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Policy Momentum and Transgender Policy Inclusion: Explaining National Policy Change

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Abstract

Western democracies are experiencing a widespread shift towards greater recognition of transgender rights in public policy, yet the timing of policy change differs across states. This dissertation asks: What explains the timing of transgender-inclusive public policy change? To explain this variation, I develop an original theoretical framework called "policy momentum." Unlike existing work on policy diffusion, which typically emphasizes either domestic or international processes, I theorize how the combined pressure from each level creates the conditions for policy change to occur. Empirically, I contrast two policy areas in Canada and Australia. First, I analyze the creation of national antidiscrimination policies to protect transgender individuals. Canada and Australia prohibited discrimination based on gender identity in 2017 and 2013, respectively. Second, I examine the timing of military policy changes. The Canadian Armed Forces lifted its ban on transgender people in 1992, whereas the Australian Defense Force repealed its ban in 2010. To explain the sequence of events that led to policy change in each case, I rely on 40 elite interviews and more than 15,000 pages of previously classified archival documents. I demonstrate how the timing of policy change in each case is best explained by the policy momentum framework. In the context of antidiscrimination legislation, Canada was primarily influenced by policy adoption across the provinces and, to a lesser extent, the desire to maintain Canada's international reputation as a human rights leader. Australia, by comparison, was most strongly influenced by its international obligations but the experiences of subnational governments also informed the policy change process. In the more conservative issue area of military policy, the combination of domestic pressure through the judiciary and changes in practices among peer countries led both the Canadian Armed Forces and the Australian Defence Force to lift their bans on transgender military service. This dissertation thus contributes to our knowledge of LGBT+ politics and the creation of more inclusive public policies. It also advances public policy scholarship by creating a more holistic explanatory framework that integrates the multidirectional and multi-jurisdictional sources of pressure that together produce national policy change.

Keywords

Summary for Lay Audience

Since at least the early 1970s, transgender individuals have mobilized for greater political recognition. Transgender individuals are people who do not identify with the sex to which they were assigned at birth (i.e., male or female) or have a gender identity that does not conform with the labels of "man" or "woman." Their efforts to convince policymakers and citizens to recognize their particular identities and challenges have historically been met with fierce opposition or indifference. In the last two decades, we have seen an increasing number of countries adopting policies that are inclusive of transgender people. However, there are important differences in the timing of public policy changes across Western democracies towards greater recognition. This dissertation thus asks: What explains the timing of transgender-inclusive public policy change? Many scholars argue that when governments adopt new policies, they are influenced by or are responding to their counterparts adopting similar policies. In other words, governments may feel pressure either from an international source (e.g., other countries) or a domestic source (e.g., provinces) to change its policies. Notwithstanding these important contributions, the international processes and domestic processes have yet to be fully integrated into a more complete theory of policy change. In this dissertation, I offer a new explanation called *policy momentum* that focuses on how the combined pressure from both the international and domestic levels create the conditions for policy change to occur. I demonstrate how policy momentum explains the timing of policy change in antidiscrimination legislation and military policy in Canada and Australia. To demonstrate how policy momentum explains each case, I rely on 40 interviews with politicians and individuals from human rights commissions and non-governmental organizations, as well as more than 15,000 pages of previously classified archival documents. This dissertation contributes to our knowledge of LGBT+ politics and the creation of more inclusive public policies. It also advances public policy research by creating a new explanation – policy momentum – that offers a more holistic understanding of the different sources of pressure that together produce national policy change.

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1   Introduction

What explains the timing of transgender-inclusive public policy change? Transgender is an umbrella term that encompasses "anyone whose identity or behaviour falls outside of stereotypical gender norms" (Green, 2000, pp. 3-4). Transgender individuals are people who do not identify with the sex to which they were assigned at birth or have a gender identity that does not conform with the labels of "man" or "woman" (Stryker, 2017; Whittle, 2006). Gender identities beyond the binary conception of man and woman violate "traditional norms about gender" (Haider-Markel et al., 2019). As a result, the policy concerns of transgender people have tended to be met with fierce opposition or indifference, depending on the time period and context (Manning, 2017). Although the modern transgender movement has gained significant political traction since its emergence in the United States in the 1980s and 1990s, transgender policy issues have historically been treated as a "marginalized topic and on the fringes" (Taylor et al., 2018, p. 5).

This dissertation develops a new theoretical framework called *policy momentum* to explain the timing of transgender inclusive public policy change across Western democracies. Extensive research on the diffusion of public policy is often theoretically limited to domestic *or* international processes (Béland et al., 2018; Graham et al., 2012; McCann et al., 2015). Yet some scholars, such as Richard Simeon (1976), have argued that researchers need to consider the possibility that policy change may be a function of both domestic and international processes. There are differing perspectives on the extent to which this call to action has been internalized by scholars of public policy. For instance, Wilder (2016) suggests that the fundamental ideas that Simeon put forward (e.g., the funnel of causality linking the international to the domestic) are widely endorsed. Others, however, are more skeptical; Fay and Polischuk (2021, p. 1) argue the policy diffusion scholarship overlooks "the complex governance environment in which solutions are implemented and the multidirectional pressure governments face to adopt similar policies." I contribute to this literature by developing a new framework called policy momentum to capture moments in time when there is an accumulation of pressure from two separate directions, which in turn increases the likelihood of policy change at a third level. Through this new framework, I bring together the literatures on domestic and international diffusion and offer the analytical tools for explaining the timing of transgender policy change.

Empirically, I consider antidiscrimination legislation and military policy in Canada and Australia. Canada amended its *Canadian Human Rights Act* in 2017 to prohibit discrimination based on gender identity and gender expression. Surprisingly, given that Australia lagged nearly all Western democracies in legalizing marriage equality (which occurred in 2017), Australia amended its *Sex Discrimination Act* to include gender identity in 2013. In the context of military policy, both Canada and Australia lifted bans on lesbian, gay, and bisexual service members in 1992. However, while Canada explicitly extended the change to include transgender service members, Australia deliberately maintained a ban on transgender people until 2010 - a delay of nearly twenty years. The features of these cases are optimal for studying the question at hand. While there are multiple political and social similarities between Canada and Australia, there is theoretically interesting variation in the timing of policy change in each country and across each issue area. I employ process tracing to evaluate the available evidence and map the sequences of events within each policy area that led to policy change. In so doing, I primarily draw on 40 elite interviews and more than 15,000 pages of previously classified archival documents in Canada and Australia.

Using the policy momentum framework, I argue that the timing of policy change in each case is best explained by the combined pressure from international and domestic sources. In the context of antidiscrimination legislation, Canada was primarily influenced by policy adoption across the provinces combined with the desire to maintain Canada's international reputation as a human rights leader. Australia, by comparison, was most strongly influenced by its international obligations (e.g., international human rights treaties) but the experiences of and consultations with subnational governments was a necessary factor in the policy change process. In the more conservative issue area of military policy, the combination of domestic pressure through the judiciary and changes in practices among peer countries led both the Canadian Armed Forces and the Australian Defence Force to lift their bans on transgender military service. The timing in which the combined pressure emerged in each case explains the variation for when each ban was lifted.

This dissertation offers both theoretical and empirical contributions for our understanding of the timing of inclusive transgender policy change. The original theoretical framework of policy momentum integrates domestic and international theories of diffusion with insights from multilevel governance scholarship to specify the multidirectional and multi-jurisdictional sources of pressure that interact to produce national policy change. This framework addresses recent calls

for stronger theorizing about complex and multidirectional sources of pressure in the diffusion literature (Fay & Polischuk, 2021). Empirically, this dissertation contributes rich qualitative data through elite interviews and substantial archival research about the processes that led to the inclusion of transgender people in public policy. Transgender policy issues have historically been grouped within the umbrella term "LGBT+" in both policy and scholarship (Haider-Markel et al., 2019; Taylor et al., 2018) and so there has been limited data collected and made available for analysis. The data presented in this dissertation contributes to a growing area of research (Ayoub, 2022; Haider-Markel et al., 2019; Taylor et al., 2018) on transgender political identity and its relationship with lesbian, gay, and bisexual (LGB) political identities.

The rest of this chapter is organized as follows. It begins by providing background information on the inclusion of transgender people in public policy. This section defines transgender and associated terms, briefly discusses the increasing prevalence of transgender inclusive policies, and how policy change is explained in existing literature. In the second section, I discuss the methodology used in this dissertation, as well as the strategy for case selection and the collection of empirical evidence. The third section summarizes the structure of the dissertation by article, and the final section outlines the scholarly contributions of the project.

1.1   Background

1.1.1   Defining Transgender

In this dissertation, I use several terms that require definition and contextualization. As briefly mentioned above, transgender individuals are people whose gender identity is different from the sex assigned at birth. Some transgender people undergo hormone therapy and surgery to transition, while others do not desire any form of therapeutic intervention but may present in ways that do not conform to traditional gender expectations (Dietert & Dentice, 2015; Namaste, 2008). The term "cisgender" is commonly used to describe individuals who are not transgender or whose

gender identity aligns with the sex they were assigned at birth (Stryker, 2017).[1] I rely upon the broadest definition of transgender and use cisgender to refer to those who are not transgender.

Beyond the definition of transgender and cisgender, I use the terms "sex", "gender", "gender identity", and "gender expression." Sex and gender are frequently used interchangeably which can lead to conceptual confusion. Sex tends to be understood in a biological or anatomical sense and I rely upon this definition. Sex has binary categories "based on biological factors such as chromosomes" (Taylor et al., 2018, p. 12). The words "male" or "female" tend to denote sex (Stryker, 2017). Gender, on the other hand, "describes the social and cultural differences ascribed to one's sex" (Taylor et al., 2018, p. 13). Typically, the words "man" and "woman" are used when describing gender (Stryker, 2017). However, I rely upon the terms gender identity and gender expression to acknowledge the spectrum that gender exists on and the nuanced ways in which an individual may choose to express their gender.

While these two terms are frequently undefined in legislation (Kirkup, 2018), it is important to provide some conceptual clarity. Gender identity is "the internal sense of being male or female" (Taylor et al., 2018, p. 13). It is a continuum that is one of several markers of one's sex and is often understood to be "hardwired into the brain at birth" (Rudacelle, 2005, p. 292). Gender expression is the "outward manifestation of masculinity or femininity, or both" (Taylor et al., 2018, p. 13). For most individuals, their gender expression conforms to societal gender norms of how a "man" or "woman" should look. For people who are gender variant, they might express their gender in ways that do not align with societal expectations.

Finally, I also discuss the lesbian, gay, bisexual, and transgender population and use the "LGBT+" acronym in the dissertation. I also use "LGB" to refer to the gay, lesbian, and bisexual populations. These acronyms are used predominantly in the context of disentangling sexual orientation from gender identity. I acknowledge that other similar acronyms exist and that their usage is context dependent (Egale Canada, 2022). For instance, in Canada there has been a shift toward using "2SLGBTQIA" (Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, Intersex, and Asexual). The deliberate position of 2S at the beginning of the acronym is to "reflect and restore Indigenous traditions suppressed by colonization" (Egale Canada, 2022,

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[1]Although the conceptual strengths and weaknesses of these terms is beyond the scope of this dissertation, see Stryker (2017) for a more detailed discussion.

p. 5). In contrast, it is much more common to see the acronym "LGBTI" in Australia (Australian Human Rights Commission (AHRC), 2022). According to an interviewee, the choice of this acronym is in part due to a strong intersex movement that pushed for increased visibility within the "LGBT" movement in Australia (Personal Interview, May 2019). In this dissertation, I have chosen to use "LGBT+" to encompass the many identities within the community.

1.1.2   The Inclusion of Transgender People in Public Policy

Transgender individuals have historically been grouped with the lesbian, gay, and bisexual (LGB) population in public policy. More generally, sexual orientation and gender identity have tended to be conflated, which has resulted in sexual orientation rights and related policies becoming intertwined with gender identity (Taylor et al., 2018). One unanticipated spinoff effect is that governments have tended to engage in "legislative avoidance" of transgender issues. It does not help that the transgender population tends to be small, lacks political salience, and is subject to varied public opinion with respect to LGB and transgender rights. As a result, there are few electoral incentives for politicians to take transgender issues seriously (Taylor, 2007, p. 836). With the rise of global support for LGBT+ rights, however, the domestic political salience of LGBT+ policy issues has increased.[2] For example, as of December 2020, approximately 64%[3] of UN member states have legalized homosexuality and 14%[4] have expanded the definition of marriage to include same-sex couples (Mendos et al., 2020). With the success of marriage equality across many Western democracies, there has been a shift toward policies focused on transgender rights that is described by LGBT+ activists as a return "to a long-promised focus on transgender rights" (Haider-Markel et al., 2019, p. 160). These policies include antidiscrimination legislation, incarceration practices, hate crime legislation, employment, health care, housing, identification documents, immigration, and the military.

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[2] The increased salience is not without backlash. Both the LGB rights and transgender rights have been targets of "counter-movements" globally (Ayoub, 2019; Haider-Markel et al., 2019).

[3] 124 of 193 UN member states have legalized consensual same-sex sexual acts between adults.

[4] 28 of 193 UN member states allow same-sex marriage.

Even though the adoption of inclusive transgender policies is not universal, there is evidence that a global shift is happening. To illustrate the increasing adoption of transgender inclusive policies, **Figures 1.1** and **1.2** present data from a 2019 survey of OECD countries on "LGBTI-inclusive laws and policies" (OECD, 2020). Broadly, the laws and policies focus on decriminalizing and de-medicalizing LGBT+ identity (e.g., equal age of consent and removing transgender as a mental illness), legal recognition of same-sex relationships, and the ability to make changes to gender markers without conditions on identification documents (OECD, 2020).[5]

Figure 1.1 compares the level of LGBT+ inclusivity for each OECD country in 1999 and 2019. This figure shows an index of policies for lesbian, gay, bisexual, transgender, and intersex people that each country has adopted. The values range from 0 (not inclusive) to 1 (very inclusive) and is measured as "the share of LGBTI-inclusive laws that are in force in a given OECD country" among the identified set of policies and laws (OECD, 2020). The overall trend suggests that every country made at least some progress between 1999 and 2019. Some countries such as Canada and Spain made significant progress, moving from index scores of 0.18 and 0.14 for policies adopted in 1999 to 0.78 and 0.75 in 2019, respectively. Other countries such as Mexico did not adopt as many policies (moving from 0.13 to 0.33) but followed the same trend. Ultimately, **Figure 1.1** depicts the consistent and progressive changes over time in the adoption of policies that are inclusive of LGBT+ people.

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[5] The laws and policies are grouped by identity. The first group of policies are specific lesbian, gay, and bisexual people and includes decriminalization of homosexuality, equal age of consent, legal recognition of same-sex partnerships, joint adoption, equal access to reproductive technology, and banning conversion therapy. The second group is specific to transgender and intersex people that focuses on policies involving removing transgender as a mental illness, permitting a gender marker change on identification, removing medical conditions to gender recognition, and allowing a non-binary option on identification documents (OECD, 2020).

Figure 1.1: Adoption of Inclusive LGBT+ Policies in OECD Countries, 1999 and 2019
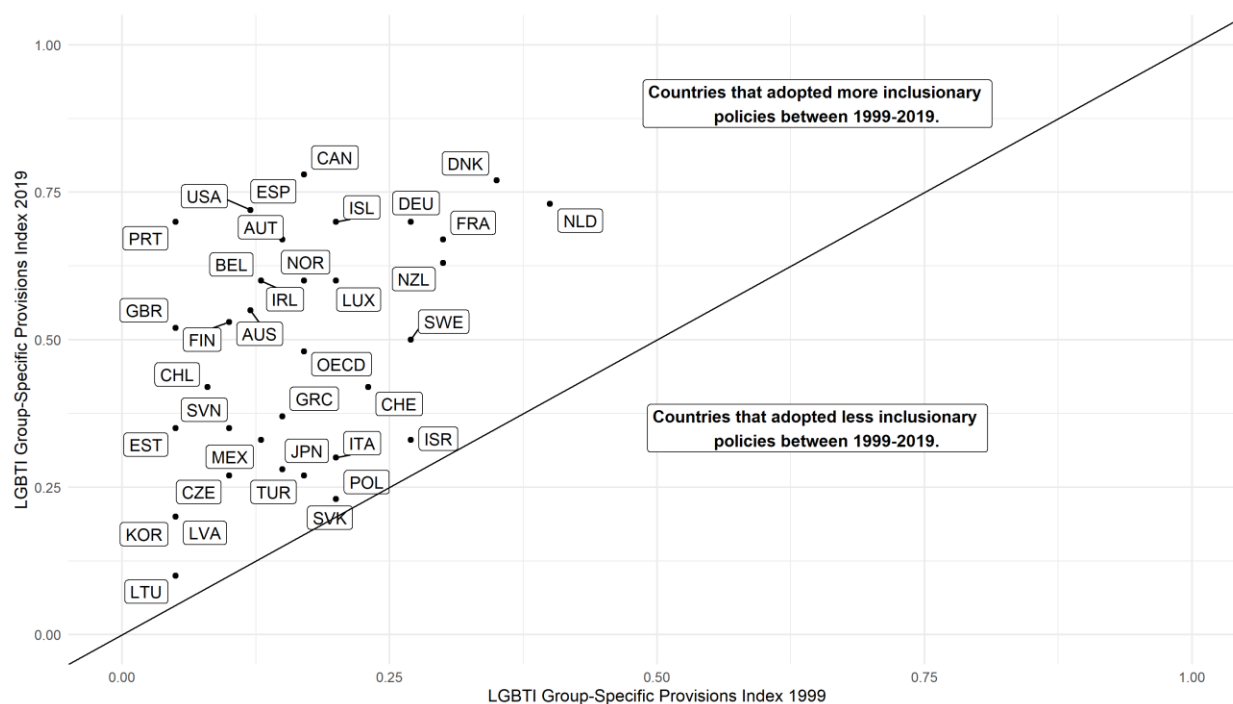
Source: OECD (2020)

Between 2009 and 2019, transgender and intersex policies were passed at a faster pace compared to LGB policies in OECD countries. **Figure 1.2** illustrates the level of transgender and intersex inclusivity in 2019 across the OECD countries. This figure reveals the cross-national variation in the adoption of transgender inclusive policies. The values range from 0 (Lithuania) to 0.73 (Denmark) which suggests there is space for improvement, but more importantly demonstrates that some countries have made great efforts in this policy area.

Figure 1.2: Measure of Transgender and Intersex Inclusive Policies, 2019
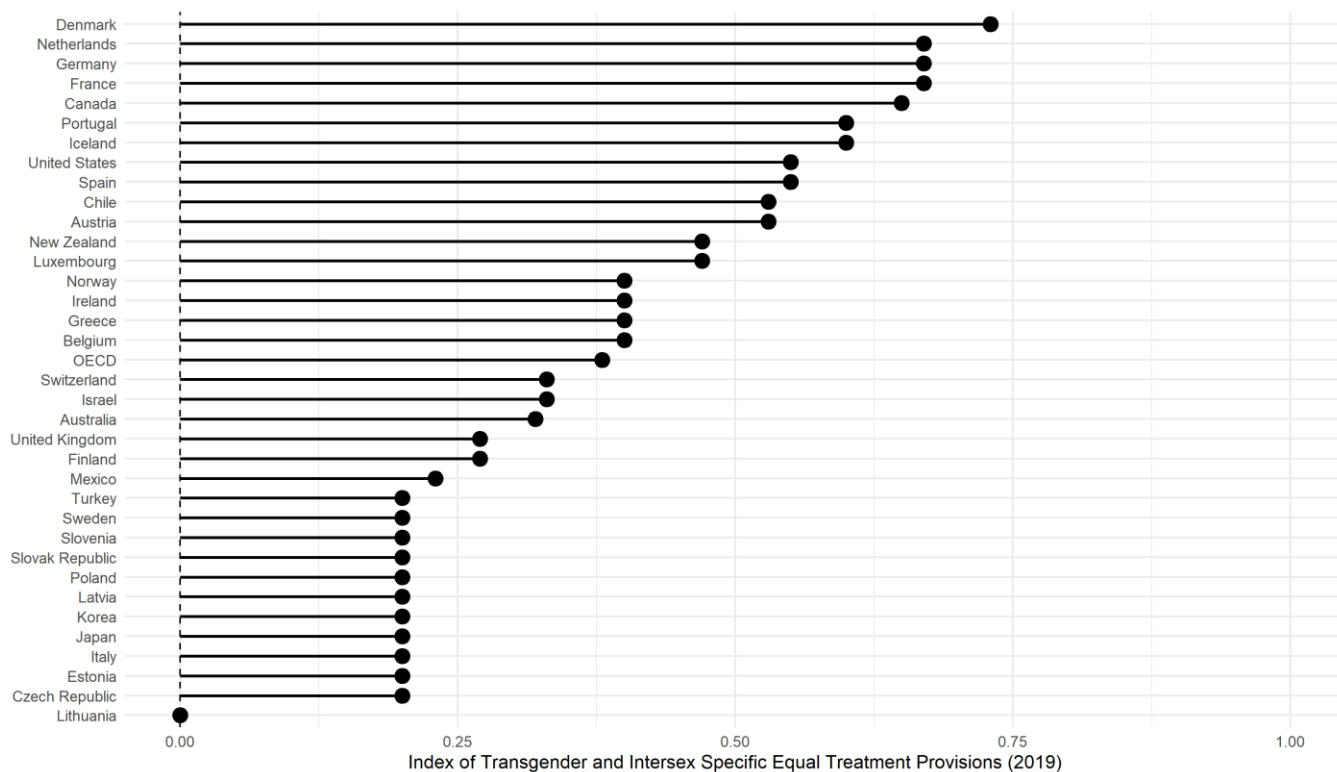
Source: OECD (2020)

1.1.3 Policy Diffusion and Transgender Policy Change

Although there has been an increase in attention paid to transgender issues, transgender policies are rarely the sole focus of political science research (Lewis et al., 2014). Much of the literature on transgender policies has been within the context of LGBT+ policies more broadly. Acknowledging sexual orientation and gender identity as distinct political identities and therefore worthy of research separately is relatively new in the social sciences and political science in particular (Haider-Markel et al., 2019). Consequently, the scholarly literature on transgender public policy is limited. Historically, work on transgender policies was conducted using "a theoretical or normative approach" (Haider-Markel et al., 2019, p. 161) and focused on the impact of policy on transgender people (Crosbie & Posard, 2016; Taylor et al., 2018) or the discriminatory practices of the state (Okros & Scott, 2015; Spade, 2015). More recently, scholars have turned to theories of the policy process such as the Advocacy Coalition Framework (Taylor & Lewis, 2014)

and elements of policy diffusion (Lewis et al., 2014; Sellers & Colvin, 2014) to better understand the inclusion of transgender people in public policy throughout the United States.

The move toward analyzing the inclusion of transgender people in public policy by seeking to understand the policy process[6] using policy diffusion is consistent with scholarship on the global LGBT+ movement. Policy diffusion has been used to understand the legal recognition of same-sex unions in Europe (Fernández & Lutter, 2013; Kollman, 2009, 2016; Swimelar, 2017) and Latin America (Encarnación, 2014; Friedman, 2012) and LGBT+ rights more broadly (Ayoub, 2015; Gardberg et al., 2022; Velasco, 2018, 2020). For example, in her work on the adoption of same-sex union laws, Kollman (2009) focuses on the diffusion of the lesbian, gay and bisexual (LGB) human rights norm in Western European states. She suggests the European Union, the European Court of Human Rights, and a transnational network of gay, lesbian, bisexual and transgender activists played crucial roles in promoting national policy change. She finds that the mobilization of human rights groups at the domestic and global levels had important effects on national policies in Germany and Austria.

The more recent scholarship on transgender policy diffusion in the United States and the LGBT+ diffusion scholarship draw attention to two main types of policy diffusion: domestic and international policy diffusion. Policy diffusion is an interdependent process that results in the spread of policies within or across countries or among public and private actors (Gilardi & Wasserfallen, 2019; Simmons et al., 2006; Simmons & Elkins, 2004). Both theories describe nearly identical processes and share theoretical concepts and methodological tools. However, they operate on different scales and have relatively little dialogue with each other (Gilardi, 2012). Recent work suggests that the policy diffusion literature too often overlooks the "complex governance environment in which solutions are implemented and the multidirectional pressure governments face to adopt similar policies (Fay & Polischuk, 2021, p. 1). The framework proposed in this dissertation, called policy momentum, seeks to fill this theoretical gap and bring domestic and international policy diffusion into conversation with each other while integrating the multidirectional and multi-jurisdictional nature of policy diffusion. In so doing, I develop a more complete explanation for the timing of cross-national policy change.

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[6] The policy process is understood as "the interactions that occur over time between public policies and surrounding actors, events, contexts, and outcomes" (Weible, 2017, p. 2).

1.2   Research Design

To explain the timing of public policymaking towards the recognition of transgender individuals, I employ inductive process tracing and comparative case studies. The dissertation is thus a "theory-generating" project that relies on an iterative process involving the application and development of theory combined with diverse forms of evidence (Bennett & Checkel, 2015). In this section, I discuss the case selection for the dissertation, the process tracing procedures, and the specific details of my fieldwork and data collection.

1.2.1   Case Selection

George and Bennett (2005, p. 5) define a case study as "the detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable to other events" (George & Bennett, 2005, p. 5). A case is "an instance of a class of events" where a class of events refers to "a phenomenon of scientific interest, such as revolutions, types of governmental regimes, kinds of economic systems, or personality types that the investigator chooses to study with the aim of developing theory" (George & Bennett, 2005, p. 17). In other words, case studies are used to provide insight into the broader population of interest (Gerring, 2008; Seawright & Gerring, 2008). In accordance with George and Bennett (2005, p. 18), I use both within-case analyses of single cases and compare findings across the cases.[7]

The cases I selected are federal antidiscrimination legislation and military policies in Canada and Australia. As such, there are two types of case selection that I engaged in: the policy areas and the countries. When selecting the policy area, I followed the "diverse case" selection method that seeks to achieve "maximum variation along relevant dimensions" (Gerring, 2008; Seawright & Gerring, 2008, p. 300). To achieve this objective, I selected cases based on which policy areas were "most-likely" and "least-likely" (Levy, 2008) to be inclusive of transgender

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[7] George and Bennett (2005, p. 18) note that "there is a growing consensus that the strongest means of drawing inferences from case studies is the use of a combination of within-case analysis and cross-case comparisons within a single study or research program."

people. As previously illustrated, there are a range of policy areas that could be analyzed to explain the growing inclusion of transgender people in public policy: antidiscrimination legislation, incarceration policies, hate crime legislation, employment, health care, housing, identification documents, immigration, and the military. I selected antidiscrimination and military policies based on a "most-likely" and "least-likely" case study design (Levy, 2008).

Anti-discrimination policy is the "most-likely" case to see transgender-friendly policy change. The protection of human rights and the promotion of broad ideas of equality originate from the emergence of the Universal Declaration of Human Rights in 1948 and the subsequent establishment of human rights commissions (Nierobisz et al., 2008). The United Nations Human Rights Office of the High Commissioner outlines the role of National Human Rights Institutions (NHRIs) as playing "a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level" (Office of the High Commissioner for Human Rights, 2022). Given that there are designated national institutions mandated with protecting human rights with the potential to influence policy, the prohibition of discrimination based on gender identity is a seemingly straightforward policy. Once realized, it also serves as the basis for other types of policy change (e.g., discrimination claims in employment or healthcare). As a result, antidiscrimination legislation is a policy area that seems most likely to achieve transgender-friendly change.

Military policy regulating whether transgender individuals serve in the armed forces was selected as a "least-likely" policy area for inclusive policies toward transgender individuals, owing to the strong forms of "masculine identity" or "hypermasculinity" often associated with the military and the well-documented resistance of the military to social change (Neff & Edgell, 2013; Schall, 2009). Dietert and Dentice (2015, p. 5) summarize the definition of hypermasculinity by Rosen et al. (2003) as "an ideology that expresses exaggerated, extreme, and stereotypic masculine attributes and behaviors that include the hatred of femininity, strict adherence to gender norms, dominance, control, aggression, and violence." As a result, the military as an institution is built upon ideas of traditional gender norms that can lead to discriminatory practices and policies toward individuals who violate traditional gender norms such as transgender people.[8] The strong

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[8] Although the precise number of transgender people serving in militaries is not known, the US-based National Transgender Discrimination Survey (2011) and the U.S. Transgender Survey (2016) indicate that transgender Americans are nearly twice as likely to serve in the armed forces than the general population (Grant et al., 2011; James

adherence to traditional gender norms within the military thus make it an unlikely case for policy change.

The countries that this project focuses on are Canada and Australia. These countries have been fruitful comparative case studies for topics ranging from climate policy (Jones, 2014; Young & Coutinho, 2013), transportation policy (Newman, 2014), Indigenous rights (O'Faircheallaigh, 2012; Porter & Barry, 2015), and pension reform (Karimi, 2017), to topics in urban politics (Brunet-Jailly & Martin, 2010; Nash & Gorman-Murray, 2014), and LGBT+ politics (Bernstein & Naples, 2015; Johnson & Tremblay, 2018; Tadlock & Glick, 2019). Structurally, Canada and Australia are very similar in part due to British colonization[9] (Johnson & Tremblay, 2018). Politically, Canada and Australia are both federations with Westminster-style parliamentary government systems and have similar political institutions such as the judiciary (accessible for legal remedy) and national human rights commissions. One of the main structural differences is that Australia does not have a bill of rights or equivalent document to Canada's *Charter of Rights and Freedoms.*[10] The countries also reside outside of the supranational structure of the European Union; the presence of the European Union would introduce additional factors or mechanisms to consider.

From a social perspective, both countries have had an active LGBT+ movement since at least the 1970s (Tadlock & Glick, 2019). Even though Canada and Australia have banned many forms of LGBT+ discrimination, their trajectories have varied. For instance, Canada was the fourth country in the world to legalize marriage equality in 2005 (following the Netherlands in 2001, Belgium in 2003 and Spain in 2005) (Kollman, 2007). In comparison, it was not until 2017 that Australia passed legislation for marriage equality (Johnson & Tremblay, 2018; Tadlock & Glick, 2019). Policies focused on sexual orientation tend to precede policies targeting the human rights of transgender people. This is in part due to how relatively new the term "gender identity" is

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et al., 2016). This finding is consistent with the claim that higher numbers of transgender identifying people in the military involves a "flight into hypermasculinity" where male-to-female transgender individuals in particular join the military in an attempt to escape their gender dysphoria (Parco et al., 2015).

[9] The shared British roots are particularly relevant for the military policy case studies since the Canadian and Australian militaries frequently collaborate and correspond with each other as part of the Commonwealth (Government of Canada, 2016).

[10] Johnson and Tremblay (2018) found that this difference was important to acknowledge but was not sufficient to explain variation in when the two countries legalized marriage equality.

compared to sexual orientation in public policy.[11] However, in Australia, human rights protections focused on gender identity were successful before rights specific to sexual orientation, such as marriage equality.

The inclusion of gender identity in antidiscrimination legislation emerged in the early 2000s across many European countries including Finland in 2005, Germany in 2006, and Croatia in 2008. Unlike its leadership with marriage equality, Canada prohibited discrimination based on gender identity in 2017. In contrast, even though Australia was comparatively late to legalize marriage equality, the national government prohibited discrimination based on gender identity in 2013. Additionally, the Canadian Armed Forces became a unified body in 1967 and maintained its preexisting discrimination toward the lesbian, gay, bisexual, and transgender people until 1992 when the ban on transgender people was lifted. Australia lifted its ban on gays and lesbians in 1992 but this policy change did not include transgender individuals. It was not until 2010 that transgender people could serve in the Australian Defence Force. The timing of including gay and lesbian individuals in Canada and Australia was the same, but there are nearly twenty years between when transgender people were permitted to openly serve and transition in the armed forces across the two countries.

1.2.2   Process Tracing

To analyze these cases, I rely on inductively oriented process tracing[12] (Beach & Pedersen, 2013; Bennett & Checkel, 2015) to reconstruct the policy processes for antidiscrimination legislation and military policy in Canada and Australia. Process tracing uses existing causal explanations with descriptive evidence to generate a sequential account of the phenomenon of interest (Collier, 2011; Mahoney, 2015). Inductive process tracing starts with observations (the outcomes), the historical record of events, and a knowledge of relevant theories (Mahoney, 2015; Trampusch & Palier, 2016). The goal of inductive process tracing is theory building and uncovering the mechanisms

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[11] For example, the Ontario Human Rights Commission first recommended extending protection from discrimination based on sexual orientation in 1977 (Ontario Human Rights Commission, 2009). The Commission did not recommend the same protection for gender identity until 1999 (Ontario Human Rights Commission, 1999).

[12] Also called "theory-building" process tracing by Beach and Pedersen (2013).

that led to a specific outcome (Beach & Pedersen, 2013; Bennett & Elman, 2007; Trampusch & Palier, 2016). For example, Mahoney (2015) neatly summarizes Levy's theory of the cause of World War I as a form of successful inductive process tracing. Levy's work started with a broad history of critical timing and events leading to the war with existing theories in mind. Ultimately this study led to the development of a novel theory about World War I that was rooted in existing theories (Mahoney, 2015, p. 215). In other words, "process tracing can yield sequential theories that combine existing causal factors and newly specified ones. These theories apply to the case at hand, but they remain general because they draw on broader theories and because they suggest more general propositions, including potentially ones not previously specified in the literature" (Mahoney, 2015, p. 217).

In practice, theory-generating process tracing is an iterative process that involves both the application of existing theories and the development of new theory. Trampusch and Palier (2016, p. 445) summarize this element of the theory-building approach: "[I]nductively oriented process tracers are not analyzing processes without theory." A crucial part of inductive process tracing is to develop an understanding of existing theories that can inform the development of a new theory. Further, Trampusch and Palier (2016, p. 445) emphasize the iterative process involving a back and forth between theory and data by suggesting the "inductive analysis of processes does not merely consist of naïve observations of empirical events from which theoretical ideas are derived, but rather forms a theoretically informed analysis…of processes that looks for causal chains between the observed events." Consistent with best practices of process tracing, I consider a wide range of evidence to develop the sequence of events that contributed to the policy change process.

1.2.3   Fieldwork and Data Collection

The evidence used to support the arguments in this dissertation comes from a variety of sources, including primary documents (such as archival documents, media reports, and non-governmental organization reports) and 40 semi-structured elite interviews. Many of the primary documents were publicly available such as Hansard transcripts or newspaper reports. However, more than 15,000 previously classified pages from documents were acquired through requests under the *Access to Information Act* (1985) in Canada and the *Archives Act* (1983) in Australia.

Interviews were conducted in Canada and Australia between 2018 and 2022 in person, on the telephone, and on Zoom. In Canada, the in-person interviews were conducted in Ottawa in October 2018 and February 2019. I travelled to Australia in May 2019 and completed interviews in Sydney and Canberra. Interview participants for in-person and virtual interviews included politicians and public servants at both the national and subnational levels, non-governmental organizations, activists, and other individuals involved in the process who were publicly identifiable (e.g., lawyers and academics). The interviewees were initially identified by consulting public documents such as Hansard records, court decisions, and non-governmental organization reports and statements. As I spoke with interviewees, they provided me with additional names to contact or they shared my study with people who were deemed relevant to the project who would reach out to me.

