PROTECTING QUEER CHILDHOOD

Bill C-6 through the lens of childhood ethics and queer theory

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Abstracts

Conversion therapy has become the target of many queer rights advocates, and with good reason. The practice can be physically torturous and is often associated with long-term psychological harm. This is why an increasing number of jurisdictions, including Canada with Bill C-6, have decided to criminalize conversion therapy. Yet, the approach taken by the Canadian legislator might not be the most beneficial for queer children.

This thesis, entitled "Protecting Queer Childhood: Bill C-6 through the lens of childhood ethics and queer theory", will draw from the works of queer theorists and childhood ethicists to assess the impact of Bill C-6. Merging queer theory and childhood ethics is a relatively recent practice that has not yet integrated mainstream legal scholarship. However, it is essential in the context of conversion therapy bans since the aim of the bill is to protect queer youth. After carefully assessing what childhood ethicists and queer theorists would think of Bill C-6, this paper will merge both perspectives to explore alternative ways to ensure the well-being of queer children.

Les thérapies de conversion d'identité de genre et d'orientation sexuelle sont devenues la cible des défenseurs des droits de la communauté 2SLGBTQQIA+. Et pour cause, les thérapies de conversions peuvent non seulement être physiquement douloureuses, mais engendrent aussi souvent des problèmes de santé mentale sur le long terme. C'est pour cela que de nombreuses juridictions se sont mises à criminaliser les thérapies de conversions, comme il en est le cas au Canada avec la loi C-6. Malgré cela, l'approche prise par le législateur Canadien n'est peut-être pas celle qui a la possibilité d'être la plus bénéfique pour les enfants 2SLGBTQQIA+.

Ce mémoire, intitulé « Protéger l'enfance *queer* : la loi C-6 au travers l'éthique de l'enfance et la théorie *queer* », utilisera des concepts tirés des travaux du domaine de l'éthique de l'enfance et de la théorie *queer* afin d'évaluer l'impact de la loi C-6. Le mélange de ces deux domaines n'est pas encore courant dans la jurisprudence. Malgré cela, il est essentiel dans le contexte de la criminalisation des thérapies de conversions, puisqu'un des buts de cette loi est de protéger les jeunes individus 2SLGBTQIA+. Après avoir analysé la position des éthiciens de

l'enfance et des théoriciens *queer*, ce mémoire rapprochera les deux perspectives afin d'explorer d'autres façons d'assurer le bien-être des jeunes individus 2SLGBTQQIA+.

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Introduction

Following the news or participating in political life, one might think that queer individuals who are out have a better quality of life nowadays than in the past. Yet, struggles for queer rights still face many hardships today. The Commission on the Status of Women which took place in 2017 in New York for example, gave rise to protests against the recognition of trans youth in the law.[1] Many scholars even argue that today's era is one of regression for 2SLGBTQQIA+ rights.[2] This might be due to the political landscape's recent shift towards a more conservative stance. Travers for instance, believes that this is the reason for the aggravation of the precarity within which trans youth live as of this day.[3] It is in this social and political climate that the federal government of Canada enacted its prohibition of conversion therapy. Conversion therapies are practices aimed at modifying an individual's sexual orientation or gender identity or expression (SOGIE) to be in line with heterosexual and cisgender norms.[4] This legal change needs a thorough analysis. This is because queer children matter, and care should be taken to evaluate the impact which relevant laws will have on their wellbeing.[5] This thesis will therefore explore the criminalization of conversion therapy through the lens of childhood ethics and of queer theory. It will draw on both of these fields to assess the effects of Bill C-6 and to inform future efforts to improve the well-being of queer children. The lens which will be used to analyze Bill C-6 is original and worthwhile. Indeed, only recently have a few scholars started to use an intersection of childhood studies and queer theory in their work. I argue that exploring the works of childhood ethicists and queer theorists allows for a better-informed discussion around

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[1] See Ryan Thoreson, "Youth and Sexual Rights" in Zowie Davy et al, eds, *The SAGE Handbook of Global Sexualities* (1 Oliver's Yard, 55 City Road London EC1Y 1SP: SAGE Publications Ltd, 2020).

[2] See for ex Joseph J Fischel, "Social Justice for Gender and Sexual Minorities: A Discussion with Paisley Currah and Aeyal Gross" (2019) 6 Critical Analysis of Law 82–101 at 99.

[3] See Ann Travers, *The Trans Generation: How Trans Kids (and Their Parents) are Creating a gender Revolution* (New York: NYU Press, 2018) at 183.

[4] See House of Commons of Canada, 2nd session, 43rd Parliament, *An Act to amend the Criminal Code (conversion therapy) (Third Reading)*, C-6 (22 June 2021), [Bill C-6] online: *Parliament of Canada* <https://parl.ca/DocumentViewer/en/43-2/bill/C-6/third-reading> section 320.101. See also Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, *Practices of so-called "conversion therapy"* (Koninklijke Brill NV, 2020) [UNHRC Report] para. 17.

[5] See *inter alia* Colleen Sheppard, "'Bread and Roses': Economic Justice and Constitutional Rights" (2015) 5:1 Oñati Socio-Legal Series 225 [Sheppard, "Bread and Roses"].

conversion therapy and illuminates more effective ways to curb injustices than through criminalization.

I will be using several methods to set forth this argument. First, I will conduct descriptive research on conversion therapy and Bill C-6. I will then focus on understanding the relevant works of childhood ethicists and queer theorists, with comparisons being drawn along the way. This will also include a level of conceptual research, which will allow me to apply the approaches of childhood ethics and queer theory to the context of Bill C-6. Finally, my methodology includes an evaluative dimension since I will be using the results of my research to appraise the extent to which Bill C-6 will impact the wellbeing of queer youth.

This combination of methodologies will enable me to develop my argument in the following way. The first chapter will provide an overview of Bill C-6, including the context leading up to the legislative proposal, where the bill stands now, what it covers, and the criticism that it has received. This will lay the groundwork for the balance of the thesis. Chapter two analyzes the bill through the lens of childhood ethics. This analysis examines the extent to which queer youth are considered as moral agents with meaningful voices and assesses the practical effect of Bill C-6 on their lives. In the third chapter, the discussion will turn to queer theory. Here, the work explores how queer theorists would appraise conversion therapy bans and applies this evaluation to Bill C-6. This will include a focus on criminal law and the 'expressive function' of the bill. The fourth and last chapter will rely on the conclusions drawn from queer theory and childhood ethics to present alternatives to Bill C-6 for ensuring the well-being of queer youth.

Throughout the paper, the terms 'children' and 'youth' will be used interchangeably to designate those under the age of eighteen. This is in line with the use that is generally made of those terms in childhood ethics.[6] The terms '2SLGBTQQIA+', 'queer', and 'SOGIE minority'[7]

[6] See for ex Franco A. Carnevale et al., "Childhood Ethics: An ontological advancement for childhood studies" (2020) 35:1 Child Soc 110 [Carnevale et al, "Childhood Ethics"].

[7] The acronym '2SLGBTQQIA+' stands for Two-Spirit, lesbian, gay, bisexual, trans, queer, questioning, intersex and asexual, and diverse other identities. 'SOGIE' is an acronym for 'sexual orientation and gender identity and expression', and 'SOGIE minority' includes individuals who do not identify as heterosexual and/or cisgender. On the reclaiming of the term 'queer' by 2SLGBTQQIA+ community, see

will also be used interchangeably to designate individuals who do not identify as heterosexual or cisgender. Additionally, I will refer to 'queer theory' rather than 'LGBT theory' because the former term is connotated with a rejection of normativity while the latter is associated with sameness and homogenization.[8]

I cannot write *about* and *for* the interest of SOGIE minorities without situating myself in this context. While I am queer, I do not pretend to be able to attest to the views and opinions of all queer individuals, which are numerous and varied. Furthermore, my lived experiences have been different to those of many, in part due to my privilege as a cisgender and white academic. The production of knowledge in the interest of minority groups must be done with particular care as to not to reproduce oppressive norms and practices.[9] This is why I have strived to draw on the works created by a plethora of queer authors, in a view of obtaining a final product which speaks to as many queer individuals as possible.

Cristina Richie, "Lessons from Queer Bioethics: A Response to Timothy F. Murphy: Lessons from Queer Bioethics" (2016) 30:5 Bioethics 365–371 [Richie, "Queer Bioethics"] at 370.

[8] *Ibid.*

[9] Julian Gill-Peterson, "Toward a Trans of Color Critique of Medicine" in *Histories of the Transgender Child* (Minnesota: University of Minnesota Press, 2018) 1 at 29.

Chapter 1: An overview of Bill C-6

1. The context leading up to Bill C-6

This first part of the paper will give an overview of the legal history of Bill C-6 and of conversion therapy bans more broadly, along with the controversies that have accompanied these advances. Efforts to curb conversion therapy practices were first heralded by survivors and their advocates who raised awareness and pushed for change.[10] Researchers followed suite, collecting data on survivors' experiences of conversion therapy and its impact on their lives.[11] Only after these concerted efforts did legislatures—relatively recently—start to take action against the denounced practices. In Western jurisdictions, legislative efforts to curb conversion therapy often started with indirect bans in the form of regulations of healthcare professionals.[12] These meso-level measures can serve to pave the way towards legislating against conversion therapies at the macro-level.

Bill C-6 was first introduced as Bill C-8 in March 2020 but died in August of the same year due to the prorogation of Parliament.[13] Before the introduction of Bill C-8 and its reintroduction as Bill C-6 in October 2020,[14] several efforts to combat conversion therapy had already been

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[10] Jacob M Victor, "Regulating Sexual Orientation Change Efforts: The California Approach, Its Limitations, and Potential Alternatives" (2014) 123:5 Yale Law Journal 1532 at 1535. Examples of these include Truth Wins Out, "Survivors", online: *Truth Wins Out* <https://truthwinsout.org/category/videos/survivors/> and Southern Poverty Law Center, "Conversion Therapy", online: *SPL Center* <https://www.splcenter.org/issues/lgbt-rights/conversion-therapy>.

[11] See for example Judith Glassgold et al., *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation*, (Washington DC: American Psychological Association, 2009).

[12] This is the case for example in Argentina, Uruguay, Fiji, Nauru, Samoa, some USA states and Canadian provinces, and Puerto Rico, see ILGA World, Toolbox to combat so-called "conversion therapies" (2020), online: <https://ilga.org/downloads/toolbox_combat_conversion_therapies_ILGA_World.pdf> at 2.

[13] See "Queer History: Rights & Freedoms", online: *Queer Events* <http://www.queerevents.ca/queer-history/rights-freedoms>.

[14] See "LEGISinfo - House Government Bill C-6 (43-2)", online: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10871883&View=0> for an evolution of the Bill's status.

made at the regional level in Canada.[15] This was for example the case in Ontario where Bill 77, commonly known as the "Affirming Sexual Orientation Identity Act", was enacted in 2015 to prohibit conversion therapy practices in clinical settings.[16] Legal and medical scholars have also been increasingly taking an interest in conversion therapy bans. This has produced works such as annotated model laws and policy guidance documents,[17] which can be used to further inform and influence legislative debates. The ban has gained swarms of supporters and critics alike throughout the legislative process. On one hand, 2SLGBTQQIA+ advocates and human rights associations have generally been in favor of passing the bill, although with some modifications to enhance its protective capacity.[18] On the other hand, many conservative and religious groups have spoken up against the bill, condemning it for its alleged infringement on freedom of expression, freedom of conscience and religion, and on parental rights.[19] As of the time of writing, the bill has successfully passed through the House of Commons and completed its second reading at the Senate.[20] Bill C-6 represents a breakthrough in the Canadian legislation in that it is the first measure against conversion therapy to be taken at the federal level. This is an important step forward for Canadian 2SLGBTQQIA+ individuals and advocates since it infers that the protection awarded against conversion therapy will be harmonized and enforced at a higher level across the entire country. Indeed, only several provinces had any pre-existing regulation of conversion therapy, and those which did exist pre-Bill C-6 did not provide as wide a cover or as harsh punishments as the federal bill now does.

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[15] Regional bans of conversion therapy practices are already in place in Ontario, Manitoba, Vancouver, Nova Scotia and PEI, see "Queer History: Rights & Freedoms", *supra* note 13.

[16] Legislative Assembly of Ontario, *Affirming Sexual Orientation and Gender Identity Act*, 77 (2015), [*Bill 77*] online: <https://www.ola.org/en/legislative-business/bills/parliament-41/session-1/bill-77>. For comments on this Bill, see for ex Alice Dreger, "The Big Problem With Outlawing Gender Conversion Therapies" (2015) Wired.

[17] See for example Florence Ashley, *Model Law – Prohibiting Conversion Practices*, SSRN Scholarly Paper, by Florence Ashley, papers.ssrn.com, SSRN Scholarly Paper ID 3398402 (Toronto: University of Toronto, Faculty of Law, 2019).

[18] See for ex the briefs produced by Pflag Canada, by Planned Parenthood Toronto, or by the MSU Pride Community Centre in Parliament of Canada, "JUST - Bill C-6, An Act to amend the Criminal Code (conversion therapy)", online: *House of Commons Canada* <https://www.ourcommons.ca/Committees/en/JUST/StudyActivity?studyActivityId=10980515>

[19] See for ex the briefs prepared by the West Highalnd Baptist Church, by the Canadian Centre for Christian Charities, and by the Neuanlage Grace Mennonite Church in *ibid.*

[20] See "LEGISinfo - House Government Bill C-6 (43-2)", *supra* note 14**.**

Canada's move to ban conversion therapy is said to have been comparatively slower than other jurisdictions. In the United States, for example, legislation to ban conversion therapy was advanced by the National Center for Lesbian Rights and Human Rights Campaign as early as 2015.[21] Brazil, Germany, Ecuador and Malta have particularly been forerunners in the field of conversion therapy bans long before the Canadian proposal was drafted.[22] Nevertheless, the fact that a wide number of countries have yet to enact any legislation regarding conversion therapy leaves a possibility for the Canadian Bill to lead by example. The French legislator, for example, could follow Canada's lead and insert article 222-16-1 A into the Code penal to ban conversion therapy, as proposed by Laurence Vanceunebrock in March 2021.[23]

First, it must not be forgotten that Bill C-6 responds to a real need to curb conversion therapy practices which have devastating consequences on queer youth who are subjected to it. Statistics endorsed by the United Nations report that minors are not only disproportionately victims of conversion therapy practices, but also particularly vulnerable to their harmful consequences.[24] These harms can be physical such as sexual dysfunction, pain and suffering and chronic stress, and psychological such as depression, post-traumatic stress disorder, or suicidal tendencies.[25] It can thus be assumed that conversion therapy contributes to the disproportionately low mental and physical health of queer youth in Canada.[26] These trends have been a concern since at least 1989 when several task forces emphasized the need to protect queer youth from discrimination.[27]

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[21] Samantha Ames & Alison Gill, *Sample Legislation to Protect Youth from Conversion Therapy* (Washington, DC: Human Rights Campaign and National Center for Lesbian Rights, 2015), online: <https://assets2.hrc.org/files/assets/resources/ModelAntiConversionTherapyBill_2016_(2).pdf?_ga=2.105190723.1954203901.1621872988-1437644122.1621872988>.

[22] ILGA World, *supra* note 12 at 2.

[23] See Assemblée Nationale, *Proposition de loi n° 4021 interdisant les pratiques visant à modifier l'orientation sexuelle ou l'identité de genre d'une personne*, (23 March 2021), [*Proposition de loi n° 4021*] online : <https://www.assemblee-nationale.fr/dyn/15/textes/l15b4021_proposition-loi>.

[24] See UNHRC Report, *supra* note 4 para 36, 57.

[25] *Ibid.* para 55—57.

[26] See for example Arati Mokashi et al., "Trans and Non-Binary Youth Accessing Gender Affirming Medical Care in Canada: New Research From the Trans Youth CAN!" (2020) 4 Journal of the Endocrine Society 1086. See also Trans Youth CAN!, *Who are the People Served by Canadian Trans Youth Clinics?* (2020), online: <https://transyouthcan.ca/results/trans-youth-infographic/>.

[27] See for ex the 1989 US Report of the Secretary's Task Force on Youth Suicide mentioned in Eve Kosofsky Sedgwick, "How to Bring Your Kids up Gay" (1991) 29 Social Text 18 at 18.

Therefore, curbing conversion therapy practices is embedded in the need to address the well-being of queer youth more generally. Around ten percent of queer youth can be assumed to undergo some form of conversion therapy in Canada.[28] This can in part be explained by parents' anxiousness to give their children "the most conventional identity possible".[29] This behaviour is not entirely irrational given the privilege which is attached to being cisgender and heterosexual.

Focusing on eliminating conversion therapy practices, therefore, constitutes a viable contribution to improving the health and well-being of queer youth. From a paternalistic standpoint, it can be argued that Bill C-6 is in the best interest of children, who need to be protected from the very real harms of conversion therapy. Claiming that there is a paternalistic duty to protect individuals from conversion therapies is an argument that is easier to make in relation to minors than to adults. This is because rendering a practice illegal essentially impedes on a person's autonomy and individual capacity to undergo that practice. Since the law sees children as individuals who do not yet hold full decision-making capacity, it is easier to rationalize that limiting their freedom is in their best interest. Establishing the state and the law as the entity which should safeguard queer youth's interest is additionally facilitated by the fact that parents can often be 'uncomfortable' when their children express a gender or sexuality which they perceive as ambiguous or unconventional.[30] Bill C-6 thereby inscribes itself in the longstanding narrative which casts the state against parents.

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[28] See Mokashi et al., *supra* note 26 at 1086. See for ex Mason D. Bracken, "Torture is not Protected Speech: Free Speech Analysis of Bans on Gay Conversion Therapy" (2020) 63 Washington University Journal of Law and Policy 325 at 325, 337. See also UNHRC Report, *supra* note 4 para 24.

[29] See Katrina Karkazis, "Wanting and Deciding What is Best" in *Fixing Sex: Intersex, Medical Authority, and Lived Experience* (Durham: Duke University Press, 2008) 179 at 180. See also Travers, *supra* note 3 at 14.

[30] Sahar Sadjadi, "The Vulnerable Child Protection Act and Transgender Children's Health" (2020) 7:3 Transgender Studies Quarterly 508 [Sadjadi, "The Vulnerable Child Protection Act"] at 513.

2. Discussing Bill C-6 itself

The enactment of Bill C-6 will create five new criminal offences relating to conversion therapy, with the overall goal of promoting human dignity and equality.[31] The proposal defines conversion therapy as "a practice, treatment or services designed to change a person's sexual orientation to heterosexual, to change a person's gender identity or gender expression to cisgender or to repress or reduce non-heterosexual attraction or sexual behaviour or non-cisgender gender expression".[32] The five new offences are the following: forcing someone to go through conversion therapy against their will, providing conversion therapy services to minors, moving a minor abroad for the purpose of obtaining conversion therapy, advertising for conversion therapy services, and profiting from such practices.[33] Committing these crimes could, after enactment of the Bill, lead up to as much as five years of imprisonment.[34] While the Minister of Justice speculated in its Charter Statement published in October 2020 that claiming not to have been aware of a victim's age could constitute a possible defense to a Bill C-6 criminal charge, the most recent reading of Bill C-6 has eliminated the viability of this defense.[35] Widely approved for a second reading by 305 members of parliament on the 28th of October 2020, the public's response to the proposal as studied by the House of Commons' Standing Committee on Justice and human Rights in December 2020 was also extensively positive.[36] As of the date of writing, Bill C-6 has passed its third reading in the House of Commons in April 2021.[37]

Having investigated how the proposal for Bill C-6 came about, and the place that this legislation occupies in the broader move to regulate conversion therapy internationally, the scope

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[31] See *Bill C-6*, *supra* note 4 and Government of Canada, Department of Justice, "Department of Justice - Statement of Potential Charter Impacts", (28 October 2020), [Charter Statement] online: <https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c6b.html>.

