsher treatment and regulation by the state, police and society. In relation to these issues, opponents of transgender people's rights have tried to undermine claims of trans marginalization, discrimination and violence by stirring up fear and revulsion of transgender people, claiming that they are a threat to the safety of cisgender women and children, particularly in public spaces.

Over its 15-year existence, the CPC has been focused on the safety of cisgender women and children, especially in relation to sexual predators, pornography, age of consent, forced marriages, polygamy, human trafficking and gender-selective abortions (see Dauda, 2010; Gaucher, 2016; Saurette & Gordon, 2016). The CPC has cast cisgender women and children as powerless victims who need state (patriarchal) protection in the form of increased police presence and powers and stricter, longer prison sentences. Children are assumed to be cisgender, thus invisibilizing transgender children, denying transgender children's need to access public spaces safely and further vilifying trans adults (Gill-Peterson, 2018). Historically, transgender people and queer people have been socially chastised as sexually perverse, immature and self-gratifying. Such discourses have been produced and perpetuated by medical and psychiatric institutions and governments, instilling unsubstantiated fear that transgender people and queer people are predatory and seek to lure people, particularly young people, into sexual perversion. These discourses were reproduced in parliamentary discussions about transgender rights and bathrooms.

For example, CPC MPs and conservative senators argued that the bill would enable "male sexual predators" who wanted to access women's bathrooms. Senator Don Meredith stated that, "Bill C-279 will not improve the lives of Canadians. It will confuse lawmakers and enforcers and will

place fear in the hearts of parents and grandparents who worry about the safety of their children” (Bill C-279, May 29, 2013). Senator Don Plett added,

I believe in protecting women and children, and I have seen too many cases where people abuse it. Listen, I don't believe any legitimate, if you will, transgender person, transsexual person, is a danger. But we have seen over and over again where people take advantage of laws. And this law is wide open for perverts, pedophiles, to take advantage of. (Page, 2015)

CPC MP Dean Allison likewise warned of dangerous sexual predators:

As the bill would also give special rights to those who simply consider themselves to be transgendered, the door would be open to sexual predators having a legal defence to charges of being caught in a women's washroom or locker room. I find this potentially legitimized access for men in girls' bathrooms to be very disconcerting. As sexual predators are statistically almost always men, imagine the trauma that a young girl would face, going into a washroom or a change room at a public pool and finding a man there. It is unconscionable for any legislator, purposefully or just neglectfully, to place her in such a compromising position. (Bill C-279, April 5, 2012)

CPC MP Rob Anders produced a petition in opposition to the gender identity bill, citing the bathroom argument, to which NDP LGBT critic Randall Garrison responded: “Anders’ petition is based on ignorance, misinformation, and fear. He is deliberately promoting prejudice against transgendered and transsexual people by portraying them as sexual offenders and pedophiles” (New Democratic Party, October 5, 2012). The NDP worked in defence of the bill against MP Anders’ petition, and called out the transphobic parliamentary debate. CPC Michelle Rempel stood in contrast to many of her colleagues: “most importantly, they live with the consequences of these acts of non-compassion, of false assumptions that, simply by virtue of their state, they are sexually promiscuous, or more ludicrously, that they are criminal” (Bill C-279, March 7, 2013). Still, the repeated fear-based association between transgender people and violence against cisgender women and children (assumed to be cisgender) produced the effects of exclusion, harassment and violence against those who were seeking a remedy to oppression in the first place.

Moreover, these discourses play a role in perpetuating the police surveillance and disproportionate criminalization of transgender people and people of colour (Sudbury, 2011), which also serves to remove them from the public through their spatial relocation to carceral systems (Johnson, 2014). Transgender people were held as failing to fulfill the criteria for equal citizenship and consequently deemed unworthy of state-granted rights and protections, as well as a public existence. This point was reinforced by representatives from REAL Women Canada, who were called on by conservative members to speak to the Senate on different iterations of the

bills. Diana Watts of REAL Women Canada stated that, “in Canadian penitentiaries, this issue will also create problems. If Bill C-279 is passed into law, prison officials, at taxpayers’ expense, will be required to provide treatment for those inmates claiming they were born the wrong gender” (Canada, November 27, 2012). Watts claimed that incarcerated transgender people who “undergo sex reassignment surgery” would face transphobic violence; therefore, she argued, incarcerated transgender people should not be allowed to transition in prisons, especially not at taxpayers’ expense. The severe and constant violence faced by incarcerated transgender people, especially when housed in gender-segregated facilities that do not correspond to their genders (Girshick, 2011), was not questioned in itself; rather, such violence was blamed on transgender people who transitioned in the prison environment. While prisons are organized according to a gender binary, as Julia Sudbury explains, the disproportionate incarceration of transgender people renders prisons “a site of heightened gender variation” (2011, p. 307). State violence of gender-segregation is enforced as trans people are denied access to publicly funded private spaces that offer protection (e.g., affordable housing, emergency and domestic abuse shelters, social and community services), are subject to heightened police and state surveillance and are consequently removed from the public sphere and relocated into gender-segregated prisons, wherein they are subject to misgendering, discrimination and violence.