Each interviewee was initially contacted with an email that outlined the purpose of the study and why they had been contacted.[13] The Letter of Information (Project ID: 111713) for the study was also attached and it provided more detail about the nature of the project, information about voluntary and informed consent, how data gathered during the interview would be used, and the procedures in place to guarantee anonymity if requested. During the interviews, I reiterated the information about informed consent, obtained verbal consent to proceed with the interview, explained that they could withdraw from the study at any time, and reminded them that they could remain anonymous if desired. After the interviews were completed, I asked if there was any information that they wanted to be off the record, whether they wanted to approve the quotes or text attributed to them, and if they wanted to change their identification choice (e.g., remain anonymous). Some interviewees opted to remain anonymous and any identifying information for those individuals has been excluded from the dissertation. Others agreed to be identified either by profession (e.g., a Senator) or by name and any information attributed to them is appropriately credited.

The interviews were semi-structured and typically took 30 to 90 minutes. The length of each interview depended on the amount of time the interviewee could allocate to speak with me. I confirmed the amount of time that they had before I started each interview. I took handwritten notes in each interview and, when permitted by the participant, the interviews were audio recorded.

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[13] Please see Appendix A for the complete interview documentation approved by Western's Research Ethics Board.

Some direct quotes used in this dissertation have been lightly edited for grammar and clarity. This decision was informed by accepted practices within qualitative research to adapt the verbatim material to make it understandable and avoid unintentional "exposure" for the interviewee (Eldh et al., 2020).

Through the triangulation of evidence from interviews, archival documents, and secondary data analysis, I am confident in the validity and reliability of my data. One of the primary reasons for using triangulation with elite interviews is to "increase the likelihood that one's findings will be accurate and reliable" (Natow, 2020, p. 168). In the context of this dissertation, triangulation helps reduce any error that may result from limited memory of certain events or limited access to interview participants and/or archival documents (Gallagher, 2013; Natow, 2020). This process allows the researcher to "check one source against another" (Gallagher, 2013, p. 194) and develop more confidence in the evidence.[14]

1.3   Structure of the Dissertation

The dissertation is organized into three articles that develop and apply the theoretical framework, *policy momentum*. In article 1, the aim is to develop and define *policy momentum* as a theoretical framework. I integrate the directional elements of policy diffusion and insights from multilevel governance scholarship to conceptualize policy momentum as a framework for understanding how multilevel and multidirectional global and domestic policy diffusion processes *together* can produce national policy change. I argue policy momentum occurs when there is an accumulation of pressure from two separate directions, which in turn can generate policy change at a third level. Within the "top-down" and "bottom-up" sources of pressure, my framework relies upon conventional diffusion mechanisms - coercion, competition, learning, and emulation - to explain how policies can diffuse either vertically or horizontally. To better contextualize policy momentum, I identify five intervening mechanisms that can strengthen or hinder policy momentum: public opinion, media, government ideology, events (political and non-political), and knowledge networks. These mechanisms act as filters through which policy momentum passes and

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[14] Please see Appendix B for more detailed information about the fieldwork and data collection.

can activate different political motivations (e.g., international reputation concerns) among policymakers. Ultimately, I demonstrate how the policy momentum framework provides a stronger understanding of policy change.

In articles 2 and 3, I apply policy momentum to explain the timing and pace in which Canada and Australia amended human rights legislation (article 2) and lifted the ban on transgender military service (article 3). Canada amended its *Canadian Human Rights Act* in 2017 to prohibit discrimination based on gender identity and gender expression, whereas Australia amended its *Sex Discrimination Act* to include gender identity in 2013. The second article of the dissertation outlines the processes that led to the inclusion of gender identity in the respective antidiscrimination frameworks. By tracing the origins of these changes, I demonstrate that the policy momentum framework provides the most complete explanation for the inclusion of gender identity in Canada's and Australia's human rights legislation.

In Canada, the national government was strongly influenced by the policy changes that occurred at the subnational level. When the federal government changed its policy in 2017, all provinces and territories had already made amendments to prohibit discrimination based on gender identity through a combination of policy learning and policy emulation. The vertical diffusion process from the provinces to the federal government created pressure on the government through knowledge networks that appealed to concerns about Canada's international reputation of being a global human rights leader. The emergence of a global norm was also acknowledged at both the federal and subnational levels and served as a complementary source of pressure. In contrast, policymakers in Australia were strongly influenced by its international obligations through human rights agreements (e.g., the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*). This top-down vertical diffusion process created pressure from the international level through knowledge networks that created concern about Australia's international reputation. Similar to Canada, many of the Australian states had already updated their human rights frameworks to prohibit discrimination based on gender identity and helped created "bottom-up" pressure on the federal government.

The third article applies policy momentum to explain the timing of the Canadian Armed Forces and the Australian Defence Force lifting their bans on transgender military service. The Canadian Armed Forces lifted its ban in 1992 at the same time as lifting the ban on gay, lesbian, bisexual (LGB) service members. The Australian Defence Force also repealed its ban on gay,

lesbian, and bisexual service in 1992, but maintained its ban on transgender people until 2010. At the time, the number of countries that had lifted bans on LGB was small. However, this information combined with knowledge of other countries pursuing a repeal of the ban was influential in Canada lifting its ban on LGB and transgender military service. In contrast, when Australia lifted its ban in 2010, several countries had already explicitly permitted transgender military service. Commonwealth countries (e.g., Canada and the United Kingdom), with whom the Australian Defence Force participates in personnel exchanges, had lifted their bans. Domestically, the judiciary was the primary source of pressure in both Canada and Australia. In Canada a lesbian who had been discharged from the Canadian Armed Forces decided to sue the military, whereas in Australia a human rights complaint was filed by a transgender woman who had been dismissed from the Australian Defence Force. In both cases, the pressure from the domestic and international levels was diffused through learning and emulation with knowledge networks acting as the primary intervening mechanism. Using policy momentum to explain this variation, I identify how the combined pressure on the respective defence forces from changing global practices and domestic human rights claims generated policy change.

1.4   Contributions of the Dissertation

The scholarly contributions of this dissertation are both theoretical, empirical, and policy-oriented in nature. The primary contribution is the development of a new theoretical framework called *policy momentum* to explain policy change. I build on the existing policy diffusion literature by offering a new way of conceptualizing the role of directionality and jurisdiction in policy diffusion processes. More specifically, I draw upon the multidirectional nature of policy diffusion and the multi-jurisdictional nature of multilevel governance as a means of theoretically integrating and specifying how global and domestic policy diffusion processes *together* can produce policy momentum and national policy change. This framework offers a more complete explanation of policy change and specifically addresses the concern that the policy diffusion literature still does not adequately address the multidirectional nature of diffusion. Policy momentum situates the timing of policy change at the centre of "top-down" *and* "bottom-up" diffusion in which there are multiple horizontal, peer, and vertical diffusion processes at both levels that allow for multiple jurisdictions to interact in a policy area.

The policy momentum framework also contributes to debates within the LGBT+ scholarship. As I previously discussed, international and domestic policy diffusion have been applied to LGBT+ policy change globally and within the United States in particular. Policy momentum demonstrates that these frameworks alone may not be sufficient to explain some cases of policy change. This framework thus cautions against focusing exclusively on international or domestic factors that can contribute to policy change. A more complete explanation requires consideration of the multidirectional and multi-jurisdictional nature of diffusion processes.

Empirically, the evidence used to support the argument of the dissertation contributes to a growing area of scholarly inquiry on transgender political identity. Addressing transgender rights as a separate issue area from LGB rights within political science has been a slow process (Haider-Markel et al., 2019). Prior to the late 2000s, transgender issues were conflated with or incorporated within LGBT+ issues more broadly which resulted in limited data available for analysis (Haider-Markel et al., 2019). By drawing upon over 15,000 pages of previously undisclosed archival materials and 40 elite interviews, I contribute new data and a comprehensive account of the inclusion of transgender people in two areas of Canadian and Australian public policy. This rich qualitative data also supports the claim by other scholars that transgender politics is an important area of research that is distinct but related to policies focused on sexual orientation and LGB politics more broadly (Currah et al., 2006; Haider-Markel et al., 2019; Haider-Markel et al., 2020).

Finally, the findings of this dissertation offer several key lessons for policymakers and civil society actors. First the policy momentum framework identifies the potential for policy innovation and experimentation within different types of government systems with various institutional arrangements. The case studies presented in this dissertation are federal states, but the multilevel and multidirectional sources of pressure identified by the policy momentum framework can also occur in a unitary state with a policy-oriented judiciary or subnational governing entities. Second, policy momentum draws attention to a more holistic view of the policy process rather than just the policy outcome. This is important for strategic planning of both civil society organizations and policymakers who are seeking to pass a particular policy. Knowledge of the policy process as a whole can help prioritize finite resources and inform policy choices of non-governmental actors and policymakers alike.

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2   Policy Momentum: A Framework for Policy Change

A large body of literature suggests that many instances of policy change are a result of mechanisms related to domestic or international policy diffusion. However, very few studies have theorized the extent to which both domestic and international diffusion can interact to facilitate or prevent policy change. When new policies adopted by one government are influenced by the decisions and policies of another government, scholars characterize this outcome as policy diffusion. Policy diffusion can be the result of domestic forces within a state[15] or externally driven through peer-to-peer contact[16]. Domestically, policy diffusion has been used extensively in the United States to explain the spread of anti-smoking laws (Shipan & Volden, 2006, p. 17), criminal justice reform (Makse & Volden, 2011), and state lottery systems (Berry & Berry, 1990). Moving beyond the United States, Béland et al. (2018) use domestic policy diffusion to explain childcare reform in Canada, pension reform in Mexico, and health care reform in the United States. Globally, policy diffusion has been used to understand the spread of policies across social and economic domains, including inclusive lesbian, gay, and bisexual policies (e.g., marriage equality and adoption rights) (Ayoub, 2015; Kollman, 2009), gender mainstreaming policies (True & Mintrom, 2001), gender quotas in legislatures (Bush, 2011), trade liberalization policies (Meseguer & Escribà-Folch, 2011), and taxation policies (Cao, 2010).

Surprisingly, theories of global and domestic policy diffusion have yet to be adequately integrated into a coherent framework. Fay and Polischuk (2021, p. 1) argue the "policy diffusion literature often simplifies the adoption of policy innovations across government units (i.e., cities, states, or nations) by overlooking the complex governance environment in which solutions are implemented and the multidirectional pressure governments face to adopt similar policies." These rich literatures provide powerful theoretical accounts that focus analytical attention on different units of analysis, but they do so at the expense of failing to capture the multidirectional and multi-jurisdictional complexity inherent in at least some instances of policy diffusion and policy change.

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[15] This type of diffusion can take the form of horizontal diffusion between subnational units (e.g., province to province or state to state) or vertical diffusion between subnational units and the national government (e.g., province to national or state to national).

[16] This process is typically state-to-state or between non-state actors (e.g., transnational networks) and states.

A policy area that would benefit significantly from a framework that draws simultaneously on the domestic and international policy diffusion literatures is the inclusion of transgender people in public policy across Western democracies. While scholars of LGBT+ politics have devoted significant attention to explaining shifts in state policies since the 1990s related to sexual orientation[17], the more recent shifts towards including transgender people in public policy are less understood.[18] In adopting a cross-national perspective, an empirical puzzle emerges with respect to the *timing* of national policy change. Consider, for instance, the inclusion of transgender people in Canada's national human rights legislation in 2017. Some may view this outcome as unsurprising, given the ways in which Canada has previously served as a leader on sexual orientation rights[19] and human rights more generally, as well as the ideological position of the governing party at the time.[20] However, the timing of change is more puzzling in comparative perspective, as Canada was quite late in updating its national human rights legislation relative to other Western democracies. Moreover, Canada was one of the first countries in the world to permit transgender individuals to serve in the military, a change secured in 1992 (Suh, 2019).[21] Given the inclusive position of Canada with respect to transgender soldiers (a traditionally conservative area of state and social relations), the 27 year wait for change in national human rights legislation is unexpected. What explains this outcome, and more generally, what explains the timing of national policy change?

In this article, I present a novel theoretical framework, which I call *policy momentum,* that bridges these important literatures. Policy momentum occurs when there is an accumulation of pressure from two separate levels, which in turn can generate policy change at a third level.

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[17] For instance, extensive work explores the spread of marriage equality over the 2000s (Ayoub, 2015; Kollman, 2009; Taylor et al., 2020).

[18] While the transgender rights movement predates the LGBT+ movement (Currah et al., 2006; Murib, 2015; Taylor et al., 2018), disentangling sexual orientation and gender identity as distinct political identities is a relatively recent process in the social sciences (Haider-Markel et al., 2019).

[19] Canada was one of the first countries in the world to legalize marriage equality in 2005.

[20] Legislative change was achieved under the Liberal government.

[21] Canada was the 5th country in the world to allow transgender people to serve in the military. The Netherlands (1974), Sweden (1976), Denmark (1978), and Norway (1979) allowed transgender military service throughout the 1970s (LeBlanc, 2017)

Ultimately, the mutually reinforcing pressure from "above" and from "below" generates the policy momentum that is sufficient for policy change to occur. I first summarize insights of existing work on theories of the policy process and, more specifically, domestic and international policy diffusion. I then propose a framework called *policy momentum*, which explains how the combination of international ("above") and domestic ("below") pressure can create the conditions for national level policy change. Subsequently, I explain the key assumptions and propositions of this framework. In the final sections, I formulate observable implications for the *policy momentum* framework and conclude with a reflection on the generalizability, limitations, and potential for future research.

2.1   Existing Explanations

The policy process is commonly defined as "the interactions that occur over time between public policies and surrounding actors, events, contexts, and outcomes" (Weible, 2017, p. 2). Rather than focusing on the outcome or decision, explaining the policymaking process concentrates on how events unfold with particular "attention devoted to the structure, context, constraints and dynamics of the process, as well as to the actual decisions and events that occur" (Schlager, 2007, p. 293). Scholars seeking to understand and explain the policy process and policy change have developed several theoretical frameworks. These frameworks vary with respect to the unit of analysis, their focus on actors or institutions, and the part of the policy process (e.g., agenda-setting, issue-framing, policy development, etc.). While there are several existing explanations for policy change, I focus on five of the main theories and approaches to inform policy momentum[22]: historical institutionalism[23], punctuated-equilibrium, multiple streams, advocacy coalition framework, and social movement theory. Historical institutionalism, punctuated equilibrium, and

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[22] The selected frameworks were chosen in accordance with the dominant theories and frameworks of policy change identified by John (2013); Tarrow (2011); Weible and Sabatier (2017).

[23] In addition to historical institutionalism, Hall and Taylor (1996) also identify sociological institutionalism and rational choice institutionalism as part of the "new institutionalisms." I intentionally focus on historical institutionalism based on the emphasis on sequencing of historical events (della Porta & Keating, 2008, p. 10). Scholars of the policy process have advanced similar frameworks that focus on how institutions constrain behaviour such as Institutional Analysis and Development Framework (Ostrom, 2011) and Social-Ecological Systems Framework (Ostrom, 2007).

the multiple streams framework have a strong focus on institutions and institutional change. In contrast, the advocacy coalition framework and social movement theory are more actor-oriented.[24] I will briefly outline each one below.

At the core of historical institutionalism, which is a branch of new institutionalism (Fioretos et al., 2016; Hall & Taylor, 1996), is the idea that institutions are "relatively enduring features of political and social life that structure behaviour and that cannot be changed easily or instantaneously" (Mahoney & Thelen, 2009). Empirically, historical institutionalists focus on "the origins, evolution, and consequences of humanly created institutions across time and space" (Fioretos et al., 2016, p. 2). Significant change can and does occur during moments in time that are exogenous to institutions, called "critical junctures," which involve an easing of the "usual constraints on action." These episodes are described as a departure from the stability of politics that create opportunities for the trajectory of politics to change (Capoccia & Kelemen, 2007; Mahoney & Thelen, 2009). Acknowledging the strong focus on exogenous sources of institutional change, more recent scholarship on historical institutionalism has conceptualized endogenous alternatives (Greif & Laitin, 2004; Mahoney & Thelen, 2009; Streeck & Thelen, 2005). Mahoney and Thelen (2009) identify four modes of endogenous change within historical institutionalism: displacement, layering, drift, and conversion. Displacement occurs when existing rules are replaced by new ones. This process can occur rapidly through a "sudden breakdown of institutions and their replacement of new ones" or through the gradual introduction of new policies that result in the abandonment of the old ones (Mahoney & Thelen, 2009, p. 16). Instead of completely replacing the existing rules, layering amends or revises the existing rules. Layering can lead to significant institutional change and is often used when proponents of change "lack the capacity to actually change the original rules" (Mahoney & Thelen, 2009, p. 17). The third type of endogenous institutional change is conversion, which involves new interpretations of existing rules. In other words, actors "exploit the inherent ambiguities of the institutions," which creates space for new understandings of institutional rules (Mahoney & Thelen, 2009, p. 17). Finally, drift is a function of external conditions and happens when the institutional rules stay the same, but actors fail to

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[24] Although the frameworks are grouped as "institution-focused" or "actor-oriented" based on the dominant focus of the theory, there is a role for institutions and actors in each. For instance, when describing punctuated-equilibrium, Baumgartner and Jones (1991, p. 1045) note that "both institutional structures within which policies are made and the individual strategies of policy entrepreneurs play important roles."

respond accordingly. This inaction alters the impact of existing institutional rules (Mahoney & Thelen, 2009). Taken together, these four types of gradual institutional change provide an important set of mechanisms that, alongside traditional conceptualizations of exogenous change, can help us to understand policy development.

Similar to historical institutionalism, the punctuated equilibrium framework is focused on institutional change and argues that policymaking is characterized by "long periods of incremental changes punctuated by brief periods of major policy change" (Baumgartner & Jones, 1993; Sabatier, 2007). The goal of punctuated equilibrium theory is to explain both policy change and stability (True et al., 2007). Baumgartner and Jones (1991) identify the interaction between policy images and policy venues as crucial for understanding policy change. Policy images are "the beliefs and values concerning a particular policy" that can change positively or negatively over time, while the venues of policy action are the existing political institutions (Baumgartner & Jones, 1991, p. 1045). According to this theory, institutions are designed to resist change and require punctuations or interruptions for change to happen.

According to punctuated equilibrium theory, policies exist within "subsystems" that are comprised of specialized government decisionmakers and interest groups (Baumgartner & Jones, 2009; True et al., 2007). At any given time, the majority of policy issues are within the scope of a community (or subsystem) of experts. Changes occur incrementally as adjustments are made to balance the interests that occupy the subsystem (True et al., 2007, p. 162). Disruptions to the subsystem can occur through changes in the policy image (e.g., a switch from positive media attention to negative media attention) that increase the number of people interested in an issue and therefore increase the number of policy venues available to pursue change. For instance, in their analysis of civilian nuclear power in the United States, Baumgartner and Jones (1991) argue that the positive images associated economic progress and technical efficiency created a policy subsystem with a monopoly over the issue. However, when opponents of civilian nuclear power developed an image of danger and environmental waste that was promoted by the media, the subsystem collapsed and the number of policy venues increased to include congressional hearings, state and local governments, and federal and state courts (Baumgartner & Jones, 1991). As a result, policies can then move from subsystem politics to "macropolitics" or the "politics of punctuation", where dramatic shifts in policy can occur (True et al., 2007, p. 162).

Both historical institutionalism and punctuated equilibrium highlight incremental policy change and bias toward the status quo. The status quo is maintained by positive feedback loops or mechanisms (Baumgartner & Jones, 1991; Pierson, 2000). For scholars of the punctuated equilibrium school, positive feedback mechanisms are the product of interactions between the policy image and the policy venue. On the other hand, a historical institutionalist account of stability relies on path dependence and the increasingly high costs of change as time moves forward (Zehavi, 2012). The frameworks also overlap in how change is conceptualized through a sudden break in the institutional stability, either as a punctuation or critical juncture. The primary sources of the sudden shock that creates opportunity for change differs. Historical institutionalism relies mainly on "exogenous shocks", whereas punctuated equilibrium relies mainly on endogenous mechanisms of change (Zehavi, 2012). For example, from the perspective of punctuated equilibrium, dramatic policy change can happen as a result of new policy framing and increased media attention that helps change the image and broaden the number of participants in the decision-making process (Baumgartner & Jones, 2009). Across both frameworks, the loosening of institutional constraints and the path dependence of established institutions during critical junctures creates space for social coalitions to pursue new policies or institutional configurations (Hall, 2016).

The final institutionalist framework is the multiple streams framework (MSF), which was developed by John Kingdon (2011) to explain how the policy making process takes place. The multiple streams framework argues that three streams (problem, policy, and political) interact to produce "windows of opportunity" that can be used by actors (known as policy entrepreneurs) to advance particular issues to the policy agenda (Béland & Howlett, 2016). The problem stream is comprised of the public problems identified as requiring government action. Once problems have been identified, the policy stream becomes "ripe" to be combined with the other streams to create a policy window (Herweg et al., 2015). Policy makers are made aware of these problems through crises or program feedback (Béland & Howlett, 2016). Relatedly, the policy stream includes the experts that propose solutions to the problems identified in the problem stream (Béland & Howlett, 2016). Although the framework was developed with policy experts in mind, political parties, bureaucrats, and interest groups can impact the development of policy ideas and are frequently included in the policy stream in contemporary adaptations of the framework (Herweg et al., 2015). The political stream is the final stream that must align to create the window of opportunity that is

characteristics of the MSF. Three elements comprise the political stream: the national mood, lobbying from interest groups, and legislative turnover (Zahariadis, 2007). These elements suggest that policy makers are sensitive to public opinion on certain issues both at an individual level and group level that can ebb and flow. Moreover, changes in the composition of the legislature can dramatically change how policies are developed. When the problem and political streams "ripen" such that a policy window opens, policy entrepreneurs have the ability to change the direction of the political agenda.

While these three frameworks have provided powerful tools for understanding change from an institutional perspective, a second set of theories have emerged that instead emphasize the importance of agents and agency in policy change. The broad school of political opportunity approaches, with its focus on specific configurations of resources, institutional arrangements, and historical precedents for social mobilization, offers a promising avenue for cross national analysis of the inclusion and exclusion of transgender individuals in public policy (Malloy, 2017). The basic premise is that "exogenous factors enhance or inhibit prospects for mobilization, for particular sorts of claims to be advanced rather than others, for particular strategies of influence to be exercised, and for movements to affect mainstream institutional politics and policy" (Meyer & Minkoff, 2004, pp. 1457-1458). Political opportunity structures provide a basis for understanding how social movements and advocacy groups gain access and influence the policy process.

Although actors are featured less prominently in the previously discussed frameworks, they comprise a more central role in the advocacy coalition framework and social movement theory. The advocacy coalition framework highlights the role of learning in a particular domain or political subsystem rather than focusing on a specific governmental institution (Jenkins-Smith & Sabatier, 1994). Actors from all levels of government are assumed to be involved and public policies can be conceptualized as belief systems because they include implicit ideas about how to achieve certain goals (Jenkins-Smith & Sabatier, 1994). In other words, the advocacy coalition framework focuses on "the interaction of advocacy coalitions each consisting of actors from a variety of institutions who share a set of policy beliefs" (Sabatier, 2007, p. 9). Coalitions within a subsystem compete for influence over policy formulation and change. Policy change occurs through policy learning that changes the value and belief system of policy makers through the advocacy work of the coalition (Schlager, 1995). Although this framework is predominantly focused on actor coalitions, it shares with historical institutionalism an awareness of how exogenous shocks, such as changes

in socioeconomic conditions or regime change can alter the political agenda (Sabatier & Weible, 2007). Moreover, recent work has identified a "coalitional turn" in historical institutionalism that emphasizes the role of coalitions in maintaining and destabilizing institutions (Emmenegger, 2021, p. 608).

In contrast to the focus of the advocacy coalition framework on formal coalitions and networks, social movement frameworks tend to be focused more on informal mobilizations. From this perspective, policy change is generated by social movements, which are a constellation of actors in non-hierarchical relationships unified by shared identities, engaging in a variety of conventional and unconventional strategies, which aim to transform both the state and society with respect to a particular issue (Tarrow, 2011; Tilly, 2004). A social movement's constituencies can change over time and the issues prioritized can shift as well. Change is more likely to occur when social movements engage with government decisionmakers, allies, opponents, and authorities (Tilly, 2004). There is no consensus about how to study social movements, but there are several theories that highlight different elements of political mobilization. These include: Resource Mobilization Theory, which focuses on the conditions (e.g., grievances) that lead to the emergence and the success of collective action by emphasizing the resources that actors have at their disposal (Jenkins, 1983; Smith, 2005); New Social Movement Theory, which focuses on identity formation around post-materialist values (Pichardo, 1997); and the Political Process Model, which synthesizes the former theories into one unified approach (Smith, 2005). With each model of social movement theory, policy change occurs when social movements gain access to the political process through political opportunity structures (Tarrow, 2011).[25]

The frameworks discussed above demonstrate that the dominant approaches often employed to understand policy change focus on explaining change or stability within a given political system or set of institutional arrangements (Sabatier, 2007). Historical institutionalism, punctuated equilibrium framework, and the multiple streams framework provide institutional accounts of change. The three frameworks rely on institutional rules or processes relaxing, "ripening", or being disrupted to explain policy change. Historical institutionalism and the punctuated equilibrium

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[25] Political opportunity structure (POS) emphasizes how changes in the political environment impact expectations of success or failure of collective action. Scholars of POS focus on resources that are external to the actors involved such as the availability of potential allies, division among elites, increasing openness of the government, and diversity of the electorate (Tarrow, 2011).

framework both identify long periods of incremental change with short periods of large-scale change due to shocks to the existing political environment (e.g., critical junctures and punctuations). The multiple streams framework similarly identifies moments in time, known as "windows of opportunity", created through the interaction of the problem, policy, and political streams, to explain policy change. Although each of the three frameworks follow a clear temporal order (e.g., long periods of stasis followed by brief periods of change), they were not designed to explain the *timing of change across units*.[26]

In comparison, the actor-centered approaches, advocacy coalition framework (ACF) and social movement theory, rely on collective action to explain policy change. Both the ACF and social movement theory emphasize the role of shared ideas and beliefs that help form coalitions. As conceptualized by the ACF, coalitions are based on a "particular belief system" and "show a non-trivial degree of coordinated activity over time (Sabatier, 1988, p. 139). Policy change occurs when a coalition is able to change the belief system of policymakers through advocacy and policy learning. In contrast, social movement theories rely on a less formalized definition of a coalition in which the actors can change over time and form through shared identities and experiences rather than a particular belief or value system. Broadly, social movements achieve policy change when they gain access to the political system. Unlike the institutional frameworks that account for temporal dynamics, but are less equipped to explain cross-national change, actor-centered explanations lack the necessary temporal dimension while being broadly applicable to comparative work. An exploration of the timing of cross-national policy change requires an explanation for change that is happening across different units at different times and necessitates consideration of both domestic and international forces.

2.2   Empirical Puzzle and Policy Diffusion

Theories of the policy process that are explicitly geared toward explaining the timing of change are theories of diffusion, which can be divided into theories that focus either on domestic or

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[26] A notable exception is recent scholarship (called the "new interdependence approach") in the fields of comparative and international political economy that has sought to incorporate key insights of historical institutionalism to account for cross-national processes of institutional change (Farrell & Newman, 2016). Importantly, this approach does not address issues of *timing*, but instead considers how processes like institutional feedback can occur across units.

international factors. Both sets of theories describe nearly identical processes and share theoretical concepts and methodological tools. However, they operate on different scales and have relatively little dialogue with each other (Gilardi, 2012, p. 5). As a result, their predictive power is limited but could be enhanced significantly if combined into a multilevel theory of policy diffusion.

At the most basic level, theories of diffusion seek to explain widespread patterns of "innovation adoption" (True & Mintrom, 2001, p. 33). In the policy literature, "innovation" simply means that the policy is new to that government, rather than newly invented (Berry & Berry, 2007). Diffusion can occur within or across countries, among public and private actors, and can lead to the spread of policies, norms, ideational frameworks, and institutions (Gilardi, 2012). While this definition is quite broad, scholars tend to agree that diffusion is an interdependent process that results in the spread of policies rather than an outcome (Gilardi & Wasserfallen, 2019; Simmons et al., 2006; Simmons & Elkins, 2004). In other words, policy diffusion refers to the "processes by which diffusion takes place" rather than whether policies are adopted or not adopted (Shipan & Volden, 2008). Consequently, diffusion does not require that all countries (or units of analysis) adopt similar policies by the end of a particular time period. Rather it identifies a trend that shows an increased rate of policy adoption surrounding a specific idea (Gilardi, 2012). In seeking to explain the process of diffusion, scholars focus on a particular unit of analysis (such as countries, organizations, or communities) and consider the unit's social, political, and economic networks (such as peer group membership, association membership, trade partners, and industry networks). Importantly, international and domestic political characteristics relating to the unit of analysis are frequently considered as central in the process of diffusion (True & Mintrom, 2001, pp. 33-34). Both theories rely on nearly identical mechanisms of diffusion and will be outlined below.

2.2.1   Lessons from International and Domestic Policy Diffusion

Research on international policy diffusion has the nation-state as the unit of analysis and focuses on mapping the interdependent process through which the policy choices of one government are affected by the previous choices made by another government (Berry & Berry, 1990; Gilardi & Wasserfallen, 2019; Simmons et al., 2006). These choices can be conditioned by domestic processes and international networks within which the country is embedded (Gilardi & Wasserfallen, 2019; Simmons et al., 2006; True & Mintrom, 2001). Rather than focusing on the

nation-state as the unit of analysis, scholars of domestic policy diffusion focus on the interplay between subnational and national governments (Baybeck et al., 2011; Béland et al., 2018; Haider-Markel, 2001). It can also be understood as an intergovernmental, horizontal process whereby subnational units emulate each other (Berry & Berry, 2007).

Theories of diffusion encompass a wide array of assumptions about the identity of the primary actors, what motivates their behaviour, the nature and extent of the information on which they base decisions, and their ultimate goals (Simmons et al., 2006, p. 787). However, diffusion scholarship is primarily based on the assumption of interdependence. In other words, "governments adopt new policies not in isolation but in response to what their counterparts in other countries are doing" (Simmons et al., 2006, p. 782). The literature on international policy diffusion identifies four mechanisms of diffusion: coercion, competition, learning, and emulation (Simmons et al., 2006). Similarly, the mechanisms associated with domestic policy diffusion are coercion, competition, learning, and mimicry (Marsh & Sharman, 2009).[27] I outline each mechanism in turn while comparing how each mechanism is conceptualized in the international and domestic contexts.

The first mechanism is diffusion by coercion. Coercion occurs when "powerful countries explicitly or implicitly influence the probability that weaker nations adopt the policy they prefer by manipulating the opportunities and constraints encountered by target countries, either directly or through the international and nongovernmental organizations they influence" (Simmons et al., 2006, p. 790). More simply, coercion is focused on the power used by one jurisdiction to influence another jurisdiction's decision to adopt a policy through incentive structures (Dobbin et al., 2007; Train & Snow, 2019). Crucially, power asymmetry drives the coercive actions which results in a vertical diffusion process. It is assumed that powerful countries, international actors, or jurisdictions within a country intentionally target weaker countries or jurisdictions for a particular reason and that weaker countries only pursue the policy change because of that foreign influence. If coercion is the mechanism at play, we would expect to identify coercive actors and the channel through which influence is being exerted. We might also expect to see strong countries actively promoting certain policy ideas that are likely to be implemented by weaker countries that are

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[27] Although the four mechanisms of diffusion are widely accepted, scholars have developed typological theories of diffusion (e.g., see Blatter et al., 2021) to more accurately define and distinguish between mechanisms. Blatter et al. (2021, p. 10) also acknowledge the potential for asymmetry or "non-equal status among the polities."

"structurally or situationally dependent on them" (Simmons et al., 2006, p. 791). Further, the type of coercive action can vary from physical force to ideational suggestions.

Coercion can be both direct and indirect, also known as "hard" coercion and "soft" coercion. Hard coercion can include threat or physical force, economic costs, or benefits, and withholding information. For instance, Sharman (2008) found that the adoption of anti-money laundering policies can in part be explained through hard coercion. He argues the coercive measures were "a deliberate and calculated use of power by the Financial Action Task Force (FATF)" to elicit state compliance (Sharman, 2008, p. 636). Although the blacklisting by FATF was not legally enforceable, the global recommendation to exercise "a higher level of scrutiny on transactions going to, from, or through a blacklisted jurisdiction" resulted in not only the blacklisted countries quickly adopting anti-money laundering policies, but also the adoption of anti-money laundering policies by countries who were concerned about potentially being blacklisted (Sharman, 2008, p. 644). The negative economic costs associated with the FATF blacklist contributed to the global adoption of AML policies in 170 countries over twenty years.

While "hard coercion" includes more visible forms of coercion, it is more common to see "soft" forms of coercion (Gilardi & Wasserfallen, 2019, p. 1247). Soft coercion may focus on ideational shifts (e.g., favouring liberal policies) that influence policy discussions within a network of countries (Simmons et al., 2006). Domestically, we can think about networks as peer groups on a different scale. Since coercion typically manifests as pressure to conform to new standards of behaviour that other governments have adopted, governments might adopt a policy to avoid social shaming. Domestic policy diffusion scholars have noted that government actors "tend to be socialized into shared norms by common professional training (such as the master's in public administration degree) and by interaction in professional associations (e.g., the National Emergency Management Association)" (Berry & Berry, 2007). As a result, the coercive nature of diffusion could be the result of peer pressure. It could also be the case that in a federal system, the national government develops mandates that restrict choices for subnational governments such that they are coerced into developing policy. As demonstrated by the FATF blacklist and the potential for social shaming among peers, the exercise of power by one actor over others is the central avenue through which policies diffuse across countries.

The second diffusion mechanism is competition. Competition is primarily observed in the context of economic policies and often focuses on how "governments compete with each other for

internationally mobile capital and export-market share" (Simmons et al., 2006, p. 792). Importantly, the diffusion process is understood to be horizontal. In other words, policy choices by one government are a function of the policy choices by a different government that is considered an "economic equal" or a "competing peer" (Simmons et al., 2006, p. 793; Wang, 2017, p. 657). Competition is assumed to be an influential mechanism when there is something tangible at stake and policy effects can be felt in a relatively short period of time. For example, in his work on economic competition and labour rights, Wang (2017) argues that competition for foreign direct investment, exports, and imports creates incentives to alter labour policies. Competition for foreign direct investment motivates states to adopt policies that lower labour standards and ultimately leads to a global decline in labour rights (Wang, 2017). Competition can also occur within a domestic context in an effort to maintain market dominance such as the "California effect" (Gilardi & Wasserfallen, 2019, p. 1247). The "California effect" is a term coined by David Vogel (1997) in his work on the environmental standards in the automotive industry. The state of California had high standards for automobile emissions; despite the standards not being adopted nationally, the size of the California market forced automobile producers to comply with the high standards to maintain sales. The observable implications of competition as a diffusion mechanism include the identification of the competition networks and a demonstration that "changes in politics of members of a competitive network increase the probability of changes in other countries in the network" (Simmons et al., 2006, p. 795).