[32] See *Bill C-6*, *supra* note 4 section 320.101.

[33] *Ibid*.

[34] *Ibid.* sections 320.102(a), 103(1)(a).

[35] Charter Statement, *supra* note 31 and *Bill C-6*, *supra* note 4 section 320.103(2).

[36] See House of Commons, "Vote No. 14, 43rd Parliament, 2nd Session", (28 October 2020), online: *Parliament of Canada* <https://www.ourcommons.ca/Members/en/votes/43/2/14>. See also Barbara Kay, "The case for deep-sixing Bill C-6", (20 November 2020), online: *National Post* <https://nationalpost.com/opinion/barbara-kay-the-case-for-deep-sixing-bill-c-6/>.

[37] See "LEGISinfo - House Government Bill C-6 (43-2)", *supra* note 14.

of Bill C-6 will now be presented. More precisely, understanding *who* the Bill is enacted for is a *sina que non* step to assessing the impact the prohibition will have once in force. Bill C-6's focus on minors is no coincidence. Indeed, centring the conversion therapy prohibition and its discussion around children's need for protection serves both the interests of legislators and of queer rights advocates.

Bill C-6 does not seem to use a developmental threshold to distinguish between minors and adults.[38] Rather, the ban considers as a 'child' anyone under the age of 18.[39] It is worthwhile to note several points regarding the legislator's choice to prioritize the protection of children. First, the focus on youth can be explained by the connotations which are attached to children. For example, Gill-Peterson highlights the fact that children are seen as "emblems of futurity".[40] Dedicating time and effort to ensure that the children of today have the best quality of life possible can in this sense be seen as a means of investing into the future of society as a whole. Because children have been shaped in the collective conscience as sanitized, innocent, and domesticated they can additionally be seen as the most vulnerable members of society and those most in need to state protection.[41]

A second point to note is the sensitive nature of any political conversation which touches upon youth and their SOGIE. This sensitivity may be due to the notion of futurity which children can represent, as already noted above.[42] There is much at stake in how children are brought up today if their current experiences can have an impact on the political, social and economic landscape of tomorrow. Moreover, many societies in North America and beyond attach great cultural importance to gender and sexuality.[43] For example, SOGIE has historically played an important role in the way labour is divided and how families are expected to function.

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[38] See Justine Noiseux et al., "Children need privacy too: Respecting confidentiality in paediatric practice" (2019) 24:1 Paediatrics & Child Health e8 for a discussion on the developmental threshold.
[39] *Bill C-6*, *supra* note 4 section 273.3(1)(c), 320.103.
[40] Gill-Peterson, *supra* note 9 at 2.
[41] *Ibid.* at 2.
[42] See *inter alia* Hannah Dyer, "The Contested Design of Children's Sexuality" in *The Queer Aesthetics of Childhood* (Rutgers University Press, 2011) 124 [Dyer, "Children's Sexuality"] at 126. See also Gill-Peterson, *supra* note 9 at 2.
[43] See Thoreson, *supra* note 1 at 2.

Focusing on minors' best interests can even be qualified of an advocacy strategy that seeks to shift the status quo and establish the queer movement as protector of children. Indeed, the dominant social norms have long painted the 2SLGBTQQIA+ community as a threat to the 'innocence of childhood'.[44] By presenting queer rights as a way to safeguard minors from the harm of conversion therapy, Bill C-6 has cast individuals belonging to SOGIE minorities as individuals needing and worthy of the state's protection.[45] Focusing on children in such a way might therefore allow for a deconstruction of some of the negative social norms surrounding SOGIE minorities. The effects of this shift in the narrative will be analyzed further in a later part of this thesis.

Defining the material scope of the ban is a question both of law and ethics. Indeed, assessing Bill C-6 requires an ethical analysis of the practices which *should* be reached by the prohibition, and a legal inquiry into those practices which *will* fall under the definition of 'conversion therapy'. Trying to answer either one of these questions has created much discourse amongst scholars. This is most likely because Bill C-6 can be said to define 'conversion' imprecisely, which creates ample leeway for diverging interpretations.[46] To remedy the lack of clarity on those practices which constitute conversion therapy, some jurisdictions have opted to create exceptions to their respective prohibitions. For example, some jurisdictions have made it explicitly clear that therapies that are mandated by a judge for sex offenders do not fall under their conversion therapy bans.[47] Such exemption clauses, however, have not been provided for in the Canadian Bill C-6.[48]

One of the worries expressed by scholars is that Bill C-6 will inadvertently prohibit gender-affirmative care. Gender affirmation is a practice whereby an individual socially and/or

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[44] See for ex Sadjadi, "The Vulnerable Child Protection Act", *supra* note 30 at 508. See also Marie-Amelie George, "Expressive Ends: Understanding Conversion Therapy Bans" (2017) 68 Alabama Law Review 63 at 838.

[45] Analogy to be made with *ibid.* at 842, regarding conversion therapy bans in general.

[46] Critique made for ex in Kay, *supra* note 36.

[47] See Jimmy Charruau, "Les « thérapies de conversion sexuelle »: Quelques remarques sur une proposition de loi française" (2020) revdh, online: <http://journals.openedition.org/revdh/10171> at 6 in the context of Europe.

[48] See *ibid.* See also *Bill C-6*, *supra* note 4.

medically asserts their gender identity.[49] Important to note here, is the difference between *asserting* and *changing* one's gender identity. Whereas the former action is associated with gender-affirmative care, the latter practice would easily fall under the definition of conversion therapy.[50] 2SLGBTQQIA+ rights advocates tend to believe gender-affirmative care should not be prohibited. This is because, unlike conversion therapy, gender affirmation is seen to have many benefits for queer youth.[51] In fact, gender affirmation is often seen to be the best practice of care, not only for children who do not identify as cisgender but also for those who are diagnosed with gender dysphoria, regardless of their gender identity.[52]

Conversion therapies and gender affirmation practices can be distinguished by looking at their underlying rationale. Indeed, while conversion therapies are motivated by anti-queer sentiments, gender affirmation care is not undertaken from a homophobic or transphobic perspective.[53] This point of view is not unanimously endorsed, as recent pushback against gender-affirmative care posits that homosexual children use gender-affirmative care in response to either their parents or their own internalized homophobia.[54] The idea here is that a gay boy, for example, will choose to identify as a girl for his sexual orientation to be perceived as heterosexual. Florence Ashley has countered these arguments by advancing three important points. First, they explain that changing the label used to describe an individual's SOGIE is not the same as changing their actual SOGIE.[55] Secondly, they show that homophobia is an unlikely factor of motivation for gender affirmation, since transphobia is more salient and has worse consequences in today's society. Ashley finally stresses the widely different moral underpinnings and history of conversion therapy in contrast to gender-affirmative care.[56] Although gender

[49] See the definition in Florence Ashley, "Homophobia, conversion therapy, and care models for trans youth: defending the gender-affirmative approach" (2020) 17:4 Journal of LGBT Youth 361 [Ashley, "The Gender-Affirmative Approach"] at 361.
[50] Compare the definition of gender affirmation in *ibid.* with the definition in *Bill C-6*, *supra* note 4 and explained in Charter Statement, *supra* note 31.
[51] See for example Ashley "The Gender-Affirmative Approach", *supra* note 49 at 375—6 and Mokashi et al., *supra* note 26.
[52] See for ex Roberto D'Angelo, "The complexity of childhood gender dysphoria" (2020) 28:5 Australia Psychiatry 530.
[53] See Ashley "The Gender-Affirmative Approach", *supra* note 49.
[54] *Ibid.* at 365. See for ex Sadjadi, "The Vulnerable Child Protection Act", *supra* note 30.
[55] Ashley "The Gender-Affirmative Approach", *supra* note 49 at 369—370.
[56] *Ibid.* at 363—65, 376.

affirmation is indeed assumed to be beneficial to trans youth while conversion therapy has proven to be extremely detrimental to one's mental and physical health, the lack of empirical data comparing the impact of both practices on queer youth comes to weaken this last point.[57]

Another position that could be taken is to view consent as the distinguishing factor between conversion therapy and gender affirmation. This is what is expressed in the French law proposal, which scholars have interpreted to exclude "medical sexual transition processes" on the basis that they are consensual, unlike conversion therapies.[58] However, using consent as the sole way to distinguish between both practices could be problematic in the case of children. This is because Bill C-6 appears to be premised on the notion that minors do not have full decision-making capacity. The ban, therefore, aims to limit children and adolescent's ability to access conversion therapy even in cases where they would consent to such practices.[59] The consequences of forgoing minor's capacity to consent is an aspect of Bill C-6 which will be analyzed in further detail in the next part of this thesis.

There is one last distinguishing aspect between both practices. While there are medical requirements that act as gatekeepers for gender-affirmative care, conversion therapies are not premised on any such factors. Access to hormone replacement therapy, for example, is only be made possible for trans patients who have received a gender dysphoria diagnosis.[60] Yet, it might be unwise to base the distinction between conversion therapy and gender-affirmative care on such medical diagnoses. This is because requiring a medical diagnosis for gender-affirmative care is increasingly seen by queer individuals and advocates as controversial and unethical.[61] Overall, there is hope that future interpretations of Bill C-6 will take into account the numerous differences between conversion therapy and gender-affirmative care. Choosing which

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[57] See *ibid.* at 374—76 and Mokashi et al., *supra* note 26. This lack of data might the unethical nature of its collection, see Ashley "The Gender-Affirmative Approach", *supra* note 49 at 376.

[58] See the interpretation in Charruau, *supra* note 47 at 5 and *Proposition de loi n° 4021*, *supra* note 23 art 3 para 3—5.

[59] See *Bill C-6*, *supra* note 4 section 320.103(1) and the interpretation in Charter Statement, *supra* note 31.

[60] See Florence Ashley, "Gatekeeping hormone replacement therapy for transgender patients is dehumanising" (2019) 45:7 J Med Ethics 480 [Ashley, "Hormone Replacement Therapy"] at 1—2.

[61] See for ex *ibid.* in the context of hormone replacement therapy.

distinguishing factors to focus on, however, will need to be done with a certain consideration as to the impacts that such distinctions could have on the well-being of 2SLGBTQQIA+ youth.

Some concern has been expressed regarding the possibility that conversion therapy bans will inadvertently discourage health professionals from working with queer youth.[62] In particular, the pressing question is whether youth who are questioning their SOGIE will continue to be able to legally seek counselling or advice from mental health professionals. What critiques of the ban worry about is the fact that prohibiting conversion therapy will prevent mental health professionals from 're-directing' an individual's self-identification as a particular SOGIE minority towards another.[63] Leaning on Bill C-6's definition of conversion therapy and the moral and historical aspects of said practice, however, it is not difficult to distinguish between two different scenarios. In the case of conversion therapy, an individual would be subject to practices that would seek to change their sexual orientation from bisexual to heterosexual for example. This would clearly fall within the reach of the Bill C-6 ban. Meanwhile, a mental health professional could conduct a therapy session whereby they help a questioning individual in understanding their SOGIE. This latter scenario would seek to better *name* or *describe* a person's SOGIE rather than to change it. Yet, as advanced earlier, changing the label which one uses to describe themselves is different from changing their identity.[64] Keeping these descriptions in mind makes it easier to differentiate between practices that should be allowed and those which should be prohibited.

Some jurisdictions have elected to create exclusion clauses for therapies aiming to support individuals who are questioning their SOGIE or aiming to help them accept their identity. The argument given by proponents of such exclusion clauses is that SOGIE is a fixed characteristic.[65] Therefore, while an individual's SOGIE cannot be changed and should not be attempted to be changed through conversion therapy practices, therapies seeking to help individuals come into their SOGIE should be encouraged. On one hand, this rationale could be challenged since the immutability of SOGIE is contested both within groups who advocate for and those who oppose

[62] See for ex Dreger, *supra* note 16.
[63] See *ibid.*
[64] Ashley, "The Gender-Affirmative Approach", *supra* note 49 at 369—370.
[65] See for ex Charruau, *supra* note 47 at 5. See also *Proposition de loi n° 4021*, *supra* note 23 art. 3 para. 3—5.

2SLGBTQQIA+ rights.[66] On the other hand, explicitly carving out specific supportive therapies from Bill C-6 could create more certainty regarding the scope of the prohibition and would have eased the concerns noted above. Noteworthy here is the Department of Justice's comment that the Bill C-6 offences will "exclude purely private discussions between individuals and those seeking to support them".[67] While this distinction is not made in the current text of the bill, there is still a possibility that it be added in a further reading of the proposal, or that the Department of Justice's comment be considered in its future interpretation. Nevertheless, opting out of such exclusion clauses has the effect of creating uncertainty as to the reach of the ban. While a wide scope of interpretation means that gender-affirmative care will hopefully be seen as falling outside Bill C-6's reach, there is also a very real possibility that it will allow some harmful practices to be excluded from the prohibition.

3. A critique of the law

Recent inquiries into the lived experience of queer individuals have shown that often, practices that can be considered as conversion therapy are practiced within religious institutions and perpetrated by religious leaders.[68] Conversion therapy bans will therefore only be truly effective if they can curb these practices. Hence, we must look at whether Bill C-6 will reach religious practices, or if it will be constrained to government-controlled medical practices.

Using the framework of international human rights law can serve to justify extending the reach of conversion therapy bans to the religious realm. The first step in making this argument is to show that the therapies practiced by religious organizations amount to torture or cruel, inhuman or degrading treatment. Some religious groups have been known to perpetuate practices such as the re-enactment of sexual abuse, beatings, or food deprivation in an effort to change

[66] See for ex the 'identity paradigm' in George, *supra* note 44 at 843—48, and the threat of the 'born this way' logic in Brian D Earp & Andrew Vierra, "Sexual Orientation Minority Rights and High-Tech Conversion Therapy" in David Boonin, ed, *The Palgrave Handbook of Philosophy and Public Policy* (Basingtoke: Palgrave Macmillan, 2018) 535 at 7—9.

[67] See Charter Statement, *supra* note 31.

[68] See *inter alia* Bracken, *supra* note 28 at 336. See also UNHRC Report, *supra* note 4 para 25—30.

individuals' SOGIE.[69] The nature of such acts, the amount of suffering they cause, the intention and purpose behind them qualifies these practices as torture or cruel, inhuman or degrading treatment.[70] The due diligence principle would therefore require states to prohibit conversion therapies whether they are practiced in government-controlled clinical settings, or by non-state actors, including in religious settings.[71] Secondly, the argument that conversion therapies are protected by religious freedom should be countered. While Canadian law upholds the freedom of religion, only the freedom of religious conscience is an unqualified right, whereas religious acts can constitutionally be limited. Practices amounting to torture are regularly not seen as protected by freedom of speech, conscience, or religion.[72] This means that these freedoms cannot be used to excuse practices of conversion therapies, even if they take place in a religious setting. Evidently, Bill C-6 has reignited debates on freedom of religion, which are periodically revived in certain areas of litigation or legislation. For example, the freedom of religion debate was very prominent in the *R v NS* case of 2012, where the Supreme Court of Canada ruled that being able to wear a niqab is not an absolute right for court witnesses.[73] The contentious question of niqabs created a discourse around the importance of avoiding a wrongful conviction versus the freedom of religion.[74] Another controversial area for religious rights is the issue of polygyny. On this matter, the Minister of Justice has highlighted the tension which exists between the harms plural marriages can cause to women, and the freedom of religion which can potentially restrict women's rights.[75] This dialogue is yet another exemplification of the ongoing conflict between religious rights and human rights.

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[69] See Christopher Romero, "Praying for torture: Why the United Kingdom should ban conversion therapy" (2019) 51 31 at 202—3 for a list of practices carried out in religious conversion therapies. See also Bracken, *supra* note 28 at 334—35 and UNHRC Report, *supra* note 4 para 50—54.

[70] See Romero, *supra* note 69 at 216—19, 222—26.

[71] *Ibid.* at 219—220.

[72] The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, [*Canadian Charter of Rights and Freedoms*] online: <https://canlii.ca/t/ldsx> s2(a). See also for ex Bracken, *supra* note 29 at 347—355.

[73] See R. v. N.S., 2012 SCC 72 (CanLII), [2012] 3 SCR 726, <https://canlii.ca/t/fvbrr>, last accessed on 2021-12-05, paras. 1—57.

[74] See generally *ibid.*

[75] See generally Rebecca Cook & Lisa Kelly, *Polygyny and Canada's Obligations under International Human Rights Law*, Family, Children and Youth Section Research Report (Department of Justice Canada, 2006).

It is nonetheless important to explore the side of the argument, which is presented by religious individuals, who emphasize the freedom to live and identify as one willingly chooses. According to them, this freedom means that queer individuals should not be prohibited from identifying and living a heterosexual and cisgender lifestyle.[76] As a response to this line of reasoning, it could once again be reminded that changes in labels are not changes in SOGIE.[77] Claiming to help individuals live a heterosexual and cisgender life despite their queer identity, rather than claiming to be able to change one's SOGIE might therefore be the silver lining which allows certain religious practices to evade the denomination of conversion therapy. A difference can indeed be made between conversion therapy as defined in Bill C-6 and what some scholars have called sexual identity exploration therapy. While the term used to name this last practice varies, it is often distinguished from conversion therapy through its "nonjudgmental setting" and the fact that its underlying rationale is to help individuals who are struggling to reconcile their religion and their SOGIE.[78]

Although religion has a historically tumultuous relationship with the queer rights movement, it is important not to automatically cast sexual identity exploration therapies as harmful practices that queer individuals need to be protected from. Indeed, it must be recognized that religion can be as much part of a person's identity as their sexuality or gender. If it is seen as acceptable for a queer individual to renounce their religion because it is at odds with their SOGIE, then there should also be a reason to accept that other queer individuals choose to place more importance on their religious identity, even if it is to the detriment of their SOGIE.[79] Ruth Colker has argued that alienating religion from the queer rights movement serves to exclude racial minorities from the discussion. This is because an important proportion of religious queer individuals are also people of colour. Dismissing all discussion of religion in the queer rights movement will thus have the adverse effect of disproportionately excluding queer people of colour from the dialogue. Colker therefore calls for queer rights advocates to use a "genuine holistic" or "fully embodied

[76] See for ex "The day I met a 'gay conversion therapist'", *BBC News* (16 September 2019), online: <https://www.bbc.com/news/stories-49679273>.
[77] See Ashley, "The Gender-Affirmative Approach", *supra* note 49 at 369—370.
[78] For a definition which encompasses both characteristics, see George, *supra* note 44 at 797.
[79] See *ibid.* at 813. See for ex "The day I met a 'gay conversion therapist'", *supra* note 76.

bisexual" framework which does not dichotomize religion and SOGIE and strives to be more inclusive.[80]

Different jurisdictions have had varied approaches to religious practices and conversion therapy bans. While some legislation enacted clearly only apply to clinical practices,[81] others have not restricted the scope of their bans in such a way.[82] The latter create space for a multitude of discussions regarding the extent to which religious actors should be affected. Bill C-6 is part of this second group of laws, which means its interpretation can potentially go either way.

The proposal for Bill C-6 came about in the context of heavy advocacy and increasingly loud survivor testimonies, which finally broke through to legislative action first at the provincial and now at the federal level.[83] The same path to criminalizing conversion therapy has been followed in other jurisdictions, with the clear goal of protecting queer youth and fostering their wellbeing. Content-wise, Bill C-6 aims to create five new offences related to the practice of conversion therapy. While this legal advance garnered much support, it also drew some criticism, particularly from religious groups. Although claims of infringements to freedom of religion can be countered with an international human rights approach, it would be unwise to entirely dismiss opinions of religious groups, lest queer people of colour be alienated from queer rights movements such as this. The protection awarded by the bill is clearly geared towards children. While this focus might be part of an advocacy strategy, it also engenders higher stakes for the ban itself. Hence, the next part of this thesis will analyze relevant notions of childhood ethics that, later in this thesis, will be applied to the context of the bill.