Transgender people’s claims to rights and protections were further questioned in relation to the rights of cisgender women. As Schilt and Westbrook summarize,

Opponents disseminate ideas that women are weak and in need of protection – what one of us (Laurel Westbrook) frames as creating a ‘vulnerable subjecthood’ – and that men are inherent rapists. At the same time, they generate fear and misunderstanding around transgender people along with the suggestion that transgender people are less deserving of protection than cisgender women and children. (2015, p. 27)

Relatedly, conservative Senator Donald Neil Plett stated that,

Women have worked and continue to work extremely hard to make headway on the issue of equality and women’s rights. We now have the opportunity to protect and defend the rights women have worked so hard to obtain. I urge all honourable senators to stand up for the rights of women and girls. I urge you to strongly consider the impact that blurring the lines of gender will have. (Bill C-279, May 23, 2013)

Alex Faktor points to this exclusion of transgender women from the category of woman as a “reactionary preservation of an abstractly ‘pure’ (that is, heterocentric and cissexist) female identity” (2011, p. 14-15). The exclusion of transgender women, Faktor (2011) claims, is troubling because it pits the safety of one marginalized group against the safety of another.

The differentiation between cisgender and transgender women was likewise articulated through claims that transgender people were asking for special and extra rights. CPC MP Harold Albrecht asked,

Is it fair to have their rights trampled upon by this imposition of extra rights for some? [...] I am supportive of equal rights for all, but in my opinion this bill goes far beyond equal rights into the territory of granting extra rights or special rights for some; and in the process of granting those extra rights for some, we automatically diminish and deny the legitimate time-honoured rights of many others. (Bill C-16, October 18, 2016)

Conservative Senator Donald Neil Plett stated, “I am not sure I want to fast-forward to a place where the safety of society is jeopardized for the empowerment of a few” (Bill C-279, May 23, 2013). Transgender people’s rights would not be equal to cisgender women’s rights but would be special and extra because of their supposed ability to threaten cisgender women’s purity of identity and safety. Yet this line of reasoning silences women, who are cast as mere victims of men who are pretending to be transgender, thereby simultaneously regulating cisgender women and transgender people’s presence, movement and speech in public and private spaces according to cisnormative heteropatriarchal hierarchies. In sum, through these debates, conservatives argued that transgender people were unworthy of state protection because their existence not only threatened the safety of cisgender women, but the gender binary itself.

Conclusion

Tensions and ambiguity persist within the CPC and the Canadian conservative movement in relation to 2SLGBTQ people and issues. Before, during and after the passage of Bill C-16, the CPC’s approach to 2SLGBTQ issues remained seemingly contradictory: the CPC under Stephen Harper supported select LGBT issues abroad while implementing continuous funding cuts to domestic non-profit organizations working in areas of social justice (Gaucher & DeGagne, 2014); social conservatives took credit for Andrew Scheer and Erin O’Toole’s CPC leadership victories but LGBTory has downplayed the influence of social conservatives in the party; the majority of CPC MPs voted against transgender rights; conservative senators and CPC MPs deployed fear-based and violent anti-transgender discourse; Scheer supported the Liberal government’s 2017 apology to 2SLGBTQ Canadians but refused to march in a Pride Parade; and Erin O’Toole will only participate in Pride Parades if police organizations are included.

These tensions are not contradictory but reveal how the CPC and conservatives are trying to make their social agenda more palatable to centrist voters. As Paul Saurette and Kelly Gordon (2016) argue in relation to the anti-abortion movement in Canada, conservative discourse has coopted and

redeployed progressive discourse and values, for example by claiming to protect women against the threats of abortion (2016) and in this case transgender “predators.” The CPC purported to welcome LGBT people to the party but denied structural inequality experienced by transgender people, and specifically did not actively pursue policies to ameliorate the lives of 2SLGBTQ people within Canada. Formally excluded people are welcome within the CPC if they do not seek to uproot enshrined hierarchal power relations.

The establishment of transgender rights tested conservatives’ tactic of avoidance and exposed many conservatives’ acrimony toward transgender people. This moment in the relationship between Canadian conservatives and transgender people has been characterized by reactivity toward perceived threats to cisgender and heterosexual order in the public and private spheres. Combining social conservative values and neoliberal tactics, several CPC and conservative social members of the House and Senate attempted to redress perceived losses of cisnormative privilege in three main ways. First, the transgender rights opponents attempted to delegitimize transgender identity and group rights claims, asserting that gender identity and gender expression were undefinable, ever-changing and emotionally-determined categories. Second, they argued for the restriction of transgender people’s access to public spaces through a fixation on and battle over gender-segregated bathrooms, denying the violence experienced by trans people in such spaces by fomenting unfounded fear over outsiders entering the gendered spaces. Third, they delegitimized transgender people’s requests for state protection by asserting that they were threats to cisgender women and children’s safety, and by claiming that the recognition of transgender people’s unique group identity demeaned the identity-based protections gained by cisgender women. When combined, these three arguments sought to undercut transgender rights advocates’ bid for social justice, complete with state acknowledgement of group-based difference and discrimination, state representation for the specific needs and issues facing transgender people and state-granted resources, rights and protections. As stated, many transgender advocates argued that the inclusion of gender identity and expression in the Canadian Human Rights Act and Criminal Code is a narrow and limited version of social justice (Vipond, 2015), which will not lead to a fundamental shift in state anti-trans institutions or cisnormative Canadian society. Moreover, those who were seeking social justice and protection through the state were subjected to questioning, shame and misrepresentation, tactics used to reinforce private and public order through the exclusion of those who challenge the norms. Notwithstanding their failure to deny trans rights, conservatives brought into sharp relief that public and private spheres remain deeply and consequentially gendered and intertwined.

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