Similar to international diffusion, subnational governments also compete with each other to gain an economic advantage or avoid being disadvantaged (Berry & Berry, 2007). Unlike learning, where new data is generated about the costs and benefits of a particular policy when a different government adopts it, the cost-benefit calculation is altered in diffusion through competition when another government legislates first. Berry and Berry (2017, p. 258) identify two types of competition: "location-choice competition" and "spillover-induced competition." Location-choice competition argues that "governments seek to influence the location choices of individuals (persons or firms) who are in a position to acquire some good in more than one jurisdiction." The premise of this type of competition is that governments want to attract particular groups to their jurisdiction and will create policies that will appeal to those populations. For example, in the United States, some scholars have suggested the diffusion of casino legalization and restaurant smoking bans are the result of location-choice competition (Berry & Berry, 2017;

Calcagno et al., 2010; Shipan & Volden, 2008). On the other hand, spillover-induced competition suggests that the expected benefits of adopting policies change, either positively or negatively when a neighbouring jurisdiction adopts policy. This outcome can incentivize a government to not adopt a particular policy and simply "free-ride" on the other jurisdiction's policy innovation. Internationally, spill-over induced competition might involve military mobilization (Berry & Berry, 2017; Most & Starr, 1980), whereas it might manifest domestically through commercial standards such as the "standards trucks need to meet to travel in neighbouring jurisdictions" (Berry & Berry, 2017, p. 259).

Third, policy learning occurs when information about the impact of a policy in other states helps a state decide whether to adopt the policy (Berry & Berry, 2007, p. 240). More specifically, policy learning refers to "a change in beliefs or change in one's confidence in existing beliefs, which can result from exposure to new evidence, theories or behavioural repertoires" (Simmons et al., 2006, p. 795). Governments learn from each other and borrow innovations (e.g., policies) that are perceived to be successful in a different context (Marsh & Sharman, 2009). Scholars hypothesize that learning occurs when policy makers look for avenues to simplify decisions related to policy problem-solving, especially those that are highly complex and difficult to solve. One simplification tool is to limit the range of solutions to those that are only "marginally different from the status quo" (Berry & Berry, 2007, p. 225). Another option that governments use for simplifying complex problem solving is looking to other jurisdictions that have faced a similar problem and found an effective solution. The number of jurisdictions that are considered can be limited to add an additional level of simplification (Berry & Berry, 2017). Therefore, when decisionmakers determine a policy has been successful in another jurisdiction, they are more likely to adopt it (Berry & Baybeck, 2005; Shipan & Volden, 2008). For instance, Train and Snow (2019) identify policy learning as a diffusion mechanism in the adoption of recreational cannabis policies in Ontario and New Brunswick. They found that Ontario learned from the experiences of Colorado and Washington to take a stricter approach for the regulatory framework and then consider re-evaluating, rather than being too relaxed from the beginning (Train & Snow, 2019).

Learning can occur both in terms of how best to achieve a particular goal and identifying which goals to pursue. Policies created by governments generate new data that can inform the policy choices of other governments. This mechanism is "particularly prominent in the study of federalism" since the decentralized structure allows for experimentation and innovation at different

levels of government (Gilardi & Wasserfallen, 2019, p. 1247). When new policies are successful, the probability of other countries or levels of government adopting similar policies increases. An important element of policy learning is the strength of communication networks among elite actors within government and international organizations. When these communication channels are strong, countries are better able to learn new information and new policies. When policy learning is the mechanism responsible for diffusion, we would expect to see successful[28] policy change in one country to be followed by similar changes in other countries (Simmons et al., 2006, p. 798).

Finally, emulation or mimicry involves emulating or copying the policy of another jurisdiction regardless of the "functional efficiency" (Marsh & Sharman, 2009, p. 272). Scholars of international diffusion argue that emulation is focused on the "social construction of appropriate policies" (Gilardi & Wasserfallen, 2019, p. 1248). Policy makers will conform to and imitate policies that are considered normatively required by their peers such as such as human rights policies and educational reforms (Gilardi & Wasserfallen, 2019, p. 1249). Put simply, the emulation mechanism suggests that policies can spread simply because of their symbolic properties without critical reflection. The role of international organizations and professional communities are emphasized as "venues where the norms fostering the appropriateness of policies are constructed and diffusion is promoted" (Gilardi & Wasserfallen, 2019, p. 1249; Simmons et al., 2006, p. 800).[29] In addition, drawing on theories of social psychology, emulation suggests that governments will try to emulate the behaviour of their self-identified peers.

As identified by domestic policy diffusion scholars, diffusion through mimicry or imitation occurs when a policy is adopted simply to be the same as another jurisdiction (Shipan & Volden, 2008) "because policy makers in *A* perceive *B* as worthy of emulation" regardless of the

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[28] The definition of "success" can vary depending on the policy area and the actor evaluating the policy. As Shipan and Volden (2012, p. 790) note: "Success in containing costs may be more attractive to some than success in improving health outcomes, for example. Electorally minded politicians may care about the political success achieved rather than the policy success." The goals of the actor seeking to policy inspiration can change what they consider "success."

[29] While I intentionally rely on international and domestic policy diffusion literature, I also rely on international norm diffusion literature to build my framework. The diffusion of norms, defined as the "standard of appropriate behaviour for actors with a given identity" (Finnemore & Sikkink, 1998, p. 891), has been theorized as tipping points and cascades (Finnemore & Sikkink, 1998), a boomerang effect (Keck & Sikkink, 1998), as a spiral model (Risse & Sikkink, 1999) and as a discursive process (Krook & True, 2012). While norm diffusion and policy diffusion are conceptually different, norms "serve as a key function in the international spread of a new policy" and "states come to adopt similar policies across the world because of the spread of new standards of behavior and new expectations about what states are supposed to do" (Towns, 2012, p. 185). Norm diffusion can thus act as a catalyst to international and domestic policy creation and diffusion.

appropriateness or effectiveness of the policy (Berry & Berry, 2017, p. 257). Worthiness in diffusion tends to be associated with jurisdictions that are wealthier or larger and have developed a certain level of credibility as a leader or role model for other jurisdictions. Mimicry tends to occur among jurisdictions that share ideological positions (Berry & Berry, 2017). Unlike learning, which tends to focus on the action of adopting a policy, emulation is more focused on the actor that is being emulated (Shipan & Volden, 2008; Train & Snow, 2019). Shared characteristics such as language, history, and religion can contribute to the identification of peers (Simmons et al., 2006, p. 801). While empirically tracing emulation as a mechanism is difficult, the active participation in international organizations, professional communities, and other groups promoting new policy norms might indicate emulation. We might also consider the shared cultural history or language of countries that adopt similar policies. It is important to note that clearly distinguishing emulation from the effects of competition, coercion, and learning can be challenging, thus contributing to the difficulty of identifying emulation as a diffusion mechanism in practice (Gilardi & Wasserfallen, 2019; Simmons et al., 2006).

While both domestic and international policy diffusion are rich bodies of literature, these accounts miss how politics can influence the choice and effects of diffusion mechanisms. Gilardi and Wasserfallen (2019, p. 1252) argue that policy adoption occurs through an ideological lens and issue framing within political debates can change the terms of diffusion. While they consider emulation a residual mechanism, learning from others and economic incentives created through competition or coercion play an important role in policy diffusion. In an effort to put politics at the forefront of policy diffusion, Gilardi and Wasserfallen (2019) argue that policy learning is "heavily mediated" by political ideology such that the lessons that individuals learn are selectively chosen in accordance with their political ideologies (Volden et al., 2008). In accordance with this view, Butler et al. (2017) demonstrate the conditional effect of ideology on the likelihood of policymakers learning from other governments. Using data from survey experiments of municipal policymakers in the United States, they show that across a range of issue areas[30] policymakers with an ideological predisposition against a policy are less willing to learn from another

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[30] Issues include support for eliminating public funding for abortions, support for including sexual orientation in state antidiscrimination laws, support for affirmative action in state college and university admissions, and support state environmental regulations being stricter than federal law. For the full list of issue areas see Table B1 in the supplementary material for Butler et al. (2017).

jurisdiction. Importantly, however, they demonstrate that ideological bias can be overcome by emphasizing the success of a policy or highlighting "earlier adoption by co-partisans" (Butler et al., 2017, p. 38). Moreover, beyond the policy effects, policy makers will also consider and learn from the electoral consequences of a particular policy direction taken in a different jurisdiction (Gilardi, 2010; Gilardi & Wasserfallen, 2019).

To summarize, theories of international and domestic policy diffusion are closely related but remain poorly integrated. On the one hand, international policy diffusion focuses on the nation-state as the unit of analysis and focuses on the interdependence of policy choices. National governments will look to each other for a variety of reasons with the goal of policy change. Policy diffusion at the global level identifies four mechanisms of diffusion: coercion, competition, learning, and emulation. These mechanisms outline relationships between countries and NGOs that broadly rely on varying power dynamics and learning from each other. On the other hand, scholars of policy diffusion have identified similar dynamics at the domestic level. Domestic or subnational policy shares with international diffusion a similar set of mechanisms, concepts, and methodological tools. However, scholars of domestic policy diffusion more frequently attribute different forms of directionality with the above mechanisms: horizontal or vertical. Horizontal diffusion occurs between "structurally equivalent jurisdictions" such as national governments or subnational units (Béland et al., 2018). Vertical diffusion, however, can emerge as a bottom-up process such as when policies diffuse from the subnational level to the national level or as a top-down process where policies spread from the national level to the subnational level (Béland et al., 2018; McCann et al., 2015; Shipan & Volden, 2008). Relying on both horizonal and vertical diffusion and mechanisms from domestic and international processes of diffusion, in the following section I present a novel theoretical framework that considers how policy change can be influenced simultaneously by both international and domestic mechanisms of policy diffusion.

2.2.2   Toward a New Theoretical Framework

Directionality is a well-established element of policy diffusion (Béland et al., 2018; Shipan & Volden, 2008; Sugiyama, 2012) and existing studies tend to focus on horizontal forms of diffusion

(Graham et al., 2012; McCann et al., 2015), although diffusion can occur vertically as well.[31] Horizontal diffusion, illustrated in **Figure 2.1**, can occur at any level of government and happens among jurisdictional peers. **Figure 2.1** shows examples of horizontal diffusion at the global level between countries (e.g., Canada and the United States) and domestically among subnational units (e.g., Ontario and Alberta).

Figure 2.1: Horizontal Policy Diffusion
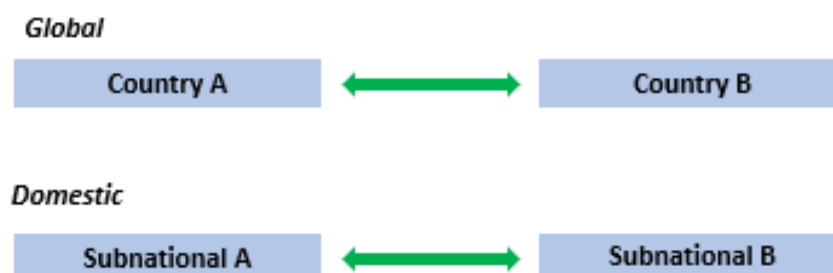
Scholars have identified two processes of vertical diffusion: top-down or bottom-up, shown in **Figure 2.2** and **2.3**, respectively. A top-down diffusion process occurs when the political choices of a government at a higher jurisdictional level influence the choices of a lower government (McCann et al., 2015) by "nudging" or signaling to subnational governments to pay more attention to a particular issue (Bednar, 2011; McCann et al., 2015). This process is shown with the blue arrow in **Figure 2.2**. Alternatively, top-down vertical diffusion can also occur from the international level to national level (illustrated with the green arrow) or from the international level to subnational level (shown with the red arrow). Bottom-up vertical policy diffusion can happen when local policies influence state politics (Shipan & Volden, 2012), or the political choice of states serving as examples for the national government, illustrated with the blue arrow in **Figure 2.3** (Béland et al., 2018; Shipan & Volden, 2006). Although less common, bottom-up policy diffusion can also happen from the subnational level to the international level (the red arrow in **Figure 2.3**) and from the national level to the international level (the green arrow in **Figure 2.3**).

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[31] In order to address power asymmetries within the diffusion process, Kuhlmann et al. (2020, p. 85) identify "imperial diffusion" which is defined as "diffusion from a dominant regime A to a legally dependent unit B."

Figure 2.2: Top-Down Vertical Policy Diffusion
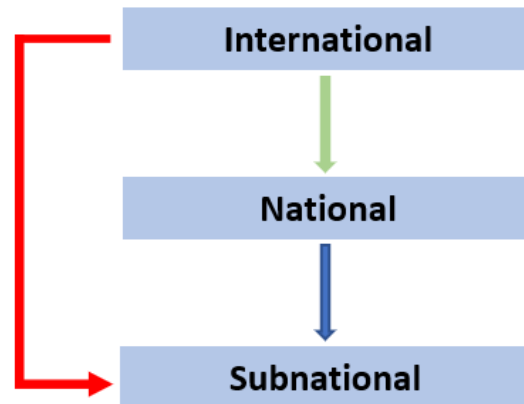
Figure 2.3: Bottom-Up Vertical Policy Diffusion
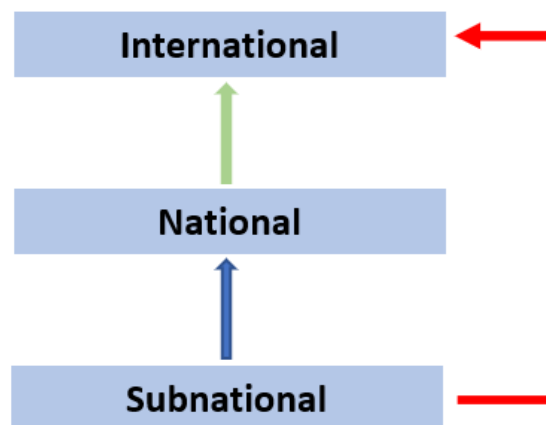
The mechanisms identified by diffusion scholars also implicitly assume directionality. Since the diffusion literature tends to be at a global level (e.g., country to country diffusion) or subnational level (e.g., typically across US states), all of the diffusion mechanisms are considered horizontal processes. For example, competition tends to be conceptualized as a horizontal process because jurisdictions compete with each other for some kind of benefit such as economic advantages (Simmons et al., 2006; Sugiyama, 2012). However, the mechanisms also fit within the context of vertical diffusion. Coercion, for instance, relies upon a power imbalance such that the more powerful state or actor coerces a weaker state or subnational unit to adopt a particular policy (Dobbin et al., 2007). Despite the emphasis on directionality for understanding diffusion processes,

the existing scholarship tends to focus on only one direction and overlooks the possibility of multidirectional diffusion. For instance, in their analysis of anti-smoking restrictions in the United States, McCann et al. (2015) focus on top-down vertical diffusion. Similarly, Ayoub (2015) considers the top-down diffusion process in the European Union with respect to the diffusion of lesbian, gay, bisexual, and transgender (LGBT+) equality legislation across member states.

In the few examples[32] that consider the "multidirectional pressures for policy adoption," the directions are conceptualized and evaluated as separate processes. For instance, in her work on the adoption of a federal conditional cash transfer program in Brazil, Sugiyama (2012) evaluates the roles of intra-national vertical sources of pressure (both bottom-up and top-down) and cross-national horizontal sources of pressure. Even though she acknowledges the potential role of cross-national and international forms of diffusion, she concludes that bottom-up sources of pressure such as intergovernmental competition and innovation from the subnational level were the sources of change at the national level. The tendency to bracket the directional characteristics of diffusion in both multidirectional and unidirectional analysis hinders our ability to understand how these processes work together.

Relatedly, accounting for multidirectional features of diffusion can be difficult because "diffusion events are constrained by institutional roles and responsibilities of distinct levels of government, thereby limiting the number of policy cases available to examine the competing pressures for diffusion" (Sugiyama, 2012, p. 27).[33] In other words, the jurisdictional boundaries and distribution of decision-making authority in a given country makes pursuing studies of multidirectional diffusion processes more difficult. However, this challenge can be remedied by integrating the insights of multilevel governance with policy diffusion. Multilevel governance (MLG) provides a framework for understanding complex and fragmented systems of policymaking (Mavrot & Sager, 2018). Although initially developed to explain the European Union integration process, multilevel governance has been applied to Indigenous-settler relations in Canada (Alcantara & Nelles, 2014; Ladner, 2010), global climate change policies (Rabe, 2007), migration

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[32] For more examples that consider multidirectional policy diffusion see Mintrom (1997); Shipan and Volden (2006, 2008); Simmons et al. (2006).

[33] Marriage equality is a notable exception to the jurisdictional challenges that a multidirectional account of policy diffusion poses as it has been legislated at subnational and national levels. There is also evidence of global diffusion that resulted in the rapid increase in marriage equality or civil union policies (Kollman, 2009).

policies (Caponio & Jones-Correa, 2017) and the study of urban politics (Kaufmann & Sidney, 2019; Stilwell & Troy, 2000).

At its core, multilevel governance (MLG) means interactions between state and non-state actors such as non-governmental organizations[34] occurring at multiple sites or levels, engaging in both formal and informal decision-making (Alcantara & Nelles, 2014; Mavrot & Sager, 2018).[35] Combined with the central definition of policy diffusion[36], MLG highlights how policy ideas can be diffused through the complex networks of actors at different scales who influence each other's decision-making processes either formally or informally. For example, multilevel governance dynamics help clarify how policy diffusion can "jump scale" wherein a policy idea at the international level diffuses to a subnational level (see Stubbs, 2005; Mavrot, 2017). Additionally, multilevel governance directs attention to the dispersion of decision-making power to the "non-intersecting and nested jurisdictions" (Marks & Hooghe, 2004, p. 19). Although jurisdiction over certain policy areas is divided amongst the levels of government, similar policies can exist at different levels (e.g., separate human rights codes at national and subnational levels) or policy ideas can span across different issue areas. For instance, conversion therapy bans in Canada have been targeted by the provincial governments through health care policy, whereas the federal government banned conversion therapy through the criminal code. The idea behind the policies is the same, but actors work within their jurisdictional boundaries, while also promoting similar action be taken in a different jurisdiction or different level of government.

Notwithstanding the important contributions made by scholars who have identified and analyzed multidirectional sources of pressure, there is an important gap in the literature on the combined role of multidirectional and multi-jurisdictional diffusion processes. In the following

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[34] Kuhlmann et al. (2020, p. 84) helpfully distinguish between non-state actors involved as a unit in the diffusion process compared to actors within a domestic setting: "The starting ground of the diffusion is called unit A, while the receiving or absorbing part is called unit B. These 'units' should not be confused with 'actors'. In the case of diffusion processes from an IO to a country, the IO as a political actor is identical with unit A, but in the political sphere of the country (unit B) there are many actors involved such as political parties, interest groups, bureaucratic agencies and so on."

[35] For a full discussion of MLG, see Hooghe and Marks (2001, 2003), Marks and Hooghe (2004), Piattoni (2009), or Alcantara and Nelles (2014).

[36] A process through which policy decisions by one government are conditioned by prior policy choices by another government (Simmons et al., 2006).

section, I present a theoretical framework that synthesizes the literature on global and domestic policy diffusion with insights from multilevel governance.

2.3   Bridging the Gap: Policy Momentum

Bringing these bodies of scholarship into conversation produces a more theoretically and conceptually rich framework for explaining national policy change.[37] More specifically, a synthesized framework provides an explanation that more accurately accounts for the timing of policy change. The original framework introduced here, called *policy momentum,* provides a means of theoretically integrating and specifying how multilevel and multidirectional global and domestic policy diffusion processes *together* can produce national policy change. While the term policy momentum is often used colloquially, typically to describe increasing pressure or support for policy change, I provide a more precise conceptualization. *Policy momentum* is a framework through which we can explain the timing of national policy change through the *different types* of pressure that are being placed on a government. The combined pressure of multiple diffusion pathways (described below and illustrated in **Figure 2.4**) creates policy momentum, which generates change by shaping preferences and perceptions of national policy makers.

2.3.1   Defining Policy Momentum

Policy momentum is a framework through which we can understand the type and strength of pressure that is being placed on a government. To be clear, the outcome to be explained is policy change (a discrete event) that is caused by ongoing processes. Drawing upon the multidirectional nature of policy diffusion, there are multiple pathways for policies to diffuse to the national government.[38] Moreover, there are different sites of diffusion that are best understood through a

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[37] Policy momentum can be applied to policy change in non-national settings as well. This is a point I return to later in the article.

[38] National governments are the central unit of analysis for the development of *policy momentum*. However, as I will discuss later in the article, the framework could be applied to other levels of government that can experience multidirectional and multilevel forms of policy diffusion.

multilevel governance lens. Multilevel governance identifies how multiple jurisdictions can interact within the context of a single policy idea. This insight helps clarify the types of actors involved, the type of decision-making processes (e.g., formal or informal), and limits the directions from which diffusion can occur. For instance, the goal of this article and the foundation of policy momentum is explaining policy change at a national level. Given that the unit of analysis is the nation-state, the ways in which multidirectional and multi-jurisdictional diffusion processes can take place is limited to the actors who are "above" and "below" the national government. Together, this conceptualization generates a theoretical framework that is premised on threshold and conjunctural effects (Mahoney, 2021, p. 265).[39]

Building on **Figures 2.1**, **2.2**, and **2.3**, *policy momentum* is the result of the combined multidirectional pressure from "above" and from "below" the unit of analysis. Within these processes exists various forms of vertical, horizontal, and peer diffusion pathways that will vary based on the specific empirical context. **Figure 2.4** illustrates the processes involved in policy momentum. The national level is highlighted in a yellow box to differentiate it as the unit of analysis. The red arrows identify the vertical diffusion processes that exist "from below" and "from above" and the green arrows identify the horizontal diffusion processes among peers. It is worth noting that the "Domestic" and "International" labels indicate whether the pressure is internal (domestic) or external (international) to the state. For instance, within the "Domestic" box in **Figure 2.4**, a horizontal diffusion process might occur across subnational units that contributes to the vertical diffusion from the subnational to national level. Similarly, a policy idea developed at the international level might initially bypass the national government and gain traction by subnational units first.

To clarify the language used within the framework, I reserve the term "horizontal diffusion" to describe processes occurring between units at the domestic level. This includes both subnational to subnational diffusion and federal institutions (e.g., the judiciary) to the national government. This is illustrated using the L-shaped "Domestic" box. While I recognize that scholars have also used this term to capture processes occurring between countries, this creates conceptual

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[39] As defined by Mahoney (2021, p. 265): "[T]hreshold and conjunctural effects are in operation when an ongoing process causes a discrete event. This causal pattern characterizes critical mass arguments: small changes cumulate in a process that eventually reaches a tipping point, at which time a discrete outcome occurs."

confusion within the policy momentum framework. To differentiate the source of pressure, I use the term "peer diffusion" to describe horizontal diffusion between countries to also acknowledge that the source of diffusion is external to the state. In light of this, the "International" box is intentionally L-shaped to recognize both vertical and peer diffusion processes that are external to the state of interest.

Figure 2.4: Policy Momentum
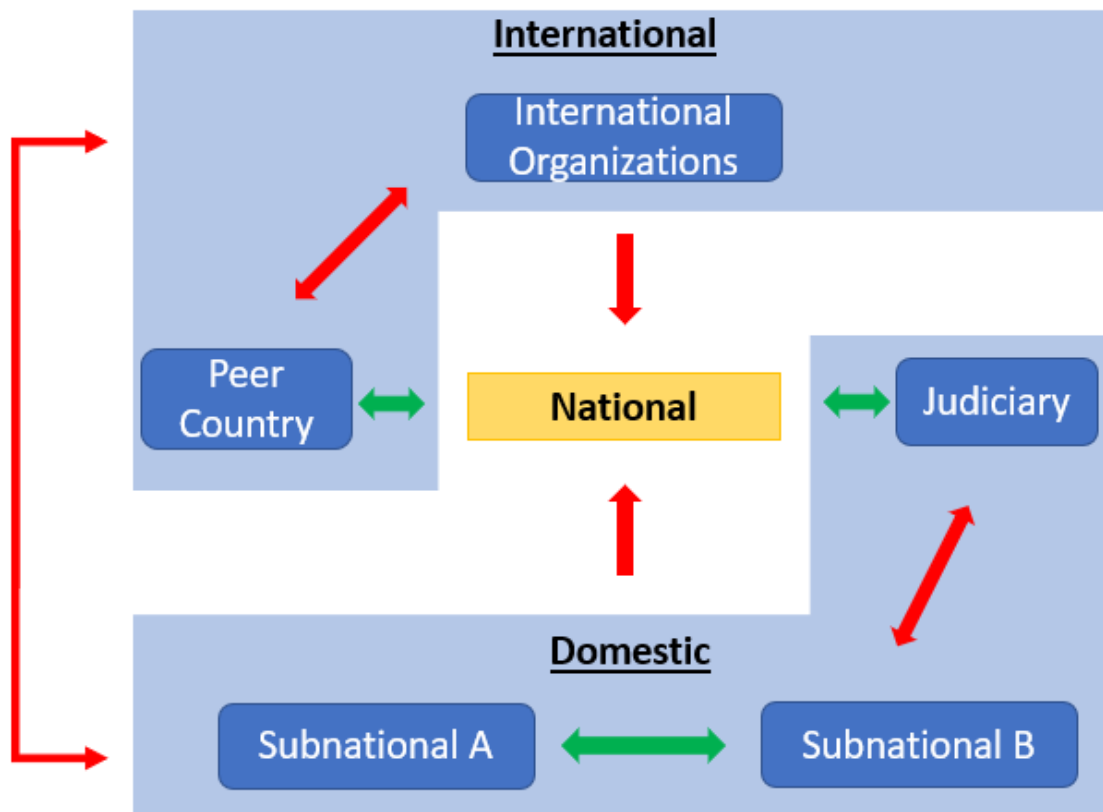
As illustrated in **Figure 2.4**, the horizontal, vertical, and peer diffusion processes, originating above and below the unit of analysis, work together to jointly create pressure on the national government. Vertically, diffusion happens from both international and domestic contexts. The horizontal diffusion process occurs within the domestic context such as across subnational governments and peer diffusion occurs across countries. The combined pressure of these multidirectional pathways creates *policy momentum*, which generates change by shaping national

elite actors' preferences or perceptions. Importantly, the specific timing of when these conditions are obtained in the respective countries explains cross-national variation in policy change.

2.3.2   Background Considerations

Policy momentum begins with the assumption that policy diffusion is multidirectional and multi-jurisdictional. That is, rather than focusing exclusively on top-down or bottom-up diffusion, policy momentum acknowledges that vertical, horizontal, and peer diffusion processes can happen at the same time and work together. Similarly, policy momentum theorizes that policies can be multi-jurisdictional and policy ideas can be developed and passed in more than one jurisdiction, regardless of how decision-making authority is distributed in a given country. Policy momentum does not suggest that every policy area is multi-jurisdictional. Rather, the framework builds on ideas of interdependence that are central to policy diffusion by broadening the scope of how diffusion processes are conventionally understood.

As previously mentioned, there is limited research on multidirectional policy diffusion because few policies fall within the authority of more than one government (Sugiyama, 2012). However, if we maintain the definition of policy diffusion put forward by Simmons et al. (2006), that policy decisions of one government inform the choices of another, strict adherence to jurisdictional boundaries is not required. Instead, we can use knowledge of jurisdictional boundaries to better understand how policies encompassing the same idea can inform the choices made at different levels of government. This perspective also aligns with research on social movements insofar as political coalitions are often organized around abstract *goals* rather than specific *policies* (e.g., equality for different marginalized communities or protection of traditional ideas about the nuclear family). For instance, human rights codes in Canada exist at the national level and within each province and territory. Any amendments made to one of the codes is only within the jurisdiction that made the amendments. That is not to say that the legislative capacity of each government must be identical for a single policy area. It could be the case that a specific policy can be targeted through different government departments. LGBT+ equality spans policy areas from health care, human rights codes, and adoption to employment, identification documents, and military service. The decision of a government to adopt more inclusive health care policies could inform the decision of a government at a different level to adopt more inclusive

criminal justice policies. Likewise, political coalitions organized around the promotion of human rights might target different policies in different jurisdictions that advance the coalitional goals in different ways. A more specific example can be seen in the criminalization of conversation therapy practices in Canada; while its criminalization is a federal matter, provinces and territories can effectively ban the practice through health care legislation by cancelling funds to places that practice conversion therapy.

Relatedly, the emphasis on multidirectional policy diffusion within policy momentum requires attention to the mechanisms of diffusion. As a result, policy momentum relies upon the existing mechanisms of policy diffusion: coercion, competition, learning, and emulation (Simmons et al., 2006). However, policy momentum does not prescribe which mechanism(s) will be present for a particular policy issue. Within policy momentum, the mechanisms serve as a way to understand how the multidirectional diffusion processes can happen. Importantly, more than one mechanism can be working at the same time. For instance, horizontal diffusion can be the result of both policy learning and emulation for the same policy area. Jurisdictions with limited resources might choose to emulate a policy, while other jurisdictions might have the ability to learn from their counterparts and better contextualize a new policy to their needs.

The final consideration is the unit of analysis. Policy momentum does not dictate a particular unit of analysis; however, the multi-jurisdictional nature of the framework has structural requirements. In other words, the unit of analysis must have jurisdictions that exist "above" and "below" for the pressure jointly create change. For the purposes of this dissertation, I have focused on national policy change which has the international level above it and the domestic level below it. The framework can also be applied in the context of a subnational unit of analysis, shown in **Figure 2.5**. Similar to **Figure 2.4**, which illustrates policy momentum with a national level government as the unit of analysis, **Figure 2.5** shows how policy momentum can help explain subnational policy change through vertical (red arrows) and horizontal/peer (green arrow) diffusion processes. The outcome of interest will dictate the unit of analysis and the origins of both the vertical and horizontal diffusion processes.

Figure 2.5: Policy Momentum with a Subnational Unit of Analysis
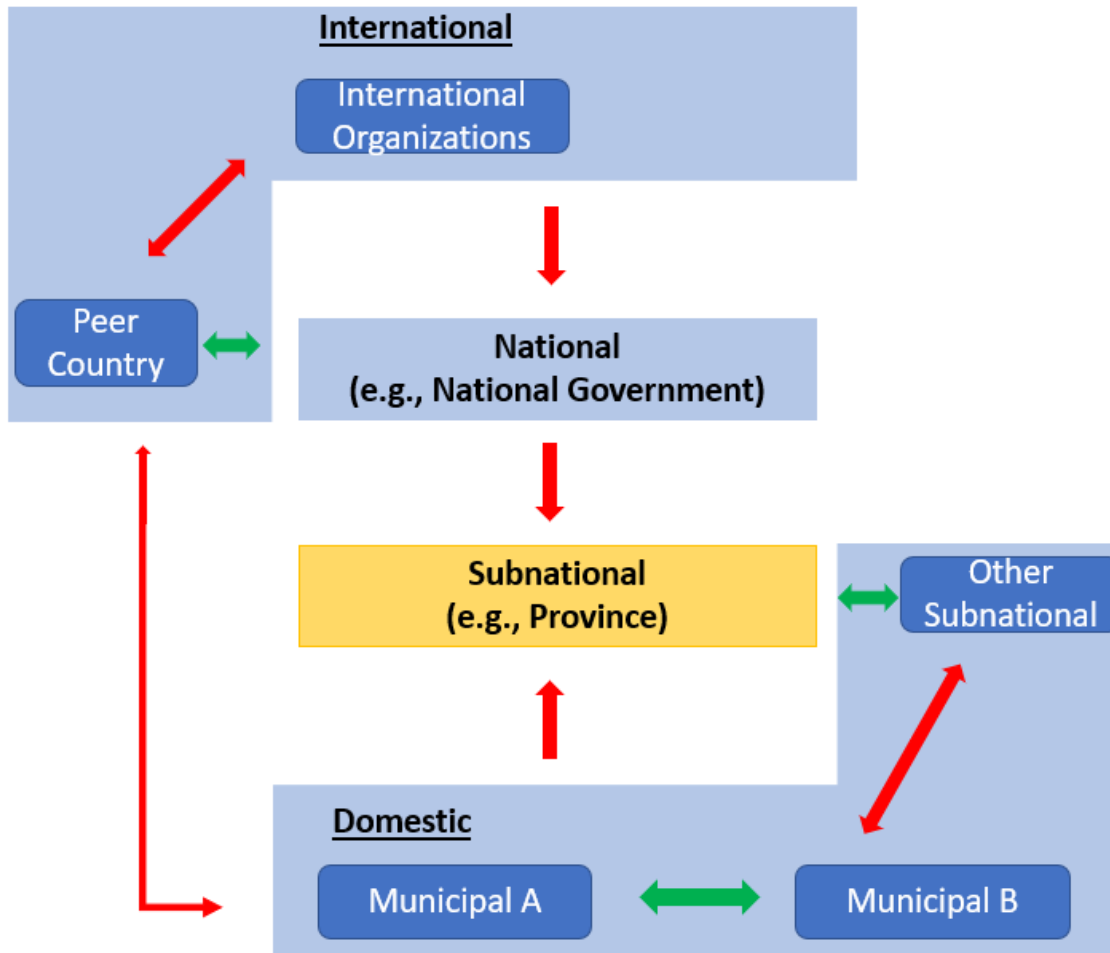
Finally, as both **Figure 2.4** and **Figure 2.5** illustrate, policy momentum relies upon the idea of interdependence that is integral to policy diffusion. As discussed in the previous sections, policy diffusion seeks to understand the interdependent process through which the policy choices of one government are influenced by the previous choices made by another government (Berry & Berry, 1990; Gilardi & Wasserfallen, 2019; Simmons et al., 2006). For instance, in **Figure 2.5**, the arrows from different units (international, national, local, and subnational) pointing to the subnational unit highlighted in yellow demonstrate how the policy choices of four separate levels of government can influence the choices of the one subnational government. Building upon scholarship on policy networks, interdependence highlights the structural patterns of interaction between government actors and societal interests (Skogstad, 2008). The interactions among members of a policy

network are similar to "policy subsystems"[40] that are identified in the punctuated equilibrium literature (Howlett, 2002). Governments and government departments and agencies (e.g., Human Rights Commissions) are enmeshed within a variety of global and domestic networks, peer groups, and communities that regularly communicate and have discussions that can facilitate learning, coercion, competition, and emulation. In turn, these networks require theoretical attention to explain policy processes in any given unit. The networks worthy of study will change depending on the unit of analysis or the outcome of interest.

The multidirectional and multi-jurisdictional conceptualization of policy momentum builds upon the directional components of policy diffusion and creates jurisdictional flexibility by integrating scholarship on multilevel governance. Although I discuss policy momentum as a framework to understand national level policy change, the framework can be applied to other levels of government that have jurisdictions "above" and "below". The final background consideration draws upon the concept of interdependence identified by scholars of policy diffusion. To provide conceptual clarity to the term "interdependence", I rely on the scholarship on policy networks and policy subsystems.[41] In light of these background considerations, I provide a more detailed account of policy momentum followed by the mechanisms that can affect policy momentum.