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[80] See Ruth Colker, "An Embodied Bisexual Perspective" (1995) 7:1 Yale Journal of Law & the Humanities 33 at 166—78.

[81] See for ex *Bill 77*, *supra* note 16.

[82] See for ex *Bill C-6*, *supra* note 4. See also *Proposition de loi n°4021*, *supra* note 23 and the discussion in Charruau, *supra* note 47.

[83] Provincial-level changes have for ex included insurance restrictions in Ontario, Nova Scotia and Prince Edward Island and a policy to restrict funding in Nova Scotia, see ILGA World, *supra* note 12 at 3, 7. See also the regional bans of conversion therapy practices already in place in Ontario, Manitoba, Vancouver, Nova Scotia and PEI, see "Queer History: Rights & Freedoms", *supra* note 13.

Chapter 2: Bill C-6 through the lens of childhood ethics

Looking at Bill C-6 through the lens of childhood ethics is imperative since, as was explained in the first part of this paper, youth are at the center of the conversion therapy prohibition. Indeed, while the bill's reach is not limited to minors and aims to outlaw any non-consensual conversion therapy practices, the legislator has opted to protect children more heavily by criminalizing conversion therapy even when they consent to it.[84] Other legal systems have followed a similar path. For example, the French proposal includes a criminal aggravation in cases where conversion therapies are practiced in the presence of children.[85]

1. Queer youth as moral agents with meaningful voices

Childhood ethics is a relatively new field of study that has primarily been developed in bioethics.[86] This ethical approach is interdisciplinary and practically oriented towards examining and giving moral meaning to the matters impacting children and the ways in which they are perceived.[87] As a precursor in this area, Franco Carnevale developed precepts which have given childhood ethics and childhood studies in general their broad direction. Carnevale has called for children to be seen as full moral agents, and for their voices to be heard and recognized as meaningful.[88] As the precepts of childhood ethics continue to be advocated for in legal literature, it is becoming increasingly important to compare theory to practice.[89] Bill C-6 presents the perfect ground to apply the principles of childhood ethics. This is not only because the bill aims to protect children, but because it targets *queer* youth more specifically—individuals whose

[84] See Bill C-6, *supra* note 4 section 320.102., 320.103.
[85] *Proposition de loi 4021*, *supra* note 23 art. 1(3)**.**
[86] See for ex Franco A Carnevale et al, "Interdisciplinary Studies of Childhood Ethics: Developing a New Field of Inquiry" (2015) 29:6 Child Soc 511 [Carnevale et al, "A New Field of Inquiry"] at 511—12, 516. See for ex Marjorie Montreuil et al, "Children's Moral Agency: An Interdisciplinary Scoping Review" (2018) 43:2 J Child Stud 17.
[87] See Carnevale et al, "Childhood Ethics", *supra* note 6.
[88] See *ibid.* at 9. See also Franco A Carnevale, "A 'Thick' Conception of Children's Voices: A Hermeneutical Framework for Childhood Research" (2020) 19 International Journal of Qualitative Methods 160940692093376 [Carnevale, "Children's Voices"] at 8.
[89] See for ex Montreuil et al., *supra* note 86 at 24, 25.

voices have been especially ignored by doctors and politicians and who have historically been denied recognition of moral agency.[90] The examination of the weight which Bill C-6 gives to children's voices will be done in two parts. The first consideration will delve into the law-making process and the presence of children's voices within the legislative discussions. Secondly, the inner workings of Bill C-6 itself will be assessed, with particular attention to the ban's ability to empower children as moral agents.

1.1. Inclusion of queer youth in the legislative discussion

It is reasonable to expect that laws enacted to protect a particular group of society be created in consultation with that specific group. Including the primary group of concern in discussions about them is something that research ethicists have long heralded. The mantra "nothing about us without us" has notably been used by marginalized groups to push for inclusion in research and policy-making.[91] Ensuring such an inclusion in the law-making process is primordial, since it meets scholars' calls for policies to be built upon the experience of the individuals who they are aimed at protecting.[92] I argue that this line of argument also stands its ground in cases where minors make up the group concerned. This is a position that is supported by the precepts of childhood ethics. Indeed, childhood ethicists have endorsed the claim that children not only have the capacities to participate but also have a right and an interest in doing so.[93] Yet nowhere in the conversion therapy ban's law-making process have children been asked about their opinion or experience. The problem of consultation seems to be systematic in the case of Bill C-6, as the legislators have also been criticized for their failure to consult gender dysphoria experts.[94]

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[90] Gill-Peterson, *supra* note 9 at 4, 28.

[91] See for ex the issue of speaking for others in Lime Jello, "Why You Shouldn't Study Sex Workers", (16 April 2015), online: *Tits and Sass: Service Journalism by and for Sex Workers* <https://titsandsass.com/why-you-shouldnt-study-sex-work/>.

[92] See for ex Dean Spade, "What's Wrong with Trans rights?" in *Normal Life: Administrative Violence, Critical Trans Politics and the Limits of Law* (Brooklyn: South End Press, 2011) at 12. See also Carnevale at al., "A New Field of Inquiry", *supra* note 86 at 519.

[93] See Carnevale et al., "Childhood Ethics", *supra* note 6 at 8. See also Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 513—519.

[94] See Kay, *supra* note 36.

This lack of inclusion can be explained in several ways. A first hurdle to including children in the legislative discussion might come from the fact that Bill C-6 is an amendment to the criminal law rather than human rights legislation. Enacting a regulation of conversion therapy as a human rights piece of legislation might have engendered a greater political push for consultations with civil society and engagement of the concerned group—namely children. This is because there is a greater tradition of citizen participation in the discussion of anti-discrimination and human rights rather than of conversations about criminal law, which tend to remain confined to political and legal circles. Yet, childhood ethicists have also expressed their support for the involvement of children in all areas of law that are relevant to them, including criminal law.[95] Bill C-6 undeniably falls under this category of laws, since it provides for an amendment to the criminal code and aims at positively impacting youth's lives.

Another reason for leaving children out of the conversation might be that, unlike other groups worthy of protection, children are not deemed to be able to participate in a dialogue regarding conversion therapy or their rights in general. The inquiry into children's capabilities has underlined much of the work undertaken by childhood ethicists. The studies conducted by these experts have revealed that many common assumptions and narratives regarding children's capacities work to systematically undermine youth as individuals of society with participatory capabilities.[96] This oppression of children's voices can be perpetuated by notions of generational ordering for example. Because the concept of generational ordering correlates age with factors such as authority and responsibility,[97] children—as the youngest group of society—are seen as the least worthy/capable of having their voices heard. This conceptualization has persisted even though many childhood specialists believe such developmental measurements on the basis of age to be inequitable and unjustified.[98]

Childhood ethicists have worked hard to counter these oppressive assumptions and have ascertained that children can and should participate in important societal and legislative decisions. Franco Carnevale for example conducted his own study into children's capacities by

[95] Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 518.
[96] See *ibid.* at 513. See for ex Carnevale, "Children's Voices", *supra* note 88 at 2.
[97] See the definition of 'generational ordering' in Carnevale et al., "Children's Voices", *supra* note 88 at 2—3.
[98] See *inter alia* Dyer, "Children's Sexuality", *supra* note 42 at 124. See also D'Angelo, *supra* note 52 at 531.

drawing on empirical research with youth and reviewing the way in which different disciplines reported childhood moral agency. This study conclusively pointed towards the fact that children do indeed have the capabilities to act, speak, and reflect by and for themselves.[99]

Additionally, childhood scholars have overwhelmingly highlighted the value in including children in medical discussions which touch upon their health and well-being.[100] It can certainly be argued that the same values are to be found in including youth in the Bill C-6 discussion since conversion therapy practices have a crucial role to play in queer youth's health. More specifically, one of the issues with excluding children from the discussion surrounding the creation of conversion therapy bans is that the resulting laws run the very high risk of reflecting a false notion of childhood.[101] As such, the legislation might end up benefiting the adults who supported it rather than the children it is aimed at protecting. Social studies of childhood have found that numerous other harms can result from excluding youth from care-related issues, including the creation of a general feeling of neglect amongst both children and their families.[102]

Although greater efforts should undeniably be made to include children in legislative conversations which affect them, care needs to be taken that such participatory practice be guided by an accurate understanding of what they express. A fluid comprehension between youth and older individuals can be encouraged by using what Carnevale calls a 'thick conception and a hermeneutical approach'. This means that children's voices need to be perceived as embedded in their relevant relations, society, culture, and politics.[103] While this translation exercise requires a certain level of effort from policymakers or adults in general, it is justified in view of the benefits of inclusion. Furthermore, it can also be argued that children's voices do not deserve to be discarded just because what they say needs to be 'interpreted' by and for adults, in the same way that the justice system does not discard individuals who do not speak French or English.

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[99] See Carnevale et al., "Childhood Ethics", *supra* note 6 at 2, 5.
[100] See for ex Noiseux et al., *supra* note 38 at 2.
[101] See Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 519.
[102] An analogy from social studies of childhood, see *ibid*. at 517—19.
[103] See Carnevale, "Children's Voices", *supra* note 88 at 5.

1.2.Bill C-6 and its potential to empower queer youth

After having analyzed the place children have been given within the law-making process, it is primordial to assess the ways in which Bill C-6 itself will cast children as moral agents with meaningful voices. This assessment will mainly be carried out with a focus on the law's capacity to empower queer youth. This is because empowerment has been heralded by scholars and activists as the main strategy which would simultaneously allow for the creation of greater equity, the promotion of equal rights, and a decrease of health inequities.[104] When it comes to children's SOGIE and conversion therapy, I have identified two main avenues which would allow for empowerment. The first is embodied by children's decision-making capacity, and therefore through the process of giving consent. The second empowerment strategy consists of the practice of self-identification of SOGIE. Bill C-6's capacity to empower queer children will therefore be assessed with reference to the amount of space that it has given to both mechanisms.

1.2.1. The role of consent

An individual's ability to give consent by themselves—whether to medical procedures or other common proceedings of everyday life—is tied to the amount of value that is given to their autonomy and the way in which their decision-making capabilities are perceived. I will first look at the manner in which which Bill C-6 considers children's autonomy, with reference to guidelines that have been emitted by childhood ethicists in the last years. A model of informed consent will then be introduced, along with an evaluation of the feasibility of such a model in the case of conversion therapies.

The concern that Bill C-6 will impede entirely upon minors' autonomy is a concern that is linked to the rights of equality and section 15 of the Canadian Charter. For the legislators, it is clear that the benefit of protecting youth from the negative effects of conversion therapy

[104] See for ex Grayce Alencar Albuquerque et al, "Access to health services by lesbian, gay, bisexual, and transgender persons: systematic literature review" (2016) 16:1 BMC Int Health Hum Rights 2 at 8. See also Florence Ashley & Carolyn Ells, "In Favor of Covering Ethically Important Cosmetic Surgeries: Facial Feminization Surgery for Transgender People" (2018) 18:12 The American Journal of Bioethics 23 at 4.

outweighs the importance of their individual autonomy.[105] Indeed, the Canadian bill, like the other conversion therapy bans enacted worldwide, has cast governments and the 2SLGBTQQIA+ rights movement as the "protectors of children", while casting queer youth as the individuals who are in need of protection.[106] This conclusion has been reached by using the 'best interest' standard, has been put into question by childhood ethicists whose main worries center around the way that children's best interests are defined and applied in practice.[107] These worries are not unwarranted, considering that legislators and policymakers recurrently make false assumptions about what is in children's best interest. More precisely, these decision-makers have been known to undermine minor's agential capacities.[108]

It is true that weighing children's need for protection against the importance of respecting their agency is a particularly difficult task.[109] A first difficulty comes from the fact that, as childhood ethicists sustain, both the elements of protection and respect need to be simultaneously honoured.[110] Secondly, Bill C-6 positions itself in opposition to parental rights by imposing upon the government the duty to protect children.[111] Additionally, children and the role they play in legislation have historically been manipulated by law-makers, sometimes with the aim of 'scapegoating' certain minority groups.[112] This was the case of the South Dakota Vulnerable Child Protection Act, for example, the rationale of which stirred a sense of fear towards the 2SLGBTQQIA+ community.[113] Finally, it is critical to distinguish between protection from conversion therapy and protection from sexuality. The need for protection from conversion therapy is well-established and will be explored further in a subsequent part of this paper.

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[105] See Charter Statement, *supra* note 31.
[106] See for ex George, *supra* note 44 at 838, 842.
[107] See for ex Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 520.
[108] *Ibid.* at 513, 519.
[109] This is a common concern in childhood ethics, see for *ibid.* at 513, 521. See also Thoreson, *supra* note 1 at 5, 6.
[110] See for ex Franco A Carnevale et al., "A Relational Ethics Framework for Advancing Practice with Children with Complex Health Care Needs and Their Parents" (2017) 40:4 Comprehensive Child and Adolescent Nursing 268 [Carnevale et al, "Relational Ethics"] at 273—74. See also Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 520—21.
[111] On the debate regarding parental rights see Victor, *supra* note 10 at 1537—38.
[112] See Sadjadi, "The Vulnerable Child Protection Act" *supra* note 30 at 508. See also Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 514.
[113] Sadjadi, "The Vulnerable Child Protection Act", *supra* note 30 at 508.

Policymakers must, however, be warned against extending this protection too widely. Indeed, a common narrative surrounding childhood is the need to shield children's innocence from sexuality. Such a discourse, pushed forth by the moral panic which the topics of childhood and sexuality can generate, has been used to restrict children's sexual rights and education.[114] Not only does this vision of childhood go against ethicists' call to recognize the capabilities and self-governing capabilities of youth by playing into the common connotations of innocence and ignorance, but it has also been shown to have life-long negative consequences on health and well-being.[115] Despite the high-stake nature of weighing children's need for protection and the respect of their autonomy, achieving a balance between both aspects is crucial and will be highly beneficial, as both aspects of protection and respect can mutually enforce one another on the long-run.[116]

Having exposed the intricacies balancing protection and respect of children, the question now becomes whether Bill C-6 could have better achieved this equilibrium with a process of informed consent rather than with the current model of precluding all autonomy in favour of protection. Using a system of informed consent means would mean that a distinction would be drawn between conversion therapies that are legal and those which are not. While proposing a model of informed consent for conversion therapies might seem to run counter the purpose of Bill C-6 and the 2SLGBTQQIA+ rights which pushed forth the legislative discussions, it must be kept in mind that the consent model was deemed appropriate to distinguish between prohibited and allowed conversion therapies in cases *not* involving children.[117] Furthermore, childhood experts converge on the opinion that children should have at least some role in decision-making processes that concern them.[118]

Informed consent models can work in a relatively simple way: individuals declare that they want a procedure, they discuss the risks and benefits of it with a healthcare professional, and

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[114] See Kerry H Robinson, "'Difficult citizenship': The precarious relationships between childhood, sexuality and access to knowledge" (2012) 15:3/4 Sexualities 257 at 259—62, 268. See also Thoreson, *supra* note 1 at 9.
[115] See Robinson, *supra* note114 at 271.
[116] Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 512.
[117] Bill C-6, *supra* note 4 at 320.102.
[118] See for ex D'Angelo, *supra* note 52 at 530.

they can then have access to the procedure.[119] A consent model for queer youth could be modelled using the lessons learned from already-existing systems used in medical cases dealing with intersex children, adults who have deteriorating mental health or elderly individuals.[120] Medical practices regarding intersex children attest to the important role parents play in their children's well-being. As a matter of fact, parents' willingness and capability to adapt to their child's identity is deemed to be one of the most crucial variables in this aspect.[121] As such, it is undeniable that parents should be involved in efforts to curb conversion therapies. Yet, studies have shown that caregivers who bear the sole responsibility of making complex decisions to do what is in a child's best interest can feel burdened by this role. In cases of children with non-conforming gender identities, for example, parents can be asked to make decisions regarding medical gender affirmation procedures which are burdensome for children to go through, and even more burdensome to reverse.[122] Shifting any slight amount of responsibility to the children who will undergo the potential treatments—whether gender-affirmative care or conversion therapy—could help alleviate the pressure put on caregivers, while at the same time working towards recognizing children's voices as meaningful. Childhood ethicists have long highlighted the fact that children can and should be active participants in issues regarding their health. Putting more responsibility on minors in this way can be beneficial in the long run, since it can help their capacities to evolve.[123]

While there are many proven advantages to using the informed consent model,[124] one must also be wary of the pitfalls that it can present, some of which are particular to the context of queer youth and conversion therapy. For instance, some arguments have fiercely been made against allowing children to have consenting capacities. For example, there is a group of people who use cases of 'de-transitioners' to warn youth and their parents against precipitated gender affirmation.[125] For them, denying children the right to give their informed consent is a way to

[119] See for ex the proposed informed consent model for hormone replacement therapy in Ashley, "Hormone Replacement Therapy", *supra* note 60 at 2.
[120] See Sadjadi, "The Vulnerable Child Protection Act", *supra* note 30 at 513. Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 521.
[121] Karkazis, *supra* note 29 at 179.
[122] *Ibid.* at 180—81, 208.
[123] See Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 519—20.
[124] See for ex Ashley, "Hormone Replacement Therapy", *supra* note 60 in the context of HRT.
[125] See for ex Kay, *supra* note 36.

protect them from undergoing irreversible changes which they could later regret.[126] In regards to this debate, scholars such as Professor Sadjadi have pointed out the fact that the issue at stake is not centred on the impacts or benefits of certain treatments offered to queer youth, but should rather be focused on whether children are capable of giving consent to the procedure in question.[127]

Another issue with the consent model for children is constituted by the fact that 'childhood' includes such a wide range of ages. Understandably, a seven-year-old will not have the same decision-making capacities as a seventeen-year-old. Therefore, children need to be included in the discussion in a manner that is appropriate for their personal situation, and while the voices of all age groups need to be valued, interpreting them all in the same way would be a mistake.[128]

The need to move to an informed consent model has been heralded by queer scholars in the context of hormone replacement therapy ('HRT').[129] The arguments that have been made in this context relies on the fact that the current, highly medicalized model which relies on a gender-dysphoria diagnosis is not based on individuals' actual experience of gender. This means that those seeking HRT are often pushed to lie and model what they say to fit the mould which will allow them to access the treatments they want.[130] Trans children become trapped in a system in which they continually need to justify their experience of SOGIE to adults in order to be who they are. This is what can be called a 'medicalized' system. Such systems have been highly criticized for disregarding not only children's voices but also the reality of their lives.[131] Conversion therapy bans are similarly based on decontextualized notions of SOGIE and the way it is experienced by queer youth. Indeed, Bill C-6 has been approved on the basis that SOGIE is a fixed characteristic,[132] yet many queer individuals themselves prefer to describe their SOGIE—

[126] See *ibid.* in the context of puberty blockers.
[127] Sadjadi, "The Vulnerable Child Protection Act", *supra* note 30 at 511.
[128] Noiseux et al., *supra* note 38 at 2.
[129] See for ex Ashley, "Hormone Replacement Therapy", *supra* note 60.
[130] *Ibid.* at 2.
[131] See for ex Gill-Peterson, *supra* note 9 at 10, 16.
[132] See for ex Kay, *supra* note 36. See also Charter Statement, *supra* note 31 when discussing sections 15 and the aim of Bill C-6. See also Victor, *supra* note 1 at 1547—52 for California. See also Charruau, *supra* note 47 at 5 para 18 for France.

or at least the label they use to describe it—as fluid.[133] Relying on such a strict binary model of SOGIE can only continue to harm queer children, particularly trans youth, who have historically "been forced to pay one of the heaviest prices"[134] for this narrative.

1.2.2. The role of self-identification in defining SOGIE

Valuing children as moral agents with meaningful voices also means allowing them to define their SOGIE, rather than requiring that it be 'diagnosed' by others through a medical process. The importance of choosing one's own term to identify with, in whatever language resonates with the individual the best, is also highlighted by Saylesh Wesley.[135]

Some arguments have been made against using self-identification in legislation protecting children. For Alice Dreger, the fact that the Ontario Bill 77 uses self-identification to define SOGI is problematic, since it puts too much pressure on children to "tell us what SOGI they 'really are'".[136] Dreger argues that "we need [clinicians] to follow patients' needs, not cultural trends".[137] Several points can be raised in response to this line of argument. First, research into the history of queer children such as that of Julian Gill-Peterson does not support the fact that 2SLGBTQQIA+ children are a 'trend'. In truth, queer children have always existed, although their history has been erased and kept at bay from the mainstream.[138] Secondly, relying on self-identification signifies valuing children's voices as well as their lived experience. Following the logic of childhood ethics, this also means that relying on self-identification is actually in line with the patient's—in this case, the children's—best interest. As a matter of fact, childhood ethicists are of the opinion that youth's identity can better be defined if it is recognized.[139] This is because "accepting youth at their word […] communicates that there is nothing wrong with

[133] See the identity paradigm in George, *supra* note 46 at 843—48. See also Kay, *supra* note 36. See also Charruau, *supra* note 47 at 5 at para 18.
[134] Gill-Peterson, *supra* note 9 at 4.
[135] Saylesh Wesley, "Twin-Spirited Woman: Sts'iyoye smestiyexw slha:li" (2014) 1:3 TSQ: Transgender Studies Quarterly 338–351 at 343—44.
[136] Dreger, *supra* note 16.
[137] *Ibid*.
[138] See Gill-Peterson, *supra* note 9 at 2—3.
[139] See Carnevale et al., "Childhood Ethics", *supra* note 6 at 3.

being yourself".[140] Moreover, recognizing and valuing one's identity is one of the solutions which is often recommended by scholars as a general remedy to inequality.[141]

Dreger adds that "children […] 'need to arrive at the identity they will' while adults give then 'the space to come to that on their own, providing supportive care along the way'".[142] First, it could be said that this is an argument which speaks in favour of relying on self-identification rather than against its use. Secondly, Dreger's statement implies that children do not know the difference between being an effeminate gay cis boy and being a straight trans girl. Studies conducted by childhood ethicists, however, would suggest otherwise. Notably, studies have revealed that internal and external pressures such as homophobia or discomfort during puberty do not have as important of an influence on children's decision to transition as previously thought. [143] Faced with the fact that children are neither 'a-sexual' nor 'proto-heterosexual', researchers have decried the narrative of a youth that is innocent and ignorant of sexuality.[144]

Finally, Dreger's argument relies on the notion that there is a single pre-determined SOGI to which we each arrive. This is in line with the desire of identifying an individual's 'true' SOGI, which has guided American practices.[145] This fixed notion of identity has recently been placed under a shadow of doubt. Indeed, research shows that there is a constant interrelation between children's lives and their identity, both of which fluctuate over time and depending on culture and context.[146] Conceptualizing the brain and genes as the originator of the 'true' identity is an inherently cultural practice which mostly belongs to North American and Western traditions and remains unproven.[147] As such, self-identification might also be a way to break free from the centrality of the Euro-American formations of personhood and relation of the self and the body

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[140] Ashley, "The Gender-Affirmative Approach", *supra* note 49 at 377.
[141] See for ex Ashley & Ells, *supra* note 104 at 4.
[142] Dreger, *supra* note 16.
[143] Ashley, "The Gender-Affirmative Approach", *supra* note 49 at 363—67.
[144] Hannah Dyer, "The Contested Design of Children's Sexuality" in *The Queer Aesthetics of Childhood* (Rutgers University Press, 2011) 124 [Dyer, "Queer Futurity"] at 294—99.
[145] Criticized in Sahar Sadjadi, "Deep in the Brain: Identity and Authenticity in Pediatric Gender Transition" (2019) 34:1 Cult Anthropol 103 [Sadjadi, "Deep in the Brain"] at 107.
[146] See *ibid.* at 104, 112. See also generally Naomi Holford, "Children and young people negotiating gender in context" in Victoria Cooper & Naomi Holford, eds, *Exploring Childhood and Youth*, 1st ed (Routledge, 2020) 35.
[147] See generally Sadjadi, "Deep in the Brain", *supra* note 145.

which has been characterized as problematic.[148] Queer theorists, of which we will talk more about in the next chapter, also often conceptualize the idea of 'true' identity as fundamentally opposed to the very notion of being queer.[149] The only advantage of conceptualizing SOGI as innate, scholars argue, it political.[150]

Relying on self-identification and increased use of informed consent would respond to queer authors' and childhood ethicists' calls for a departure from the longstanding tradition of medicalizing trans children's bodies to the detriment of their self-knowledge.[151] Overall, however, 2SLGBTQQIA+ children still face hurdles to being recognized as moral agents and having their voices heard and respected not only due to their age but also because of their SOGIE. Sadly, Eve Sedgwick's observation still seems to stand thirty years later: "It's always open season on gay kids."[152]

2. The practical effects of the ban on the lives of queer youth

When legislative breakthroughs are made in terms of minority rights, one of the major concerns expressed by activists is always whether or not the changes made will have an actual impact on the lives of those whose needs they supposedly address.[153] Looking at emerging laws through this perspective also responds to the general demand from the movement of minority rights that laws engender the needed material change to individual's lives.[154] Similarly, childhood ethicists have asked that the reality of children's lives be the center of decision taken on their behalf; "In

[148] See the criticism of the Euro-American centrality in Sadjadi, "The Vulnerable Child Protection Act", *supra* note 30 at 512—13.
[149] See for ex Sarah Lamble et al., "Guest editorial: Queer theory and criminology" (2020) 20:5 Criminology & Criminal Justice 504–509at 505. In contra, see Wesley, *supra* note 135 at 341.
[150] See the 'born this way' and the 'from within' discussions in Sadjadi, "Deep in the Brain", *supra* note 145 at 115—18.
[151] See for ex Gill-Peterson, *supra* note 9 at 5.
[152] Sedgwick, *supra* note 27 at 18.
[153] See for ex Spade, *supra* note 92.
[154] *Ibid.* at 13.

the midst of this ideological warfare, there are actual children with actual lives and bodies […] whose interests might fall outside the polarized terms of contemporary discourse."[155]

The focal point of Bill C-6 and of this inquiry into its effects must therefore be continuously centred upon the needs of children. In the case at hand, the question is: will Bill C-6 have actual consequences on the lives of queer youth? To answer this question, I will first look at Bill C-6 in response to the claims of torture and cruel, inhumane, or degrading treatment ('CIDT'). I will then move on to assessing the conversion therapy ban as a reaction to the systemic discrimination and structural inequalities Canadian queer youth face.

2.1. Responding to claims of torture and cruel, inhumane, or degrading treatment

The most striking legal claim made against conversion therapy is that it consists of torture or CIDT. This is a claim which has been investigated by the UN Independent Expert in protection against violence and discrimination.[156] Although the definition of torture and CIDT varies across jurisdiction and throughout international legal systems, they tend to center around similar common elements: the nature and purpose of the act and the severity of the pain and suffering.[157] Each of these factors needs to be assessed in order to ascertain whether there is, in fact, a claim to torture or CIDT in the conversion therapies as they are known to be practiced.

In the case of North American children, conversion therapies are often linked to religion and can include practices such as exorcisms, forced prayer and circumcision rites. Methods used for conversion therapy can be both psychologically and physically harmful. For example, forced isolation and exclusion from one's community or family can cause psychological distress. At the same time, practices such as pervasive rape, starvation or the removal of sexual organs undeniably cause great physical harm. Additionally, children are sometimes forced to prescribe to gender-specific roles, through aversion therapy, forced pregnancy, or being prevented from gender transitioning.[158]

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[155] Sadjadi, "The Vulnerable Child Protection Act", *supra* note 30 at 510.
[156] See UNHRC Report, *supra* note 4.
[157] See the definition of torture and CIDT in Romero, *supra* note 69 at 214—220.
[158] See for ex the UNCHR Report, *supra* note 4 paras. 18, 25, 30, 33, 37—54.

The nature and purpose of these acts is to change an individual's sexual orientation to heterosexual and/or gender identity to cisgender.[159] First, several national and international legal authorities have decried this act.[160] Although the practice is still present, it can thus be said to exist in an area of legal uncertainty, if not of complete worldwide illegality. Secondly, due to the nature of the acts employed to carry out conversion therapies and the now quasi-widespread knowledge of their harmful effects, it can be argued that the perpetrators of conversion therapy know or ought to know that their practices induce harm. As such, it could be claimed that those who carry out conversion therapies do so for the purpose of causing pain and suffering.

The severity of the pain and suffering which can be caused by conversion therapies clearly meets the threshold required for the practice to be considered torture or CIDT. Clinical observations have revealed that conversion therapies can create shame, impede upon personal development and relationships, and lead to psychological harm.[161] These effects notably increase the risk that victims will suffer from depression.[162] These effects are particularly worrisome when the victims are minors since they are at a moment in their lives when their identity and capacities are being actively developed. Incurring life-long harms at such a young age therefore means that the individual can be burdened in every single remaining aspect of life—which is to say much of their life. The effects of conversion therapy can also be particularly harmful to queer youth since this group already disproportionately experiences violence and is disproportionately affected by mental illness.[163] Practices used in the most severe conversion therapies have also been known to include rape and other physical and psychological harmful acts which clearly rank highly on the UN's gliding scale of pain and suffering.[164]

The risk of undergoing conversion therapy is real. Trans Youth CAN!'s efforts to document reports from parents and caregivers of trans youth have revealed that 8.8% of the children in the study group had undergone conversion therapy, and 9.7% of parents or caregivers had thought

[159] See the definition in Bill C-6, *supra* note 4.
[160] See for ex ILGA World, *supra* note 12.
[161] See Ashley, "The Gender-Affirmative Approach", *supra* note 49 at 374. See also Romero, *supra* note 69 at 213 and Victor, *supra* note 10 at 1540—45.
[162] Ashley, "The Gender-Affirmative Approach", *supra* note 49 at 374
[163] See *inter alia* Travers, *supra* note 3 at 15.
[164] See for ex UNHRC Report, *supra* note 4, para 37—54.

about making their children undergo such practices.[165] These statistics are cause for alarm. The claim that conversion therapy constitutes torture or CIDT is easiest to make in the case when minors are the victims.[166] Indeed, that group of the population is at a higher risk of being victims of conversion therapy.[167] Additionally, the traditional narrative of children needing protection from harm facilitates the general public's acceptance of the need to protect queer children from practices which amount to torture or CIDT.

Because conversion therapy practices can constitute torture or CIDT, governments have an obligation under international law's due diligence principle to prevent such practices from taking place within their jurisdiction.[168]

2.2.Addressing structural inequalities

The term 'structural inequalities' refers to those inequalities which are caused by the way the structures of society, such as the justice system or social benefits, are shaped.[169] In order to target these structural rather than more superficial inequalities, Dean Spade recommends that the most disadvantaged be put at the center of equality efforts.[170] It is therefore necessary to determine who the most vulnerable are in the context of Bill C-6. Queer youth are in and of themselves a minority group faced with many societal, economic, and political disadvantages. Yet it is possible to define certain subgroups which are at the margins of the 2SLGBTQQIA+ community and are most discriminated against as a result. Trans children of colour for one, are faced with transphobe and racist political structures which leaves them most powerless and at risk of harm. 'Street kids', or kids without stable family care and housing, are also often conceptualized as some of the most economically and politically disenfranchised individuals within the queer community.[171] Other particularly disadvantaged groups are those which are at the intersection of

[165] See Mokashi et al., *supra* note 26 at 1086.
[166] Romero, *supra* note 69 at 224.
[167] See UNHRC Report, *supra* note 4 at para 36.
[168] See for ex Romero, *supra* note 69 at 222—28.
[169] See for ex Travers, *supra* note 3 at 190. See also Thoreson, *supra* note 1 at 8.
[170] See Spade, *supra* note 92 at 13.
[171] Gill-Peterson, *supra* note 9 at 10, 24.

especially disadvantaged identities. Keeping these children in mind while analyzing Bill C-6 provides us with a threshold with which to assess its impact on structural inequalities.

Critical race theorists have criticized the "perpetrator perspective" which is adopted by many equality laws.[172] This critique can be transposed to the context of conversion therapy bans. Because Bill C-6 analyses the harm done to queer youth by centring the perpetrator of conversion therapy, it is unable to correctly perceive and respond to the complex and far-reaching ways in which discrimination towards queer youth operates. Because of this individual focus on the victim and the perpetrator, discrimination is individualized, and its systemic and structural nature remains imperceptible.[173] Due to this conceptualization, only the "perfect plaintiffs" are expected to benefit from laws meant to protect minorities. Those who fall farthest from the description of the 'perfect plaintiff' are those who are the most marginalized. It is expected that laws such as Bill C-6 and the litigations that ensue will not be able to protect these more vulnerable individuals.[174]

This is a recurrent problem for minority rights, the protection of which requires a certain extent of categorization of individuals. Yet this use of classification goes against the ideal of inclusion, which calls to recognize the reality of the permeability of identity groups.[175] The concept of intersectionality embodies this by demonstrating that individuals can identify themselves with different minority groups, both simultaneously and interchangeably throughout time.

Ashley & Ells have stated that the distinction between the facial feminization surgeries which are seen as "morally necessary" and therefore insured and those which are not is only made possible because of the inequalities which persist between, say, a straight woman who needs surgery after a car accident, and a trans woman who needs surgery to assert her gender identity.[176] Following this line of thinking, I argue that making a distinction between conversion therapies which are allowable and those which are not is only possible because of the inequalities

[172] See for ex Spade, *supra* note 92 at 5—12.
[173] Analogy made with the critique of the "perpetrator perspective" and the "perpetrator/victim dyad" in the context of racism, see *ibid.* at 5.
[174] *Ibid.* at 7.
[175] See the 'identity paradigm' in George, *supra* note 44 at 843—48.
[176] Ashley & Ells, *supra* note 104 at 4.

which persist between queer youth and the heteronormative majority who is called to legislate on the matter. Thus, the implementation of Bill C-6 will only be truly valuable if it goes hand-in-hand with a real effort to address structural inequalities. As such, evaluating the impact of the conversion therapy ban requires looking into whether it will be able to respond to structural inequalities.

2.2.1. The multi-layered lens of systemic discrimination

Structural inequalities can be better understood through the multi-layered lens of systemic discrimination. Analyzing and addressing the discrimination present in each layer allows for a well-rounded approach to systemic inequalities. Childhood ethicists themselves have recognized the fact that childhood cannot and should not be idealized as unified and decontextualized.[177] We must be wary of the intersectionality of identities within the social group that is of concern—queer youth.

First, there is an increasing awareness of the fact that the queer rights movement and the legislative changes that it has pushed for are Euro-American centric.[178] Mistaking the Euro-American norms expressed in law as universal is problematic since doing so excludes those who do not conform from the discussion and can prevent them from reaping the benefits of the advancement of queer rights.[179] This is why it is crucial to look at notions of SOGIE which go beyond the Euro-American norm. Are these also accommodated by Bill C-6? Or are they neglected in favour of solely improving the lives of non-immigrant or non-racialized queer youth? Western notions of childhood have historically been tainted by notions such as the need for protection, innocence, and education.[180] As Professor Sadjadi phrased, they are the "harbingers of authenticity"[181]. In other cultures, children are on the contrary sometimes seen as

[177] See Carnevale et al., "Childhood Ethics", *supra* note 6 at 8.
[178] See for ex Sadjadi, **"**The Vulnerable Child Protection Act", *supra* note 30 at 512. See also Colker, *supra* note 80.
[179] Sadjadi, "The Vulnerable Child Protection Act" *supra* note 30 at 512. See also Colker, *supra* note 80.
[180] See Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 518.
[181] Sadjadi, "Deep in the Brain", *supra* note 145 at 121.

having an inherent social value regardless of their age or where they fall in the 'developmental stages'.[182]

Gill-Peterson has also brought to light the racialized aspects of the 20th-century discourse which propelled white trans children to the center of the medical interest in sex and gender. Carried by the eugenic thinking of the medical field, research on SOGIE favoured white children as an embodiment of 'plasticity', while black children were rejected from human studies for not being 'plastic enough'.[183] Reflecting on the racialized history she sets forth, Gill-Peterson then calls for a more authentic and all-encompassing reflection on tans children.[184] Indigenous 2SLGBTQQIA+ children are also part of those who can face obstacles that lead to health disparities because of their ethnicity in addition to their SOGIE. This is despite the fact that the practices of communities such as the Algonquin promote *minododazin*—or respect—in a way that aligns with non-Indigenous scholars' definition of childhood well-being.[185] Barriers to Indigenous 2SLGBTQQIA+ youth welfare are therefore not constructed by cultural differences but by structural inequalities and systemic oppression. Kooiman et al. have for example highlighted aggravating impact which residential schools, limited resources, and isolation continue to have on children's vulnerability.[186]

Furthermore, a queer youth identity often intersects with mental illness. This crossroad of disadvantaged groups was illustrated by recent studies amongst Canadian trans youth. The results indicated that more than half of the individuals who participated in the study experienced self-harm, and a concerningly high number were suicidal.[187] This is in line with many other researchers' conclusions that queer youth are at higher risk of having deteriorating mental health than their cis-het counterparts.[188] Another mental disorder to be aware of is autism. Interestingly, trans children and autistic children have intertwining histories. Both groups were subject to

[182] See Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 518.
[183] See Gill-Peterson, *supra* note 9 at 3, 4.
[184] *Ibid.* at 33.
[185] See Heather Kooiman et al, "Minododazin: Translating an Algonquin Tradition of Respect into Youth Well-being in Rapid Lake, Quebec" (2012) 10:1 Pimatisiwin: A Journal of Aboriginal and Indigenous Community Health at 1.
[186] *Ibid.* at 5—7.
[187] Mokashi et al., *supra* note 26 at 1086.
[188] See *inter alia* Travers, *supra* note 3 at 21.

behaviour modification programs heralded by UCLA psychologists of the 1960s, conversion therapy and applied behavioural analysis respectively.[189] As Bill C-6 illustrates, the trans community has been successful in their legal fight against conversion therapy. Yet the laws enacted to protect queer children from conversion therapy have been criticized for not extending the same rights to autistic queer youth.[190]

Childhood ethicists have also called for an increased awareness of intersections with poverty and social alienation.[191] Being aware of these intersections is important to paint an accurate picture of childhood that is inclusive and goes beyond white upper-middle-class norms. This is particularly important since queer youth are disproportionately at risk of living in economic precarity.[192]

Just like the Californian ban, Bill C-6 can be criticized for relying on mainstream notions of queer SOGIE which perpetuate the exclusion of individuals who are already on the margins of the 2SLGBTQQIA+ community.[193] This section has provided a list of identities or characteristics which, when intersecting with a 2SLGBTQQIA+ identity, serves to hinder the effectiveness of the protection awarded by conversion therapy bans and Bill C-6. The seemingly endless shopping-style list of 'aggravating' factors illustrates the fact that protection from conversion therapy can only be ascertained with near-full certainty for white, economically privileged, neurotypical queer children. Conversion therapy bans regrettably seem not to have managed to move away from a 20th-century mindset of plasticity.