2.3.3   Theorizing Policy Momentum

Policy momentum (reproduced below in **Figure 2.6**) occurs when the vertical, horizontal, and peer pathways of diffusion are simultaneously occurring at different levels. Crucially, the vertical, horizontal, and peer diffusion processes must converge to create a multidirectional form of pressure. In other words, top-down and bottom-up diffusion work jointly with horizontal and peer diffusion to put pressure on the national government to generate policy change. This is not to suggest that policy momentum is deterministic and policy change is inevitable once these

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[40] A group of specialized government decisionmakers and interest groups (Baumgartner & Jones, 2009).

[41] Policy diffusion scholarship relies upon interdependence that describes a process through which the policy choices of one government are affected by the previous choices made by another government. To better clarify interdependence in the context of policy momentum, I rely upon the conceptualization of policy networks and policy subsystems to expand the definition to include interactions across a variety of global and domestic networks, peer groups, and communities that consist of both governmental and non-governmental actors.

processes converge. Rather, policy momentum highlights the importance of several ongoing processes that eventually intersect.[42] The vertical processes (illustrated with red arrows) show how national governments respond directly to international diffusion processes (top-down) or domestic diffusion processes (bottom-up). Policy ideas can also bypass the national government and result in a diffusion process that initially starts between the international and domestic levels. Additionally, peer diffusion originating from a national government's peers (e.g., other countries in their policy network), incorporated within the "international" level, adds to the pressure that generates policy change. These concurrent pathways together generate policy momentum towards national level policy change. The specific timing of when these conditions are obtained in the respective countries explains cross-national variation in policy change. I outline the paths in more detail below.

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[42] I draw inspiration from the idea of "threshold and conjunctural effects" outlined by Mahoney (2021). Broadly, he defines these effects as "[W]hen an ongoing process causes a discrete event" in which "small changes cumulate in a process that eventually reaches a tipping point, at which time a discrete outcome occurs" (2021, p. 265) Further, Mahoney (2021, p. 266) defines conjunctures as "the coming together – the temporal and spatial intersection – of two or more independent processes. The result of the intersection can be a specific event that is located as a specific time." Although policy momentum does not require the processes of diffusion to be independent of each other, the emphasis on intersecting processes leading to a discrete event is central to its conceptualization.

Figure 2.6: Policy Momentum
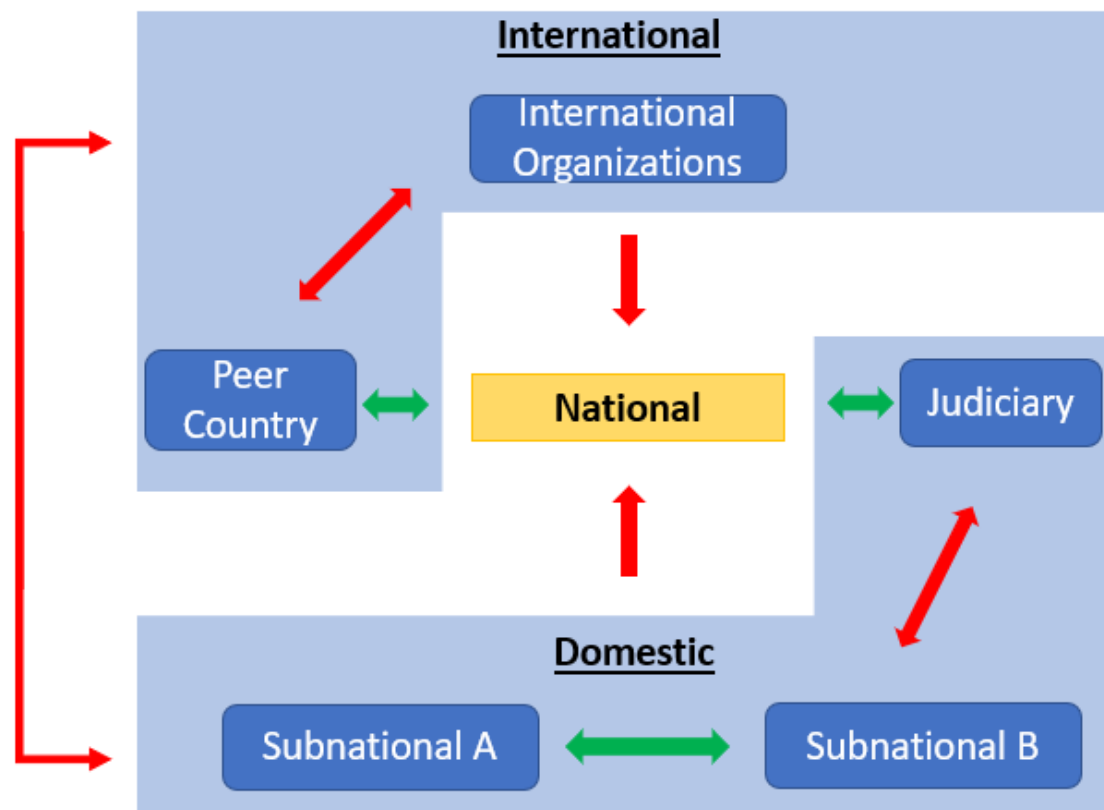
The top-down diffusion connecting the international level to the national and subnational levels is a simplistic representation of international policy diffusion. While the label "international" might refer to a variety of actors and institutions, the primary focus of this path is that national policy change is influenced by actors and processes occurring "above" or external to the state (e.g., international non-governmental actors and other countries). Scholarship focused on global processes highlight mechanisms of diffusion from the global to the national (Checkel, 1997; Kollman, 2009; Krook & True, 2012) and global to the subnational (Brown, 2014; Resnik et al., 2008). For example, in her work on the adoption of same-sex union laws, Kollman (2009) focuses on the diffusion of the lesbian, gay and bisexual (LGB) human rights norm in Western European states. She suggests the European Union, the European Court of Human Rights, and a transnational network of gay, lesbian, bisexual and transgender activists played crucial roles in promoting national policy change. She finds that the mobilization of human rights groups at the domestic and global levels had important effects on national policies in Germany and Austria.

Global norms can also be diffused to the subnational level. When subnational units are aware of the changing standards of behaviour, it is possible that they will respond with policy before a national government. The national government may not be in a position to adopt policies consistent with the new standards due to ideological opposition or gridlock among the governing party or coalition. For example, in their work on the Kyoto Protocol in the United States, Resnik et al. (2008) focus on the role of state and local governments in adopting the Protocol's targets to combat climate change. Despite federal opposition, they point to the actions of local and state governments such as the US Conference of Mayors announcing climate protection as a top legislative priority and ten states joining Canadian provinces and other countries in forming an International Carbon Action Partnership (ICAP). Jumping scale from the international to subnational can lead to both vertical and horizontal domestic diffusion.

The bottom-up diffusion processes are illustrated using red arrows connecting the domestic level to the national and international levels. The arrow from the domestic to the national level represents the process of domestic diffusion and its relationship to national policy change. As noted above, domestic diffusion is focused on the interplay of subnational and national governments. When a norm or policy idea enters the subnational political environment, whether from international or domestic sources, it can move horizontally to other subnational units and/or vertically to the national government. For instance, in their work on social policies in the United States, Mexico, and Canada, Béland et al. (2018) analyze how social policies (health care reform, non-contributory pension reform, and child care reform, respectively) adopted at the subnational level ultimately informed national policy decisions.

The other form of bottom-up diffusion, from the subnational to international, is less common. However, research on the importance of local and municipal governments in combatting climate change illustrates how ideas can diffuse from the domestic to international level before reaching the national level. An example of the potential for subnational to international diffusion is the creation of the International Council for Local Environmental Initiatives (ICLEI) in 1990. The ICLEI initially brought together over "200 local governments from 43 countries at the World Congress of Local Governments for a Sustainable Future at the United Nations" and is now a network of more than 900 local governments that share knowledge and training on climate change policies (Schreurs, 2008, p. 348). The innovations developed in cities can diffuse through the

ICLEI to the global agenda on climate change. As mentioned, this path is less common, but relevant to consider as a bottom-up diffusion process.

2.3.4   Timing and Political Motivations

Like policy diffusion, policy momentum articulates a framework that incorporates time as an important element to explaining policy change. As neatly summarized by Dunlop and Radaelli (2020, p. 66): "Change, and its pace, is multi-level and multi-dimensional. This is not simply a matter of saying learning that happens in one place can influence another (though it can). Rather, at any one time there can be multiple learning processes within and between different times and spaces." That is, there can be more than one vertical and horizontal diffusion process happening at the same time that put pressure on a government to make a policy decision. Policy change is more likely to occur when these processes converge to create pressure on a single government. The pacing of these processes might vary which ultimately contributes to our understanding of why change happens at one time point rather than another.

When pressure to compete with or learn from international organizations or peers within a policy network is combined with domestic diffusion processes that lead to policy pressure from subnational units, policy momentum is created. National policy change is more likely to occur as a result of these combined sources of pressure by shaping national elite actors' preferences or perceptions. Why do national governments succumb to policy momentum? As this framework does not conceptualize the process of change as deterministic, it is entirely possible that national governments can successfully resist the combined pressures from international and subnational sources. I argue that policy momentum is likely to generate policy change when at least one of two motivations is activated among national policymakers.

First, national policymakers may view policy change as necessary to maintain their international reputation. Canada and Sweden, for instance, have "a long-standing reputation as ethical powers with an ideological heritage as promoters of human rights" (Zhukova et al., 2022, p. 198). In their work on the adoption of feminist foreign policies, Zhukova et al. (2022, p. 198) note that countries who tend to be human rights leaders can maintain their image as "a vanguard and frontrunner" by initiating feminist policies. The states who consider themselves frontrunners or tend to be more progressive internationally are more likely to be conscious of and sensitive to

being considered a laggard on a given issue. In other words, a disconnect between a state's identity and the appropriate policies associated with a particular norm may create pressure for policy change. Recent work on gender equality in Germany illustrates the international pressure that Angela Merkel experienced during her tenure as Chancellor (Ahrens et al., 2021). They find that Merkel responded to international pressure for gender equality and LGBT+ rights policies because Germany is particularly "attuned to their international reputation and human rights record" (Ahrens et al., 2021, p. 5). Regardless of the number of other countries who have adopted a norm, the sense of straggling is also created by subnational movement on the issue. The importance of maintaining a positive reputation or avoiding a negative review can prompt national policy makers to promote change.

Second, national governments may view policy change as feasible due to experiences in other jurisdictions. This motivation appeals to electoral incentives that policymakers face when seeking re-election. A well-recognized feature of federal states, for instance, is the opportunity for policy experimentation at the subnational level (Boeckelman, 1992; Lowery et al., 2011; Painter, 1991). This experimentation has helped facilitate policy change at the national level, such as marriage equality in the United States (Lowery et al., 2011; Smith, 2007). By allowing experimentation to occur elsewhere, national policymakers effectively allow the subnational units to take on the "burden of proof" until the policy innovation becomes more widely accepted (Maggetti & Gilardi, 2016). Consequently, the successful adoption of policies at the subnational level may aid in the promotion of similar policies nationally by legitimizing the policy and raising expectations among citizens.

Central to the argument that national governments respond to subnational policy change are policy attention and electoral incentives. As described by Lowery et al. (2011, p. 287), "before *policy solutions* can diffuse, *policy attention* at one level of government must be synchronized with that of another." In other words, for a national government to determine the feasibility of a specific policy or be influenced by subnational policy change, they must care about the same issue. Lowery et al. (2011) argue that the central link between policy attention across different levels of government is the connection between politicians and constituents. There are strong incentive structures in place for politicians are any level who are seeking re-election to be responsive to constituent needs (Harden, 2013; Hogan, 2008; Lowery et al., 2011). Since national and

subnational policymakers share constituents, policy attention and therefore policy solutions can be linked and diffuse across levels (Lowery et al., 2011).

2.3.5   Intervening Mechanisms

The motivations that impact the pace of policy momentum can be shaped by domestic or international mechanisms that can alter the salience or strength of different types of pressure. Consistent with the Gilardi and Wasserfallen (2019) "stylized model of policy diffusion," policy momentum is sensitive to political and social factors that can act as political filters. In other words, the likelihood of policy momentum generating change can increase or decrease when the mechanisms are present. I identify five intervening mechanisms[43] that affect policy momentum: public opinion, media attention, government ideology, political events, and knowledge networks.[44] These mechanisms are summarized in **Table 2.1** and **Figure 2.7** and discussed further below.[45]

Table 2.1: Intervening Mechanisms Affecting Policy Momentum

Intervening Mechanism	Description	Expectations
Public Opinion	Governments are responsive to public opinion on policy issues in order to boost chances of re-election.	When voters are against a policy, the pressure from policy momentum will need to overcome the electoral incentive structure that would typically lead

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[43] I rely upon the definition proposed by Mahoney (2021, p. 124): "I use the term *intervening mechanism* for an event that stands as a link in a causal chain. The intervening mechanism is both an outcome of an initial cause and a cause of a final outcome." However, I do not adhere strictly to Mahoney's definition of the term "event" to describe the mechanisms. Instead, they are conceptualized as theoretically informed links in the sequential chain. Some links might be political or non-political events (identified as one of the mechanisms) that closely aligns with Mahoney's definition, while others are elements of the political and social environment (e.g., public opinion).

[44] Even though policy momentum is broadly focused on institutional change, these intervening mechanisms acknowledge the relationship between structure and agency that is often overlooked in policy diffusion work. Marsh and Sharman (2009, p. 270) note that "Work on diffusion tends to emphasize structure while those writing on [policy] transfer tend to privilege agency. We need to recognize that the relationship between structure and agency is dialectical, that is interactive and iterative."

[45] Shipan and Volden (2008, p. 840) argue that there is a normative element to understanding mechanisms and incentive structures that impact of policy diffusion. In particular, they suggest that diffusion can produce inappropriate policy choices and understanding "the conditions under which each of these mechanisms drives policy diffusion is normatively important."

		decisionmakers to not legislate on the issue.
Media Attention	Media can shape the policy agenda, public opinion, and influence diffusion through overlapping media markets.	Policy issues that are widely reported on will likely make it to the policy agenda. The tone and quantity of coverage can condition the strength of pressure required for policy momentum to be successful.
Government Ideology	Ideology shapes the preferences of decision makers.	Ideological positions will condition how likely governments are to adopt policies and who they are willing to learn from.
Political and Non-Political Events	Events that are exogenous to the legislative body, both domestic and global, can change the policy options available to government officials.	Events can constrain policy options such that policy momentum is more likely to be successful. However, events can also constrain options that would hinder the success of policy momentum.
Knowledge Networks	Actors (both governmental and non-governmental actors) form knowledge-based networks domestically and internationally that influence policy in each other's jurisdictions.	The policies that other actors or governments are promoting within these networks can alter the success of policy momentum.

The first intervening mechanism that can affect policy momentum is public opinion. When diffusion processes are happening, policymakers will not only look at the policy effects, but also the electoral consequences of a policy in a different jurisdiction (Gilardi, 2010; Gilardi & Wasserfallen, 2019). Regardless of whether a policy has negative or positive electoral consequences, public opinion can shape the preferences of policymakers if re-election is top of mind (Schmidt, 2008; Zaller, 1992). Zaller (1992, p. 272) observes that public opinion can "create discretion for elites to move in a similar direction," but those elites are likely predisposed to the position they move toward and only do so when it is deemed politically safe. In other words, public opinion is a strong component of incentive structure in place for government actors who plan to

seek re-election (Bernardi, 2020; Kastellec et al., 2010; Lax & Phillips, 2009; Soroka & Wlezien, 2010). In particular, votes that are considered "highly-visible" are important considerations for re-election (Kastellec et al., 2010). As a result, we would expect policy momentum to be conditioned by legislator responsiveness to public opinion. If a policy is extremely popular, we would expect legislators to be more likely to pursue that policy. However, if a policy is very unpopular with the public, leading to the expectation that it would not be pursued, policy momentum would need to overcome that potential barrier.

Relatedly, the media have a role in all aspects of the policymaking process (Soroka et al., 2013). Early research on the influence of the media on public policy suggests that the media "can effectively set the public agenda by consistently and prominently featuring issues in their news coverage" (Soroka et al., 2013, p. 205). The influential power of the media is also the result of overlapping media markets. That is, government officials and the public are made aware of policy innovations in nearby jurisdictions through shared media (Karch, 2007). The media play a central role in electoral politics for voters in shaping how they understand politics and electoral issues (Lalancette & Tremblay, 2019). The quantity and tone of media coverage can shape individual attitudes and public opinion more generally. The conditioning effect of the media on policy momentum is twofold. First, the amount and tone of coverage can create barriers or opportunities or policies to reach the national agenda through policy momentum. Second, the media can change the electoral incentives that government officials experience by influencing public opinion. We would expect positive and extensive coverage of an issue to be more favourable for policy momentum to be successful.

The third intervening mechanism that can affect the role of policy momentum is government ideology. Literature on policy diffusion suggests that governments are more likely to learn from governments with similar ideological positions (Butler et al., 2017; Gilardi, 2010). In their work on the "conditioning effect of ideology on policy diffusion," Butler et al. (2017, p. 38) argue that the ideological views of a government official will strongly impact their policy preferences. Moreover, they find that ideology affects which policies government actors will seek information on (e.g., conservatives less willing to learn from liberal policies). Put simply, ideological positions can condition how "sensitive" a policymaker is to the policies from other jurisdictions (Gilardi, 2010). The effects of policy momentum might be conditioned by the ideological position of the national government. For example, a liberal government might be more

receptive to policy momentum on certain social issues than a conservative government. On the other hand, a conservative government might need stronger pressure from the international and domestic domains for policy momentum to be successful with social policies.

Political and non-political events can change the policymaking environment and constrain the options available to government officials in the policymaking process. According to Weible (2017, p. 3), each policy theory has a different way of understanding events, but the general idea is that they "can be anticipated and unanticipated" and "provide opportunities to achieve policy objectives." For example, social movements deliberately create events to change the policy agenda or process as a whole, whereas an earthquake is an unintentional event that government actors cannot control. Weible (2017, p. 3) suggests a simple example of an event is a bureaucracy releasing an "evaluative report that brings attention to the success or failure of a public policy in addressing an issue" that can influence future policy and legislative agendas. Another example of an "event" is a court decision. Some scholars suggest that "judicial policy making" is an activist form of decision-making and an overstep by justices, while others suggest that it is merely a judicial function that should be understood on its own terms (Feeley & Rubin, 2000). Regardless of the perspective, a decision being rendered from a judiciary can influence the legislative agenda and inform public policy. For example, when the Supreme Court of Canada ruled that the definition of "spouse" in the *Ontario Family Law Act* was discriminatory, it was only applicable to that statute, but it not only prompted Ontario to change several policies to align with a less discriminatory definition, but the federal and most provincial governments also responded to the decision (Wintemute, 2004). Even though some events are rarer than others, policy momentum can be propelled or hindered depending on the type of event. For example, if a court decision strongly suggests that a legislative remedy is required that is consistent with the momentum that is building, the likelihood of success increases. However, if a decision is not consistent with the momentum, the likelihood of success would decrease.

Finally, the domestic and international knowledge networks can affect policy momentum. This intervening mechanism draws upon the role of interdependence in policy diffusion scholarship and policy momentum. Social context and relationships can change individual perceptions and preferences (Sugiyama, 2008). Formal and informal networks can influence how diffusion processes occur. Formal networks (such as professional associations) and informal networks (such as policy communities) can create social pressure for policymakers to behave in a

certain way (Stone, 2015; Sugiyama, 2008; Tsingou, 2015). Greenhill (2010) finds that international organizations have the ability to promote human rights norms through socialization of its members. The members would rather adopt certain policies than be the one actor within a network that has not adopted human rights policies. Additionally, these networks can encourage members to adopt a policy through a "strength in numbers" logic. In other words, being part of a large network of actors that has adopted a policy can change the incentive structure associated with the policy change. The burden of proof that is placed on early adopters is lessened when a community has adopted a policy together (Elkins & Simmons, 2005).

Figure 2.7: Intervening Mechanisms and Political Motivations of Policy Momentum
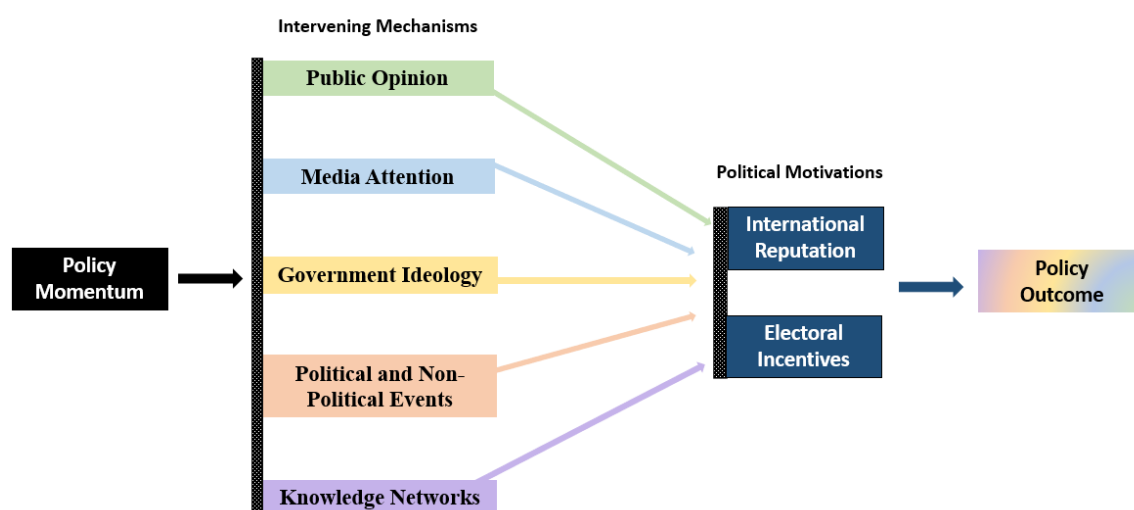
Drawing upon insights from domestic and international policy diffusion and multilevel governance, policy momentum identifies the multidirectional and multi-jurisdictional processes that lead to policy change. The intervening mechanisms I have identified above - public opinion, government ideology, media, and political and non-political events - are mechanisms that can increase or decrease the likelihood of policy momentum being successful. Indeed, as illustrated in **Figure 2.7**, the intervening mechanisms act as filters through which policy momentum passes and have the capacity influence the policy outcome. These intervening mechanisms are not deterministic, nor are they expected to operate identically in different policy areas. Rather, they help create expectations within the framework to better contextualize policy momentum.

2.4   Conclusion

The goal of this article was to specify a multidirectional and multi-jurisdictional theoretical framework to better understand policy change through processes of policy diffusion. I develop a novel framework called *policy momentum* that synthesizes the literature on global and domestic policy diffusion with insights from multilevel governance. Policy momentum builds upon the directional components of policy diffusion and uses insights from multilevel governance to introduce jurisdictional flexibility. In other words, I situate the timing of policy change at the centre of vertical and horizontal diffusion processes that allows for multiple jurisdictions to interact on a policy area.

The choice to write a theoretical article that describes policy momentum and outlines its assumptions and mechanisms is deliberate and follows in the tradition of public policy scholars (e.g., Sabatier, 1988; Polski and Ostrom, 1999; Feiock, 2013). The advantages of this approach are twofold. First, by focusing solely on outlining policy momentum, I can fully specify the framework along with its background assumptions and mechanisms that can affect how the framework operates. This allows for conceptual precision and comprehensiveness that is otherwise missed in an article that is accompanied by empirical analysis (Nelles & Alcantara, 2014). Second, developing the framework allows other researchers to engage in empirical research in a variety of settings. The theoretical article sets the foundation for a broader research program (Sabatier, 1988). As a result, policy momentum can only be "challenged (and defended) on theoretical grounds" (Nelles & Alcantara, 2014). Notwithstanding the limited opportunity to challenge policy momentum, a fully specified theoretical framework creates new opportunities for research and discussion surrounding policy change.

Future researchers might apply this framework in a number of ways. First, although I discuss policy momentum as a framework to understand the timing of national level policy change, the framework can be applied to other levels of government that have jurisdictions "above" and "below". Scholars might apply the framework to understand how the diffusion processes and mechanisms affecting policy momentum change with a different unit of analysis. Additionally, future research might consider different governmental structures that introduce new jurisdictional arrangements and consider the impact on how policy momentum operates. Moreover, the five mechanisms identified as potentially impacting policy momentum can be explored across different

policy areas. The framework does not prescribe how influential these mechanisms will be for a given policy area. Rather, they create expectations and highlight important elements to consider when applying policy momentum.

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3 Policy Momentum and Transgender Human Rights: Explaining National Antidiscrimination Policy Change

Transgender[46] recognition in public policy has become more widespread across Western democracies. Historically, transgender and lesbian, gay, and bisexual (LGB) identities have been conflated (Taylor et al., 2018). As a result, transgender and LGB activists have formed political coalitions that have led to transgender rights and LGB rights becoming intertwined over time (Taylor et al., 2018). While the transgender rights movement predates the LGBT+ movement (Currah et al., 2006; Murib, 2015; Taylor et al., 2018), disentangling sexual orientation and gender identity as distinct political identities is a relatively recent process in the social sciences (Haider-Markel et al., 2019). The process of disentangling transgender and LGB identities is also happening in public policy. In addition to health care policy, identification documents, and employment policy, many national governments have included gender identity and gender expression[47] as prohibited grounds of discrimination in their human rights frameworks.

What explains the variation in timing of transgender recognition in these frameworks across Western democracies? Several attempts to answer this question focus solely on processes of domestic or international policy/norm diffusion (Ayoub, 2015; Fernández & Lutter, 2013; Kollman, 2009) rather than taking into account the full range of influential factors that may exist at other levels of analysis. These rich literatures provide powerful theoretical accounts that focus analytical attention on different units of analysis, but they overlook "the complex governance environment in which solutions are implemented and the multidirectional pressure governments face to adopt similar policies" (Fay & Polischuk, 2021, p. 1). By failing to account for the multidirectional and multi-jurisdictional complexity inherent in at least some instances of policy

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[46] Transgender individuals are people whose gender identity is different from the sex assigned at birth. Some transgender people will undergo hormone therapy and surgery to transition, while others do not desire any form of therapeutic intervention but may present in ways that do not conform to traditional gender expectations (Dietert & Dentice, 2015; Namaste, 2008).

[47] Gender identity is "the internal sense of being male or female" (Taylor et al., 2018, p. 13). It is a continuum that is one of several markers of one's sex and is often understood to be "hardwired into the brain at birth" (Rudacelle, 2005, p. 292). Gender expression is the "outward manifestation of masculinity or femininity, or both" (Taylor et al., 2018, p. 13). For most individuals, their gender expression conforms to societal gender norms of how a "man" or "woman" should look. For people who are gender variant, they might express their gender in ways that do not align with societal expectations.

diffusion and policy change existing studies provide only partial explanations of the global and domestic factors that influence transgender policy change cross-nationally.

In this article, I draw upon an original theoretical framework called *policy momentum* that bridges these important literatures.[48] Policy momentum occurs when there is an accumulation of pressure from two separate directions, which in turn can generate policy change at a third level. In the case of federal systems, for instance, factors relating to international and domestic policy diffusion together may help explain the timing of when different national governments adopt specific policies. Ultimately, the mutually reinforcing pressure from subnational units and global actors generates the critical amount of policy momentum that makes policy change more likely to occur compared to maintaining the status quo. This article thus contributes to our understanding of LGBT+ public policy while also providing a more complete explanation of the conditions that produce variation in the timing of cross-national policy change more broadly.

I explore the explanatory power of policy momentum by applying the framework to explain the timing and pace in which Canada and Australia developed human rights policies to protect transgender individuals. Canada amended its *Canadian Human Rights Act* in 2017 to prohibit discrimination based on gender identity and gender expression, whereas Australia amended its *Sex Discrimination Act* to include gender identity in 2013. Given that both countries are federal systems and share a number of structural similarities, including a parliamentary governance system, subnational and national human rights commissions, and an accessible judiciary for legal remedy, the variation in timing of policy change is surprising. Insofar as we expect state behaviour toward transgender rights to reflect similar political struggles such as those experienced by the broader lesbian, gay, bisexual, transgender, and queer community (LGBT+)[49], the timing of policy change in these two cases is puzzling because Australia has historically lagged other Western democracies on LGB rights (i.e., marriage equality). However, with respect to transgender rights, Canada has been slower to address transgender policy issues compared to Australia.

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[48] This framework was first introduced and is fully elaborated in (McMahon, 2022) (Article 1 of the dissertation).

[49] Historically transgender and LGB identities have been conflated with each other (Taylor et al., 2018). As a result of transgender and LGBT activists forming political coalitions, in part out of necessity, transgender rights and LGB rights have become intertwined over time (Taylor et al., 2018).

Drawing upon 34 elite interviews and primary documents[50] gathered from the two countries between 2018 and 2021, I find that in both cases, policy change at the national level occurred as a result of the accumulated pressure – conceptualized here as *policy momentum* – generated by pro-transgender international policy diffusion and subnational policy change and advocacy. The origin of national policy change in both countries is traced to the emergence of a global norm that initially gained traction at the subnational level in each country. The primary source of pressure from these two levels of influence, global and subnational, varied between the cases; in Canada, the federal government was highly influenced by the diffusion of provincial policies, whereas in Australia the federal government was more influenced by its perceived international obligations. However, the time at which the subnational condition (i.e., policy change) is obtained affected the timing of national policy change. The presence and timing of the two levels of pressure, I argue, was decisive in the timing of policy change in the two countries.

This article proceeds in five sections. First, I briefly outline *policy momentum* as a framework for understanding national level policy change. Second, I discuss the methodology used in this article, as well as the strategy for case selection and the collection of empirical evidence. In sections three and four, I present the findings from the Canadian and Australian cases, respectively. The final section concludes and offers considerations for future research.

3.1   Theoretical Foundations

Policy momentum[51] is a framework through which we can understand the type and strength of pressure that is being placed on a government. The outcome to be explained is policy change (a discrete event) that is caused by ongoing processes. The multidirectional and multi-jurisdictional conceptualization of policy momentum builds upon the directional components of policy diffusion and creates jurisdictional flexibility by integrating scholarship on multilevel governance (Marks & Hooghe, 2004; Simmons et al., 2006). Rather than focusing exclusively on top-down or bottom-up diffusion, which is the dominant approach in the literature (Fay & Polischuk, 2021), policy

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[50] Primary documents include submissions for policy consultations, media reports, NGO reports, and parliamentary Hansards.

[51] Developed and elaborated in McMahon (2022) (Article 1 of the dissertation).

momentum theorizes how vertical and horizontal diffusion processes can happen at the same time and work together. The multidirectional processes occur through the existing mechanisms of policy diffusion: coercion, competition, learning, and emulation (Simmons et al., 2006). Importantly, policy momentum does not prescribe which mechanism or how many mechanisms can be involved in the process. Rather, the framework allows for flexibility to identify the appropriate mechanism(s) given the context.

Similarly, policy momentum operates under the assumption that policies can be multi-jurisdictional and policy ideas can be developed and promoted in more than one jurisdiction, regardless of how decision-making authority is distributed in a given country. Drawing upon the multidirectional nature of policy diffusion and the multi-jurisdictional nature of multilevel governance provides a means of theoretically integrating and specifying how global and domestic policy diffusion processes *together* can produce policy momentum and national policy change (McMahon, 2022). Policy momentum is premised on threshold and conjunctural effects, as conceptualized by Mahoney (2021, p. 265): "[T]hreshold and conjunctural effects are in operation when an ongoing process causes a discrete event. This causal pattern characterizes critical mass arguments: small changes cumulate in a process that eventually reaches a tipping point, at which time a discrete outcome occurs."

Policy momentum occurs when the vertical, horizontal, and peer pathways of diffusion are simultaneously occurring at different levels (above and below the unit of analysis). **Figure 3.1** illustrates policy momentum, specifically focusing on a national unit of analysis (highlighted with the yellow box). Crucially, the vertical, horizontal, and peer diffusion processes must converge to create multidirectional pressure. In other words, top-down and bottom-up diffusion work jointly with horizontal and peer diffusion to put pressure on the national government to generate policy change. However, policy momentum is not a deterministic framework; rather it highlights the importance of several ongoing processes that eventually intersect.

The vertical processes (illustrated with red arrows) show how national governments respond directly to international diffusion processes (top-down) or domestic diffusion processes (bottom-up). Policy pressure can also bypass the national government which can result in diffusion processes that initially start between the international and domestic levels. Horizontal and peer diffusion processes are identified using green arrows. Within the policy momentum framework, the term "horizontal diffusion" is reserved to describe processes occurring between units at the

domestic level. Illustrated using the L-shaped "Domestic" box, this includes both subnational to subnational diffusion and federal institutions (e.g., the judiciary) to the national government. To differentiate the source of pressure, I use the term "peer diffusion" to describe horizontal diffusion between countries to acknowledge that the source of diffusion is external to the state. In light of this, the "International" box is intentionally L-shaped to recognize both vertical and peer diffusion processes that are external to the state of interest. As illustrated in **Figure 3.1**, these concurrent pathways together generate policy momentum towards national level policy change. The specific timing of when these conditions are obtained in the respective countries explains cross-national variation in policy change.

Figure 3.1: Policy Momentum
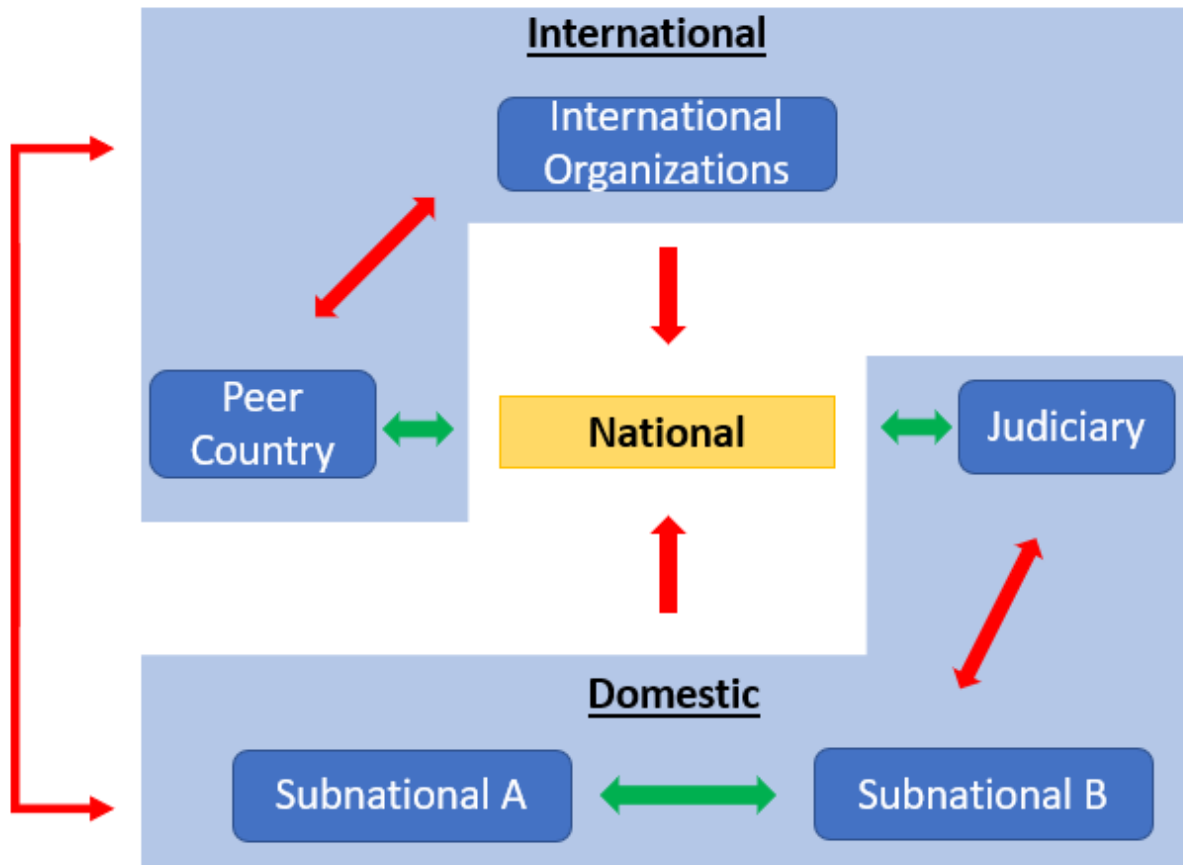
When pressure to compete with or learn from international organizations or peers within a policy network is combined with domestic diffusion processes that lead to policy pressure from

subnational units or national-level peers, policy momentum is created. National policy change is more likely to occur as a result of these combined sources of pressure by shaping national elite actors' preferences or perceptions. Why do national governments succumb to policy momentum? This framework does not conceptualize the process of change as deterministic, so it is possible that national governments can successfully resist the combined pressure from international and domestic sources. Policy momentum is likely to generate policy change due to two possible motivations among national policymakers: international reputation considerations and electoral incentives.