In conclusion, several of the main notions of childhood ethics are not as fully embodied by Bill C-6 as they could be. First, because of the idea that children are not able to participate in meaningful decisions and legislative—let alone criminal law--conversations, youth have been left out of the discussion. This is so even though children can participate and despite the value in encouraging them to do so. Second, empowerment is deemed essential to foster equity. Yet queer youth's autonomy has been restricted in favour of their protection. Additionally, the practice of

[189] Jake Pyne, "'Building a Person': Legal and Clinical Personhood for Autistic and Trans Children in Ontario" (2020) 35:2 Can J Law Soc 341 at 342.
[190] See for ex *ibid.* at 358.
[191] See for ex Carnevale et al., "A New Field of Inquiry", *supra* note 86 at 518.
[192] See for ex Travers, *supra* note 3 at 15.
[193] See Victor, *supra* note 10 at 1538—1540.

diagnosing an individual's 'true identity' is still present despite the recognized importance of defining one's identity per their own terms through self-identification. Finally, the predicted effect that Bill C-6 will have in practice might not be enough to redeem the deviations from precepts of childhood ethics. There is, on one hand, a real need to curb conversion therapy practices since they have been demonstrated to fall under the definition of torture or CIDT. On the other hand, however, the ban will likely be unable to address structural inequality. Now that the protection of queer youth offered by Bill C-6 has been analyzed under the lens of childhood ethics, a queer theory approach will be taken to complement the theoretical framework presented here for analyzing a conversion therapy ban.

Chapter 3: Queer theory perspective on Bill C-6

This part of the thesis will analyze the conversion therapy ban by drawing on queer theory. The theory will be explained before diving into the details of its relationship to Bill C-6.

The beginnings of queer theory can be traced to the AIDS outbreak. Popularized in the 2010s, queer theory has expanded its reach by slowly seeping into other fields of study.[194] For example, some bioethicists have been incorporating concepts of queer theory into their work, resulting in the field of 'queer bioethics'. While queer theory has now become a wide field of study that comprises a multitude of perspectives, some common aspects can be traced throughout most queer theorists' work.[195] The first is the field's dedication to questioning the status quo and deconstructing received social norms.[196] These inquiries often center around the concepts of sexuality and gender,[197] although they can also extend to a broader critique of all relative aspects of daily life, such as state governance or healthcare practices.[198] Another aspect often present in the works of queer theorists is the desire to improve the situation of the queer community. For example, some authors will advocate for anti-discrimination legislation, while others will push for stronger reproductive rights or greater health awareness.[199]

There are several reasons why it is not only interesting but also crucial to use queer theory as a lens through which to observe Bill C-6. First, and perhaps most importantly, queer theory scholarship has been developed primarily by and for queer individuals, the very group which the bill targets. Secondly, queer theorists have analyzed conversion therapy bans more carefully and systematically than childhood ethicists. This means that there is still some value to using queer

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[194] Doris Leibetseder, "Queer reproduction revisited and why race, class and citizenship still matters: A response to Cristina Richie" (2018) 32:2 Bioethics 138–144 at 138.
[195] See generally Richie, "Queer Bioethics", *supra* note 7.
[196] See *ibid.* at 371. See also Fischel, *supra* note 2 at 84, 86. See also Lamble et al., *supra* note 149 at 507.
[197] See generally Fischel, *supra* note 2. See also Lamble et al., *supra* note 149 at 505.
[198] See generally Lamble et al., *supra* note 149 at 507. On state action or inaction, see Lynne Copson & Avi Boukli, "Queer utopias and queer criminology" (2020) 20:5 Criminology & Criminal Justice 510–522 at 512. On healthcare, see for ex Richie, "Queer Bioethics", *supra* note 7 at 371.
[199] See for ex Florence Ashley, "Don't be so hateful: The insufficiency of anti-discrimination and hate crime laws in improving trans well-being" (2018) 68:1 University of Toronto Law Journal 1–36 [Ashley, "Don't be so hateful"]. See also Leibester, *supra* note 194. See also Alencar Albuquerque et al., *supra* note 104.

ethics even after using the lens of childhood ethics. What transpires is an overall mistrust of the legal system's capability to improve the condition of 2SLGBTQQIA+ individuals.[200]

In the case of Bill C-6, this apprehension will first be made obvious by queer scholars' critique of the criminal justice system. The implications of using criminal law to curb conversion therapy will be explored, with particular attention to the conditions of liability and the goals of criminal law. Queer theorists have also been interested in measuring the expressive function of law. What effect will a legal change have on the queer rights movement and on the broader society? This question will be answered by looking first by considering the values which Bill C-6 explicitly and implicitly endorses, and secondly by looking at the wording of the law and its placement in the Criminal Code.

1. Using criminal law

Governments have increasingly resorted to criminal laws to protect SOGIE minorities.[201] While this shows that the alertness towards issues faced by the 2SLGBTQQIA+ community is spreading, criminalization has raised notable issues in the eyes of queer theorists. On one hand, enacting criminal laws is said to be justified in many cases as a legitimate and reasonable means to protect minorities. [202] On the other hand, some have highlighted the fact that the criminal justice system must only be used as a last resort,[203] and that its expansion for the protection of minorities is incompatible with the principles of democracy and equity.[204] This debate is not only present at the law-making level but also takes place among queer theorists. So much so, that an analogous field of 'queer criminology' has emerged alongside queer theory.[205]

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[200] See generally Charruau, *supra* note 47 who expresses that the French law will not live up to the expectations nor the ambition of the original proposal.

[201] See Giacomo Giorgini Pignatiello, "Countering anti-lgbti+ bias in the European Union: A comparative analysis of criminal policies and constitutional issues in Italian, Spanish and French legislation" (2021) 86 Women's Studies International Forum 102466 at 2.

[202] *Ibid.* at 2, 8.

[203] *Ibid.* at 2.

[204] On democratic principles, see *ibid.* at 3, 7. On the principle of equity, see *ibid.* at 5.

[205] See for ex Copson and Boukli, *supra* note 198 at 513—14.

This could be surprising, seeing as queer theory and criminology are, in certain aspects, naturally at odds. Indeed, both fields take fundamentally different approaches to deviance and normativity. While queer theory is interested in what Lamble et al. call the "pleasures of deviance", criminology focuses on the "socially marginal as monstrous deviants".[206] Yet, many queer theorists have analyzed the criminal justice system and its potential as a vessel for remedying inequalities.[207] The studies constituting the field of queer criminology are mostly directed at questioning how criminal laws affect 2SLGBTQQIA+ individuals, and the role criminality plays in the systemic oppression of the queer community. [208] No matter the perceived relationship between criminology and queer theory, many authors have identified the need to introduce both fields of study to one another. [209]

1.1.The individualization of harm

Because of the conditions of criminal liability upon which Bill C-6 depends, the prohibition might only be able to address individual harm. Using queer theory's lens of intersectionality, it will become apparent that this protection will therefore only cater to the most privileged of the targeted group. Intersectionality is a theoretical approach that seeks to analyze how different facets of individual's identities overlap.[210]

1.1.1. Conditions of criminal liability: barriers to protection?

Criminal liability is conditioned on several factors, which become problematic due to their reliance on the perceived dichotomy between the perpetrator and the victim. One of the major steps in assessing criminal liability is proving the intent of the accused. The fact that the criminal nature of behaviour is dependent on intent has been highlighted as a problem by queer theorists, who took on the critique from critical race theorists. Making intent the cornerstone of criminal

[206] Lamble et al., *supra* note 149 at 506—7.
[207] See for ex the 'utopias' in Copson and Boukli, *supra* note 198.
[208] See *ibid.* at 513—14, 516. See also Lamble et al., *supra* note 149 at 505—06.
[209] See for ex Lamble et al., *supra* note 149 at 505.
[210] See Holford, *supra* note 146 at 38.

responsibility, queer author Dean Spade explains, has made the possibility of winning court cases a near unattainable illusion. This issue is in part due to the "perpetrator/victim dyad" upon which the notion of harm is premised.[211]

Other parts of the criminal justice process are at issue because of their encumbrance upon victims. The French proposition to ban conversion therapy for example, as it has last been presented, places upon the victim the burden to prove that they are suffering from physical and/or psychological effects due to conversion therapy.[212] This requirement can be heavily criticized in the case of conversion therapy bans since the effects of such practices do not present themselves uniformly amongst victims, nor do the harms necessarily manifest themselves immediately. In response to this problem, the French Minister of Justice, suggested that a criminal sanction be included in the conversion therapy ban which would serve specifically to catch conversion therapy practices regardless of the extent to which they cause harm to the victim if any at all.[213]

There is also the danger that Bill C-6 is worded too vaguely. This is a concern that was already raised by Canadian scholars in the early stages of the legislative process.[214] If legal provisions are not precise enough in their wording, this creates a risk of giving too much discretion to judges in the interpretation process. This puts the notions of legal certainty and foreseeability into jeopardy. It also gives courts considerable leeway for future interpretation to deviate from the original goals of the ban as heralded by rights advocates. These risks have been highlighted as factors that could render access to justice difficult for all individuals. Some scholars have contested the fact that this threat is present in laws protecting queer individuals. For them, the meaning of SOGIE is commonly accepted worldwide, both at the national and international level. Still, some legislators have chosen to limit the risks of having vague provisions by providing an explicit definition of SOGIE.[215] While the Canadian bill falls into the

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[211] See for ex Spade, *supra* note 92 at 4, 5.

[212] See Charruau, *supra* note 47 at 4. See also Proposition de loi nº 4021, *supra* note 23 art.1(2).

[213] See Commission des lois constitutionnelles, de la législation et de l'administration générale de la République, *Mission "flash" sur les pratiques prétendant modifier l'orientation sexuelle ou l'identité de genre d'une personne: Communication de Mme Laurence Vauceunebrock et M. Bastien Lachaud* (2019) at 10.

[214] See for ex George, *supra* note 44 at 849.

[215] Giorgini Pignatiello, *supra* note 201 at 7—8.

latter category, the definition is too vaguely worded to avoid falling into any of the pitfalls noted by queer theorists.

The administrative aspect of the criminal justice system can also be at odds with swift access to justice. These types of barriers have been repeatedly condemned by queer theorists. Florence Ashley for instance criticizes what they call the 'bad apple' model used by criminal laws such as hate crime laws. For them, this criminal law model is inadequate, since it relies on a court system riddled with delays and high costs.[216] Because of these factors, access to justice for all is but an unattainable mirage. These barriers to justice become especially stark for individuals who are already placed at a disadvantage in front of the courts. As will become clear after an intersectional analysis of the queer community, queer theory tends to be against the use of criminal law as a remedy to the injustices faced by the queer community. This is because barriers to justice can be particularly stark for 2SLGBTQQIA+ individuals due to the justice system's oppressive response to race, gender, disability, and financial insecurity.

1.1.2. Intersectionality: who does the ban really protect?

Several queer theorists emphasize the fact that the queer experience is not physically, socially, economically, emotionally, or politically homogenous.[217] Because the academics and legal actors who bear an impact on minority rights laws are more often than not white, male, able-bodied and/or middle-class, many intersections of identities are left out of the legislative discussion.[218] Queer theorists are often particularly aware of the problem of exclusion within the academic and legal dialogue.[219] This is in part because, as Richie states, the 2SLGBTQQIA+ community "stand[s] united with oppressed minorities".[220] The individuals concerned by the dangers of

[216] See Ashley, "Don't be so hateful", *supra* note 199 at 7—8, 23—25.
[217] See for ex Cristina Richie, "Whose interests are advanced by LGBT bioethics?" (2020) 13 Ethics, Medicine and Public Health 100467 [Richie, "LGBT Bioethics"] at 8.
[218] On the predominance of identity see Lamble et al., *supra* note 149 at 507. This issue was noted *inter alia* in queer bioethics, see Leibetseder, *supra* note 194 at 144.
[219] See Lamble et al., *supra* note 149 at 505. See for ex the 'bisexual perspective' in Colker, *supra* note 80 at 173.
[220] See Richie, "Queer Bioethics", *supra* note 7 at 369. On the coalitions between oppressed minorities, see also Travers, *supra* note 3 at 199.

conversion therapy and whose identities can intersect with queerness include people of colour, indigenous people, children and physically or mentally disabled individuals. While this is in no way an exhaustive list of oppressed and/or concerned minorities, these identities are those which have increasingly come to the attention of minority rights advocates. I will turn to each of the categories of identities listed to give an overview of the ways in which the experience of the individuals concerned differ from that of the majority group, and how the enaction of a conversion therapy ban could impact them

The first category of intersecting identity which can be observed is children. While the role of children in conversion therapy bans has been amply examined in a previous part of this thesis, the way their societal place as children intersects with their queer identity can benefit from additional analysis. Indeed, while our previous study of childhood focused on childhood studies, queer theorists tend to have a slightly varying approach to youth. Rather than seeing childhood simply as a developmental phase or simply another category used to classify individuals, queer theorists can come to conceptualize children as a group that is excluded from the benefits given to the broader society, in a way that is very similar to other minority groups. This point of view becomes clear when we take into consideration the political and legal exclusion and the subhuman nature with which both children and other oppressed minorities are subjected to.[221]

Queer theorists have even been able to draw up similarities between the role society casts for children and that given to 2SLGBTQQIA+ individuals.[222] Indeed, predominant narratives surrounding queer individuals have certain similarities with those surrounding the child. Both groups of individuals are, for example, regularly denied aspects of their individual autonomy.[223] Queer individuals themselves sometimes identify with children, in the sense that they refuse the heteronormative expectations of adulthood such as parenthood or marriage.[224] For instance, Saylesh Wesley writes, in her quasi-autobiographical piece: “I realize that I am not a child, according to Western ideology, but I place myself in this stage given that I am ‘first-born’ as

[221] On the non-human conceptualization of children and minorities, see Richie, “Queer Bioethics”, *supra* note 7 at 367. On political and legal exclusion, see Travers, *supra* note 3 at 188—89.
[222] See for ex Travers, *supra* note 3 at 188—89, on the classification of children and oppressed minorities as “temporary noncitizens”.
[223] See for ex Copson and Boukli, *supra* note 198 at 518.
[224] See Richie, “Queer Bioethics”, *supra* note 7 at 369.

Sts'iyóye smestíyexw slháli".[225] Wesley also uses the notion of the child to illustrate the different developmental stages of her two-spirited identity. She describes 'him' as a child, and 'her' as an adult.[226]

The second intersection of identity which is important to dedicate time to consists of queer individuals who have disabilities. Individuals who are both queer and disabled can be faced with additional barriers to equality than their able-bodied counterparts. This double disadvantage was made clear when two deaf lesbian parents chose for their child to be deaf rather than hearing. Their choice perplexed many and gave rise to a discussion on the morality of the situation. Queer author Leibetseder argued that the family, because of their lesbian *and* deaf identity, were considered to be "too abnormal, too disruptive, too queer". [227] Those who opposed the parents' choice based their arguments on the child's quality of life. Queer theorists are quick to dismiss this argument by highlighting the fact that there is no one way of living in the world, and each individual is free to define their quality of life in accordance with their own values, opinions and experiences.[228]

Richie asserts that "it is not the person who is disabled, but rather the society"[229]. This shifts the focus from the individual to the society they exist in. Approaches to queer rights could use a similar approach. In this sense, legal solutions to the oppression of queer individuals would center around changing societal norms and structure rather than using the courts to remedy the harms suffered by individuals one by one. Richie also highlights the fact that medical approaches to 'curing' disability or queerness both arise when certain conditions are seen as socially problematic and center around the "white, middle-class heteroproductive, able-bodied" individual.[230]

Third, it is important to take the time to analyze the intersection of queerness and race. Queer theorists lament the fact that many mainstream norms have been modelled on the white individual and are therefore not adapted to and can even erase the experiences of racialized

[225] See Wesley, *supra* note 135 at 345.
[226] *Ibid.* at 346.
[227] See Leibetseder, *supra* note 194 at 142.
[228] *Ibid.* at 143.
[229] See Richie, "Queer Bioethics", *supra* note 7 at 370.
[230] *Ibid.* at 369—70.

populations. This is for example the case with the concept of the nuclear family, which is more often than not solely representative of the white queer individual. Moreover, many branches of queer theory have themselves the uncanny tendency to ignore issues of racism.[231] Yet, queer individuals of colour are at higher risk of facing greater oppression due to their identity, and the harm they face due to racism cannot be ignored when addressing their queerness.[232] In response to this lack of representation, the field of black queer studies started developing in the early 2000s. On the one hand, the emergence of this field has had the positive effect of bringing the intersection of Blackness and queerness to academic discussions. On the other hand, the mainstreaming of Black queer studies has had the adverse effect of slowly pushing Black queer authors out of the conversation—and of their very own field of study.[233] Ellison et al. worry that this is due to a phenomenon by which queer theorists use people of colour—especially Black queer individuals—to propel their own claim for rights without thinking to include their non-white counterparts when reaping the benefits of their efforts.[234] Although Ruth Colker looked at the issue of racial divisiveness in the mid-1990s,[235] her claims can still be used to inform today's 2SLGBTQQIA+ activism. For Colker, a big part of the problem comes from the fact that morality and religion are, from the outset, seen as external to the dialogue on SOGIE minority rights. Relying on this secular way of thinking alienates coloured individuals for whom their religious identity can be just as—or even *more*—important than their queerness. Colker observes that this phenomenon often occurs for coloured individuals, effectively whitewashing the 2SLGBTQQIA+ movement. Rather, advocates should strive to broaden and "embody" their perspective by relying on disciplines such as sexual theology.[236]

The double oppression from queerness and race is also felt starkly by Indigenous individuals. This is in part due to what Wesley terms 'gen(der)ocide' or 'colonized homophobia'.[237] These terms define the Canadian government and the Catholic Church's oppressive attitudes towards

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[231] In the context of queer bioethics for ex, see Richie, "LGBT Bioethics", *supra* note 217 at 7.
[232] See Travers, *supra* note 3 at 184.
[233] See Treva Ellison et al., "We Got Issues: Toward a Black Trans*/Studies" (2017) 4:2 TSQ 162–169 at 163.
[234] In the context of transgender studies for ex, see *ibid.* at 162.
[235] See generally Colker, *supra* note 80.
[236] See *ibid.* at 166, 167.
[237] Wesley, *supra* note 135 at 339.

Indigenous populations, which has materialized through the residential school system for example. For Wesley, both queer and Indigenous scholars need to make a place for two-spirited individuals within their discussions if they want to strengthen their claims.[238]

My non-mention of races and ethnicities other than white, Black, and Indigenous is to be noted. The lack of queer scholarship on racialized groups other than those I have mentioned is telling. How can all queer individuals benefit from laws aimed at protecting them if individuals who also identify as Latinx, Asian, or Pacific Islander, among others, are excluded from the discussions these laws stem from?

While having a queer gender identity exposes one to oppression,[239] queer women are also at risk of greater societal harm even when they are cisgender. Indeed, queer women are faced with the added burden of living in a patriarchy and facing regular sexism and misogyny. Therefore, scholars recommend that 2SLGBTQQIA+ advocates take the necessary precautions to make sure that women are not disproportionately disadvantaged.[240] Particular attention can be given here to transmisogynoir. This term nominates the disproportionate oppression faced by Black trans women. Florence Ashley highlights that in the United States for example, "Black trans women are murdered at a rate 2,744% higher than White trans women".[241]

In times of increasing social inequity such as these when minorities struggle to have their identities and needs recognized, proponents of rights tend to focus on building a better future for the most privileged groups.[242] Yet it is important to keep in mind that remedies to inequality are only valid and worthwhile insofar as they do not cause harm to those they are unable—or not intended—to benefit.[243] A proactive approach can even be advocated for in the case of minority rights. Such an approach would be achieved by centring the most precarious individuals in the

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[238] *Ibid.* at 345, 347.

[239] See for ex Flora Renz, "(De)regulating trans identities" (2020) Research Handbook on Gender, Sexuality and the Law, online: <http://www.elgaronline.com/view/edcoll/9781788111140/9781788111140.00026.xml> at 249 in the context of England and Wales Gender Recognition Act 2004.

[240] See for ex Richie, "LGBT Bioethics", *supra* note 217 at 8.

[241] Ashley, "Don't be so hateful", *supra* note 199 at 20.

[242] See Travers, *supra* note 3 at 184—85.

[243] See Fischel, *supra* note 2 at 94.

legal efforts for change.[244] This would mean including the most oppressed minorities into legal discussions at an early stage. It becomes clear, after taking the time to recognize the disproportionate oppression faced by those at the intersection of minority identities, that 'futurity' must be given to all marginalized communities.[245]

1.2. Taking a closer look at structural inequalities

Advocates of minority rights, including queer theorists, have increasingly emphasized the need to remedy the structural inequalities which underly the oppression of SOGIE minorities. In this regard, I will assess whether Bill C-6 has the potential to make an impact on the structural inequalities faced by Canadian queer youth. My analysis will then touch upon queer theorists' worry that the criminal law system itself is an active participant in the creation of these factors of structural inequalities. Finally, I will address the argument made by several authors regarding the fact that criminal sanctions do not fulfill their purported aim of deterrence.

1.2.1. The bill's potential to remedy structural inequalities

The oppressed status of SOGIE minorities has become so ingrained in our societal norms that even governmental institutions partake in the oppression of queer individuals.[246] This is what we call structural and institutionalized oppression. The fact that laws to protect the 2SLGBTQQIA+ community might not make much of a change is one of the main worries noted by queer theorist Dean Spade.[247] This worry stems from the fact that the laws and policies enacted do not go so far as bearing any consequence on the structural causes of inequality and oppression.[248] Rather, the very fact of enacting legal protections for minorities might serve to hide the state's role in their systemic oppression.[249] This is because the legal remedies to

[244] See Travers, *supra* note 3 at 201.
[245] Reference is being made here to the observation made in Leibetseder, *supra* note 194 at 139.
[246] See *inter alia* Giorgini Pignatiello, *supra* note 201 at 1.
[247] Spade, *supra* note 92.
[248] See Travers, *supra* note 3 at 186. See also Ashley, "Don't be so hateful", *supra* note 199 at 25.
[249] *Ibid.* at 29. More broadly, see also Fischel, *supra* note 2 at 88.

inequality are focused on the individual, thereby 'isolating' and 'individualizing' the violence experienced by the 2SLGBTQQIA+ community.[250]

Additionally, the solutions enacted by the government are often criticized as being too frail to amount to any real positive change for all queer individuals.[251] The Gender Recognition Act enacted in 2004 in England and Wales can be used to illustrate this point. Originally, the law was meant to strengthen the rights of gender minorities. In practice, however, scholars observed that it reinforced gender as a binary notion and acted to indirectly deny rights and protection to some gender minorities.[252] Anti-bullying laws have been the subject of similar critique, queer scholars having rebutted the assertion that they protect children by exposing the law's capability to individualize violence and leaving harmful heteronormative norms untouched.[253]

This observation holds true in the case of criminal laws as well, as these have focused on what has been termed the 'add LGBTQI+ and stir' approach. The main objective of this approach is to include the concerns of queer individuals into the criminal justice system's agenda. For scholars, this approach fails to realize the goals of queer theory, which is to deconstruct harmful social norms and oppressive structures.[254] Going even farther, some scholars have warned that such legal matters are counterproductive to the deconstruction of oppression since they 'rehabilitate' and 'reinforce' systems of harm. While this critique has focused on hate crime laws,[255] I will focus the next part of this thesis on analyzing the risk that Bill C-6 and conversion therapy bans, in general, could contribute to the oppression of queer persons.

1.2.2. Participation in the oppressive criminal law system

Queer theorists, following critical race theorists, have warned about the very dangers of using the criminal justice system to remedy injustices suffered by minorities. This is first because of the problematic context within which the criminal justice system operates. The problem of the mass

[250] Ashley, "Don't be so hateful", *supra* note 199 at 29.
[251] See for ex Fischel, *supra* note 2 at 98.
[252] Renz, *supra* note 239 at 251.
[253] See Travers, *supra* note 3 at 194.
[254] See Lamble et al., *supra* note 149 at 505.
[255] See for ex Travers, *supra* note 3 at 186—90.

imprisonment of marginalized individuals is particularly damning.[256] Queer individuals have been estimated to be thrice as likely as others to be incarcerated. Additionally, criminologists have concluded that today's prison system is increasingly racialized, playing into colonial relations. This observation is probably at least in part linked to the decrease in funds allocated to education and other social services.[257] In light of this climate, legal policies should be careful not to exacerbate these oppressions. In this part of the thesis, I will delve into the different ways in which Bill C-6 could be in danger of contributing to adverse, harmful consequences of criminal law. The first aspect of criminal justice to consider is the attitudes of law enforcement and prosecution forces towards queer youth. This is a crucial aspect to consider since contact with the police will be the first step in enacting a Bill C-6 offence, the result of which will be decided through a prosecution system.

The baseline problem is that using criminal justice to protect minorities increases the number of funds given to a system that historically and continuously oppresses those same minorities. This undeniably applies to the 2SLGBTQQIA+ community, which has consistently been the target of police brutality and imprisonment.[258] Ashley also warns against the "enforcement related pitfalls" of the criminal justice system. Their warning centers on the fact that queer victims are often "not taken seriously", misgendered, or even "blamed for the crimes they suffer". Because of these frustrating or even harmful interactions with the police force, trans individuals are often warry of reporting crimes. This undeniably undermines the effectiveness of criminal laws such as Bill C-6.[259] Black and Indigenous members of the 2SLGBTQQIA+ community are also at high risk of being harmed by criminal policies. In fact, queer authors have issued stark warnings about the impact that allowing more discretion to already prejudiced law enforcement officers will have. More specifically, the very fact of creating more opportunities within which Black or Indigenous individuals come into contact with the criminal justice system could aggravate the problem of their mass incarceration and of the discriminatory violence employed by law enforcement.[260] In the context of hate crime laws, for example, queer theorists

[256] *Ibid*. See also Spade, *supra* note 92.
[257] See Travers, *supra* note 3 at 185, 189.
[258] See Spade, *supra* note 92 at 8—10.
[259] Ashley, "Don't be so hateful", *supra* note 199 at 9—10.
[260] *Ibid.* at 27.

have argued that the oppressive possibility of the policies overshadowed their protective aim.[261] Anti-bullying laws have similarly been criticized for accentuating the institutional oppression of disabled and racialized youth rather than protecting queer children.[262] Instead of working towards ending oppression, bans such as Bill C-6 risk increasing—or at least perpetuating—pre-existing violence towards queer individuals, particularly those who are at the intersection of other marginalized groups.[263]

Secondly, the feasibility of litigation must be assessed. Advocates' approach to queer rights often relies on showing that there is no significant difference between queer individuals and other individuals who are worthy of rights.[264] Because of this strategy, queer theorists expect only the 'perfect plaintiff'—queer individuals who most resemble the culturally accepted notion of vulnerability—to receive guaranteed protection. There is thus a danger that Bill C-6 will create divisions within 2SLGBTQQIA+ and children rights' advocates about who 'deserves' protection.[265] Eve Sedgwick has already conceptualized a similar notion to that of the 'perfect plaintiff' in 1991, namely the 'healthy homosexual'. The 'healthy homosexual' is a gay adult who acts and lives in a way that most resembles behaviours deemed heterosexual.[266] There is a possibility that those most marginalized will continue to be left out. Jules Gill-Peterson for example, explains how street kids have been left out of trans histories because they did not fit the version of queerness that had become mainstream.[267] With the progression of conversion therapy bans, these perpetually excluded groups are at risk of being left out once again. What is worse, those individuals left out of rights advances are always those least well-off to begin with rather than those most privileged. Indeed, queer rights are created for the privileged individuals who fit into the image of the white, non-sexual and unproblematic queer child.[268] A more pessimistic yet perhaps realistic analysis of past legislative changes indicates that interpretation of Bill C-6 is likely to take a turn to the worse and "take the teeth out" of the ban. This forecast, often

[261] On the relation between queer people of colour and hate crime laws, see for ex *ibid.* at 31.
[262] See Travers, *supra* note 3 at 194—95.
[263] See for ex *ibid.* at 190. See also Spade, *supra* note 92 at 10.
[264] Spade, *supra* note 92 at 7.
[265] *Ibid.*
[266] See Sedgwick, *supra* note 27 at 19.
[267] Gill-Peterson, *supra* note 9 at 24.
[268] See *inter alia* Dyer, "Children's Sexuality", *supra* note 42 at 125.

predicted by queer scholars and empirically confirmed, reveals the shortcomings of the courts and legislators' protective capacities.[269]

1.2.3. Assessing the deterrence potential

Another critique that criminal laws have received from minority rights advocates concerns their deterrence potential. This critique goes to the very core of criminal justice since one of the main aims of criminal law is deterring criminal activity. If conversion therapy bans do not have the potential to deter perpetrators, the law loses its main rationale for existing. Spade has argued that hate crime laws do not, in fact, serve to deter potential perpetrators.[270] George also believes that this is the case with conversion therapy bans.[271] Some empirical evidence would seem to support these claims.[272] One of the reasons for this is that the main impetus for individually perpetrated harms against minorities is believed to be impulsive hate. Thus, hate crime perpetrators are unlikely to undergo a rational weighing of the risks and benefits of their acts. Adding additional risks to certain crimes, through the enactment of new offences or harsher punishments is therefore unlikely to be taken into consideration by these types of perpetrators. Additionally, Ashley highlights the fact that criminal laws enacted for the protection of SOGIE minorities are aimed at the very group of individuals which the legal system has long protected, namely the cisgender heterosexual. Because of this, Ashley argues, the chances of these criminal laws being effective is very slim.[273] If this is true, then the very narrative that criminal laws and the punishments they infer create a safer environment is turned on its head.[274] Even queer theorists who believe that criminal laws retain their deterring potential argue that the discriminatory attitudes which said crimes were borne of are only redirected to other violent acts.[275]

Moving away from the bill's potential to deter perpetrators of conversion therapy, several scholars have also investigated whether the law would deter healthcare professionals from

[269] See for ex Spade, *supra* note 92 at 4.
[270] *Ibid.* at 3.
[271] See George, *supra* note 44 at 810, 823.
[272] See for ex Travers, *supra* note 3 at 191.
[273] Ashley, "Don't be so hateful", *supra* note 199 at 26—27.
[274] Queer authors have warned against this narrative of safety, see Spade, *supra* note 92 at 10.
[275] Ashley, "Don't be so hateful", *supra* note 199 at 12.

working with queer youth. A worry has been expressed that mental health professionals, in particular, will no longer wish to take on new young queer patients, and would be reluctant to discuss SOGIE with them, by fear of being prosecuted for conducting a form of conversion therapy.[276] The bill's Charter Statement, which was prepared by the Minister of Justice to explain potential constitutional inconsistencies when the legal proposal was introduced, briefly addresses this potential adverse effect. More specifically, it is noted that freedom of expression as guaranteed by Charter section 2 could be impeded upon in cases where Bill C-6 prohibits conversations about conversion therapy.[277] Even queer theorists have noted that conversion therapy bans might unduly restrict practices some harmless practices.[278] This worry seems to stem from a lack of clear definition of the scope of Bill C-6.

2. The expressive function of Bill C-6

Moving away from the material consequences that Bill C-6 will have on conversion therapy perpetrators and their victims, the Bill's expressive function also needs to be assessed. What is meant by 'expressive function' is the capacity of laws and the dialogue they create to convey certain values.[279] It designates the indirect or symbolic effect the law will have rather than its immediate practical consequences. In this sense, whether Bill C-6 has a small deterrent potential might be irrelevant if the message it sends contributes to decreasing the oppression queer individuals are faced with in other aspects of their lives.

2.1. Creating an explicit protection for SOGIE minorities

There is an argument to be made for Bill C-6's expressive function. Scholars such as George tend towards qualifying the expressive function as the most important and effective aspect of

[276] See Dreger, *supra* note 16. See also Kay, *supra* note 36.
[277] See Charter Statement, *supra* note 12.
[278] See for ex Victor, *supra* note 10 at 1537.
[279] See the definition in George, *supra* note 44 at 825—30. See also Fischel, *supra* note 2 at 96 on the material effect of words.

conversion therapy bans.[280] Going beyond the ban itself, some advocates indeed believe that the process of advocating for legal protection has an undeniable positive impact on human right movements.[281] In this case there is a possibility that Bill C-6, by expressing values such as respect for queer youth, will help other related human rights struggles move forward. For example, there could be positive repercussions for the protection of children within the medical system, or for queer sexual education.[282] This is because the act of discussing or witnessing discussions about queer rights can educate people on the lives of the 2SLGBTQQIA+ community, raise awareness as to their struggles, and generally work towards their legal and cultural recognition.[283] Overall, the discussions surrounding certain laws and the values these express can play a critical role in overturning oppressive social norms. For example, George points out that conversations around conversion therapy bans have changed the narrative surrounding the queer rights movement. Instead of being seen as dangerous to children, the public eye is now more apt to view the 2SLGBTQQIA+ community as protectors of children. Similarly, queer youth are more likely to be seen as needing to be protected from oppressive practices rather than needing to be converted to conforming identities.[284] As a matter of fact, implementing specific protection for groups targeted of discrimination and violence is done with the goal of making law enforcement forces be aware of and award more importance to these issues. In the case of Bill C-6, the amendment to the criminal code can for example signal that the lives of queer youth and 2SLGBTQQIA+ individuals in general matter.[285] Similarly to other anti-discrimination or protective laws targeting minorities, Bill C-6 is therefore built upon an inclusive rationale aimed at increasing visibility.[286]

Pyne analyses the techniques employed by trans individuals and trans rights advocates to obtain protections from oppressive practices such as conversion therapy. For Pyne, the fight for conversion therapy bans necessitated a shift in the narrative "from having a condition to being

[280] See for ex George, *supra* note 44 at 853.
[281] See *ibid.* in the context of conversion therapy bans. See also Spade, *supra* note 92 at 2.
[282] Similar effects are predicted in George, *supra* note 44 at 822.
[283] On the educative function of law-making, see *ibid.* at 827—28. See also Travers, *supra* note 3 at 187—88.
[284] George, *supra* note 44 at 830—43.
[285] Analogies made with the analysis of hate crime law in Spade, *supra* note 92 at 2.
[286] *Ibid.* at 3.

human".[287] As a conversion therapy ban, Bill C-6 encourages this narrative shift and contributes to viewing queer individuals as individuals worthy of as much protection and rights as the rest of society. The political statement issued by well-known public figures which often accompany important legal changes can also serve as a symbolic support to the values expressed by the laws in question.[288] In the case of trans children, for example, Travers underlines the fact that despite their flaws, legal protections have helped reduce the precarity which most individuals faced, and has served to create an overall better living condition for them than before the enactment of these laws. [289]

This expressive function was clearly one of the goals of Bill C-6, as its accompanying Charter Statement explicitly states that the ban is meant to discredit discriminatory stereotypes that lead to the oppression of queer individuals. The inclusion of a prohibition to advertise conversion therapy drives this point home since it criminalizes the propagation of information on available conversion therapy services rather than the act of perpetrating the practice.[290] Organizations advocating for queer rights themselves have highlighted the symbolic nature of conversion therapy bans and praised them for their role as participants in the education on conversion therapy and SOGIE. Additionally, such bans have been said to contribute to encouraging victims of conversion therapy to speak up and for their voices to be heard, and to increase the visibility of the practice's harms. Therefore, enacting new offences to catch practices of conversion therapy does not convey a message to perpetrators of conversion therapy and individuals who contributed to its success, but could also have a positive impact on the victims of conversion therapy.[291] Some say it is because of this expressive function that conversion therapy practices are no longer widespread.[292] Although there is merit to conversion therapy bans' statement of values, this statement might be reaching too far in its optimism. Even

[287] See Pyne, *supra* note 189 at 358.
[288] See Travers, *supra* note 3 at 181—83.
[289] *Ibid.* at 186.
[290] See Charter Statement, *supra* note 31.
[291] See Communication de Mme Laurence Vauceunebrock, *supra* note 213 at 9.
[292] See for ex George, *supra* note 44 at 805, 810.

though it is difficult to compare the number of conversion therapy practices that took place at different times in history, studies nevertheless show that a substantial amount still exists today.[293]

Nevertheless, the analysis conducted by queer theorists on the expressive function of legal protections is not always positive as the points relayed above might suggest. Indeed, another argument to be made consists in recognizing that Bill C-6 will have an expressive function, but that it will counter efforts to advance queer rights rather than advance them. This possibility of backlash is one of the negative points which Jacob Victor noted about the Californian conversion therapy ban.[294] The protests of organizations that stood against the recognition of trans youth during the Commission on the Status of Women in March 2017 illustrates the strenuous opposition that discussions of queer rights for youth can unleash.[295] It is also worthwhile to reiterate a point which has been already made in this chapter. Namely, the overwhelmingly positive message conveyed by Bill C-6 might serve to create a mere illusion of equality, relaying structural oppression to the shadows and providing a shield behind which discrimination can persist with fewer obstacles.[296] Even though there is some value to recognizing the oppression of queer individuals, there is a case to be made that this benefit is overshadowed by the law's potential contribution to hiding a greater amount of injustice behind a discourse of supposed equality and that the enaction of minority protections such as Bill C-6 is not justified.

2.2.The rationale used for the creation of Bill C-6

In 1995, Colker introduced a critique of laws regarding SOGIE minorities. Her arguments centred around the fact that lawmakers and judges did not have a correct understanding of the realities with which queer individuals lived. Consequently, the policies and case law they produced were not fit to reach the goals of equality for all and did little to better the living conditions of the 2SLGBTQQIA+ community. For Colker, the problem was that these legal

[293] See for ex Mokashi et al., *supra* note 26 at 1086. See also Bracken, *supra* note 28 at 325, 337. See also UNHRC Report, *supra* note 4 para 24.
[294] Victor, *supra* note 10 at 1559—62.
[295] See Thoreson, *supra* note 1 at 2.
[296] See for ex Spade, *supra* note 92 at 5—7. See also Travers, *supra* note 3 at 186. See also Ashley, "Don't be so hateful", *supra* note 199 at 28—29.

changes were 'disembodied'.[297] The last test I will subject Bill C-6 to in this chapter consists of evaluating the rationale on which the ban was enacted, and the extent to which it is 'embodied' or 'disembodied'.