First, national policymakers may view policy change as necessary due to the perception that they have become a laggard on a given issue. In other words, a disconnect between a state's identity and the appropriate policies associated with a particular norm may create pressure for policy change. Second, experiences of other jurisdictions can alter the electoral consequences of a particular policy (Gilardi, 2010; Gilardi & Wasserfallen, 2019). Subnational policy experimentation, a widely recognized feature of federal states, can help facilitate policy change at the national level (Boeckelman, 1992; Lowery et al., 2011; Painter, 1991). This allows the subnational units to take on the "burden of proof" until a policy becomes more widely accepted and highlight potential electoral consequences for other jurisdictions.

These two motivations can also be shaped by domestic political and social mechanisms that can alter the salience and strength of different types of pressure by acting as political filters.[52] In other words, the likelihood of policy momentum generating change can increase or decrease based on five intervening mechanisms: public opinion, media attention, government ideology, political events, and knowledge networks. These intervening mechanisms are summarized in **Table 3.1** and illustrated in **Figure 3.2**.

Table 3.1: Intervening Mechanisms Affecting Policy Momentum

Intervening Mechanism	Description	Expectations
Public Opinion	Governments are responsive to public opinion on policy issues in order to boost chances of re-election (Bernardi, 2020; Kastellec et	When voters are against a policy, the pressure from policy momentum will need to overcome the electoral incentive structure that would

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[52] Consistent with stylized model of policy diffusion" put forward by Gilardi and Wasserfallen (2019).

	al., 2010; Soroka & Wlezien, 2010).	typically lead decisionmakers to not legislate on the issue.
Media Attention	Media can shape the policy agenda, public opinion, and influence diffusion through overlapping media markets (Lalancette & Tremblay, 2019; Soroka et al., 2013)	Policy issues that are widely reported on will likely make it to the policy agenda. The tone and quantity of coverage can condition the strength of pressure required for policy momentum to be successful.
Government Ideology	Ideology shapes the preferences of decision makers (Butler et al., 2017; Gilardi, 2010).	Ideological positions will condition how likely governments are to adopt policies and who they are willing to learn from.
Knowledge Networks	Actors (both governmental and non-governmental actors) form knowledge-based networks domestically and internationally that influence policy in each other's jurisdictions (Stone, 2015; Sugiyama, 2008; Tsingou, 2015).	The policies that other actors or governments are promoting within these networks can alter the success of policy momentum.
Political and Non-political events	Events that are exogenous to the legislative body can change the policy options available to government officials (Weible, 2017)	Events can constrain policy options such that policy momentum is more likely to be successful. However, events can also constrain options that would hinder the success of policy momentum.

Figure 3.2: Intervening Mechanisms and Political Motivations of Policy Momentum
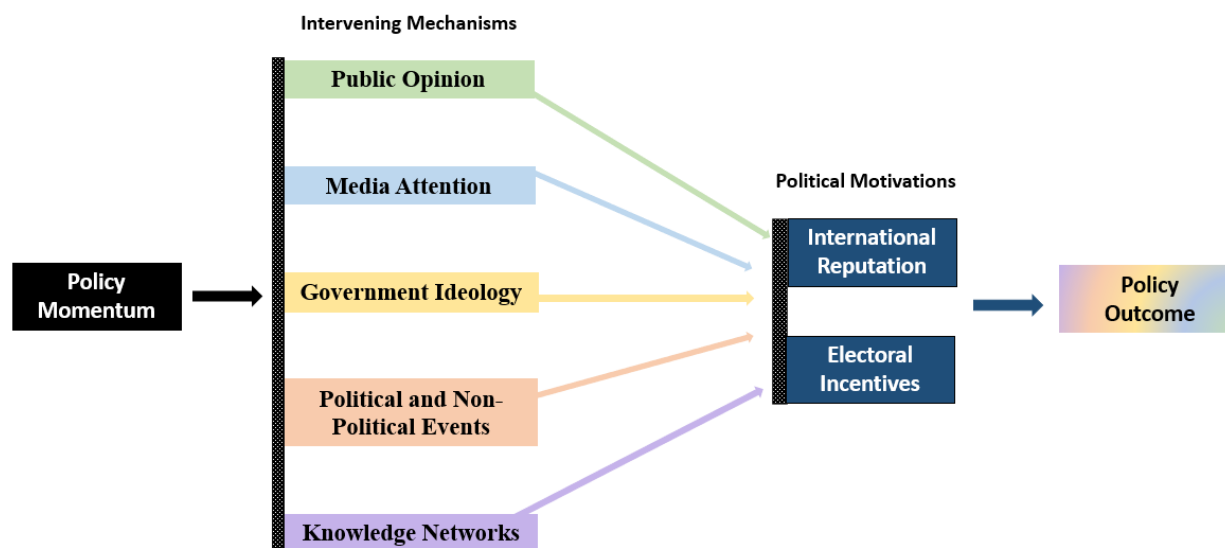
Drawing upon insights from domestic and international policy diffusion and multilevel governance, policy momentum identifies the multidirectional and multi-jurisdictional processes that lead to policy change. The intervening mechanisms I have identified above - public opinion, government ideology, media, and political and non-political events - are mechanisms that can increase or decrease the likelihood of policy momentum being successful. Indeed, as illustrated in **Figure 3.2**, the intervening mechanisms act as filters through which policy momentum passes and have the capacity influence the policy outcome. The intervening mechanisms ultimately activate the political motivations identified above (international reputation and electoral incentives) and together they can alter the policy outcome.

Since the intervening mechanisms will behave differently or may not be influential in a given context, policy momentum does not identify specific interactions between the intervening mechanisms and the political motivations. However, one motivation might be more actively guiding the decision-making if a particular intervening mechanism is present. For instance, public opinion may be more likely to activate the electoral incentives motivation whereas knowledge networks might be more closely aligned with the international reputation motivation. Although **Figure 3.2** is a simplified model for a complex and nuanced process, the model helps identify expectations within the framework to better contextualize policy momentum.

3.2   Data and Methods

3.2.1   Case Selection

To illustrate how policy momentum can explain the timing of national policy change, I use Canada and Australia as case studies. The *Canadian Human Rights Act* was amended in 2017 to prohibit discrimination based on gender identity and gender expression. The *Sex Discrimination Act* in Australia was amended to include gender identity in 2013. Both countries are federal systems and share a number of structural similarities, including a parliamentary governance system, subnational and national human rights commissions, and an accessible judiciary for legal remedy. These two countries reside outside of the supranational structure of the European Union which would introduce additional factors or mechanisms to consider. In addition, transgender human rights can be legislated at both the national and subnational levels in each country. With respect to sexual orientation and gender identity and expression (SOGIE) rights, there has been varied success in the two countries. Canada was the fourth country in the world to legalize same sex marriage in 2005 (compared to the Netherlands in 2001, Belgium in 2003, and Spain in 2005), which makes it puzzling that Canada lagged behind many countries with respect to transgender rights. The inclusion of gender identity in antidiscrimination legislation emerged in the early 2000s across many European countries including Finland in 2005, Germany in 2006, and Croatia in 2008. On the other hand, Australia was comparatively late to legalize same-sex marriage in 2017, but prohibited discrimination based on gender identity in 2013. Policies focused on sexual orientation tend to precede policies targeting the human rights of transgender people. This is in part due to how relatively new the term "gender identity" is compared to sexual orientation in public policy.[53] However, in Australia, human rights protections focused on gender identity were successful before rights specific to sexual orientation, such as marriage equality.

Each province and territory in Canada has a Human Rights Commission and corresponding law called a Human Rights Code or Human Rights Act. As outlined in **Table 3.2**, at the national

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[53] For example, the Ontario Human Rights Commission first recommended extending protection from discrimination based on sexual orientation in 1977 (Ontario Human Rights Commission, 2009). The Commission did not recommend the same protection for gender identity until 1999 (Ontario Human Rights Commission, 1999).

level, the Canadian Human Rights Commission and the *Canadian Human Rights Act* function as the main antidiscrimination institution and legislation. In the Australian states and territories, human rights commissions are called Equal Opportunity Commissions or Anti-Discrimination Commissions and the corresponding acts are the Equal Opportunity Acts or Anti-Discrimination Acts. The national commission, however, is called the Australian Human Rights Commission. Despite great efforts, Australia does not have a consolidated document that outlines prohibited grounds of discrimination. Instead, there are several acts that the national legislature has enacted to protect human rights. For example, sex, gender identity, sexual orientation and intersex status are protected though the *Sex Discrimination Act* (1984), whereas protections for those with disabilities are covered in the *Disability Discrimination Act* (1992).

Table 3.2: Human Rights Institutions in Canada and Australia

Institution	Canada	Australia
Subnational Human Rights Commission	Human Rights Commission	Equal Opportunity Commission Anti-Discrimination Commission
Subnational Human Rights Legislation	Human Rights Code Human Rights Act	Equal Opportunity Act Anti-Discrimination Acts
National Human Rights Commission	Canadian Human Rights Commission	Australian Human Rights Commission
National Human Rights Legislation	*Canadian Human Rights Act* (1985)	*Sex Discrimination Act* (1984)

3.2.2   Method

To analyze these cases, I rely on process tracing (Beach & Pedersen, 2013; Bennett & Checkel, 2015) to reconstruct the policy processes in each country. Process tracing uses existing causal explanations with descriptive evidence to generate a sequential account of the phenomenon of interest (Collier, 2011; Mahoney, 2015). I draw upon 34 semi-structured elite interviews with

politicians and non-governmental organization staff, conducted in-person and by telephone between 2018 and 2021.[54] These individuals were purposefully selected based on their involvement with or expert knowledge of the events in question, including politicians from multiple political parties in each country and nongovernmental organization leaders and staff. When permitted by the interview participant, they are identified in the case study analyses below; otherwise, identifying information is excluded. In addition, primary documents available publicly or acquired through freedom of information requests were used to describe the events that preceded the inclusion of gender identity in national human rights legislation in Canada and Australia. These documents include parliamentary Hansards from Canada and Australia, publicly available reports from international and domestic organizations involved in the process, and documents from national and subnational human rights commissions. By combining the interviews and primary documents, I identify the factors that generated the change in transgender antidiscrimination policy. The following sections provide a broad overview of the changes in Canada and Australia before providing a detailed analysis and application of the *policy momentum* framework.

3.3   Canada

3.3.1   Summary of the Canadian Case

The process by which the *Canadian Human Rights Act* was amended to include gender identity and gender expression as prohibited grounds of discrimination is summarized in **Figure 3.3**. This figure illustrates the relationship between the international and domestic processes that ultimately led to successful policy change. I also identify the diffusion mechanisms (DM) that help facilitate policy momentum and the intervening mechanisms (IM) that contributed to the success of policy momentum. **Figure 3.3** primarily illustrates the main sources of pressure. However, I have included a red dashed arrow to indicate vertical diffusion that existed but was not the initial site of diffusion.

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[54] The author's university Research Ethics Board provided approval for the interviews that were conducted (Project ID: 111713). See Tansey (2007) for a discussion on the methodological benefits of combining elite interviews and process-tracing.

To briefly summarize the empirical case in relation to **Figure 3.3**, the first province in Canada to successfully amend its human rights legislation was Ontario. Two features of the process in Ontario are especially important: this policy was co-sponsored by all three parties in the provincial legislature and established international norms on human rights and emerging norms on protecting sexual orientation, gender identity and expression rights were discussed in the legislative assembly. For this reason, a solid red arrow points from the "Emerging Global Norm" to Ontario as the first site of diffusion in the sequence of events. Once Ontario's legislation passed in 2012, every province and territory followed Ontario's lead within five years. The other provinces and territories frequently cited Ontario as an example to emulate and often made note of international obligations such as the Universal Declaration of Human Rights (UDHR). These simultaneous events are the second step in the sequence. There is also a dashed arrow pointing to the other provinces from the emerging global norm to acknowledge the secondary vertical diffusion process.

Finally, the third step in the sequence is the diffusion of policies from provinces and territories and the international norm to the federal government. There are two arrows that point to the Canadian government the international diffusion process and the domestic diffusion process. These arrows create multidirectional and multi-jurisdictional pressure on the government that ultimately led to policy change. The multiple diffusion mechanisms and intervening mechanisms associated with the domestic processes reaching the national level indicate a stronger influence compared to the international processes. The rest of this section will discuss this process in more detail.

Figure 3.3: Policy Momentum in Canada
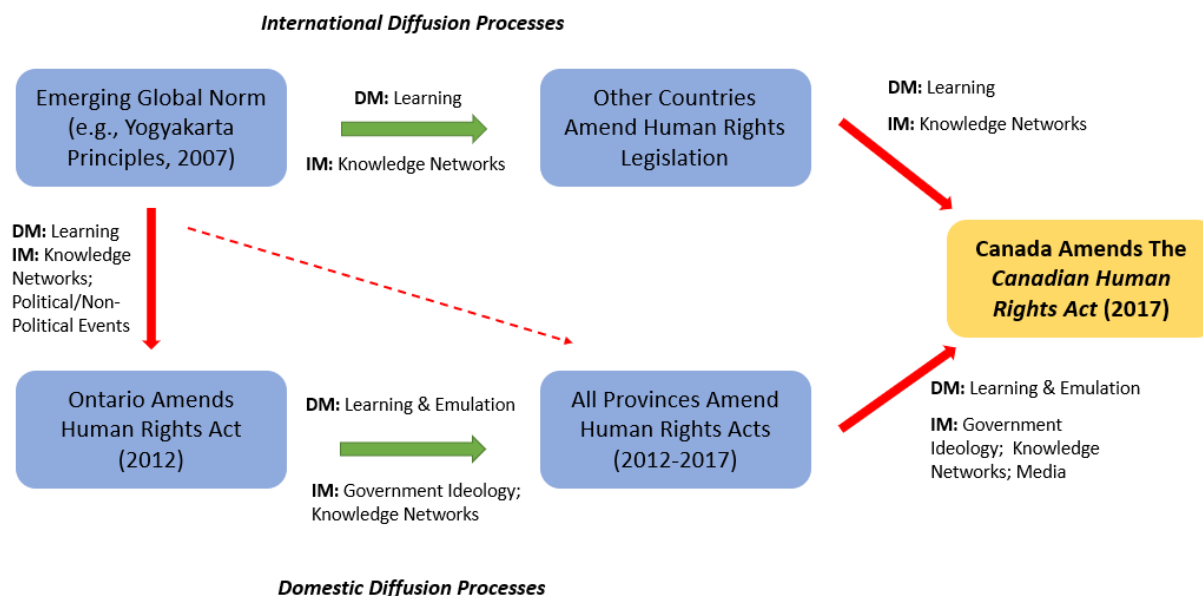
Note: This figure is a simplified illustration of policy momentum in the Canadian case. The labels "DM" and "IM" are used to identify the diffusion mechanisms and intervening mechanisms, respectively.

3.3.2   Detailed Canadian Case

Although two high profile meetings on sexual orientation and gender identity and expression rights happened in Montreal, Canada (2006)[55] and Yogyakarta, Indonesia (2007)[56], the international push for gender identity to be a protected ground of discrimination had been happening for over a decade. The first institution in Canada to recommend gender identity as a prohibited category of discrimination was the British Columbia Human Rights Commission in their report "Human Rights for the Next Millennium" in 1998. The following year, the Ontario Human Rights

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[55] The Declaration of Montreal was presented at the International Conference on LGBT Human Rights and listed several proposals promoting global recognition of SOGIE human rights. For example, the Declaration urged governments to "put LGBT human rights on the agenda of the new UN Human Rights Council." (Swiebel & Wintemute, 2006, p. 4).

[56] The Yogyakarta Principles, agreed upon in 2006, were created by a group of international human rights experts as a "universal guide to human rights which affirm binding international legal standards with which all States must comply." The report includes recommendations regarding the legal treatment of sexual orientation and gender identity. While the Principles were not a legally binding, state-signed agreement, it was one of the first international documents that explicitly called for states to prohibit discrimination based on gender identity. For additional information on the content of the Principles, see the Yogyakarta Principles, available at http://www.yogyakartaprinciples.org

Commission released a similar report entitled "Toward a Commission Policy on Gender Identity". At the national level, the Minister of Justice appointed a panel to review the *Canadian Human Rights Act* in 1999 and released its report the following year. Known as the "La Forest Report," it was the first federal institution to recommend adding gender identity to the *Canadian Human Rights Act* (Canadian Human Rights Act Review Panel, 2000).

All three reports outlined the domestic and international context for transgender human rights. In the BC Human Rights Commission's report, it noted that the province would be "the first jurisdiction in Canada to do so" and that there were few examples of human rights protections globally (British Columbia Human Rights Commission, 1998). The report outlined the limited international protections at the time including European Convention articles, state legislation in Australia, Singapore, and state and local legislation in the United States (British Columbia Human Rights Commission, 1998, pp. 13-14). The discussion paper released by the Ontario Human Rights Commission in 1999 included an overview of how jurisdictions in the United States, the United Kingdom, and Australia view transgender human rights, the term gender identity, and related terms (Ontario Human Rights Commission, 1999, pp. 39-41). More broadly, the *La Forest Report* made note of the "considerable number of international equality obligations" by which Canada is bound and recommended that the *Canadian Human Rights Act* include a preamble that refers to these international agreements, similar to other provincial and territorial legislation that cite the *Universal Declaration of Human Rights* (Canadian Human Rights Act Review Panel, 2000, p. 12).

As the above examples illustrate, the human rights commissions in Canada form a domestic knowledge network and participate in a broader global knowledge network with other human rights commissions that are at the forefront of human rights issues. The Canadian Human Rights Commission and the provincial human rights commissions communicate through their joint membership in The Canadian Association of Statutory Human Rights Agencies (CASHRA).[57] An executive director from a provincial human rights commission described the relationship among the commissions saying:

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[57] Established in 1972, CASHRA is described as "as a network of federal, provincial and territorial human rights commissions" that "share a mandate of protecting human rights across Canada" and work together on public education, research, policy development, communications, and formal complaint processes (Canadian Association of Statutory Human Rights Agencies, 2018).

…all the different commissions across the country, we talk regularly, we rely on the bigger human rights commissions to kind of support with that [policy] research and kind of policy work just because we don't have [the resources] …and those sessions usually identify trends like right now it's all about COVID vaccines, vaccine, passports, mask, mandates, all this sort of stuff. So, talking about when gender identity and gender expression kind of came about as a thing of number of years ago, that was on the agenda. Right. Okay, so yes, we talk about that as a group and because the commissions at the bigger commissions have people to do that sort of research, they'll do it. And then they might come up with guidelines for employers or for service providers or whatever, and then we steal whatever they got (Personal Interview, June 2021).

Echoing this sentiment, another director of a provincial human rights commission said that the commissions across Canada started a strategic planning process to enable more collaboration. For instance, they coordinated the structure of the legal teams and executive directors:

They [the legal counsel] know who they are across the country, that they can, they have regular meetings. They share white papers, policy papers, new development, case law, things like that. So, it's much more collegial and collaborative in that aspect. We do it at the manager level. Also, as I said, that the chief commissioners and the executive directors, we also created a policy and research team. So the folks here that are in that area, we'll collaborate with their, with our counterparts, and we'll also do it from a communication perspective. So all educators and communicators in commissions, they share ideas and, best leading practices (Personal Interview, June 2021).

When asked if provincial commissions interact with international counterparts, one human rights commission director said: "Not really. Canada does do a lot, obviously I don't know who you've talked to, but they're the ones that have that international kind of component. We just don't have the resources to do that here" (Personal Interview, June 2021). The Canadian Human Rights Commission also confirmed that it works with "NHRIs[58] internationally" through The Global Alliance of National Human Rights Institutions[59] (Personal Interview, February 2020). The Global Alliance of National Human Rights Institutions holds general meetings and international

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[58] National Human Rights Institutions

[59] Formerly the International Coordinating Committee of NHRIs (ICC). According to the United Nations Human Rights Office of the High Commissioner, National Human Rights Institutions must adhere to the standards set out in the Paris Principles, endorsed by the UN General Assembly in 1993. The Global Alliance of National Human Rights Institutions (GANHRI), in collaboration with the UN Human Rights, grants membership and two levels of status based on the criteria set out in the Paris Principles (Office of the High Commissioner for Human Rights, 2022).

conferences in cooperation with UN Human Rights (Office of the High Commissioner for Human Rights, 2022). Further, the Canadian Human Rights Commission highlighted several international organizations and documents that help them stay up to date on emerging human rights issues. For instance, in an interview with senior policy advisors at the Canadian Human Rights Commission, they mentioned the International Commission of Jurists "SOGI Casebook"[60], the Yogyakarta Principles, the UN International Experts, and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) as important actors or documents (Personal Interview, February 2020). Taken together the Canadian human rights commissions form a knowledge network that meet regularly to discuss the human rights agenda with information from both domestic and international sources.

Focusing on the Canadian federal government, in 2005 a private member's bill (Bill C-392) was introduced in the House of Commons by New Democratic Party Member of Parliament Bill Siksay that proposed adding gender identity and expression to the *Canadian Human Rights Act*. Bill C-392 was not successful, nor were subsequent bills proposing the same changes in 2006, 2009 or 2011. It was not until June 2017 that the Canadian federal government passed Bill C-16, prohibiting discrimination based on gender identity and gender expression. In the time that the federal government had failed to pass legislation, every province and territory had made amendments of this nature to its human rights act. As mentioned previously, the first province to prohibit discrimination based on gender identity and gender expression was Ontario. **Table 3.3** provides details on when each province and territory passed legislation and the type of influence cited in parliamentary debates. Influences were categorized as "Global", "Provincial", or both based on the examples cited in legislative debates.

Ontario's Bill 33, known as "Toby's Act," was co-sponsored by Members of Provincial Parliament (MPP) Cheri Di Novo (New Democratic Party), Christine Elliot (Progressive Conservative Party) and Yasir Naqvi (Liberal Party) and proposed adding gender identity and gender expression as prohibited grounds of discrimination in Ontario's Human Rights Code. In

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[60] The International Commission of Jurists "SOGI Casebook" was a project that began in 2009 that collected national court decisions that addressed questions concerning sexual orientation and gender identity. The purpose is to help lawyers, judges, and human rights activists better understand how to use the law to protect individual rights and provide evidence for the claim that law on sexual orientation and gender identity is global in nature (ICJ, 2018).

June 2012, the provincial legislature passed Bill 33, making Ontario the first province[61] in Canada to make this change. While debates for the bill made note of federal legislation being considered at the time (Bill C-279), a critical element of the debates was the perception of Canada and Ontario at the international level. For example, during the second reading of Bill 33, Cheri Di Novo (NDP MPP) said:

> I could talk about where it's better in the world. It is better in other jurisdictions. The Northwest Territories has gender identity in their human rights code. We know it can be done in Canada. The entire European economic union recognizes gender identity as a way of discriminating against people. So, we're a little behind here, but we can catch up. I'm hopeful, today, Mr. Speaker, that that's exactly what we're going to do (Legislative Assembly of Ontario, 10 May 2012).

Changing global practices were also emphasized in the Standing Committee on Social Policy debates for "Toby's Law." Helen Kennedy, the Executive Director of Egale Canada[62], told the legislative committee:

> We know that 40% of our UN member countries criminalize homosexuality and discriminate against our LGBT populations. Canada needs to be a leader in this regard. Currently, there are only six countries around the world that have protection for trans people under their Human Rights Codes. That's really appalling. We know that Ontario will now be the second jurisdiction in Canada, and we should be incredibly proud of that, but we have more work to do (Legislative Assembly of Ontario, 11 June 2012).

Within five years of Ontario passing Toby's Act, the rest of the provinces and territories passed similar legislation with many citing international obligations and global reputation as reasons for the change. For example, Manitoba amended its human rights code in the same year shortly after Ontario. During the third reading of Bill 36, Andrew Swan , then Manitoba's Minister of Justice and Attorney General, made clear the global *and* inter-provincial dynamics under

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[61] The Northwest Territories was the first jurisdiction in Canada to include gender identity in its human rights act in 2002. However, this case is unique because NWT did not have a human rights code prior to 2002. Gender identity was a protected ground of discrimination from the beginning of the human rights legislation.

[62] Egale Canada is a national Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Two-Spirit (LGBTQI2S) advocacy organization. The organization engages in research, education, awareness, and advocacy in Canada and around the world (Egale Canada, 2019).

consideration: "This bill will continue Manitoba's reputation as a leader in human rights by expanding protections against discrimination to socially disadvantaged persons and transgendered persons. We want Manitoba to continue to be seen not just in Canada, but by the world as a place of tolerance and of diversity" (Legislative Assembly of Manitoba, 14 June 2012). At the time, Manitoba was only the second province in Canada to prohibit discrimination based on gender identity and gender expression and few examples existed worldwide. Mr. Swan's comments indicate a recognition that global processes were changing, and that Manitoba (and Canada) were at the forefront of this change, which helped to bolster Canada's reputation as a human rights leader.

Ontario's legislation and the subsequent policy put forward by the Ontario Human Rights Commission served as examples for the other provincial and territorial governments. Cheri Di Novo, former Ontario NDP MPP said representatives from nearly every province called her when they were proposing similar legislation because Ontario and specifically Di Novo was considered a leader on the policy (Personal Interview, Cheri Di Novo , June 2021). Additionally, an executive director of a provincial human rights commission described their experience saying "it was starting to happen across the country and they [the provincial legislature] reached out to us and said, is this a thing? And I said, yes, do it" (Personal Interview, June 2021). Di Novo also suggested that once Ontario had passed its legislation, part of the motivation for other provinces was related to political branding. She said: "everybody wants to march in their big city's pride [parade]. So, everybody wanted to march, being able to put that banner on, you know, themselves. So it spread" (Personal Interview, Cheri Di Novo, June 2021). The policy learning and emulation across provinces and territories is also evident in the legislative debates.

The influence of Ontario and other provinces in Newfoundland was particularly clear from the Hansard records. For example, during the second reading of changes proposed to the *Newfoundland and Labrador Human Rights Act* in 2013, members of the House of Assembly explicitly looked to other provinces for guidance. Minister of Justice and Government House Leader Darin King said: "We have continued to consult and listened to what people were saying to us and we have looked at what other provinces are doing, and very clearly, we now believe it is time to update our legislation" (Newfoundland House of Assembly, 21 November 2013). Moreover, while determining whether gender identity and gender expression should both be prohibited grounds of discrimination, Andrew Parsons, a Liberal member of the Newfoundland

and Labrador House of Assembly (MHA), noted that "Manitoba, PEI, Nova Scotia, and Ontario have now put this language in their legislation, and it seems that the trend is to include both" (Newfoundland House of Assembly, 21 November 2013). The Newfoundland Human Rights Commission has continued to rely on the Ontario Human Right's Commission's *Policy on Discrimination and Harassment Because of Gender Identity* definitions of gender identity and gender expression.

Table 3.3: Global and Provincial Influences in Canadian Policy Adoption

Date Passed	Province	Influences: Global, Provincial or Both
October 30, 2002	Northwest Territories	N/A
June 13, 2012	Ontario	Global
June 14, 2012	Manitoba	Global and Provincial (Ontario)
November 30, 2012	Nova Scotia	Global and Provincial (OHRC)
November 25, 2013	Newfoundland and Labrador	Global and Provincial (ON, MB, PEI, NS)
December 6, 2013	Prince Edward Island	N/A
December 8, 2014	Saskatchewan	Global
June 10, 2016	Quebec	Provincial
July 26, 2016	British Columbia	Global and Provincial
December 7, 2016	Alberta	Provincial
March 13, 2017	Nunavut	Provincial
May 5, 2017	New Brunswick	Provincial
June 13, 2017	Yukon	Global and Provincial
June 19, 2017	**Canada**	Global and Provincial

The federal government was the last jurisdiction in Canada to formally prohibit discrimination based on gender identity and gender expression. Even though legislation had been proposed at the national level many times, it was not until all provincial and territorial governments had passed and implemented legislation that the federal government was successful. This is in part

due to a newly elected Liberal government under Justin Trudeau in 2015 who was more open to passing legislation protecting transgender human rights. The ideological position of the government conditioned the strength of pressure from both vertical and horizontal diffusion processes. More specifically, including transgender people in the *Canadian Human Rights Act* aligned with the ideology of the government which provided support for policy momentum.

It is also clear that the creation of a coalition of support for Bill C-16 at the federal level was at least partially spurred by provincial policy experimentation and experience. At the time that Bill C-16 was being debated in 2016 and 2017 the Northwest Territories had had protections in place for over a decade and provinces such as Ontario and Manitoba had five years of experience prohibiting discrimination based on gender identity and gender expression. Since those against amending the *Canadian Human Rights Act* were concerned about cisgender[63] people claiming to be transgender to gain access to sex segregated spaces[64], the provincial experience became an important tool to counter those concerns. In other words, the potential electoral consequences of bad policy were in part alleviated through the provincial experience.

During debates for the second reading of Bill C-16 in the Senate, Senator Grant Mitchell said "eight Canadian provinces and one territory have human rights legislation that includes gender expression and/or gender identity. The world has not somehow been turned upside down by the extension of trans rights and protections in provincial and territorial jurisdictions. There has not been an epidemic of men dressing up as women to commit crimes" (Senate Debates, 28 November 2016). Senator Mitchell's remark was echoed by many others in the Senate when concerns were raised.[65]

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[63] Cisgender individuals are defined as those holding a gender identity that corresponds with their birth-assigned sex category – that is, the designation of 'male' or 'female' determined based in their anatomy at birth.

[64] Senator Donald Plett expressed concern about cisgender men trying to gain access to women's washrooms by pretending to be transgender (Summarized by Senator Lillian Eva Dyck on Feb. 28, 2017). Senator Betty Unger expressed similar concerns about privacy and security of women's only spaces (Unger, Senate Debates, 2 March 2017).

[65] Some of the Senators who had similar statements include: Senator Jane Cordy (November 28, 2016), Senator Mobina Jaffer (December 1, 2016), Senator Renée Dupuis (February 8, 2017), and Senator Chantal Petitclerc (February 9, 2017).

In addition to relying on provincial experience to pass the Bill, Members of Parliament and Senators recognized that the provinces and territories were leaders on this issue. Liberal Member of Parliament Patty Hajdu flagged the importance of provincial leadership:

> [W]e are joining provinces that have made movement in this regard as well and are taking steps to ensure that those of us who are the most vulnerable, including people who have a different gender identity, have the right and the opportunity to live, contribute, and participate in their communities in fulsome ways. I think we are joining that work. (House of Commons Debates, 18 October 2016).

In recognizing that the federal government is joining the work of the provinces, Ms. Hajdu highlights the momentum that has contributed to changes in federal legislation. An interviewee said, "the provinces were helpful in terms of understanding and learning [about the issue]" (Personal Interview, February 2020). The above comments about joining the provinces or pointing to the provinces as inspiration highlights the subnational horizontal diffusion process and the bottom-up diffusion from the provinces to the federal government.

International considerations and Canada's global identity were highlighted in parliamentary debates and interviews with political elites which focused on Canada's global identity. Kevin Lamoureux, a Liberal Member of Parliament, spoke about how provinces have moved on the issue and the importance of passing this bill for international recognition:

> Ottawa is to demonstrate leadership. Other provinces have already moved, and some provinces need to move a little more. In the past, Canada has played a very strong international role. Passing this legislation and making it a part of our Human Rights Act will give Canada that much more clout when we talk about issues such as this internationally (House of Commons Debates, 18 October 2016).

Similarly, even though at least 10 interview participants focused on the example set by the provinces[66], the perception of Canada as a "human rights leader" was frequently mentioned by Members of Parliament and Senators. For example, one Senator said that Canada did not have international inspiration (beyond "one or two European friends"); rather, Canada is a strong leader

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[66] Neatly summarized by one senator as "the provinces leading pushes the federal government to jump in" (Personal Interview, February 2020)

on these issues (Personal Interview, October 2018). Indeed, another Senator echoed this sentiment by suggesting that accepting difference and promoting human rights is "quintessentially Canadian" (Personal Interview, February 2020). Ultimately, Bill C-16 was passed in June 2017.

The inclusion of gender identity and gender expression in the Canadian Human Rights Act was the result of multidirectional vertical and horizontal diffusion processes characteristic of policy momentum. I find evidence of bottom-up vertical diffusion from the provincial government to the national government and top-down diffusion from international norms to the Ontario government and the federal government. Moreover, horizontal diffusion across the provinces took on the "burden of proof" by demonstrating the protection of transgender people from discrimination does not cause political problems. The provincial legislation was an important topic within the debates at the federal level before Bill C-16 was passed. In addition, the role of provincial human rights commissions and the Canadian Human Rights Commission highlights the impact of knowledge networks within policy momentum. As members of both domestic and international communities, human rights commissions have the most contemporary information about global human rights issues that should be addressed. Not only did they help place human rights protections for gender identity on the political agenda in the late 1990s, they also maintained an advisory role for governments at all levels. I provide a more detailed discussion of the other mechanisms identified in policy momentum in the next section.

3.3.3   Intervening Mechanisms in Canada

Policy momentum identifies five intervening mechanisms that can influence the likelihood of policy change. The mechanisms are public opinion, media attention, government ideology, political events, and knowledge networks. In Canada, knowledge networks and, to a lesser extent, the media played a role in promoting policy momentum. Political ideology and public opinion do not account for variation in policy outcomes but had a role in the policy momentum process. Finally, political and non-political events were not identified in primary documents or by interviewees as an important mechanism for understanding policy change.

As discussed in the previous section, knowledge networks played a significant role through the provincial and federal human rights commissions. The human rights commissions are members of domestic and international networks that engage in meetings and conferences to share

experiences. These networks promote policy diffusion through learning by translating global practices to the domestic context through provincial and territorial human rights commissions. The knowledge sharing through these networks had a significant impact on the success of both vertical and horizontal diffusion processes.

When the media was discussed by interviewees, there was variation in terms of the perceived influence of this factor on policy change. Policy momentum can be affected by the media based on the amount of coverage and the tone of the coverage. For example, when Ontario passed Toby's Law in 2012, the first Canadian province to do so, it barely made the news. Cheri DiNovo, a sponsor of the bill, wrote: "in the press, Toby's Law, when it actually became law, was a tiny sidebar, though we were the only major jurisdiction in all of North America to have added trans rights to human rights. It should have been huge news" (DiNovo, 2021, p. 142). The lack of media coverage surrounding the changes in Ontario's legislation did not contribute to the horizontal diffusion that occurred across Canadian provinces. In contrast, when the national policies were being considered, the media may have helped policy momentum succeed. As one Conservative Member of Parliament said the media was "helpful in promoting it instead of attacking it or not cover it, which is probably the worst thing right?" (Personal Interview, October 2018). Indeed, an opponent of the bill said the media is "huge on every issue" and felt the media was "slanted against [their] position" because the coverage was positive (Personal Interview, February 2020).

Although public opinion and government ideology are theorized to influence the success of policy momentum, the evidence suggests that these mechanisms had limited effect. The influence that public opinion and electoral incentives have on the decisions of politicians was described by Ontario MPP Cheri Di Novo:

> I don't think the electorate knows their own power. I mean, now I'm back in church work, and I might constantly be speaking to clergy who represent hundreds of voters who don't feel like they have any power at all. And I'm saying, of course, you've got power. You know, you represent, I mean, what do politicians want? They want to get re-elected. Um, you know, so we're elected. So, like you have incredible power, use it, you know, don't just sign petitions or write letters, like actually, you know, have an audience with people, get to know them, um, get to know their staff (Personal Interview, June 2021).

The importance of re-election was echoed by Canadian interviewees. An opponent of the Canadian bill said the previous attempts to include gender identity and gender expression in 2006, 2009, and

2011 were unsuccessful in part due to previous governments not wanting to address it. They noted that members of the House of Commons are concerned with re-election and transgender rights are a controversial issue (Personal Interview, February 2020). In fact, a previous iteration of Bill C-16, a private member's bill, was before the Senate around the time that an election was being held. Instead of supporting the Bill, the government of the day was concerned about losing votes and therefore would not re-introduce the Bill as a government bill to help expedite the process. The reasoning was that if the private member's bill was successful on its own, then the government of the day could take some credit without suffering potential electoral consequences (Personal Interview, February 2020). As a result, government ideology and public opinion, as it relates to re-election, decreased the likelihood of policy momentum being successful.

However, the horizonal diffusion across provinces that contributed to policy momentum indicates that government ideology was not filtering the policy choices. Policy issues are often thought of in terms of ideological divides (Gabel & Huber, 2000). In particular, policies such as human rights protections for transgender people tend to be associated with left-wing ideology. While the Liberal Party of Canada was the government of the day when the national bill was passed, there is evidence to suggest that policy momentum was not only developed by right and left-leaning parties but was also successful across ideological lines. For instance, the Progressive Conservative Party in Newfoundland and Labrador introduced the amendments to the Newfoundland and Labrador Human Rights Act (Government of Newfoundland and Labrador, 2017). In addition, the legislation in Ontario was co-sponsored by MPPs from the Liberal Party, the New Democratic Party, and the Progressive Conservative Party (Bill 33, "Toby's Act" 2012). This is not to say that all right and left-leaning policymakers as individuals were influenced by the multidirectional pressure created by policy momentum, but the momentum backing the national bill gained support across political parties. At the federal level, Conservative Member of Parliament, Michael Cooper, indicated he supported the bill, despite personally not fully understanding how necessary it is:

> I reiterate my earlier point that there are many in the transgender community who say that this would be meaningful to them. From the standpoint that I oppose discrimination against transgender Canadians and to the degree that the inclusion of gender identity and expression would remove any ambiguity that potentially exists, which I do not believe there is, but to the degree that there might be, I am prepared to support Bill C-16 because I

support it in principle so we can get it to committee (House of Commons Debates, 18 October 2016).

Although there is limited public opinion data on support for transgender rights in Canada, nearly every interviewee suggested that public opinion was not part of the motivation behind policy change. The overwhelming response from activists, politicians, and other government actors suggested that prohibiting discrimination based on gender identity was either not top of mind for the public or the majority of people likely did not have a strong preference. For example, one Parliamentarian said, "the general public is not focused on these types of [social] bills" (Personal Interview, February 2020). In other words, the interviewee felt that social issues receive attention on a case-by-case basis compared to the type of attention a bill about the economy might receive. In addition, another Canadian senator assumed that there was "not widespread support" for Bill C-16 (Personal Interview, February 2020). When asked about how the public felt about policy change in the provinces, an executive director from a human rights commission in Canada said, "I don't think there was any opinion before, like I just don't think it was in the public consciousness in 2013" (Personal Interview, June 2021). In addition, a women's advocacy group that supported one of the provincial bills said they received "no pushback, complaints or criticism – it was a different climate back then" (Personal Interview, October 2018). With this in mind, it is unlikely that public opinion strongly impacted policy momentum. I return to these mechanisms in the context of Australia after an exploration of the process that led to Australia's policy change.

3.4   Australia

3.4.1   Summary of the Australian Case

Australia followed a similar path to Canada in terms of the events that led the federal government to protect transgender human rights by amending its *Sex Discrimination Act* in 2013. However, the events leading up to the policy change, summarized in **Figure 3.4**, began at an earlier point in time. The first state in Australia to prohibit discrimination based on gender identity was Victoria in 2000. Its state government was not only influenced by international obligations and reputation, but also by legislation that existed in the other states and territories. At the time, several states had antidiscrimination legislation in place from the early 1990s that protected transgender people using

the terms "transsexuality"[67], "transgender status"[68], and "gender history"[69], but the language was becoming outdated.[70] While some Australian states had made changes, the national government did not have an existing policy protecting transgender people from discrimination in 2000 when the state of Victoria changed its policy. The Victorian Legislative Assembly cited the states that had the outdated terminology as examples for how and why it should amend the Victorian Equal Opportunity Act.

The inclusion of "gender identity" in Victoria's antidiscrimination legislation became an example for other states to update the wording in their legislation. During the second reading of the bill in the Victorian Assembly, it was made clear that while the term "transgender" is used in other states, gender identity is used in the bill to broaden the scope of protection to intersex people.[71] This relationship is identified in **Figure 3.4** using an arrow from Victoria to the other states and territories with the label identifying both learning and emulation as diffusion mechanisms. In addition, Australian governments at the subnational level were influenced by the changing international processes. This finding is illustrated by a dashed arrow pointing to other states and territories from the international level and to illustrate a secondary source of vertical diffusion. Finally, the third part of the sequence is when the Australian government passed legislation prohibiting discrimination based on gender identity. Similar to the states and territories,

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[67] Prior to 2003, the Australian Capital Territory had the term "transsexual" in its Discrimination Act (1991). The Act defined a transsexual as "a person of one sex who – a) assumes the bodily characteristics of the other sex, whether by means of medical intervention or otherwise; or b) identifies himself or herself as a member of the other sex or lives, or seeks to live, as a member of that other sex. Additionally, the Northern Territory includes "transsexuality" under the definition of sexuality in the Anti-Discrimination Act (1992).

[68] In 1996, New South Wales updated the Antidiscrimination Act (1977) to include "transgender status" which defines a transgender person as someone who "a) who identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex; or b) who has identified as a member of the opposite sex by living as a member of the opposite sex; or c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex."

[69] Western Australia's Equal Opportunity Act (1984) was updated in 2000 to include "gender history/gender reassignment" which is defined as "reassigned gender as certified by the Gender Reassignment Act 2000."

[70] The term gender identity emerged in the 1980s but was starting to be used in antidiscrimination policies in the mid-1990s (Kirkup, 2018). "Gender identity" and later "gender expression" became the terms used for policymaking in the 1990s and early 2000s, respectively, "to account for both the internal and external dimensions of trans identity and experience" (Kirkup, 2018, p. 113). For this reason, the focus of this article is when "gender identity" was added to antidiscrimination legislation.

[71] During the debates in the Victorian Assembly in April 2000, the term used was "people born of indeterminate sex" (Hulls, Victorian Assembly Debates, 13 April 2000).

the national government was strongly influenced by international obligations, but they also consulted state-level legislation in the process. The rest of this section will discuss this process in more detail.

Figure 3.4: Policy Momentum in Australia
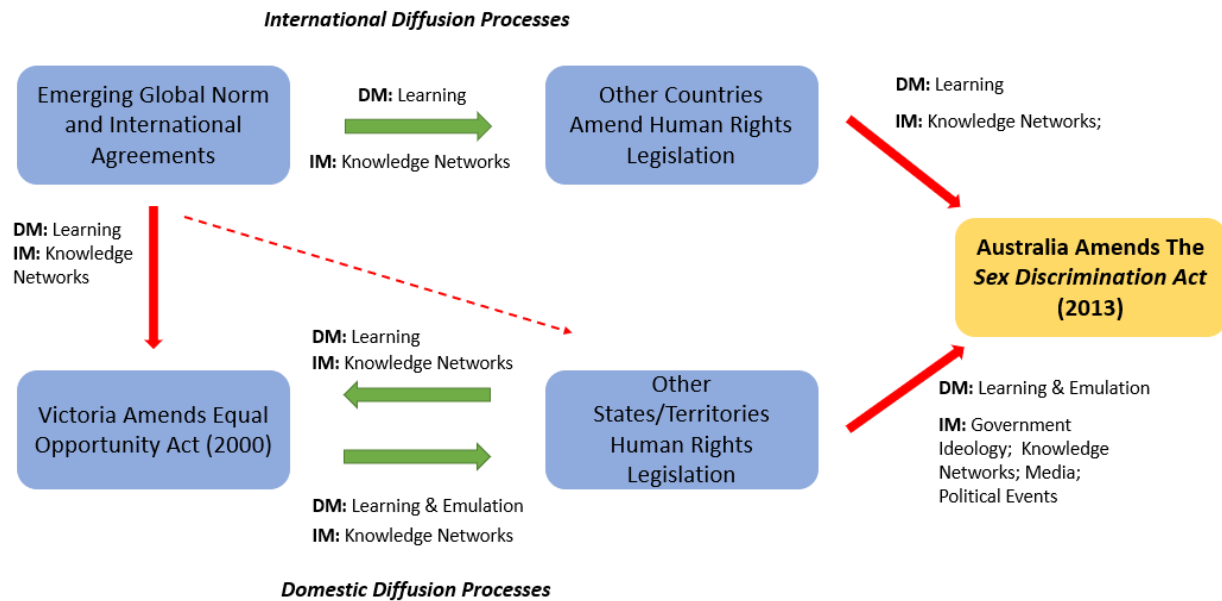
Note: This figure is a simplified illustration of policy momentum in the Australian case. The labels "DM" and "IM" are used to identify the diffusion mechanisms and intervening mechanisms, respectively.

3.4.2   Detailed Australian Case

The process that led the Australian federal government to amend the *Sex Discrimination Act* began in the early 1990s.[72] In November 1995, Senator for the Australian Democrats, Sid Spindler introduced the *Sexuality Discrimination Bill* that would "ensure that people receive equal treatment in areas governed by Commonwealth law and are protected against discrimination on the grounds of their sexuality or their transgender identity" (Senate Debates, 29 November 1995). In May 1996

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[72] This is the first time gender identity was considered at the federal level. States had been having discussions about it for at least a decade prior. For instance, the former South Australian Commissioner for Equal Opportunity, Josephine M. Tiddy wrote that she had been approached by activists in 1983 to include a "broad definition of sexuality, that is, sexuality would include heterosexuality, homosexuality, bisexuality and transsexuality" when amending the South Australian Equal Opportunity Act (Tiddy, 1996).

the Senate referred the Bill to an Inquiry by the Senate Legal and Constitutional References Committee and ultimately presented its report in December 1997. The Inquiry considered both international obligations and existing state and territorial legislation.

Australia does not have a bill of rights or an extensive list of human rights written into its constitution.[73] Instead, human rights tend to be individual pieces of legislation passed by the federal government or state or territorial governments. The state or territorial governments are often where much of the antidiscrimination policy innovations occur. According to one interviewee, "the reason all this stuff [LGBTI[74] policies] is usually dealt with by the states is because these are essentially seen as state powers…only when the Commonwealth[75] wants to act on things like antidiscrimination, they have to invoke the ICCPR[76] and say that they're using the external affairs power" (Personal Interview, May 2019). Indeed, the Report of the Inquiry into Sexuality Discrimination notes that "most Australian anti-discrimination or human rights legislation has been developed through use of the external affairs power" (Commonwealth of Australia, 1997, p. 58). This power allows the federal government in Australia to legislate on matters of "international concern" and implement the provisions of a treaty to which Australia is a signatory (Commonwealth of Australia, 1997, p. 59). In other words, when the national government has developed LGBTI antidiscrimination legislation using the external affairs power, it is in response to the issue being considered an international concern. Notwithstanding the procedural intricacies of the external affairs power, advocates for national antidiscrimination policy change invoke international obligations and growing international concern about an issue as a tool to encourage the use of the external affairs power. For example, in their submission to the Inquiry into Sexuality Discrimination, a representative from the Tasmanian Gay and Lesbian Rights Group said:

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[73] There are five explicit individual rights in the Constitution. These are the right to vote (Section 41), protection against acquisition of property on unjust terms (Section 51 (xxxi)), the right to a trial by jury (Section 80), freedom of religion (Section 116) and prohibition of discrimination on the basis of State of residency (Section 117) (Australian Human Rights Commission, 2022).

[74] The acronym commonly used in Australia to refer to the LGBT+ community is LGBTI (lesbian, gay, bisexual, transgender, and intersex). As a result, I follow the lead of my interviewees and primary documents when discussing the Australian context.

[75] The Australian federal government was frequently referred to as "the Commonwealth" by interviewees.

[76] The International Covenant on Civil and Political Rights.

I think the point is that at both conferences, first at Vienna[77] and then in Beijing[78], there was an increasing number of countries each time who made statements in favour of addressing the issue of sexuality discrimination. That is our example of growing international concern. Perhaps that has not yet reached the final statement of a particular conference, but that is the direction in which we are heading (Commonwealth of Australia, 1997, p. 66).

While the Inquiry considered international obligations, a chapter was dedicated to state and territory antidiscrimination legislation. It was noted that "a number of witnesses argued that there was little need for Commonwealth legislation, given the protection available through State and Territory criminal and other law" (Commonwealth of Australia, 1997, p. 87). Others, however, suggested that due to the gaps and inconsistency in state and territory legislation, a national policy that created uniform protection was needed (Commonwealth of Australia, 1997). Ultimately, the *Sexuality Discrimination Bill* was not adopted by the government, but the Bill and its Inquiry prompted significant activism in the states and territories for amendments to subnational antidiscrimination legislation (Riseman, 2019). The activism pushing for amendments was focused on changing outdated language and expanding the definition of "transexual" to be more inclusive.

Just three years after the Inquiry on Sexuality Discrimination presented its report, the state of Victoria became the first jurisdiction in Australia to prohibit discrimination based on gender identity in 2000.[79] The Inquiry prompted more activism at the state level in Australia, but the push for transgender people to be protected from discrimination started much earlier than the 1990s. One activist described the amendments in Victoria as the culmination of several decades of work: "my home state is Victoria, um, where there had been, significant work throughout the 70s, 80s, 90s, and that culminated in some state anti-discrimination law, in the year 2000" (Personal Interview, May 2019). **Table 3.4** shows the date and influences cited for policy change in all

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[77] The World Conference on Human Rights, Vienna 1993.

[78] The World Conference on Women, Beijing 1995.

[79] Some Australian states prohibited discrimination based on "transgender status", "gender history" or "transsexuality" defined within sexual orientation prior to 2000. These prohibitions indicate that the issue had some salience, but the focus of this article is when gender identity and gender expression became protected grounds. At the time of writing, New South Wales, Western Australia, and the Northern Territory have some protections for transgender people, but do not use the term "gender identity."

jurisdictions. The Victorian legislation followed a report published by the Victorian Gay and Lesbian Rights Lobby (VGLRL) called *Enough is Enough*. The report is based on a survey conducted in 1999 on discrimination experienced by gay, lesbian, bisexual, and transgender people in Victoria. One of the recommendations was for the Victorian Parliament to amend the Equal Opportunity Act to include "the clear and unambiguous attribute 'sexual orientation' in addition to the new attribute 'gender identity'" (Victorian Gay and Lesbian Rights Lobby, 2000, p. 9).

Table 3.4: Global and State-Level Influences in Australian Policy Adoption

Date Passed	State	Influences: Global, State or Both
September 12, 2000	Victoria	Both
December 2002	Queensland	Both
February 23, 2010	Australian Capital Territory (ACT)	State
June 25, 2013	**Australia**	Both
October 21, 2013	Tasmania	State
April 8, 2016	South Australia	State
No Policy Change	New South Wales	N/A
No Policy Change	Western Australia	N/A
No Policy Change	Northern Territory	N/A

During the debates in Victoria, Telmo Languiller , Member of the Victorian Legislative Assembly, remarked that "This issue is important not just for Victorians and for Victoria, but for the Asia-Pacific region and, indeed, the world … As a society we can certainly be proud of having the conviction and courage to pursue this legislation and lead the world" (Victorian Legislative Assembly, 29 August 2000). These comments not only illustrate the global importance of protecting transgender human rights but recognizes that few jurisdictions in the world had made similar changes and that they are difficult changes to make. In addition, the influence of the other states on Victoria is evident during the second reading of the bill in the legislative assembly. The Attorney General at the time, Rob Hulls said:

> New South Wales, South Australia, Tasmania, the Northern Territory, and the Australian Capital Territory already prohibit discrimination against transgender people. The Western Australian Parliament has also recently passed legislation prohibiting this type of discrimination. The protection in the New South Wales legislation extends to people of indeterminate sex. This bill will provide long overdue protection from discrimination to transgender people and people born of indeterminate sex in Victoria (Victorian Legislative Assembly, 13 April 2000).

Attorney General Hull's comments combined with those of Telmo Languiller illustrate where the momentum originates at the state level. Even though the members of the Victorian Legislature were conscious that their policy would position them as a global leader and few jurisdictions internationally had made changes to their human rights frameworks, it was the legislation in other states in Australia that used outdated language that were the most influential in the policy diffusion process.

In Queensland, Dr. Lesley Clark, Member of the Queensland Legislative Assembly, emphasized the importance of the *Discrimination Law Amendment Bill* in 2002: "The ADA currently prohibits discrimination on the basis of a number of grounds but provides no protection for pre- or post-transgenders or intersex people. The introduction of a new attribute of 'gender identity' will bring Queensland into line with other Australian jurisdictions and provide specific protection for this group" (Queensland Legislative Assembly, 28 November 2002). While acknowledging the policies of other states, Dr. Clark also discussed Queensland's compliance with the UN Convention on Civil and Political Rights. She noted that the reform package that included the addition of gender identity to the Discrimination Law would strengthen their compliance with the Convention that states, "all people have a right to equal treatment under the law" (Queensland Legislative Assembly, 28 November 2002). The importance of other state level policies is evident in both Queensland and Victoria. Moreover, the acknowledgment of international obligations or international reputation highlights the vertical and horizontal diffusion that ultimately led to national policy change.

The state level horizontal diffusion was a dual process that included both learning from peers about the importance of protecting transgender people in antidiscrimination and the type of language that should be used to promote inclusivity. When speaking with a policy officer from a human rights commission, they commented on how language has been shifting over the last 20 to 30 years:

> I'd say people are moving here in Australia towards using the term "trans and gender diverse", just because it's that little bit more inclusive of including nonbinary people … but in terms of legislation, I think there's only one state that has transsexualism or something still covered … We've been pushing government for 30 years. So that's why you'll see things that are just well out of date, but in terms of practice … nobody uses transsexual you know, in terms of dealing with people (Personal Interview, June 2021).

The outdatedness of the language in policies was also discussed in two other interviews. When discussing legislation that has not been updated, one interviewee said: "The language in our legislation is unfortunate. It's 25 years old now and there are references in our legislation to like transsexual, transsexuality under the definition of sexuality" (Personal Interview, May 2019). The shifting language around transgender people speaks to the significance of states like Victoria and Queensland amending their policies to include "gender identity" in the early 2000s. A policy officer from a human rights commission said there are close connections between human rights commissions and the state governments and with other human rights commissions in Australia. The commissions attend a conference "every two or three years" that has "been an opportunity to share ideas and, um, though that process, we can hear about what are the issues across other states" (Personal Interview, June 2021). In particular they said at one of the recent conferences, they had presented work on "definitions of gender identity and how they're evolving across different jurisdictions" (Personal Interview, June 2021).

In December 2008, the Australian federal government launched the National Human Rights Consultation (NHRC), a nationwide effort to find "out which human rights and responsibilities should be protected and promoted in Australia" (Commonwealth of Australia, 2009, p. xiii). The consultation was the result of a campaign promise made by Prime Minister Kevin Rudd to establish a national human rights framework. One interviewee explained that part of the reason the consultation happened was "one of the things that they [the Labor Party] promised was that they were going to equalize every piece of legislation where inequalities [existed] for same sex couples with the notable exception of marriage and they did that. They amended, it was 85 pieces of legislation in 2008"[80] (Personal Interview, May 2019). Shortly before announcing the consultation committee, then Attorney-General Robert McClelland referenced the 60th anniversary of the Universal Declaration of Human Rights at an Evatt Foundation event: "Australia was an original signatory to that declaration 60 years ago ... and, bar 11 of the last 60 years, we've been a leading proponent of its consistent, comprehensive implementation" (Massola, 2008). He

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[80] Parliamentary records suggest that these policy changes were also pursued 2009. However, for the argument made in this article, the difference between 2008 and 2009 is immaterial.

added that the consultations would "give Australians a chance to have their say about the rights and responsibilities that ought to be protected" (Massola, 2008).

The committee that led the consultation received over 35,000 written submissions covering a wide array of human rights issues including age discrimination, homelessness and poverty, access to housing, immigration and refugees, and Indigenous rights.[81] Notably, the submission categories created by the consultation committee included a distinct category for "sexuality discrimination/gender equality", which was separate from "sex discrimination". At least 125 individuals and organizations had submissions on the topic of "sexuality discrimination/gender equality" which broadly focused on the rights of gay, lesbian, bisexual, transgender, and intersex (LGBTI) people. The Victorian Ministerial Advisory Committee on Gay, Lesbian, Bisexual, Transgender, and Intersex Health and Wellbeing and the Queensland Antidiscrimination Commission made explicit requests for prohibiting discrimination based on gender identity. Both entities relied on international agreements that the Australian government had signed to promote human rights and LGBTI human rights specifically. The Victorian Ministerial Advisory Committee wrote that Australia has made commitments to promote the rights of LGBTI people by signing the *International Covenant on Civil and Political Rights (ICCPR),* the *International Covenant on Economic, Social and Cultural Rights (ICESC)* and the *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (Allen & Gould, 2009). Similarly, the Queensland Anti-Discrimination Commission cited the ICCPR in their section on LGBTI rights and the Queensland Commission outlined the rights that are protected by the Queensland *Anti-Discrimination Act (1991)* which had been amended to include prohibitions on discrimination based on gender identity and sexuality in 2002 (Anti-Discrimination Commission Queensland (ADCQ), 2009).

The Australian Human Rights Commission (AHRC) wrote a detailed submission for the consultations in 2009. The Commission stated that including sexuality, sex and gender identity as

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[81] Submissions are categorized into 25 categories, as selected by the submission authors. The categories are: Access to Justice; Age discrimination; Australian Human Rights Commission (HREOC); Charter of rights/human rights act/human rights legislation; Children and young people's rights; Disability discrimination; Economic, Social and Cultural Rights; Education; Freedom of Assembly and Association; Freedom of Expression; Health; Homelessness and Poverty; Housing; Human rights in rural Australia; Immigration and refugees; Indigenous rights; National security and terrorism; Other; Privacy; Race discrimination; Religion; Right to Self Determination; Sex discrimination; Sexuality discrimination/gender equality; Treatment of people who are arrested or detained.

prohibited grounds of discrimination is necessary to send the message that members of the LGBTI community are entitled to the same rights as others. Similar to Victoria and Queensland, the Commission relied on subnational and international examples to illustrate the need to update the human rights legislation. For example, the Commission wrote "unlike equivalent legislation in the state and territories, as well as overseas," the federal legislation is missing several attributes such as gender identity and sexual orientation (Australian Human Rights Commission (AHRC), 2009, p. 86). Moreover, the Commission indicated that the failure to include such attributes in antidiscrimination legislation is not in line with Australia's international obligations. They mention that the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural rights have both recognized that Australia does not have comprehensive federal antidiscrimination legislation and recommended that the country make changes to address this deficit (Australian Human Rights Commission (AHRC), 2009, p. 87). As previously mentioned, referencing international obligations such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights creates pressure on the Australian federal government to use its external affairs power to implement the provisions in those agreements. The submissions from the Victorian Ministerial Advisory Committee on Gay, Lesbian, Bisexual Transgender and Intersex Health and Wellbeing, the Queensland Antidiscrimination Commission, and the Australian Human Rights Commission to the national consultation also demonstrate the role of knowledge networks in Australia.

In response to the National Human Rights Consultation in 2009, the Australian government established Australia's Human Rights Framework in 2010. The Framework outlined commitments including combining federal antidiscrimination legislation to make it more concise and more user-friendly. This project was officially launched on September 22, 2011 by the Attorney-General and Minister for Finance and Deregulation. Public input was sought for the drafting of the consolidated bill. On November 21, 2012, The *Exposure Draft of Human Rights and Anti-Discrimination Bill* (2012)[82] was submitted to the Australian Senate Standing Committee on Legal and Constitutional Affairs for another round of public inquiry. In its report, released in February 2013, the Committee

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[82] The Bill sought to consolidate the existing Commonwealth anti-discrimination legislation - the Age Discrimination Act 2004, the Disability Discrimination Act 1992, the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, and the Australian Human Rights Commission Act 1986 - into a single Act (Attorney General's Department, 2011).

notes that individuals and organizations referenced international obligations and agreements as considerations for revisions for the Bill. Moreover, state legislation was specifically considered with respect the definition of gender identity. In fact, the Committee's recommendation was: "the definition of 'gender identity' in clause 6 of the Draft Bill be replaced with the definition in the proposed Tasmanian legislation" (Commonwealth of Australia, 2013, p. 85). Ultimately, the effort to consolidate antidiscrimination legislation failed due to an election scheduled in September 2013.[83] During the second reading of the Sex Discrimination Amendment Bill in March 2013, Attorney General Mark Dreyfus acknowledged that the goal to unify a human rights framework would take more time than they had before the scheduled election:

> This is a worthy but complex project, and it is important that we get it right. That means taking the time to carefully consider the many recommendations put forward by the committee and submitters to the inquiry, developing a comprehensive government response, drafting a final bill, and fully debating it in this place (House of Representatives, 21 March 2013).

As a result, he relied on the wealth of information provided by the various public consultations to propose an amendment to the *Sex Discrimination Act* that prohibited discrimination based on sexual orientation, gender identity, and intersex status. During the second reading, Attorney General Mark Dreyfus said:

> These proposed new protections were included in the exposure draft of the Human Rights and Anti-Discrimination Bill, which was released in November 2012. That draft bill aimed to make the unnecessarily complex system of federal anti-discrimination laws clearer, simpler, and more effective … It was reassuring that the committee's report demonstrated that all parties agree on one issue—the pressing need for protection from discrimination for the lesbian, gay, bisexual, transgender, and intersex community at the federal level … This reform is too important to suffer any further delay through its connection to the wider consolidation project (House of Representatives, 21 March 2013).

By relying on the public consultations, Attorney General Dreyfus highlights several mechanisms, identified in **Table 3.1**: public opinion, knowledge networks, and political events. The information

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[83] Julia Gillard had called a September election in January 2013 (Cullen, 2013). However, after Kevin Rudd regained leadership of the Labour Party and became Prime Minister again, he called an election in August 2013 (BBC News, 2013).

gathered through the public consultations can partially illustrate where public opinion was on LGBTI rights. Since the submissions were voluntary, those who were supportive or opposed would have self-selected into the process and therefore may not be representative of the broader population. However, the submissions certainly represent shared positions of knowledge network members, specifically human rights organizations (e.g., advocacy groups and human rights commissions). Finally, explicit reference to the public consultations demonstrates the power of political events. Although the national consultations in 2008 and 2012 to unify the Australian human rights framework were unsuccessful in terms of creating a consolidated human rights code, they helped accelerate policy momentum. Additionally, an interviewee suggested that passing the *Sex Discrimination Act* was part of the Labour government's plan to equalize legislation that had inequalities. Although they had changed 85 pieces of legislation regarding LGB issues,

> One point that the Labour Government looked at during its two terms was the fact that there was no Commonwealth protections for sexuality… So, when they do finally do that, and it's one of the last acts that the government did before they were voted out in 2013 when they amend the sex discrimination act to add sexual orientation and transgender or gender identity (Personal Interview, May 2019).

While the Australian government leaned heavily on international obligations either discussed in parliamentary debates or in consultations, state-level action also put pressure on the government. One interviewee said, "the state-level is where everything starts" (Personal Interview, May 2019). Similarly, another interviewee said that for antidiscrimination legislative change, "you need leadership on one of the ends" and that "states look at the federal landscape and see a space to be leaders" (Personal Interview, May 2019). In other words, the individual suggested that the states look for opportunities to innovate, especially when there is a lack of leadership at the federal level. They also noted that leaders at the federal level tend to "look at the states and play catch-up." The *Sex Discrimination Amendment (Sexual Orientation, Gender Identity, and Intersex Status) Bill 2013* was successfully passed on June 2013.

The combined role of multidirectional vertical and horizontal diffusion processes of policy momentum resulted in the inclusion of gender identity in the Australian Sex Discrimination Act. Due to the nature of the constitutional arrangement in Australia, specifically the external affairs power, international obligations are part of the top-down vertical diffusion process, but they were also used as a tool in the bottom-up vertical diffusion process. Thus, this created the pressure from

above and below that is characteristic of policy momentum. In addition, the dual horizontal diffusion processes that occurred at the subnational level greatly informed the Australian federal government and were used as examples in the consultations that occurred for a unified human rights framework. A more detailed discussion of the different mechanisms that affect policy momentum is outlined in the next section.

3.4.3   Intervening Mechanisms in Australia

A more nuanced explanation of Australia's national policy change through policy momentum relies upon an examination of the five intervening mechanisms that affect policy momentum: public opinion, media attention, government ideology, knowledge networks, and political events. The intervening mechanisms that influenced policy momentum the most were political events, knowledge networks, and to a lesser extent, the media. Government ideology and public opinion did not seem to influence policy momentum in Australia.

The national consultations that Australia had in 2008 and 2012 in an effort to unify its human rights framework had direct implications for national policy change. First, they created a platform for grassroots organizations and human rights commissions to ensure gender identity was part of the conversation. Second, in the speech that Attorney General Mark Dreyfus made in the House of Representatives when he promoted the Sex Discrimination Act Amendment, he made note that the work of the consultations would not result in a unified framework before the scheduled election. However, he relied on the wealth of information collected to develop the proposed amendment. Relatedly, knowledge networks played a significant role in supporting policy momentum. As previously discussed, human rights commissions in both are members of domestic and international networks that engage in meetings and conferences to share experiences. The policy learning that occurs through these networks translates to the domestic context through national, state, and territorial commissions. The knowledge sharing through these networks had a significant impact on the success of both vertical and horizontal diffusion processes.

Policy momentum can be affected by the media based on the amount of coverage and the tone of the coverage. Although the media was not identified as a significant mechanism in the Australian case, there was some speculation on how it may have helped the policy change. As mentioned above, interviewees in Australia said that when states such as Victoria and Queensland

were changing their antidiscrimination policies "it certainly was in the newspapers, the media. But it wasn't like it was a dominant issue at the time" (Personal Interview, May 2019). Even though a majority of interviewees agreed that the public likely did not have an opinion at the time that policies were being changed, two interviewees from a state-level human rights commission and an advocacy organization suggested that when individuals or communities have supportive opinions of transgender rights, it was often due to knowing someone who was LGBTI or the media highlighting a person who has a "story that the community is able to relate to that illustrates, um, experiences of harm or discrimination or exclusion" (Personal Interview, May 2019). Australian national media "is predominantly very conservative" (Personal Interview, May 2019), but some interviewees suggested the increased visibility of transgender people in the news, such as Caitlyn Jenner, was helpful in destigmatizing transgender identities.

The effects of policy momentum might also be impacted by the ideological position of the national government. Similar to the Canadian case, Australia had centre-left governments at the time, which may have been more amenable to policy change in certain social issues (Gabel & Huber, 2000). However, Hansard records indicate there was little ideological opposition. Indeed, right-leaning parties in Australia deliberately chose not to oppose bills introducing gender identity as a prohibited ground of discrimination. For example, during the second debate in the Victorian Legislative Council, speaking on behalf of the Liberal Party of Victoria, a member of the Legislative Council declared "the Liberal Party does not oppose the bill" and that "all states and territories except Queensland have introduced legislation of this type" (Victorian Legislative Council, C.A. Furletti, 06 September 2000). This is not to say that all right or left-leaning policymakers as individuals were influenced by the multidirectional pressure created by policy momentum, but the national bills gained support across political parties.

Public opinion data on support for transgender rights is limited in Australia as well. Interviewees in Australia expressed similar sentiments as Canadian interviewees in suggesting that adding gender identity and gender expression to the *Sex Discrimination Act* was not in the public consciousness at the time. For instance, a state-level politician said he thought there was "a lack of general awareness" about transgender issues in 2013 (Personal Interview, September 2021). Similarly, others suggested that when the Australian states were passing legislation in the early 2000s, it was a non-issue or "flew under the radar." A senior policy advisor at a human rights commission said: "I think that there would have been very little understanding of trans and gender

diverse people in the early 2000s. And in a way some of the issues sort of flew under the radar a bit, I think" (Personal Interview, June 2021). Another interviewee said:

> When they were doing antidiscrimination, I don't think public opinion was necessarily on side with trends, but it certainly was in the newspapers, the media. But it wasn't like it was a dominant issue at the time. I think because it wasn't a dominant issue, it was able to fly under the radar for the most part with exceptions (Personal Interview, May 2019).

The policy momentum framework suggests that if public opinion is clearly against a particular policy, the pressure generated through multidirectional diffusion must overcome the electoral incentives. Importantly, the dominant perception among interviewees is that the public did not have strong preferences because there was limited knowledge about transgender identities. The shift in language in Australia highlights an additional consideration about how policy momentum might be influenced by public opinion. Part of the move toward adding gender identity to human rights legislation reflected outdated language (e.g., "transsexuality") in other policies. There is insufficient evidence to suggest that this is the result of changing public opinion, but it could reflect a broader cultural shift in Australian society. However, it more likely that the shift in language originates from human rights organizations who are part of domestic and global knowledge networks.