One of the reasons for enacting conversion therapy bans is that these practices are harmful and ineffective. Earp and Vierra have investigated the validity of this argument. While it is very much accepted and empirically proven that today's conversion therapy practices are indeed harmful and ineffective, Earp and Vierra highlight the possibility that the same might not be true in the future. As a matter of fact, it is not impossible according to their research that new technologies could be created to change an individual's SOGIE successfully with few or even without any harm. This would essentially render null the claim that conversion therapy should be banned because SOGIE is immutable. Because the 'harmful and ineffective' approach might not hold up in time, other more reliable arguments should have been made in favour of prohibiting conversion therapy.[298]

More broadly, the 'born this way' approach is also put into question here. The idea that individuals are born with a SOGIE which is fixed has very much been challenged by queer theorists. [299] On one hand, this line of reasoning has been used to successfully advocate for positive change and the acceptance of queer individuals. Scholars agree that it has undeniably been pivotal in increasing the life quality of many, providing a "moment of relief from attacks against the soul". On the other hand, the 'born this way' narrative is garnering criticism from the 2SLGBTQQIA+ community and their advocates. Many reasons can be cited for this change of view. First, we can go back to the possibility that scientific developments might change the truth of the 'born this way' narrative, as explained above. Scholars argue that basing rights on a ground that has an uncertain future is weak and should be avoided. Second, the 'born this way' approach is oversimplistic and does not do justice to the intricacies of SOGIE identity. The fact that external social factors might bear an impact on SOGIE is for example, pushed out of the picture. Furthermore, studies have revealed that the innate and the unchangeable nature of a characteristic are not automatically linked. This is to say, being born with a characteristic does

[297] See the critique made regarding Judge Posner's position in Colker, *supra* note 80 at 188—89.
[298] See Earp and Vierra, *supra* note 66 at 2—4.
[299] See for ex *ibid.* at 6. See also Sadjadi, "Deep in the Brain", *supra* note 145 at 120. See also Charruau, *supra* note 47 at 5.

not imply that it will not change and having an unchangeable characteristic does not mean that it was present at birth. Looking at the nature of SOGIE with this in mind, the 'born this way' approach loses some of its attraction. Third, relying on the 'born this way' narrative often implies that SOGIE is the most important aspect of a queer individual's identity. This simply does not hold true across the board, as many may also give much importance to their religious, racial, or cultural identities for example. Ignoring these aspects of queer individual's lives results would lead to an extremely disembodied approach and could even alienate some from the queer rights movement.[300] Finally, basing rights claims on the fact that individuals are 'born this way' sets a dangerous precedent by implying that rights might depend on a characteristic being imposed from birth rather than a choice.[301] Yet, queer theorists argue that some important parts of queer individual's lives are chosen rather than imposed. Queer youth for example, do not *have* to attend pride events or signal their belonging to the 2SLGBTQQIA+ community using specific clothing, makeup, or haircut. They should, however, have the right to *choose* to do so.[302]

It is undeniable that action needs to be taken against conversion therapies. Indeed, as seen in earlier chapters, these practices have not only remained widespread but have also proven to be extremely harmful to queer youth.[303] Whether the police forces and the courts that make up the criminal justice system are the best vehicles to task with protecting queer youth is another question. As I have demonstrated in this chapter, queer theorists have fallen in line with critical race theorists in rejecting criminal law as a realistic and efficient way to protect minorities. Indeed, the lens of intersectionality illuminates how criminal law individualizes harm. This is because barriers to justice exclude many of the more disadvantaged queer individuals. While remedying structural inequalities is primordial for queer theorists, there is a real risk that Bill C-6 will leave these untouched. Moreover, the ban could participate in the systemic oppression of 2SLGBTQQIA+ persons due to its use of criminal justice, the unfeasible nature of litigation for many, and its questionable deterrence potential. The ban could nevertheless have a positive impact through its expressive function, as it signals that queer youth are worthy of protection.

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[300] See Earp & Vierra, *supra* note 66 at 5—7. See also George, *supra* note 44 at 813. See also Colker, *supra* note 80 at 171—72.

[301] See Earp and Vierra, *supra* note 66 at 8—9.

[302] This example is based on the reasoning used in *ibid*.

[303] On the widespread nature of conversion therapy in Canada, see for ex Mokashi et al., *supra* note 26 at 1086.

However, the worry remains that this discourse is but a shield behind which oppressive forces may hide. Finally, the rationale used to advocate for conversion therapy bans has been heavily reliant on contested notions, such as the 'born this way' approach and the complete ineffectiveness of SOGIE change efforts. This is problematic since it could weaken the strength of the protection awarded by the bill. Having given an overview of the critiques which can be made to the ban from both the perspective of childhood ethics and queer theory, this thesis will now turn to explore potential solutions to remedy these shortcomings.

Chapter 4: Moving forward

Bill C-6's goal of promoting human dignity and equality for queer persons is laudable.[304] Yet, its realization through the execution of a conversion therapy ban can be questioned. If we create an analogy between conversion therapy bans and legislation with similar goals such as anti-discrimination or hate crime laws, history tells us that the ban would need to be accompanied by a broad publicity campaign and harsh punishments to reach its goal. Academics consider this too high a cost to pay for human dignity and equality when these same goals can be accomplished with less costly alternatives that are inclusive of all individuals.[305]

1. Legal remedies

There are several ways to respond to childhood ethics and queer theory's critique of Bill C-6 while staying within the realm of legal remedies. This chapter will first look at the measures which must be taken for the conversion therapy ban to be successful – what can be done within the Bill's prerogative to ensure that the concerns expressed in previous chapters are dealt with? Several authors have brought up the fact that pre-existing criminal laws could have been exploited to achieve the same goals as Bill C-6.[306] This is the point second point we will explore. Finally, we will turn to the range of non-legal remedies which could be employed to protect queer children.

1.1. Theoretical approach

A line of legal scholarship, legal realism, emphasizes the role law plays in the development of inequalities.[307] The cornerstone of this theory is that law can build identities and endow them

[304] See the goals explicit in Charter Statement, *supra* note 31.
[305] Ashley, "Don't be so hateful", *supra* note 199 at 30.
[306] See for ex Charruau, *supra* note 47 at 8—10.
[307] Sheppard, "Bread and Roses", *supra* note 5 at 229.

with social meaning.[308] Reverse-engineering this mechanism, changing the theories which are at the basis of legal reforms could open the way to new remedies for injustices. The road continues to be long in this respect, and the transition from commitment to reality remains a hurdle.[309]

Remedies for injustices have been conceptualized under various categories. A difference can be drawn for example, between affirmative and transformative remedies. The rights-based approach can also be singled out. Finally, the injustices themselves can be categorized according to their source and consequences. Time will be dedicated here to understanding these classifications, as this will facilitate the analysis of the possible remedies to the injustices faced by Canadian queer youth.

Affirmative remedies are those which bring a positive focus on the difference between social groups. These include inclusion tactics targeting specific identities for example. Identifiable pitfalls to this approach include the possibility of creating a backlash, the failure to bring material change to everyday life, and the inability to challenge the deeper roots of inequalities.[310] In the context of queer youth, a textbook affirmative remedy could consist of creating legal protections based on SOGIE. While this could supplement existing anti-discrimination laws, the necessary reliance on self-identification may lead to a harmful outing, stigmatization and ultimately discrimination.[311]

Transformative remedies, in contrast, are those aimed at blurring differences between groups.[312] A prime example is the 'deconstruct heterosexuality first' approach, whereby the state's role in regulating SOGIE and its preferential treatment towards cisgender and heterosexuality is unveiled.[313] This is an interesting approach, since understanding why and how SOGI categories came to be such an important pillar of our legal system will provide a

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[308] Lise Gotell, "Queering Law: Not by Vriend" (2002) 17:1 Canadian Journal of Law and Society 89 at 97.

[309] Colleen Sheppard, "Challenging Systemic Racism in Canada" in *Race and Inequality*, 1st ed (Routledge, 2006) 43 [Sheppard, "Systemic Racism"] at 61.

[310] Nancy Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a 'Postsocialist' Age" in *Justice Interruptus*, (Routledge, 2014) 68 [Fraser, "Dilemmas of Justice"] at 82—86. See also Lamble et al., *supra* note 149 at 506.

[311] See Gotell, *supra* note 308 at 95.

[312] Fraser, "Dilemmas of Justice", *supra* note 310 at 82.

[313] Gotell, *supra* note 308 at 111.

foundation for the deconstruction of structural causes of inequality.[314] These remedies are promising, as they align with what many queer theorists recommend and contain a real possibility of remedying misrecognition. Simultaneously engaging both a process of affirmation and of deconstruction of societal differences remains the main challenge of remedial efforts. A proposed way of overcoming this challenge is to reframe the ways we think about foundational social concepts such as SOGIE in view of deconstructing them.[315] A slightly more immediate and accessible proposed remedy is to increase the funding allocated to restorative and transformative justice programs which target structural oppression.[316]

Using a rights-based approach is another method of advocating for a better quality of life for 2SLGBTQQIA+ individuals which has been both lauded and criticized. On one hand, a rights-based approach can reduce precarity by legitimizing individual experiences and creating new channels to access justice. Another benefit to this approach is its capacity to push for political and cultural discussions while additionally weakening discriminatory structures.[317] On the other hand, the rights-based approach offers several pitfalls to be wary of. Several scholars lament the fact that the goal of 'building a rights-bearing person' is done at the detriment of other disadvantaged groups. Historically, for example, laws protecting children from conversion therapy do not usually extend to autistic youth.[318] Additionally, scholars disapprove of the rights-bearing approach's lack of redistributive effect and for its overshadowing of alternative means of 'resistance'.[319] There are several ways to avoid these pitfalls. For example, it is advised to supplement a rights-based approach with a wider plan to deconstruct oppression, such as the three-year anti-discrimination scheme implemented in Italy.[320] Another course of action could be to take a morally significant perspective to rights-based arguments, by using Colker's embodied bisexual perspective for instance.[321]

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[314] Fischel, *supra* note 2 at 91.
[315] Fraser, "Dilemmas of Justice", *supra* note 310 at 83, 86. See also Travers, *supra* note 3 at 200—01.
[316] Travers, *supra* note 3 at 196.
[317] *Ibid.* at 196, 198.
[318] See for ex Pyne, *supra* note 189 at 343, 358.
[319] See Travers, *supra* note 3 at 187—88. See also Spade, *supra* note 92 at 7—13.
[320] Travers, *supra* note 3 at 198.
[321] Colker, *supra* note 80 at 164

The type of injustice at hand must also be analyzed to assess the optimal solution. First, economic injustices can be remedied through redistribution. Scholars have lamented that this is what has been lacking under past and present Canadian governments.[322] Secondly, the preferred remedy for cultural injustices is theorized to be recognition. Finally, political injustices can be separated into two types. Ordinary-political misrepresentations are those situations in which not all individuals can equally participate in their community's political life, while misframing happens when those individuals are prevented from participating at all. The supposed solution to these injustices is representation, which cannot happen without economic redistribution and cultural recognition.[323] Efforts to increase participation can for example go through the implementation of participatory parity, as suggested by Fraser.[324] For her, participatory parity is an essential aspect of social justice which consists of eliminating barriers to participation in the political and social community.[325]

1.2. Ensuring Bill C-6's success

Several suggestions have been made to ensure Bill C-6's success without necessarily moving past the law's scope of operation. These include, but are not limited to, increasing the severity of the punishments mandated by the ban, being careful of the text of the law, creating publicity campaigns, monitoring implementation, and ensuring equitable access to justice for all.[326]

One route which could be particularly promising is to focus on the simultaneous implementation of civil and administrative schemes. For example, governments and their officials could be incentivized to cease all support provided to proponents of conversion therapies. Another interesting plan which has been proposed consists in the creation of survivor support systems, such as the proposed anti-violence centers for victims in Italy.[327] Not only can

[322] Nancy Fraser, "Reframing Justice in a Globalizing World" (2005) 36 New Left Review 69 [Fraser, "Reframing Justice"] at 78—79. See for ex Travers, *supra* note 3 at 186.
[323] Fraser, "Reframing Justice", *supra* note 322 at 76—79.
[324] Travers, *supra* note 3 at 188.
[325] See *ibid*. at 188, 197. See also Fraser, "Reframing Justice", *supra* note 322 at 73—77, 87.
[326] See Ashley, "Don't be so hateful", *supra* note 199 at 30. See also generally Charruau, *supra* note 47; Alencar Albuquerque et al., *supra* note 104; ILGA World, *supra* note 12.
[327] ILGA World, supra note 12 at 6, 7.

such initiatives create more freedom to speak about victims' experiences which can, in turn, ameliorate the general public's knowledge of conversion therapies and SOGIE,[328] but they could also be leveraged to empower survivors and accompany them in their healing process. Regarding these survivor support schemes, it is important to note advocates' recommendation that they stem from the community and be led by queer organizations and individuals.[329]

Neglecting these supplementary measures would hinder the efficacy of Bill C-6 while fostering them could lead to a more well-rounded achievement of the legislation's goal.

1.3. Use pre-existing criminal law

Several authors argue that Bill C-6's goals could have been achieved, sometimes even more efficiently, by exploiting the criminal laws which were already in place. This approach would use pre-existing criminal offences as a legal basis while building on new aggravating circumstances to fit the specific circumstances of conversion therapies.[330] Such aggravating circumstances have been put into effect in Ecuador for example.[331]

On one hand, this approach would respond to dilution concerns. Indeed, aggravating circumstances would not create new crimes *per se*, which could preserve the severity with which they are seen.[332] On the other hand, this approach would trap us the criminal law's system of rule and enforcement which has been so criticized by queer rights advocates for being incapable of impacting systemic inequalities.

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[328] One goal of conversion therapy bans noted in Communication de Mme Laurence Vauceunebrock, *supra* note 213 at 9.
[329] See Ashley, "Don't be so hateful", *supra* note 199 at 31—33.
[330] ILGA World, *supra* note 12 at 3. See also Communication de Mme Laurence Vauceunebrock, *supra* note 213 at 9—11.
[331] See ILGA World, *supra* note 12 at 3.
[332] See for ex Charruau, *supra* note 47 at 8—9.

1.4. Non-criminal legal remedies

To respond to claims that criminal law, by its very nature as a rule-enforcement system, is unable to appropriately address the injustices faced by queer youth, it is necessary to move towards legal remedies that span beyond the criminal justice system. The remedies which will be analyzed in this section include de-medicalization and other administrative and civil remedies.

1.4.1. De-medicalization

De-medicalization is one of the transformative remedies which has been the most discussed among queer theorists and childhood ethics. Yet not much progress has been made to address the legal side of this remedy. This is even though the de-medicalization process can be pursued through many different avenues, which will be discussed under two categories: those aimed at disrupting assumptions in and about healthcare, and those which draw on hermeneutical interpretations and moral experiences.

Many of the assumptions made in and about the healthcare of queer youth could benefit from being reviewed or even deconstructed. First, there is a need to re-evaluate what is considered a social and/or health problem. It has been argued for example, that achieving a "healthy sense of self" should be one of the primary goals of healthcare.[333] Additionally, queer theorists demand that the concept of a 'healthy person' be de-centred from the norms attached to privileged groups. Secondly, assumptions made about patients' values must be put into question. The need to deconstruct the importance of biological parenthood and of fertility is particularly important for the inclusion of queer individuals.[334] Third, the goals of healthcare need to be redefined. Indeed, the focus is too often placed on the "technological" aspects of queer health, to the detriment of preventive aspects of queer healthcare.[335] Finally, time and effort need to be allocated to the best interest standard. This standard needs to be adjusted to fit current concepts of child agency, to allow children to take up more space in the determination of their care.[336]

[333] See for ex Dreger, *supra* note 16.
[334] Richie, "Queer Bioethics", *supra* note 7 at 368—70.
[335] Richie, "LGBT Bioethics", *supra* note 217 at 8.
[336] Carnevale, "A New Field of Inquiry", *supra* note 86 at 519.

Asking healthcare professionals to base their decisions on hermeneutical interpretation and moral experiences entails several important changes. First, queer patients would no longer bear the burden of accounting for and providing proof of their self-identification.[337] For example, an individual's 'transness' would no longer be judged through the number and type of surgeries undergone.[338] This would benefit queer children since it would signal that they are listened to and that all identities are valid.[339] Such a de-instrumentalization of bodies could also be beneficial for parents of queer youth, as it might alleviate some of the pressure created by a healthcare system with such a plastic-oriented focus on queer bodies that they are made to feel as if they are caring for chronically ill children.[340]

A second way to increase the reliance on moral experience and hermeneutical interpretation would be to do away with the mandatory nature of SOGIE markers in official documentation.[341] This approach is like that taken for race and religion, whereby the categorization of SOGIE as a legally protected aspect of individuals' identity could be preserved. Rethinking SOGIE markers can either take a nongendered or a self-declaratory approach. The non-gendered approach is a transformative remedy that would delete all requirements for SOGIE markers.[342] Queer youth would essentially be achieving "freedom *from* gender" rather than "freedom *of* gender".[343] This is where the tension between deconstructing and affirming 2SLGBTQIA+ identities comes in. In response to this, one can turn to the corresponding affirmative remedy, namely the self-declaratory approach. Allowing patients to document their SOGI using whatever language they want is an approach that is supported by many queer activists.[344] Self-declaration would also enable those who fall outside of SOGI binaries to be better recognized by the law and therefore achieve the status of a legal subject. Whichever approach is taken, these types of paradigm shifts would allow queer youth to be seen as morally

[337] Criticized in Gill-Peterson, *supra* note 9 at 5, 10.
[338] Issue highlighted in *ibid.* at 17.
[339] Ashley, "The Gender-Affirmative Approach", *supra* note 49 at 377.
[340] Karkazis, *supra* note 29 at 179—80.
[341] Travers, *supra* note 3 at 200—01.
[342] See Renz, *supra* note 239 at 252—55.
[343] Fischel, *supra* note 2 at 91.
[344] On the importance of using one's own language, see Wesley, *supra* note 135 at 347. See contra Renz, *supra* note 239 at 252—53.

complex and give more worth to their self-knowledge, as is necessary to improve queer youth's well-being.

Finally, de-medicalization can be implemented using informed consent models. This change would be historically significant since silence has long been the "raw material of the medical foundation of the sex and gender binary"[345]. Additionally, increased reliance on informed consent could make it easier to distinguish between those practices which are to be considered as conversion therapies and those which are defined as part of gender-affirmative care.[346] Moreover, informed consent models increase the amount of respect given to patients' vales. Queer advocates themselves even attest to the fact that the value of consent is more important to them than other values which are often prone in heteronormative environments—such as fertility.[347]

Although informed consent models have garnered overwhelming support, concerns have arisen regarding the feasibility of their implementation. Ashley has delved into this issue in the context of HRT. In practice, children would simply need to fill out a document declaring their wish for and consent to HRT and discuss the risks and benefits of the treatment with their healthcare professional.[348] The smooth development of such an informed consent model, according to childhood ethicists, requires that children be seen as capable moral agents. Indeed, these scholars recommend that the authentic assent or consent of children of *all* ages be sought and that they be the ones leading the decision-making process.[349] In addition, increasing the healthcare system's reliance on informed consent should go hand-in-hand with increased respect for confidentiality.[350] The shift to informed consent would be reinforced by a general rethinking of the concept of the 'knowing child' and of age-appropriateness.[351]

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[345] Gill-Peterson, *supra* note 9 at 4.

[346] Analogy made with Ashley & Ells, *supra* note 104 at 4 in the context of the insurance coverage of facial-feminization surgery.

[347] See for ex Karkazis, *supra* note 29 at 211—12. See also Sadjadi, "The Vulnerable Child Protection Act", *supra* note 30 at 511.

[348] Ashley, "Hormone Replacement Therapy", *supra* note 60 at 2.

[349] Carnevale, "Childhood Ethics", *supra* note 6 at 8—12. See also D'Angelo, *supra* note 52 at 532.

[350] Noiseux et al, *supra* note 38 at 2.

[351] See Robinson, *supra* note 114 at 264—66.

Finally, some authors argue that new informed consent models could be finetuned by turning to the history of intersex children. This is because the medical care of intersex children bears many similarities with that of other queer youth, both described as inherently complex. Namely, parents and caregivers of both groups often express their discomfort and worry surrounding the variations and ambiguities of SOGIE. [352]

1.4.2. Other civil and administrative remedies

As already mentioned earlier in this chapter, it is recommended that criminal policies be accompanied by administrative and civil actions. Leaning further into this approach, it could even be that the goals of criminal law could be achieved solely by enacting less harmful civil and administrative changes.

Regulating healthcare professionals could be a first way of effectively creating an indirect ban of conversion therapy. It has been argued for example, that using an anti-deception approach would effectively curb conversion therapy.[353] This approach would work if it is considered that changing one's SOGI is *de facto* impossible, and that conversion therapy can therefore never live up to its promise. Healthcare professionals could also be prohibited from referring their patients to conversion therapy practices.[354] Secondly, restrictions could be imposed on insurance policies.[355] Indeed, cutting off all access to reimbursement of medical conversion therapies would also reduce the accessibility of these practices.

Finally, several authors have proposed that conversion therapy be regulated in the same way as harmful products, such as cigarettes and alcohol.[356] This would imply a strict regulation of the advertisement of conversion therapy, along with the implementation of awareness and education campaigns and firm restrictions on who can access and delivery conversion therapy.

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[352] Sadjadi, "The Vulnerable Child Protection Act", *supra* note 30 at 513.
[353] Victor, *supra* note 10 at 1562—71.
[354] ILGA World, *supra* note 12 at 4.
[355] *Ibid.* at 3.
[356] See for ex *ibid.* at 4.