3.5   Discussion

What explains the timing and sequencing of events described above for these two countries? There is compelling evidence for the explanatory power of the policy momentum framework. The national policy change in Canada was strongly influenced by the fact that all provinces and territories had prohibited discrimination based on gender identity. Prior subnational policy change, transmitted through policy learning and policy emulation, was a determining factor in national change in Canada. In addition, bottom-up vertical diffusion from the provinces created pressure that pushed the federal government to act because it did not want to be "named and shamed" by other states or international organizations. Interestingly, the national government in Australia was more strongly influenced by the top-down vertical diffusion processes that created pressure from the international level. The Australian federal government predominantly focused

on the international obligations to which it was bound, while also recognizing that some subnational units had made changes to their antidiscrimination policies. Importantly, the specific timing of domestic and international changes provides an explanation for the different timing of policy change in Canada (2017) and Australia (2013). Australian states introduced gender identity in their human rights codes in 2000, twelve years earlier than Canadian provinces in 2012. This difference, combined with the national consultations that Australia held on 2008, offer an explanation as to why timing of cross-national policy change is varied.

In addition to the multidirectional pressure through horizontal and vertical diffusion processes, policy momentum relies upon the four mechanisms of policy diffusion and identifies five intervening mechanisms that can impact the success of policy momentum. **Table 3.5** summarizes the primary diffusion mechanisms and intervening mechanisms that contributed to policy momentum in Canada and Australia. The primary diffusion mechanisms involved in the inclusion of gender identity in Canada's and Australia's human rights frameworks are learning and emulation. Policy learning occurs when information about the consequences of a policy in other units helps another unit decide whether to adopt the policy (Berry & Berry, 2007; Maggetti & Gilardi, 2016). Put differently, a policy is more likely to be adopted if it has been successful in other places.[84] While emulation is similar to learning, "it is not related to the objective consequences of a policy" (Maggetti & Gilardi, 2016, p. 91). Instead, emulation emphasizes the symbolic characteristics of the policy and suggests that states will "conform to their normative environment" (Maggetti & Gilardi, 2016, p. 91).

In Canada and Australia policy learning is evident throughout the policy momentum process. For instance, knowledge networks of human rights commissions facilitated learning from the international level to the domestic context and across subnational units. In addition, policy learning and emulation occurred when the subnational human rights acts were changing. The national policy in both countries changed through a combination of learning and emulation. The Canadian and Australian governments learned from both international peers and subnational units. Additionally, the evidence suggests that the risk of being considered a laggard on the policy area pushed the government to adapt to its normative environment, which is indicative of emulation.

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[84] According to Maggetti and Gilardi (2016, p. 90) success can be defined in relation to: "(a) the goals that the policy is designed to achieve, (b) the challenges of its implementation and/or (c) its political support."

Table 3.5: Primary Diffusion and Intervening Mechanisms by Country

Country	Diffusion Mechanisms	Intervening Mechanisms
Canada	• Learning • Emulation	• Knowledge Networks • Media • Government Ideology
Australia	• Learning • Emulation	• Political/Non-Political Events • Knowledge Networks • Media • Government Ideology

The intervening mechanisms identified by policy momentum contextualize the diffusion process. The evidence suggests that global and domestic networks of human rights commissions played a key role in disseminating information and encouraging subnational and national governments to change policies. Importantly, the timing of the national human rights consultations (political events) likely contributed to the timing of Australia's policy in 2013. In comparison, Canada did not have a national event that would have placed the issue so centrally in the national political agenda. Public opinion was not a major contributor to the success of policy momentum in Canada or Australia. Interviewees from both countries suggested it was not top of mind for the public. However, the media was a useful tool in destigmatizing transgender identity in Australia and framing transgender rights positively in Canada. Although ideology is theorized as a mechanism that policy momentum may need to overcome, evidence from Hansard records indicate that left and right-learning policymakers supported the inclusion of gender identity in the national human rights code.

3.6   Conclusion

This article uses the theoretical framework called policy momentum to explain the cross-national timing of human rights protections for transgender people in Western democracies. This framework draws on insights from global and domestic policy diffusion and multilevel governance to explain how the interaction of international and subnational pressure creates the conditions for national policy change to occur. Policy momentum provides a compelling explanation for the timing of transgender policy change in Canada and Australia. While the Canadian federal

government was strongly influenced by provincial policies and the Australian federal government was more strongly influenced by international obligations, the origin of national policy change can be attributed to the multidirectional diffusion process with pressure from both the international and subnational level. The framework presented here can provide insight into cases beyond those presented. Scholars of public policy can use this framework to better understand the sequence of events that preceded policy change. In addition, policy momentum will help identify influential sources of pressure that are placed on a government.

Future research would benefit from a comprehensive study of the inclusion of gender identity and gender expression in human rights frameworks. Although the advocacy for gender identity to be part of human rights acts has existed for decades, a global dataset does not exist on anti-discrimination legislation. The International Lesbian, Gay, Bisexual, Trans and Intersex Association publishes a "Trans Legal Mapping Report" that details "how laws in different countries recognize the rights of trans people to change their identity markers on official documents" (Chiam et al., 2019, p. 7), but it does not identify antidiscrimination legislation specifically.[85] As a result, there is limited opportunity to conduct cross-national analyses on anti-discrimination legislation or other policy areas that impact transgender lives.

Finally, progressive policies for transgender human rights are consistently at risk of being reversed. It is possible that policy momentum can contribute to the explanation of success reversals or resistance to transgender rights. The cases discussed in the article highlight the importance of these policies "flying under the radar" or receiving minimal negative public attention. In cases where there is stronger resistance such as the United States, it would be worthwhile to understand how policy momentum navigates this amount of political resistance. This type of work might also consider different policy areas. Policies can vary in terms of the ideological or partisan salience. The capacity of a policy to attract and retain public attention may shape the efficacy of policy momentum. In addition, each policy area has different ecosystems of actors interested in shaping the policy outcome. The types of actors and the roles that they undertake may change the type of direct or indirect pressure that is placed on a government.

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[85] This is in part due to limited resources available to organizations to collect this type of information.

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4   Transgender Military Service

The military has long been recognized as a "hyper-masculine"[86] environment (Brown, 1988; Dietert & Dentice, 2015; Parco et al., 2015). The inclusion of women and minority groups has lagged behind broader societal changes and continues to be a point of political conflict in many countries. Nevertheless, important advancements have been made toward the inclusion of transgender people in militaries across Western democracies, albeit at unexpected moments in time. The inclusion of transgender people in the Canadian military in 1992, for instance, stands in stark contrast to the deliberate exclusion of transgender people in Australia's military in the same year. Indeed, Australia did not eliminate its ban until 2010. What explains this variation in the timing of policy change in Canada and Australia?

Previous research suggests that the timing of transgender policy change is likely the result of the accumulation of pressure from two separate levels, which in turn can generate change at a third level. McMahon (2022b) calls this process policy momentum.[87] In her study of transgender recognition in Canada and Australia McMahon (2022a) finds that the federal governments in these countries altered their human rights legislation due to the combined pressure of international and domestic policy diffusion. Further, this pressure was filtered through several intervening mechanisms, including professional knowledge networks, political events, and to a lesser extent, the media (McMahon, 2022a)

In this article, I apply McMahon's (2022b) framework to explain the timing and pace by which the Canadian Armed Forces and the Australian Defence Force lifted their bans on transgender military service. The Canadian Armed Forces lifted its ban in 1992 as part of a wider move to explicitly include gay, lesbian, and bisexual service members. Although the Australian Defence Force also repealed its ban on gay, lesbian, and bisexual service members in 1992, transgender people were unable to openly serve until 2010. This difference in timing is puzzling given that Canada and Australia lifted bans on gays and lesbians within a month of each other and,

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[86] Dietert and Dentice (2015, p. 5) summarize the definition of hypermasculinity by Rosen et al. (2003) as "an ideology that expresses exaggerated, extreme, and stereotypic masculine attributes and behaviors that include the hatred of femininity, strict adherence to gender norms, dominance, control, aggression, and violence." As a result, the military as an institution is built upon ideas of traditional gender norms that can lead to discriminatory practices and policies toward individuals who violate traditional gender norms such as transgender people.

[87] This framework was first introduced and is fully elaborated in McMahon (2022b) (Article 1 of the dissertation).

as Commonwealth countries, they have close military ties with each other and with the militaries in New Zealand and the United Kingdom (Government of Canada, 2016). Nevertheless, there was an 18-year gap between when Canada and Australia allowed their transgender citizens to openly serve in their militaries. I also use this case study as a way of testing the robustness of the policy momentum framework, given that McMahon's (2022a) original study involved a policy area that was located at two levels (federal and provincial/state) whereas transgender military service is located only at the federal level.

Empirically, I draw on six elite interviews[88], extensive archival research[89], and primary documents[90] gathered from the two countries between 2018 and 2022. I argue that policy change at the national level occurred because of the accumulated pressure – conceptualized as policy momentum – generated by changing military practices globally (e.g., other countries lifting bans) and domestic human rights challenges (e.g., favourable court decisions). These processes were amplified by professional knowledge networks and media attention. Although the presence and timing of the two levels of pressure were crucial for encouraging change, the pressure in both countries originating at the domestic level played a primary role in the process.

This article proceeds in five sections. First, I briefly outline McMahon's (2022b) *policy momentum* framework. Second, I discuss the methodology used in this article, as well as the strategy for case selection and the collection of empirical evidence. In sections three and four, I present the findings from the Canadian and Australian cases, respectively. The final section concludes and offers considerations for future research.

4.1   Policy Momentum and Policy Change

Policy momentum[91] is a framework through which we can explain policy change through the type and strength of pressure that is placed on a government. The multidirectional and multi-

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[88] The number of interviewees is limited by the availability of people who were willing and able to speak about the Canadian and Australian militaries. The treatment of LGBT+ people in these militaries has been subject to public scrutiny in recent years which created a barrier to the interview process.

[89] Approximately 10,000 pages in Canada and 5,000 pages in Australia.

[90] This includes media reports, non-governmental organizations reports, and research conducted by human rights commissions.

[91] Developed and elaborated in McMahon (2022b) (Article 1 of the dissertation).

jurisdictional conceptualization of policy momentum builds upon the directional components of policy diffusion and creates jurisdictional flexibility by integrating scholarship on multilevel governance (Marks & Hooghe, 2004; Simmons et al., 2006). Rather than focusing exclusively on top-down or bottom-up diffusion, which is the dominant approach in the literature (Fay & Polischuk, 2021), policy momentum acknowledges that the combination of top-down and bottom-up processes of diffusion are key to explaining the timing of policy change. Within these processes exist various forms of vertical, horizontal, and peer diffusion pathways whose manifestation will depend on the specific empirical context. For example, the form and nature of peer diffusion will differ if the main unit of analysis is the national level or the sub-national (state/province) level. Policy momentum relies on the existing mechanisms of policy diffusion: coercion, competition, learning, and emulation (Simmons et al., 2006). Importantly, policy momentum does not prescribe which diffusion mechanism or how many diffusion mechanisms can be involved in the process. Rather, the framework creates space to identify the most appropriate mechanisms for the context.

Similarly, policy momentum operates under the assumption that policies can be multi-jurisdictional and policy ideas can be developed and promoted in more than one jurisdiction, regardless of how decision-making authority is distributed in a country. Drawing upon the multidirectional nature of policy diffusion and the multi-jurisdictional nature of multilevel governance provides a means of theoretically integrating and specifying how global and domestic policy diffusion processes *together* can produce policy momentum and national policy change (McMahon, 2022b). Policy momentum is premised on threshold and conjunctural effects, as conceptualized by Mahoney (2021, p. 265): "[T]hreshold and conjunctural effects are in operation when an ongoing process causes a discrete event. This causal pattern characterizes critical mass arguments: small changes cumulate in a process that eventually reaches a tipping point, at which time a discrete outcome occurs."

Policy momentum occurs when the vertical, horizontal, and peer pathways of diffusion occur simultaneously above and below the unit of analysis. **Figure 4.1** illustrates policy momentum, specifically focusing on a national unit of analysis (highlighted with the yellow box). Crucially, the vertical, horizontal, and peer diffusion processes must converge to create multidirectional pressure. In other words, top-down and bottom-up diffusion work jointly with horizontal and peer diffusion to put pressure on the national government to generate policy change.

Policy momentum is not a deterministic framework; rather, it highlights the importance of several ongoing and intersecting processes.

The vertical processes (illustrated with red arrows) show how national governments respond directly to international diffusion processes (top-down) or domestic diffusion processes (bottom-up). The diffusion process can also bypass the national government and start between the international and domestic levels. Horizontal and peer diffusion processes are identified using green arrows. According to policy momentum, the term "horizontal diffusion" is reserved to describe processes occurring between units at the domestic level. Illustrated using the L-shaped "Domestic" box, this box includes both subnational to subnational diffusion and federal institutions (e.g., the judiciary) to the national government. The term "peer diffusion" is used to describe horizontal diffusion between countries to clearly identify the source of diffusion as external to the state. As a result, the "International" box is intentionally L-shaped to recognize both vertical and peer diffusion processes. As illustrated in **Figure 4.1**, these concurrent pathways together generate policy momentum towards national level policy change. The specific timing of when these conditions are obtained in the respective countries explains cross-national variation in the timing of policy change.

Figure 4.1: Policy Momentum
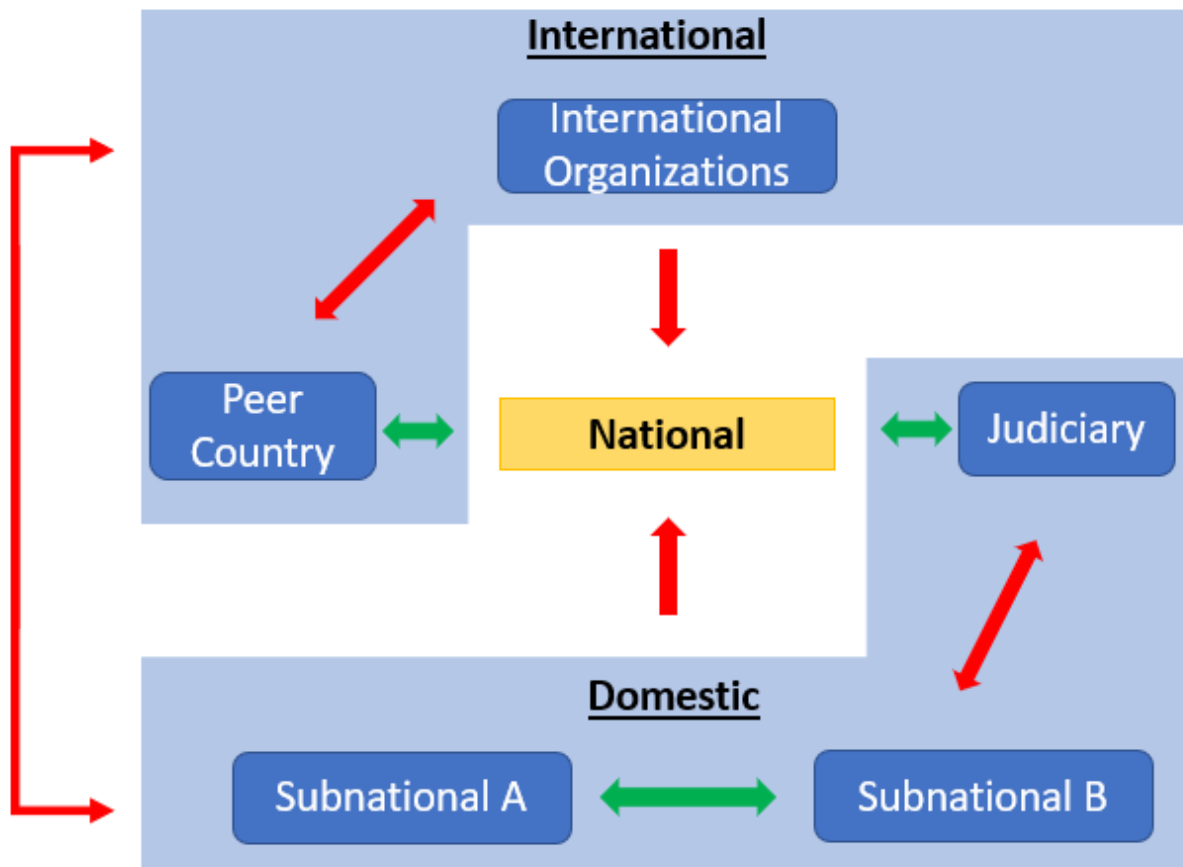
Policy momentum is most likely to generate policy change by shaping national policymakers' perceptions about international reputation and electoral consequences. First, national policymakers may view policy change as necessary due to the perception that they have become a laggard on a given issue. In other words, a disconnect between a state's identity and the appropriate policies associated with a particular norm may create pressure for policy change to maintain the international reputation. Second, experiences of other jurisdictions can alter the electoral consequences of a particular policy (Gilardi, 2010; Gilardi & Wasserfallen, 2019). Subnational policy experimentation, a widely recognized feature of federal states, can help facilitate policy change at the national level (Boeckelman, 1992; Lowery et al., 2011; Painter, 1991). By "moving first" on a new policy, subnational units take on the "burden of proof" until a policy becomes more widely accepted. As a result, it is a less risky political decision to adopt a

policy for which there is evidence demonstrating that it was not detrimental to the jurisdictions – and political careers – of other policymakers.

While policy momentum can serve as a powerful force for inducing change, its strength and salience can be altered by a number of domestic political and social intervening mechanisms.[92] In other words, the likelihood of policy momentum generating change can increase or decrease based on five intervening mechanisms: public opinion, media attention, government ideology, political events, and knowledge networks. These mechanisms are summarized in **Table 4.1** and **Figure 4.2**. To reiterate, the policy momentum framework is not deterministic and there is no expectation that all intervening mechanisms will operate identically in different policy areas. Rather, these mechanisms create expectations within the framework that better contextualize policy momentum.

Table 4.1: Intervening Mechanisms Affecting Policy Momentum

Intervening Mechanism	Description	Expectations
Public Opinion	Governments are responsive to public opinion on policy issues in order to boost chances of re-election (Bernardi, 2020; Kastellec et al., 2010; Soroka & Wlezien, 2010).	When voters are against a policy, the pressure from policy momentum will need to overcome the electoral incentive structure that would typically lead decisionmakers to not legislate on the issue.
Media Attention	Media can shape the policy agenda, public opinion, and influence diffusion through overlapping media markets (Lalancette & Tremblay, 2019; Soroka et al., 2013)	Policy issues that are widely reported will likely make it onto the policy agenda. The tone and quantity of coverage can condition the strength of pressure required for policy momentum to be successful.
Government Ideology	Ideology shapes the preferences of decision makers (Butler et al., 2017; Gilardi, 2010).	Ideological positions will condition how likely governments are to adopt policies and who they are willing to learn from.
Knowledge Networks	Actors (both governmental and non-governmental actors)	The policies that other actors or governments are

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[92] Consistent with Gilardi and Wasserfallen (2019) "stylized model of policy diffusion."

	form knowledge-based networks domestically and internationally that influence policy in each other's jurisdictions (Stone, 2015; Sugiyama, 2008; Tsingou, 2015).	promoting within these networks can alter the success of policy momentum.
Political and Non-political events	Events that are exogenous to the legislative body can change the policy options available to government officials (Weible, 2017)	Events can constrain policy options such that policy momentum is more likely to be successful. However, events can also constrain options that would hinder the success of policy momentum.

Figure 4.2: Intervening Mechanisms and Political Motivations Affecting Policy Momentum
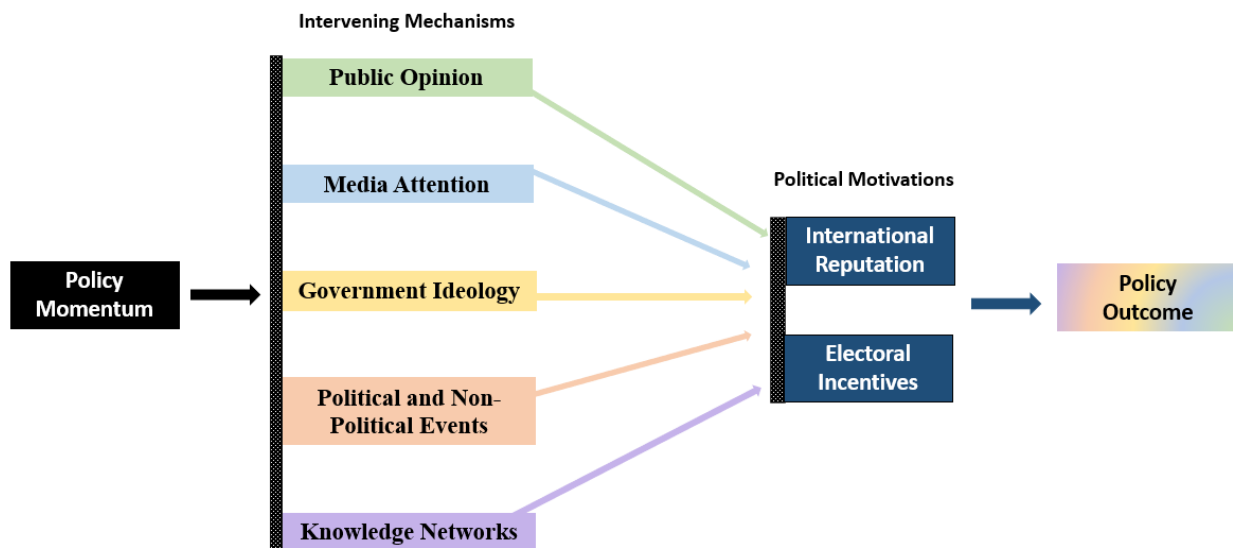
Drawing upon insights from domestic and international policy diffusion and multilevel governance, policy momentum identifies the multidirectional and multi-jurisdictional processes that lead to policy change. The intervening mechanisms I have identified above - public opinion, government ideology, media, and political and non-political events - are mechanisms that can increase or decrease the likelihood of policy momentum being successful. Indeed, as illustrated in **Figure 4.2**, the intervening mechanisms act as filters through which policy momentum passes and have the capacity influence the policy outcome. The intervening mechanisms ultimately activate

the political motivations identified above (international reputation and electoral incentives) and together they can alter the policy outcome.

Since the intervening mechanisms will behave differently or may not be influential in a given context, policy momentum does not identify specific interactions between the intervening mechanisms and the political motivations. However, one motivation might be more actively guiding the decision-making if a particular intervening mechanism is present. For instance, public opinion may be more likely to activate the electoral incentives motivation whereas knowledge networks might be more closely aligned with the international reputation motivation. Although **Figure 4.2** is a simplified model for a complex and nuanced process, the model helps create expectations within the framework to better contextualize policy momentum.

4.2   Data and Methods

4.2.1   Case Selection

To illustrate how policy momentum can explain the timing of national policy change, I use Canada and Australia as case studies. Canada and Australia share several structural similarities such as a parliamentary governance system, national human rights commissions, and access to the judiciary for legal remedy. These two cases both reside outside of the supranational structure of the European Union, which would introduce additional factors or mechanisms to consider. Additionally, the Canadian and Australian militaries frequently collaborate and correspond with each other as part of the Commonwealth (Government of Canada, 2016). The Canadian Armed Forces became a unified body in 1967 and maintained its discrimination toward the lesbian, gay, bisexual, and transgender people until 1992 when the ban on transgender people was lifted. In comparison, Australia lifted its ban on gays and lesbians in 1992 but continued to exclude transgender individuals. It was not until 2010 that transgender people could serve in the Australian Defence Force. In other words, the timing of including gay and lesbian individuals in Canada and Australia was the same, but there was nearly twenty years between when transgender people were permitted to openly serve and transition in the armed forces.

4.2.2   Methods

To analyze these cases, I rely on process tracing (Beach & Pedersen, 2013; Bennett & Checkel, 2015) to reconstruct the policy processes in each country. Process tracing uses existing causal explanations with descriptive evidence to generate a sequential account of the phenomenon of interest (Collier, 2011; Mahoney, 2015). I draw upon six semi-structured elite interviews[93] with individuals involved in the lifting of the bans, politicians, and academics conducted in-person and by telephone in Canada and Australia between 2018 and 2021. These individuals were purposefully selected based on their involvement with or expert knowledge of the events in question. The author's university Research Ethics Board provided approval for the interviews that were conducted (Project ID: 111713). When permitted by the interview participant, they are identified in the case study analyses below; otherwise, identifying information is excluded. In addition, primary documents available publicly or acquired through freedom of information requests (e.g., archival materials) were used to analyze the events that preceded the inclusion of transgender people in the Canadian Armed Forces and the Australian Defence Force. These documents include parliamentary Hansards from Canada and Australia, parliamentary committee hearing transcripts, publicly available reports from international and domestic organizations involved in the process, and internal government correspondence. Taken together, the interviews and primary documents allow for the identification of the factors that generated the change in transgender military policy. The following sections provide a broad overview of the changes in Canada and Australia before providing a detailed analysis and application of the policy momentum framework.

4.3   Canada

4.3.1   Summary of the Canadian Case

The process by which the ban on transgender military service was lifted in Canada is summarized in **Figure 4.3**. Canada lifted the ban on lesbian, gay, bisexual, and transgender service members in 1992. **Figure 4.3** illustrates the relationship between the international and domestic processes

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[93] The number of interviewees is limited by the availability of people who were willing and able to speak about the Canadian and Australian militaries. The treatment of LGBT+ people in these militaries has been subject to public scrutiny in recent years which created a barrier to the interview process.

that ultimately led to successful policy change. I also identify the diffusion mechanisms (DM) that help facilitate policy momentum and the intervening mechanisms (IM) that contributed to the success of policy momentum. **Figure 4.3** primarily illustrates the main sources of pressure; however, I have also included a red dashed arrow to indicate a secondary source of diffusion.

To briefly summarize the empirical case in relation to **Figure 4.3**, the Netherlands was the first country in the world to lift its ban on LGBT+ military personnel in 1974. This decision was part of a broader LGBT+-friendly policy shift in the 1970s. At the time, the Netherlands had decriminalized homosexuality and updated consent laws such that the age of consent was equal for homosexual and heterosexual activities (Government of the Netherlands, 2018). Sweden (1976), Denmark (1978), and Norway (1979) followed suit shortly thereafter. All of the above countries not only lifted bans on gay and lesbian military service, but also transgender military service (LeBlanc, 2017; Sundevall & Persson, 2016). I have described this diffusion as learning and emulation in **Figure 4.3** because it is likely that other countries were responding to a combination of the success of the policy (learning) and the normative value of the policy (emulation). This process is the international pressure that contributes to the policy momentum.

The domestic context is largely driven by the decisions of legal cases involving appealing the removal of security clearance (labelled as Security Review Committee) and a claim of discrimination filed with the Federal Court of Canada (labelled as Canadian Judiciary). Both of these cases are influential in lifting the ban on transgender people in public policy. They are also connected such that the Federal Court Case was a continuation of the case that was decided by the Security Review Committee which is identified using the dashed red arrow in **Figure 4.3**.

Figure 4.3: Canadian Military Policy Momentum
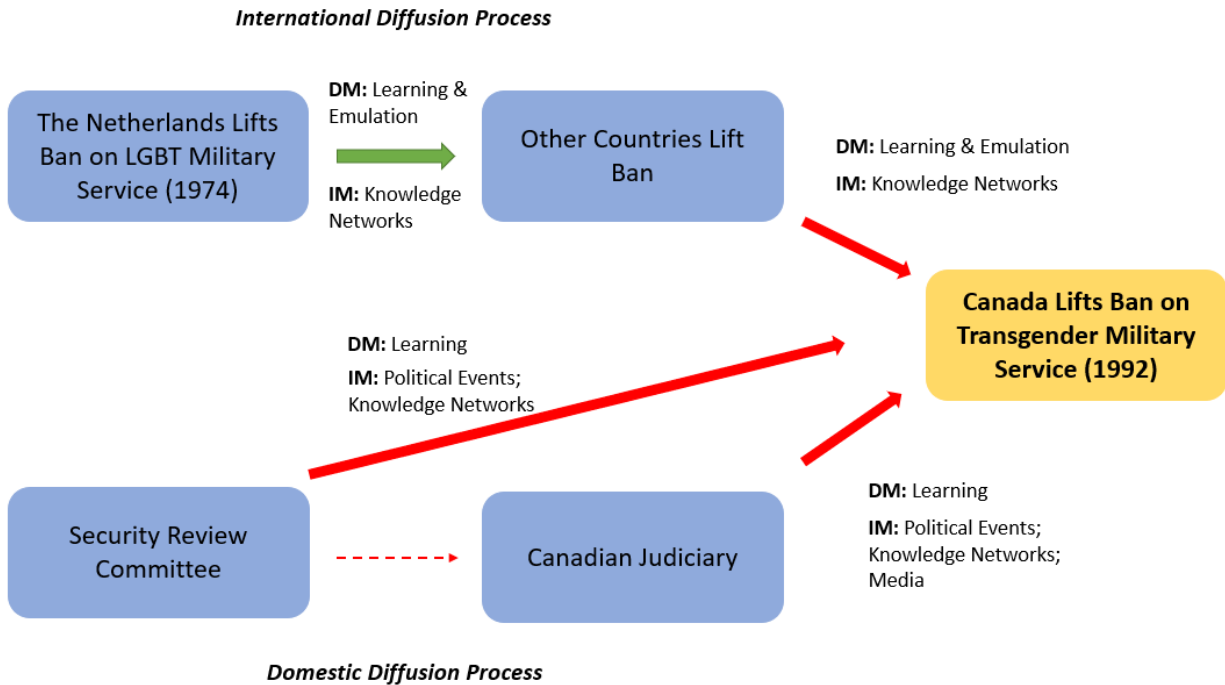
Note: This figure is a simplified illustration of policy momentum in the Canadian case. The labels "DM" and "IM" are used to identify the diffusion mechanisms and intervening mechanisms, respectively.

4.3.2   Detailed Canadian Case

The Canadian Armed Forces lifted its ban on transgender service in 1992. This process was part of a broader fight to repeal Canadian Forces Administrative Order (CFAO) 19-20 (adopted in 1967) which banned gays and lesbians serving in the military. Given that transgender identities have historically been conflated with gay identities, the Canadian policy and subsequent debates are exclusively focused on the inclusion and exclusion of gays and lesbians in the military (Taylor et al., 2018). However, evidence suggests that transgender people were also denied enrollment or released from the Canadian Forces due to the ban on homosexuality (Okros & Scott, 2015).[94] Consequently, the following sections trace the origins of excluding gays and lesbians from the

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[94] This also reflects broader policy trends for transgender people. Prior to 2017, transgender people in Canada seeking to make a claim under the Canadian Human Rights Act, had to claim discrimination on the basis of sexual orientation or sex (Ontario Human Rights Commission).

military and the process that led to the lifting of the ban on homosexuality. Transgender people were implicitly banned from the military under CFAO 19-20, but explicitly included when the ban was lifted. The rest of this section will discuss this process in more detail.

4.3.2.1   Historical Origins of LGBT+ Exclusion in Canada

In 1967, the Canadian government passed the *CF Reorganization Act* that combined the Canadian Army, Royal Canadian Navy, and the Royal Canadian Air Force into a unified body (Park 1994). Prior to 1967, homosexual men and women were not only excluded, but reported and discharged from service in all three branches. The *CF Reorganization Act* maintained these discriminatory practices under CF Administrative Order (CFAO) 19-20 (Park, 1994). Initially called "Sexual Deviation – Investigation, Medical Examination, and Disposal," CFAO 19-20 required homosexuals and other "sexual deviations" to be excluded from the armed forces. After the Criminal Code of Canada was amended in 1969 to decriminalize same-sex relations between consenting adults, the blanket ban on homosexual activity outlined in CFAO 19-20 was no longer consistent with federal law (Park, 1994). As a result, CFAO 19-20 was revised in 1976 to differentiate between homosexuality and "sexual abnormality." Entitled "Homosexuality–Sexual Abnormality Investigation, Medical Examination and Disposal", the revised CFAO 19-20 stated that "service policy does not allow homosexual members or members with a sexual abnormality to be retained in the Canadian Forces. When it is decided that a member is to be released, appropriate action shall be taken as quickly as possible, with a minimum of publicity" (Department of National Defence, 1976). Although transgender people were not explicitly included in CFAO 19-20, "gender nonconformity often was conflated with sexual orientation at the time" and considered a sexual abnormality under the order (Okros & Scott, 2015, p. 245).[95] As a result, transgender people were released from the Canadian Forces or denied enrollment (Okros & Scott, 2015).

The discriminatory stance of the military originated from the framing of homosexuals as "suffering from an unreliable and unstable character" in the 1959 Security Panel, an

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[95] Sexual abnormality was defined as "any form of sexual behaviour not conforming with accepted moral standards or constituting an office under the Criminal Code of Canada, e.g., voyeurism, exhibitionism, gross indecency, bestiality" (Department of National Defence, 1976).

interdepartmental committee responsible for coordinating national security. Inspired by the position taken by the Central Intelligence Agency in the United States, this assumption led to the conclusion that homosexuals in intelligence positions were a threat to national security (Kinsman & Gentile, 2010, p. 7). More specifically, national security experts believed that homosexual people were deceitful, unreliable, and more likely to be blackmailed or exploited under the threat of being "outed" (Kinsman & Gentile, 2010). This conceptualization of homosexuality influenced policies throughout Canada in the 1950s and 1960s and led to "state-sanctioned security purges" of gay men and lesbians that were largely kept hidden from the public (Kinsman & Gentile, 2010, p. 12). Any discussion of the "LGBT+ purge"[96] was merely rumour that circulated through the military, the Canadian public service, and gay networks in Ottawa. Although the number of advocates was small, the people and organizations involved in gay networks eventually chose to demand change from the government.

On August 28, 1971, a group of LGBT+ activists[97] coordinated by the Toronto Gay Action rallied on Parliament Hill to support the "We Demand" brief that was sent to members of Parliament. Known as the "We Demand" rally, the group listed 10 demands that were meant to improve the lives of LGBT+ people in Canada. Among the demands was "the right of homosexuals to serve in the Armed Forces, and therefore the removal of provisions for convicting service personnel of conduct and/or acts legal under the Criminal Code; further the rescinding of policy statements reflecting on the homosexual" (Di Novo & Waite, 1971, p. 10) The Toronto Gay Action relied upon two arguments to support this demand. First, the existing policy that banned homosexual military service contravenes the Criminal Code of Canada which was amended in 1969, legalizing "homosexual acts between consenting adults, in private" (Di Novo & Waite, 1971, p. 10). Second, they rejected the notion that the military is exempt from the newly amended Criminal Code because of the "susceptibility of homosexuals to breeches of security through

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[96] The term "LGBT Purge" describes the "campaign to identify and purge LGBT Federal Public Servants on the basis of their sexual orientation, gender identity, or gender expression in the Federal Public Service and military" (LGBT Purge Class Action, 2019).