2. Non-legal remedies

2.1. Advocacy

Advocates can play an important role in bettering queer youth's quality of life. For instance, certain advocacy groups hold enough weight to be able to influence institutions and corporations to give more importance to queer children.[357] Advocacy strategies must, however, be careful to strive for those results which are the most efficient and the least harmful for all 2SLGBTQQIA+ children. In this respect, several changes must be implemented within advocacy circles. These include an increased focus on diversity, a rethinking of the importance of legal remedies, and a reframing of the ways in which queer rights are argued for.

First, advocates must increase the amount of diversity present both within those doing the advocating and within the causes which they advocate for. This is because relying on and perpetuating privileged Euro-American concepts of SOGIE is detrimental to the overall cause of 2SLGBTQQIA+ advocates.[358] For example, greater efforts should be made to integrate religious and moral arguments in discussions around queer rights, as this could allow for broader inclusion of diverse activists in advocacy strategies.[359] An effective way to ensure that advocacy efforts are not exclusionary would be to focalize first on those issues faced by queer youth who are the most disadvantaged. More specifically, advocacy should be based on the real experiences of those queer children rather than on disembodied concepts.[360] Strategies should also be implemented to address the whiteness and class privilege prevalent amongst advocacy groups.[361] While shifting their focus to the most oppressed queer identities, advocates must be careful not to tokenize, make assumptions about, or otherwise take advantage of those marginalized individuals[362]. For

[357] See Travers, *supra* note 3 at 200.
[358] See for ex Sadjadi, "The Vulnerable Child Protection Act", supra note 30 at 512.
[359] See the relationship observed between feminist movements and Black women in Colker, *supra* note 80 at 171.
[360] Spade, *supra* note 92 at 13. See also Gill-Peterson, *supra* note 9 at 33.
[361] See Gill-Peterson, *supra* note 9 at 21. See also Ellison et al, *supra* note 233 at 166.
[362] See for ex Gill-Peterson, *supra* note 9 at 29.

instance, Indigenous queer authors have sometimes criticized the use of the "two-spirit" term and the accompanied failure to accurately portray Indigenous concepts of SOGIE.[363]

Secondly, observations show that strategies that focus on legal remedies end up yielding fewer tangible results than those that center around changing the broader community's perceptions on the 2SLGBTQQIA+ community.[364] Advocacy must therefore concentrate further on critical resistance rather than on rights-based approaches.[365] This could include strategies which aim at deconstructing and revealing the effects of normative social norms.[366]

Much ink has been spilt on the issue of how to best argue for queer rights. Many argue for a reframing of the ways in which rights are advocated for. Relying more heavily on a fully embodied framework for instance could help move advocacy forward. This is because relying on dual conceptions of gender or sexuality prevents the achievement of full equality. Rather, advocates should reject separatism and accept all intersections of identities. Similarly, advocates should argue for queer rights on the basis that all individuals equally deserve to be free from prosecution and oppression, and not because that law should be separate from politics and morality.[367] Using the former basis for queer rights could be more effective while also working to decrease the invisibilization of certain SOGIE minorities.[368]

Finally, there could be an added spotlight on the fact that there is nothing wrong with identifying as a SOGIE minority and that living accordingly is a moral right.[369] Indeed, while an earlier part of this chapter was dedicated to a critique of the rights-based approach, this strategy can nevertheless present an advantage. Relying on a "right to have consensual sexual interactions without prejudice or interference" for example would allow circumventing the contentious debate on the innate nature of SOGI. This could also encourage advocates to leave the 'born this way' approach behind, which queer theorists believe is essential to the inclusion of all SOGIE

[363] Wesley, *supra* note 135 at 344.
[364] See for ex Ashley, "Don't be so hateful", *supra* note 199 at 27.
[365] See for ex Spade, *supra* note 92 at 12—13.
[366] Lamble et al, *supra* note 149 at 506.
[367] Colker, *supra* note 80 at 179.
[368] *Ibid.* at 182, 184.
[369] Earp & Vierra, *supra* note 66 at 9.

identities.[370] While the focus of this section has been on advocates, civil society includes a broad range of other actors who have a role to play in shaping queer youth's wellbeing. Equally important stakeholders include parents, academics, and public sector providers such as educators and healthcare workers, each of which will be addressed in section 2.3 of this chapter.

2.2. Social policies

Social policies are essential to better the quality of life of queer children since they can address the "many little cuts" which come to hinder their well-being. Some of the social policies which hold the most potential to improve the quality of life of the most disadvantaged queer children include addressing reparations for land theft, investing in vulnerable children, and implementing solutions to poverty and social alienation. Many other avenues, such as the abolition of prisons or the reform of religious norms, could be addressed, but will not be delved into in detail here for lack of space and time.

Making reparations for land theft can be beneficial for the entire Indigenous population of Canada, but also more specifically for queer Indigenous youth. Indeed, colonialism has eliminated many of the queer identities which had previously been used in Indigenous cultures. As part of the reconciliation process with Indigenous groups, efforts should be made in order for these lost identities to be reclaimed.[371] A proposed first step might be to get rid of the government system put into place by the Indian Act whereby a chief is elected and replace it with systems based on a matriarchy.[372]

Additionally, more efforts should be made to invest in vulnerable queer children.[373] This cause of action can first include an improvement of access to gender-affirmative care. The fact that gender-affirmative care is not considered as essential care usually provided to cis-gendered patients is premised on inequality. Indeed, it is inequality that renders it possible to differentiate between procedures that are 'morally necessary' and those that are not. Today, insurance policies

[370] *Ibid.* at 15.
[371] Wesley, *supra* note 135 at 339.
[372] *Ibid.* at 346.
[373] Travers, *supra* note 3 at 200—01.

continue to refuse to cover this care even though transitioning has an undeniable protective factor.[374] Because long wait times for transitioning or other gender-affirming care have been correlated with lifetime discrimination, psychological and gender distress, low gender positivity, and depression,[375] it is essential to ensure that queer children have easy access to gender-affirming care. Secondly, empowerment strategies for queer youth must be created.[376] Advocates explain that the "connection to core aspects of self" must be what guides these strategies' development.[377] Third, there is a pressing need to address specific issues faced by Indigenous children within the specific context of Canada. Queer Indigenous children are disproportionately burdened by the intergenerational trauma caused by residential schools and assimilationist practices which erased the Two-spirited identity and promulgated colonized queerphobia.[378] Sparse access to accessible and affordable food sources, healthcare professionals and educational facilities also works to accentuate these burdens.[379] This lack of resources available to Indigenous children needs to be remedied. Linked to this is the need to move beyond the barrier of the geographical isolation of many Indigenous communities, particularly in terms of access to physical care. We must also go beyond assumptions that Indigenous communities create suboptimal spaces for queer children to grow up in. The Minododazin tradition, for example, holds beliefs regarding the care of children that is very much in line with what Western childhood ethicists prone.[380]

Finally, social policies must be created to remedy the poverty and social alienation to which queer youth are disproportionately subject. Many broad lines of work can be identified in relation to the issue of poverty and social alienation. Issues of basic income, housing, and baseline security all need to be addressed.[381] Social inclusion strategies are primordial. In this

[374] Ashley & Ells, *supra* note 104 at 4.
[375] Mokashi et al., *supra* note 26.
[376] Alencar Albuquerque et al., *supra* note 104 at 8. See also Ashley, "Don't be so hateful", *supra* note 199 at 31—33.
[377] Ashley & Ells, *supra* note 104 at 4.
[378] Kooiman et al., *supra* note 185 at 3. See for ex Wesley, *supra* note 135 at 339, 343, 345.
[379] Kooiman et al., *supra* note 185 at 3.
[380] *Ibid.* at 5—7.
[381] Travers, *supra* note 3 at 200—01.

respect, scholars recommend shifting the system's attention away from the disadvantage of certain societal groups and towards the advantage of others.[382]

2.3. Education

The pedagogical and informative role of conversion therapy bans can be achieved through less harmful ways, such as educational efforts. The last part of this paper will be dedicated to the exploration of the actions which can be taken to better inform the general public, increase the quality of the education provided to the stakeholders involved in conversion therapy, and to the changes which must take place within academic circles.

2.3.1. The general public

Educating the general public on SOGIE minorities must become a primordial objective since the entirety of society must be mobilized to end the injustices faced by queer youth. Programs to educate the general public must focus on several key points which will be detailed here. Namely, we must plan for a rethinking of how we relate our actions to structural injustices, a more holistic understanding of discrimination must be created, and a cultural shift must take place in the way minority SOGIE identities are conceived.

Let us first turn to the task of rethinking our actions in relation to structural injustice. The cause and effect of structural injustice are both blurry and mutually reinforcing, making it easy to view these issues as something "we must live with rather than try to change".[383] The criminal law system relied heavily on the fault and blame model. Rooted in the concept of duty, the focus of this model is to single out individuals who can be held responsible for certain harms, without considering any external factors. This conceptualization is not the fittest for widespread harms such as those caused by structural injustice. For example, we can ask ourselves if those who benefit from current injustices have a 'special moral responsibility' to remedy them since they

[382] Sheppard, "Bread and Roses", *supra* note 5 at 239.
[383] Iris Marion Young, *Political Responsibility and Structural Injustice* (University of Chicago, 2003) at 7—8.

have more means to do so with the least adverse impact.[384] The model of political responsibility responds to this need to find a new way of ascribing blame for harm. This model contextualizes the harms done and sees responsibility as shared, as all individuals of a group can be held responsible for the harms caused collectively. This model can be preferred since it is less prone to creating resentment and has a greater potential of creating change.[385]

Secondly, the general public must be taught to acquire a more holistic understanding of discrimination. Namely, all actors of society must be exposed to contextualized discussions on injustices that challenge stereotypes and wholly include SOGIE minorities. This is essential to form more positive interactions between various groups, and to deconstruct the link between difference and stigma. Implementing these discussions in school programs could have a particularly important impact since many people could be reached, and children would be given a place in the conversation. Additionally, these public dialogues could contribute to improving the quality of the information available on SOGIE and conversion therapy and could foster healthy criticism of societal and legal structures.[386]

Finally, focusing on the education of the public would facilitate the materialization of cultural shifts, many of which are considered necessary to remedy the injustices suffered by queer youth. Indeed, queer theorists agree that challenging the status quo, particularly those practices rooted in sexism or conformism, is essential to eliminating harm towards the 2SLGBTQQIA+ community.[387]

2.3.2. Stakeholders

The individuals who have the most at stake and have the greatest potential to make a change in conversion therapy practices are queer children themselves, their parents, and public sector service providers. According to childhood ethicists, better educating children on sexuality and

[384] *Ibid.* at 18.
[385] *Ibid.* at 15—16, 19.
[386] Goals stated in Communication de Mme Laurence Vauceunebrock**,** *supra* note 213 at 11. See also Sheppard, "Systemic Racism", *supra* note 309 at 51.
[387] See for ex Ashley, "Don't be so hateful", *supra* note 199 at 31, 35. Richie, "Queer Bioethics", *supra* note 7 at 371. Lamble et al., *supra* note 149 at 507. Copson & Boukli, *supra* note 198 at 519.

sexual health would greatly improve their quality of life and decrease future risks to their health.[388] This is of course, so long as non-heterosexual orientations are included in the discussion.

Parents also have an incredibly important role to play in their children's well-being. The cause of many conversion therapy practices, experts theorize, can be found in parents' discomfort with their child's nonconforming SOGIE. However, these feelings are not always born out of queerphobia. Rather, parents are often worried about the injustices their child will face if they live in accordance with their 2SLGBTQQIA+ identity.[389] In order to change this way of thinking and course of action, parents need to be educated on the harms of conversion therapy and taught ways to accompany their child in their understanding of their SOGIE.[390]

Finally, public sector service providers also need to undergo training related to the well-being of queer youth. It is particularly important for school nurses, teachers, and health professionals to have easy access to this education.[391] An example can be taken from the clinical guidelines on treating gender-variant children developed for healthcare professionals in Finland.[392] When developing such guidelines for service providers, childhood ethicists say it is primordial that the disparate views on youth's moral agency be harmonized.[393]

2.3.3. Academia

Finally, changes need to take place within academia, since this is one of the principal media through which concepts on queerness and childhood are created and discussed. Some of the shifts that need to take place include the creation of novel approaches to research and policy analysis and the increased use of queer theory in all academic fields.

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[388] Robinson, *supra* note 114 at 267—70.
[389] See for ex Karkazis, *supra* note 29 at 179—81.
[390] Dreger, *supra* note 16.
[391] Charruau, *supra* note 47 at 9—10. Alencar Albuquerque et al., *supra* note 104 at 8. Communication de Mme Laurence Vauceunebrock**,** *supra* note 213 at 11.
[392] See Kay, *supra* note 36.
[393] See generally Montreuil et al., *supra* note 86.

New approaches in academic work are needed to elicit increased readership and fuel scholarly engagement.[394] For example, authors should be encouraged to self-identify and to decolonize the material they engage with, in order to re-write a queer history that is embodied.[395] Academics who do not usually engage with childhood ethics also need to give more weight to the opinions voiced by children.[396] Policies need to be analyzed, with a particular focus on the way in which sexual and gender justice is addressed, and their implementation and effect needs to be more carefully evaluated.[397]

All fields of study would benefit from including concepts of queer theory and should be encouraged to do so.[398] This means, for instance, that medical research should rethink which interests are followed and should be careful not to sweep 2SLGBTQQIA+ individuals under the rug.[399] More particularly, queer theorists encourage legal scholars of all sorts to try their hand at creating queer arguments by challenging the status quo and fabricating increasingly embodied visions of society.[400]

Overall, the theoretical approach to using legal remedies could call for legal realism, a combination of affirmative and transformative remedies, or a rights-based approach. In practice, ensuring Bill C-6's success calls for a parallel implementation of civil and administrative schemes. However, it can even be argued that the goals of the ban could be achieved by implementing aggravating circumstances to existing criminal offences, or by moving toward legal remedies outside of criminal law altogether. This could include a broader focus on the de-medicalization of queer bodies, for example through increased reliance on hermeneutical interpretation and moral experiences in healthcare and administrative procedures.

Turning to non-legal remedies, many positive changes could be implemented within the sphere of advocacy. Indeed, queer rights advocates must deepen their focus on diversity and revisit outdated notions of gender and sexuality. Social policies such as empowerment strategies

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[394] Sheppard, "Bread and Roses", *supra* note 5 at 240.
[395] See for ex Wesley, *supra* note 135 at 349. See also Ellison et al, *supra* note 233 at 166.
[396] See generally Carnevale, "Children's Voices", *supra* note 88.
[397] See Sheppard, "Bread and Roses", *supra* note 5 at 232. See for ex Fischel, *supra* note 2 at 91.
[398] See for ex Gotell, *supra* note 308 at 92.
[399] See for ex Richie, "LGBT Bioethics", *supra* note 217.
[400] Fischel, *supra* note 2 at 93. See also Lamble et al., *supra* note 149 at 507.

also have a role to play, particularly for marginalized queer individuals. Last but not least, more effort should be allocated to the education of all members of society to correct erroneous notions surrounding SOGIE and queer life. Such initiatives bear the potential to render more accurate general understandings, and therefore the quality of life, of queer individuals.

Conclusion

The beginning of this thesis focused on providing an overview of the context leading up to the adoption of Bill C-6. Even though the Canadian federal initiative was relatively slow, the need to curb conversion therapy practices and work towards the improvement of queer youth's wellbeing eventually prevailed over the controversies that emerged. The conversion therapy ban has effectively created new criminal offences, one of the goals of which is to protect queer youth. Relying on the best interest narrative, Bill C-6 is one of the most important federal laws to have breached the historically sensitive topics of minor's SOGIE. The law-making process has not been entirely smooth, as it has opened the way for broader discussions on religious claims, queer rights, and children's moral competence among other topics.

Using precepts of childhood ethics has yielded several important points on the conversion therapy ban. First, there is a lack of inclusion of children in the law-making process which is reflective of the weak importance awarded to their voices and moral capacities. Second, a greater discussion on the use of informed consent and self-identification would have allowed both for better recognition of children's capabilities and for an increased de-medicalization of SOGIE. Finally, the works of childhood ethicists have allowed for a weighing of the practical effects of the ban on the actual lives of queer youth. While Bill C-6 responds to a real need to curb practices related to torture and CIDT, its potential to remedy structural inequalities has been put into question. This is because the ban adopts a perpetrator perspective, relies on Euro-American centric notions, and does not fully take into consideration the multi-layered discrimination experienced by queer youth experiencing mental illness, poverty, or social alienation. From these critiques, it can be argued that Bill C-6 will only be valuable for most queer youth if it is accompanied by renewed efforts to address structural inequalities and by a shift away from harmful mainstream notions of queer SOGIE.

Queer theory has also been useful in understanding the broader impact of the conversion therapy ban's implementation. Although the use of criminal law is in line with legal trends worldwide, reliance on criminal justice has been heavily criticized. This is in part because of the individualization of harm that follows from the conditions of criminal liability. Additionally, the criminal justice system is not apt to respond to the intersectionality of identities present within

the 2SLGBTQQIA+ community. The shortcomings of Bill C-6 became especially apparent when looking at its potential to reduce structural inequalities. With an 'add LGBTQI+ and stir' approach that is arguably too weak to make a meaningful impact, there is a risk that the ban will only serve to reinforce the oppressive nature of the criminal law system. Not only are queer individuals already at a disadvantage when it comes to criminality, but there is little evidence to suggest that the ban will have a strong deterrent effect for perpetrators of conversion therapy. Several queer theorists had kept hope that Bill C-6 would have an important expressive function. On one hand, the creation of explicit protection for SOGIE minorities is a step forward for the queer rights movement. On the other hand, the law's rationale perpetuates contested notions of SOGIE and its enaction might even serve to overshadow greater oppression.

Keeping the childhood ethics and queer theory critique in mind, several points merit highlighting as efforts are undertaken to improve queer youth's wellbeing. First, in the realm of legal remedies, ensuring Bill C-6's success requires the simultaneous implementation of civil and administrative measures. While adding aggravating circumstances to pre-existing criminal offences has been suggested to address dilution concerns, this tactic could still perpetuate the harms of criminal law. Turning away from criminal law remedies, therefore, more efforts should be put into de-medicalizing children's SOGIE. The regulation of health care professions and of conversion therapy as a harmful practice could also be further explored. Secondly, non-legal remedies also have interesting potential. Advocates could continue to have a meaningful impact if they increase their focus on diversity and rethink the way they argue for queer rights. Social policies could also be implemented to benefit the specific groups within queer communities who are most marginalized, to invest in queer youth, and to work to remedy poverty and social alienation. Finally, education is primordial and represents another less harmful way to reach the pedagogical goals of Bill C-6 than through criminal law. Regarding the general public, efforts should be made to shift the ways in which individual actions are related to structural injustice, and a more holistic understanding of discrimination could be acquired. More focus should also be put on the education of parents and public sector service providers given the impact they can have on the lives of queer children. Turning to academia, there is a real value in including concepts of queer theory and childhood ethics in all fields, as this would push for greater scrutiny of widespread disembodied notions which are harmful to 2SLGBTQQIA+ children.

My hope is that this thesis will encourage future queer ethics scholars to incorporate notions of childhood ethics into their work, and vice versa. Additionally, this thesis has strived to push future scholars to look at questions of queer-affirmative policy development with an increasingly intersectional and embodied approach. Scholars' work will have a greater impact on all queer youth if it goes beyond singular lived experiences or preconceived notions of queer life. Finally, I anticipate that this thesis has contributed to a larger body of work on childhood ethics, which will urge scholars to ascribe more weight to children's voices. Only by recognizing and respecting children's moral agency can a material change be made in favour of queer youth's wellbeing.

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