[97] The organizations that supported the brief and corresponding rally included: The Community Homophile Association of Toronto, Front du Liberation Homsexuel (Montreal), Gay Alliance Toward Equality (Vancouver), Guelph University Homophile Association (Guelph), Toronto Gay Action, University of Western Ontario Homophile Association, University of Toronto Homophile Association, Vancouver Gay Activist Alliance (support in principal), Vancouver Gay Liberation Front and Gay Sisters (Vancouver), Waterloo Universities Gay Liberation Movement (Waterloo Universities), and York University Homophile Association (Di Novo & Waite, 1971).

blackmail" (Di Novo & Waite, 1971, p. 10). Cheri Di Novo , one of the organizers of the rally, said: "[In] 1971 we were a group of utopian freaks as far as everybody was concerned. And we didn't expect that anyone would listen to us really" (Personal Interview, June 2021). The We Demand rally was the first recorded political demonstration by LGBT+ people in Canada. It has become known as "one of the pivotal turning points in Canadian LGBTQ2+ history and is often aligned with the Stonewall riot in New York" (The ArQuives, 2021).

The first person to go public with their experience of being dismissed from the military for being gay was Barbara Thornborrow in 1977. After refusing the two options given to her by the Armed Forces - dismissal or psychiatric counselling - she called an Ottawa-based LGBT+ organization called "Gays of Ottawa" for help. Although it was determined that there was likely not a solution to her dismissal, Gays of Ottawa partnered with Lesbians for Ottawa Now who agreed to help her publicize the case. The National Gay Rights Coalition[98] issued a press release and organized a press conference on Parliament Hill for the same time that the Standing Committee on Justice and Legal Affairs was conducting a study of the proposed *Canadian Human Rights Act*. In particular, the Committee was expected to vote on whether sexual orientation should be included in the *Act*. Ultimately, sexual orientation was not added to the *Canadian Human Rights Act* at this time, but Thornborrow's decision to publicly out herself created space for other former military personnel to share their experiences and start to discredit the national security and blackmail concerns of the military through "increased visibility and activism" (Kinsman & Gentile, 2010). The media attention of Thornborrow's case also helped set the foundation for policy momentum to occur. Policy momentum theorizes that media can shape the policy agenda, public opinion, and influence policy change. Thornborrow's public shaming of the military's policies helped strengthen policy momentum.

Throughout the late 1970s and the 1980s, the Canadian Armed Forces policy of excluding gays and lesbians was a consistent topic of discussion within the legislature, among LGBT+ organizations, and within the Armed Forces. During this time, legal, political, and "special interest group" pressure was being exerted in an effort to revoke the policy which was supported by the passage of two human rights documents: the *Canadian Human Rights Act* in 1977 and the *Charter*

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[98] The National Gay Rights Coalition was the only "pan-Canadian" LGBTQ+ group of the time. It was renamed to the Canadian Lesbian and Gay Rights Coalition in 1978 (Smith, 1998).

of Rights and Freedoms in 1982 (Park, 1994).[99] Although neither document explicitly listed sexual orientation (or gender identity) as prohibited grounds of discrimination, the development of human rights frameworks created a different way for activists and politicians to seek change. Consequently, the discrimination faced by gays and lesbians in the Armed Forces was usually couched within a discussion of amending the *Canadian Human Rights Act* or interpreting the *Charter* as protecting sexual orientation. For instance, in 1981, Progressive Conservative Member of Parliament Pat Carney spoke on the importance of adding sexual orientation as a prohibited ground of discrimination in the *Canadian Human Rights Act*. In her speech, she discusses a constituent's experience being interrogated and subsequently released by the military for being gay despite exceptional performance in his job:

> In another case a young man told me that he had been compulsorily released from the Canadian Armed Forces without any opportunity to have access to the nature of the information which led to his dismissal. Instead, he was visited by two military police, taken to a Holiday Inn and interrogated by another military policeman for some time. At the end of the interrogation he was told that although there was no breach of security involved, he would have to resign his commission because he was a homosexual. My constituent emphatically denied that he was a homosexual and said there were no grounds whatsoever to the allegation. The file shows that the military police told my constituent that he was not to discuss the interrogation with anyone whatsoever. He later found that his telephone had been wiretapped. It stretches ones' credibility to believe that in this country a Canadian citizen can be picked up by the military police, have his phone tapped, be interrogated and dismissed without any access to the information on which the dismissal was based. (House of Commons Debates, 19 June 1981).

During the same debate, Svend Robinson, an NDP Member of Parliament, told a similar story of a woman who had been harassed and interrogated by the Canadian Armed Forces on the suspicion that she was a lesbian:

> What are some of the areas which are covered by this bill? One of the areas which would be covered would be the Canadian army. I was recently approached by a young woman who was a private in the Canadian army, based at Canadian Forces Base Borden. She indicated that she was subjected to tyranny-I use that word advisedly-when it was suspected that she might be a lesbian. In fact, as it turns out, although of course it is really irrelevant, she was not a lesbian. However, what was done in these circumstances was to harass her,

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[99] *The Charter of Rights and Freedoms* was enacted in 1982, but Section 15 (equality rights) came into effect in 1985 to give governments the chance to update their policies in accordance with the Charter (Government of Canada, 2020).

was to take her in and subject her to interrogation by the security police, by military police, without any form of charge; to go to her friends, to go to her boyfriend, to visit her neighbours and to suggest that, in fact, this girl was not worthy of continuing in the Canadian Armed Forces. […] but to deny men and women the right to serve in Canadian Armed Forces merely because of their sexual orientation must surely be wrong (House of Commons Debates, 19 June 1981).

The importance of both the Progressive Conservatives and the NDP not only supporting the addition of sexual orientation into the *Canadian Human Rights Act* but using the discriminatory practices of the military as part of their reasoning is twofold. First, the comments come from people within parties that are ideologically very different. This suggests that in the context of policy momentum, political ideology is not strongly shaping preferences for lifting the ban on LGBT+ military service. Second, these events demonstrate Members of Parliament listen to their constituents, which highlights the importance of election concerns. While an election was not imminent at the time, Carney and Robinson were discussing issues that were important to their constituents by sharing their stories. These stories are also notable because the individuals did not have access to the information on which their dismissals were based, nor did they have an opportunity to appeal the decision.

  The process to appeal dismissals based on sexual orientation was developed through the creation of the Canadian Security Intelligence Service (CSIS) and its external review agency, the Security Intelligence Review Committee in 1984. The Canadian Security Intelligence Service was developed in response to the McDonald Report, which was the result of a commission formed to investigate the actions of the RCMP. At the time, the RCMP had its own Security Service which was determined to have discriminatory practices and the Canadian Security Intelligence Service was meant to transfer this power to a "civilian agency separating security intelligence from policy and law enforcement activities" (Kinsman & Gentile, 2010, p. 344). Although the development of CSIS and the Security Intelligence Review Committee was not unanimously well-received, these agencies oversaw the security clearance process for all federal employees including the Canadian Armed Forces. Ultimately, the establishment of the agencies created the opportunity for gays and lesbians who had been denied security clearance to appeal the decision.

  Shortly after establishing the Canadian Security Intelligence Service and the Security Intelligence Review Committee, the federal government sought to update its policies in accordance with Section 15 of the *Charter of Rights and Freedoms*. Section 15 was scheduled to come into

effect in 1985 and led to the Standing Committee on Justice and Legal Affairs forming a subcommittee. The mandate of the committee was to "seek the views and opinions of Canadians, both individuals and organizations" on equality issues and table its report in October 1985 (Boyer, 1985).[100] The report was meant to discuss the status of equality rights under the *Charter of Rights and Freedoms* and make recommendations for changes to policies (Boyer, 1985).

During the hearings, Peter Maloney , a Toronto lawyer who has represented members of the LGBT+ community, highlighted the discriminatory practices of the Armed Forces by comparing them to provincial protections in Quebec:

> Despite the fact that as early as December 1977 the Quebec National Assembly found itself in the position of being able to amend its Charter of Human Rights and Freedoms to protect citizens of Quebec from discrimination on the grounds of sexual orientation, in that very same year the Government of Canada, through its Armed Forces, dismissed Gloria Cameron as a serving member of the Canadian Armed Forces after 8 years of service, and dismissed Barbara Thornborough [sic] after 18 months of service, solely on the basis of those women's lesbianism (Sub-Committee on Equality Rights, 17 June 1985).

Further, he discussed public opinion data collected by the Canadian Human Rights Commission that supports inclusive hiring practices:

> [S]ince its inception, the Canadian Human Rights Commission has strongly advocated the inclusion of sexual orientation as a prescribed ground of discrimination. In making their submissions to Parliament, they have published and obtained public opinion polls that demonstrate clearly that the majority of Canadians agree that sexual orientation ought to be covered, and secondly, that professional qualifications take precedence over sexual orientation in employment hiring policies (Sub-Committee on Equality Rights, 17 June 1985).

Echoing this information on May 9, 1986, the Chief Commissioner of the Canadian Human Rights Commission, R.G.L Fairweather said:

> The Commission has repeatedly urged that this be made a ground on which discrimination is prohibited under the Canadian Human Rights Act. Our view is that sexual orientation is an entirely private matter. The thing that impresses us most about the argument that gays

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[100] The Committee consistent of Patrick Boyer (Progressive Conservative), Pauline Browes (Progressive Conservative), Maurice Tremblay (Progressive Conservative), Roger Clinch (Progressive Conservative), Mary Collins (Progressive Conservative), Svend Robinson (NDP), and Sheila Finestone (Liberal).

must be excluded from employment because they are subject to blackmail is how circular it is: They are subject to blackmail because they may lose their jobs because of their sexual orientation, and they may lose their jobs because they are subject to blackmail. Somehow the cycle must be broken, and section 15 seems to offer an opportunity (Library and Archives Canada, 1986).

The sub-committee's report, "Equality for All", was completed in October 1985. In its chapter dedicated to sexual orientation, they recommend that "the *Canadian Human Rights Act* be amended to add sexual orientation as a prohibited ground of discrimination to the other grounds" (Boyer, 1985, p. 30). However, the Canadian Armed Forces and the Royal Canadian Mounted Police wanted to be considered special cases where discrimination based on sexual orientation could continue as long as there were good justifications for doing so. At the time, Canadian Forces Administrative Order 19-20 stated that homosexuals could not be recruited and had to be dismissed from the Forces upon detection. The reasons cited for maintaining discriminatory practices include: "members frequently serve in isolated posts in close physical proximity; members train and often live in confined quarters; homosexual members may be subject to blackmail; some countries to which members may be posted make homosexual relations illegal; the presence of homosexual members undermines morale and public confidence; and homosexual members are excluded for their own protection" (Boyer, 1985, p. 31). In particular, the argument about blackmail is derived from the criteria for granting security clearances. A person can be denied security clearance due to a "character defect such as illicit sexual behaviour" (Boyer, 1985, p. 31). The sub-committee members did not find these reasons compelling and recommended that the Canadian Armed Forces and the RCMP update their employment policies to align with the *Canadian Human Rights Act* as amended to include sexual orientation as a prohibited ground of discrimination.

From the perspective of Svend Robinson, the Member of Parliament who had been actively pursuing the addition of sexual orientation in the Canadian Human Rights Act and lifting the ban on gays and lesbians in the military for many years, this unanimous recommendation from a predominantly conservative committee was a moment of pride (Truelove, 2013). Robinson was able to rally the LGBT+ population across Canada who then made submissions and appeared before the committee sharing personal stories. Patrick Boyer, Progressive Conservative MP and Chair of the sub-committee on equality rights, said: "[W]e had barely begun our work as a committee when a surge of submissions from groups across Canada advocating gay and lesbian

rights made it clear to me that either this had been an untapped vein of public opinion waiting to express itself, or someone had been orchestrating a widespread campaign to our committee, or both" (Truelove, 2013, p. 92). According to David Rayside (Professor Emeritus at the University of Toronto), this was "the first large scale mobilization of gay activists in pursuit of federal policy" (Truelove, 2013, p. 93). This opportunity for individuals and LGBT+ organizations to share their experiences and knowledge with the sub-committee illustrates the ways in which political events (the public consultation/hearings) and knowledge networks comprised of LGBT+ activists can filter policy momentum and shape subsequent policy change. This effort did not change the military's policy on its own, but it contributed to the sub-committee's recommendations that helped move the issue forward.

In March 1986, Justice Minister John Crosbie released the official government response to the "Equality for All" report in a report called "Toward Equality". The response said:

> [T]he government believes that one's sexual orientation is irrelevant to whether one can perform a job or use a service or facility. The Department of Justice is of the view that the courts will find that sexual orientation is encompassed by the guarantees in Section 15 of the Charter. The government will take whatever measures are necessary to ensure that sexual orientation is a prohibited ground of discrimination in relation to all areas of federal jurisdiction (Truelove, 2013, pp. 95-96).

Although this statement did not change any laws, the work done by the sub-committee changed the official government position from supporting exclusionary policies to promoting the inclusion of sexual orientation in the human rights act. The establishment of the sub-committee served as a political event that constrained the position that the government could take on the issue, thus contributing to the policy momentum needed to create policy change.

Since the government's statement did not change any specific policies, the Department of National Defence formed "The Charter Task Force" to determine how the government's new position might affect military policies pertaining to women, sexual orientation, mandatory retirement, and recognition of common-law relationships (Library and Archives Canada, 1991, p. 3825). The Task Force fielded surveys to both the general Canadian population and military personnel to better understand the effects of allowing homosexual service members. The results overwhelmingly suggested that heterosexual men and women in the Armed Forces did not approve of homosexuals enrolling in the military and believed that the effectiveness of the Canadian Forces

would decrease. Moreover, the majority of respondents said they had privacy concerns and would refuse to use the same shower facilities and sleeping accommodations as someone who identified as gay or lesbian (Zuliani, 1986). Using the survey data and other countries as examples, the final report found support for maintaining the exclusionary policy. At the time (1986), most Western countries had at least some restrictions on gay and lesbian service. For example, the United Kingdom, the United States, New Zealand, and Australia had similar policies to Canada's. Only Norway and the Netherlands were identified as having militaries that allowed homosexuals to serve (Pinch, 1994). In the mid-1980s, the evidence suggests that there was not sufficient pressure from the actions of the Canadian Armed Forces' peers to support changing its policy. In other words, pressure from "above" in the form of international peer diffusion had not started which hindered the success of policy momentum at the time.

In a briefing note written in September 1989 for the Minister and Associate Minister of Defence, a new administrative order (CFAO 19-36), initially drafted in 1987 to replace the existing policy that banned homosexual military service (CFAO 19-20), was presented. The main difference with the two administrative orders was the distinction between identifying as a homosexual and being a "practicing" homosexual (Library and Archives Canada, 1986, p. 2977). In other words, as long as the individual did not engage in same-sex relations, they would be retained or allowed to enroll in the Canadian Armed Forces. In addition to the new administrative order, the brief also included a detailed question and answer list for the proposed new policy, a list of countries and their military policies on gays and lesbians, and a list of questions and answers anticipated from the media. A simplified version of the table of countries is reproduced below in **Table 4.2**:

Table 4.2: Policies on Enrolling and Discharging Homosexuals, by Country (1989)

Country	Allowed to Enroll	Released Upon Detection
Canada	No	Yes
United Kingdom	No	Yes
United States	No	Yes
Germany	Yes (to prevent conscription avoidance)	Yes
France	Yes	No
Australia	No	Yes
New Zealand	No	Yes
Norway	Yes	No

Netherlands	Yes	No
Spain	Yes	No

Source: (Library and Archives Canada, 1989, p. 3011)

In a separate letter on Norway, the Department of National Defence wrote "there would appear to be no assistance from the Nordic countries in response to the challenge under the Charter of Rights and Freedoms…Since 1981 it is illegal to discriminate against homosexuals. Since all male Norwegians must complete military service, it must be assumed that at least some of the conscripts are homosexual…The official position is that there is no policy with respect to homosexuals: 'we just don't ask them'" (Library and Archives Canada, 1989, p. 2937). As referenced in the quote, the Nordic countries more broadly were not useful examples to lean on to maintain the status quo. Denmark had lifted its ban in 1979 and Sweden changed its policy in 1984 (Kinsman & Gentile, 2010). Outside of the Nordic countries, the Netherlands had lifted its ban in 1974. The evidence suggests that despite knowledge of countries lifting their bans, the Canadian Armed Forces was seeking evidence to support the status quo and did not find such evidence with the Nordic countries. The stated rationale for ignoring the Nordic countries was that Canada has unique cultural and societal norms and value systems that need to be contextualized and reflected in our policy.[101] As neatly summarized by the September 1989 briefing note for the Minister and Associate Minister of Defence, "what is acceptable in one culture may not be acceptable in another" (Library and Archives Canada, 1989, p. 3006).

The September 1989 briefing note for the Minister and Associate Minister of Defence on the new sexual orientation policy included a section on anticipated media questions and prepared responses. In that section a question asks about the review process. The response details those involved in the process and the types of evidence that they considered. In particular, the Department of National Defence highlighted that they "conducted a full and comprehensive review of all aspects of the matter, including the policies currently in effect in the armed forces of other western nations. Based on this review, the revised Canadian Forces Administrative Order was drafted" (Library and Archives Canada, 1989, p. 3015). The research conducted into the practices of other countries is used as a justification for the revised CFAO.

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[101] This rationale was expressed in a briefing note written in September 1989 for the Minister and Associate Minister of Defence on CFAO 19-36.

Between 1967 and 1989, the Canadian Armed Forces consistently discharged individuals who were identified as gay, lesbian, bisexual, or transgender. A series of political events, an intervening mechanism identified in policy momentum, amplified the diffusion process, and helped create the environment for the domestic context in Canada to shift. Not only were politicians from both sides of the ideological spectrum expressing their support for lifting the ban in the legislature, but a small network of LGBT+ organizations were gaining strength and lobbying for change. In addition, the development of the *Canadian Human Rights Act* and the passage of the *Charter of Rights and Freedoms* forced the government to undergo a policy review process that included analyzing how well policies aligned with Section 15 of the Charter (the equality rights provision). This process resulted in the recommendation that sexual orientation be added as a prohibited ground of discrimination in the *Canadian Human Rights Act* and a statement by the government that sexual orientation is irrelevant to one's ability to complete employment expectations. This prompted the government to research global military practices to find support for its position to maintain the ban. Despite mounting criticism of the policy and evidence that other countries do not ban gays and lesbians from serving in the military, the pressure on the Department of National Defence was not sufficient for policy momentum to be strong enough to change the policy. More specifically, the domestic context had not yet shifted to alter the perspective of the Canadian military. This shift started in 1989 with Michelle Douglas.[102]

4.3.2.2   Lifting the Ban on LGBT+ Military Service in Canada

Michelle Douglas joined the Canadian Armed Forces in 1986 and joined the Special Investigation Unit (SIU) team shortly thereafter, which required top security clearance. As part of the SIU, she was tasked with investigating "sabotage, espionage, and homosexuality" (Kinsman & Gentile, 2010, p. 412). In 1988, the SIU began investigating her on the suspicion that she was a lesbian. Douglas initially denied the accusation, knowing that she would lose her security clearance and job if she confirmed that she was a lesbian. Ultimately, after intense interrogation, she admitted to being a lesbian and was subsequently discharged from the Canadian Armed Forces. Shortly

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[102] Michelle Douglas is one of many LGBT+ individuals who pursued legal action for being wrongfully dismissed from the Canadian Armed Forces. Her case is the most well-known and most frequently cited because it was the first to set a trial date that forced the Department of National Defence to make a decision.

after she was discharged, Douglas attended a lecture given by Svend Robinson in 1989, an NDP Member of Parliament, at what was then known as Ryerson University[103] about the fight for gay rights and decided to share her story with him (Ibbitson, 2017; Truelove, 2013). Robinson had been looking for someone who had been released from the military due to their sexual orientation that would be willing to take the military to court. When Douglas agreed, she was introduced to Clayton Ruby, a lawyer in Toronto known for human rights cases.

In a personal interview with Mr. Ruby, he added additional context as to why Robinson was keen to find someone willing to take the military to court. According to Mr. Ruby, Robinson was a good friend and had been speaking with him about "getting no-where" on the military politically and wondered if Ruby could "think of a way of attacking this legally" (Personal Interview, October 2021). Regarding their strategy, Mr. Ruby noted that "the interesting thing about that struggle was that we freely moved from politics to the law and back and forth again. As we'd win one in politics and then needed to move on, then we would get no-where with politics and we'd move on to the court cases. And when we lost the court cases, we'd move back to the political issues and try to put pressure there" (Personal Interview, October 2021). Since Robinson had not made progress in the political sphere, the goal was to make progress in the legal realm and Michelle Douglas was the right person to be the catalyst for change. The process involved appealing the discharge to the Security Review Committee because Douglas had lost her security clearance. According to Ruby, "We went through the procedure in a top-secret locked room with the Security Intelligence Review Committee and we ultimately wound-up having hearings and cross-examining witnesses there" (Personal Interview, October 2021). The hearing officer ruled in favour of Douglas and ordered the Armed Forces to stop discrimination in August 1990. This decision ended up being a short-lived victory for Douglas and Ruby because the Supreme Court rendered a decision in a separate case that said the Security Review Committee could not bind the government to do anything. Put simply, "We were back at square one, we lost our judgement, and it had no effect" (Personal Interview, Clayton Ruby, October 2021). Despite this setback, they decided to sue the Armed Forces for damages and seek a declaration that the policy was unconstitutional.

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[103] Renamed to Toronto Metropolitan University in April 2022.

During this time, the Department of Justice and Department of National Defence were closely following the developments of Douglas' case and four others. Similar to the research conducted previously, the Department of Defence was also keeping track of policies in other countries. A memo authored by Col. J.A. Almstrom – a senior operations staff officer in the army headquarters – and dated August 21, 1991, included a *Time* article that not only outlines the policy of the United States Army on homosexuality, but also lists the policies in Britain, France, South Africa, the Soviet Union, and Japan. Of the countries listed, France, South Africa, and Japan did not have bans on homosexual military service. Britain had a ban, but a parliamentary committee had recommended removing the policy and there was significant debate in the United States on whether to maintain the ban (Library and Archives Canada, 1991). The newspaper article in the memo provides evidence that the Canadian Armed Forces was aware of and paying attention to the shifting international landscape. In particular, the article noted that the United Kingdom had a recommendation to change its policy and there was ongoing speculation into how long the United States could maintain its discriminatory policy which highlighted how military practices were starting to change. Policy momentum theorizes that the timing of policy change is explained by the combination of multidirectional diffusion processes, which can include a horizontal process from international peers or organizations. These international developments were important because they were consistent with the domestic events (e.g., the Equality for All and Toward Equality reports and the Douglas case) that were working towards greater inclusiveness within the military in Canada.

Following the August memo, a briefing note developed for the Chief of the Defence Staff in September of 1991, made it clear that the challenges to the Armed Forces policy on sexual orientation were likely going to be successful. At the time, there were five cases in the Federal Court of Canada challenging the Armed Forces policy in sexual orientation and Michelle Douglas's case was scheduled for trial in March 1992. Given these events, the Justice Department recommended that the Canadian Armed Forces (through the Department of Defence) settle the case and remove the policy. The briefing note outlines the details of the five cases, the policy in place, strategies for justifying the policy, and recommendations for how to proceed. Several elements of the brief highlight different mechanisms that were propelling policy momentum. First, they note that Douglas "is being represented by Clayton Ruby and there is no doubt that it will be a high-profile case played both in the court and the media" (Library and Archives Canada, 1991,

p. 4118). The potential of public embarrassment and media scrutiny was a consideration for whether to move forward with defending the existing policy. Indeed, after outlining the three options - defend the policy, introduce new policy, or revoke the policy - the brief says:

> The first option, continuing with the defense, is the worst option in light of the evidence and legal opinions. While it may be seen in a positive way by members of the CF, there is a negligible chance of winning, the CF will undoubtedly be embarrassed as the facts of the case become public, and the lack of clarity and precision in the policy could lead to the military witnesses being held up to ridicule and contempt – not only by opposing counsel but by the court and the media (Library and Archives Canada, 1991, p. 4128).

The possibility of the military being publicly shamed for its discriminatory policy made the option of defending the policy in a trial unrealistic. The final recommendation, supported by both the Department of Justice and the Judge Advocate General[104], was to remove the existing policy, settle the court cases, and not create a new policy. The main advantage communicated with this option was that it put the Canadian Armed Forces on the same side as the government and its position on sexual orientation.

In October of 1991, the Progressive Conservative government, under Brian Mulroney, moved to lift the ban on gays and lesbians in the military. Given international developments towards inclusiveness in national militaries and the fact that the government was unlikely to be successful in court, it seems likely that these factors pushed the Conservatives to make this decision. It was reported that Defence Minister Marcel Masse informed Conservative Members of Parliament of the intention to lift the ban in a caucus meeting in early October 1991 (Bindman, 1991). A public announcement was anticipated on October 10, 1991, but several members of the party were reportedly vehemently opposed to this change and delayed the announcement. On October 11, 1991, it was reported that Mulroney was "bowing to pressure from within his caucus" because he announced the policy was not going to change and that "the matter is before the courts now", referencing the Douglas case, among others (Harper, 1991).

The policy momentum framework suggests that ideology can condition how likely governments are to adopt particular policies. From an ideological perspective, it may seem out of

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[104] The Judge Advocate General is the senior legal officer in the Canadian Armed Forces. They are responsive to the chain of command in providing legal services but responsible to the Minister of National Defence for the performance of duties (Government of Canada, 2018).

character for Mulroney, as a conservative Prime Minister, to agree to lift the ban on gays and lesbians in the military before the courts could force a decision. However, both an anonymous interviewee and publicly available accounts of the process suggested that lifting the ban was entirely consistent with his personal belief system and unrelated to political ideology.

Even though the Progressive Conservative Party was deeply divided, and many Members of Parliament were openly discriminatory about homosexuality, LGBT+ rights, and towards colleagues who were suspected of being gay (such as Svend Robinson),[105] the Prime Minister appeared to be an ally. In an interview with Graeme Truelove, Mulroney said:

> 'One of the first caucuses I ever held when I became leader of the Progressive Conservative Party [in 1983] was to tell the Progressive Conservative caucus that I had no time whatsoever for any discrimination of any kind against gays, lesbians, people of any religions, anything…I can remember saying to them "I have 211 members of Parliament here and 40 senators. That's 250 people. Chances are that in here, if the statistics are right…either there are some people right in here, or our children who are gay. Now if you want me to discriminate or legitimize discrimination against a member of your family, your own son, your own daughter – I'm telling you right now, if you ask me to do it, I'm not going to. I wouldn't discriminate against your children any more than I would discriminate against children of other families. So, it's not going to happen while I'm the leader of the party. So let's all get used to that."' And they did (Truelove, 2013, p. 92).

An anonymous interviewee said that when counsel for the Department of Justice advised the Prime Minister that the best option would be to settle the court case and lift the military ban on gays and lesbians, he would have followed the advice (Personal Interview, December 2021). When the subcommittee on equality rights report, "Equality for All" was released in 1985, Prime Minister Mulroney did not speak publicly on it, but Patrick Boyer, a Progressive Conservative MP and Chair of the sub-committee, gave his account of when Mulroney shared his perspective on the issue in a private caucus meeting:

> 'Who can say what God's plan is?', the Prime Minister asked, gazing quizzically over his eyeglasses around the vast assembly of Tory MP's and Senators. 'Here, look at me...married to Mila...blessed with children...just like God intended.' He paused to let that sink in. The ardent Christians, John Reimer especially, were beaming. 'And before I was married,' he then continued in a confidential, almost conspiratorial tone of voice, 'as some of you probably know...I was pretty robust as a heterosexual male.' The room relaxed with

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[105] Robinson publicly came out as gay in 1988.

laughter and chuckles, all the straight men on-side, happily identifying with their leader. The evangelicals, for their part, are aglow at Brian's acknowledgement of God's plan. Everyone's in the palm of his hand. He looks around the vast chamber, alive with good vibes. 'But then, there's my brother, another son of the same Christian parents, carrying the same genes as me. Why did God make him gay, but not me?' Stunned silence filled the room. The Prime Minister lets the hush take its toll. The changing atmosphere is palpable. Who knew that Brian's younger brother Gary, a fine arts teacher in Montreal who excelled at redecorating homes, was one of those whom some in his very caucus had been virulently attacking? The PM's very own brother, for heaven's sake! (Truelove, 2013, p. 95)

Following up on Boyer's comments, Progressive Conservative MP Pat Carney said: "That settled it. There was no great debate ever in caucus on sexual orientation. There was far greater debate on the metric system, which was going to destroy the world, than there ever was on sexual orientation. When the prime minister is supportive of something, the others, in self-interest, will kind of shut up" (Truelove, 2013, p. 95). Mulroney's connection to the LGBT+ community through his brother helps explain why, as a conservative leader, he was willing to lift the ban before he was forced to by the courts. Ultimately, he gave in to the political pressure exerted by those in his caucus and chose to let the courts handle the case.

In October 1992, lawyers for the Canadian government agreed to a settlement that awarded damages to Michelle Douglas and declared that discrimination against the LGBT+ population was unconstitutional. When asked to speculate on why the government settled in the Douglas case, Clayton Ruby said "I think they thought they would lose" (Personal Interview, October 2021). Even though the Department of National Defence was knowledgeable about the criticism against the policy and more progressive policies in other countries, the addition of a court case that was likely going to expose discriminatory government practices in a public forum was sufficient for the government to change its policy. Ruby also suggested that there were individuals within government that were sympathetic to the issue and helped encourage the settlement but did not want to publicly advocate for change.

Notwithstanding the importance of the decision for the lesbian, gay, and bisexual community – who were the explicit focus of the ban and policy debates – the question of why transgender people were included in the policy change remains unaddressed. In other words, why did the conservative government extend the new policy to include transgender people? Even though transgender people did not fit within the parameters of the case, the settlement order was intentionally far-reaching. When drafting the settlement order, Douglas' lawyer, Clayton Ruby,

said that they "wanted to make it as broad as possible." Regarding transgender people, he said that it was not a long conversation, but "it was clear to me that they had the same issues, and the same solutions should go forward, and the government said yes to it" (Personal Interview, October 2021). The decision to include transgender people in the settlement order reflects the broader shift in the gay rights movement to include transgender people in the early 1990s.[106] Political coalitions were formed between transgender activists and lesbian, gay, and bisexual activists, in part out of necessity, which resulted in transgender rights and LGB rights becoming intertwined over time (Taylor et al., 2018).

The combined role of "top-down" and "bottom-up" diffusion processes identified by the policy momentum framework created the conditions for lifting the ban on gay, lesbian, bisexual, and transgender people in the Canadian Armed Forces. The pressure "from above" came from other countries that had lifted bans on the LGBT+ population. The evidence suggests that from at least the mid-1980s, the Canadian military was seeking out the positions of other countries and aware of other militaries around the world changing their policies or receiving recommendations to change their policy. At the domestic level, legislative committees and the judiciary serve as sources of pressure that combined with international pressure to create policy momentum. The sub-committee on equality rights and the decision of the Security Review Committee in favour of Michelle Douglas in 1990 identified the homosexuality ban as discriminatory and clearly identified lifting the ban as the appropriate path forward. This policy position was ultimately determined to be the optimal outcome by the Department of Justice as well. Combined with potential of public embarrassment with the Douglas trial, these positions created domestic pressure from the Security Review Committee and the Federal Court of Canada on the Canadian Armed Forces. Taken together, the international and domestic sources of pressure generated sufficient conditions for policy momentum to successfully change the military policy in Canada.

4.3.3   Intervening Mechanisms in Canada

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[106] A turning point in transgender inclusion in the gay liberation movement is the 1993 March on Washington for Lesbian, Gay, and Bi Rights. Even though they were excluded in name, transgender people were mentioned in the purpose and goals of the event (Taylor et al., 2018). This ultimately led to the "LGBT" acronym that is commonly used today.

Policy momentum identifies five intervening mechanisms, outlined earlier in this article in **Table 4.1**, that can positively or negatively influence the timing of policy change. The mechanisms are public opinion, media attention, government ideology, political events, and knowledge networks. In the case of the Canadian military, knowledge networks, political events, and the media helped strengthen policy momentum. Government ideology and public opinion were not as strongly involved in the process, but initially hindered the policy momentum process. I will outline each mechanism below.

There were three networks that were working concurrently to enact change. First, Clayton Ruby described the network of lawyers and politicians that would move between the political and legal realms when it was deemed necessary and proved to be critical for the inclusion of transgender people in the settlement order that was signed in the Douglas case. This particular network was critical for the inclusion of transgender people in the settlement order that was signed in the Douglas case. This network was involved in human rights issues more broadly and would have been privy to transgender issues, despite the relative lack of visibility of transgender people in the LGBT+ movement at the time. As a result, Clayton Ruby was able to draft a wide-reaching settlement order to include the transgender population. Second, the network of individuals and organization advocating for LGBT+ human rights that appeared before the sub-committee on Equality rights altered the perspectives of committee members such that the recommendations to include sexual orientation in the human rights act and lifting the ban on gay and lesbian military service were unanimously supported. Finally, in an implicit capacity, the provincial and federal human rights commissions contributed to the success of policy momentum. The Canadian Human Rights Commission and the provincial human rights commissions communicate through their joint membership in The Canadian Association of Statutory Human Rights Agencies (CASHRA) which was established in 1972. The Canadian Human Rights Commission was actively involved in promoting the inclusion of sexual orientation in the human rights act and lifting discriminatory employment policies. The provincial human rights commissions were less actively involved but were used as examples to illustrate that the provinces were making progress.

Several political events occurred throughout the 1970s and 1980s that created the environment for policy momentum to gain traction. The We Demand Rally in 1971 explicitly called for the ban on gay and lesbian military service to be lifted. In addition, the passage of both The *Canadian Human Rights Act* in 1977 and the *Charter of Rights and Freedoms* in 1982 created

the space for future discrimination claims to be filed against an employer and the government. People who experienced discrimination used this tool and filed several complaints with the Canadian Human Rights Commission and there were five cases filed with the Federal Court of Canada seeking remedy for discrimination, one of which was Michelle Douglas' case. The Douglas case was the first to set a trial date and forced the government to decide on whether to settle the case privately or pursue a public trial that had a low probability of producing an outcome that was favourable toward the existing policy.

The media also played a role in encouraging the Canadian government to act swiftly due to the threat of public embarrassment and the preference to control the narrative around the ban. The archival documents show the Department of Justice and the Department of Defence were briefed on the options available to them when preparing to go to trial with Michelle Douglas. Defending the policy, in what was anticipated to be a three-week trial with a lot of publicity, was immediately dismissed. The reasoning was the Canadian Armed Forces and the individuals asked to participate in the trial would be exposed for discriminatory practices and be publicly shamed.

Finally, government ideology and public opinion briefly contributed to the delay in lifting the ban. Policy momentum theorizes that political ideology will condition how likely governments are to adopt policies and who they are willing to learn from. Relatedly, public opinion as an intervening mechanism contributes to the electoral incentive structure that policymakers face when policies are unpopular with the public. Even though ideology initially hindered the process, the advocacy by politicians to lift the ban was a multi-party endeavour. Members of both the Progressive Conservative Party and the NDP were advocating for the ban to be lifted and for broader protections in the Canadian Human Rights Act. Moreover, Prime Minister Mulroney had a familial connection to the LGBT+ community, which made him more inclined to support lifting the military ban. However, when the government moved to lift the ban in 1991, the socially conservative members of the Progressive Conservative Party were so strongly opposed that the Prime Minister chose not to pursue it. The strength of the opposition was ultimately outweighed by the potential for public embarrassment if the Douglas case had gone to trial.

Relatedly, public opinion was used as a tool by the Canadian Armed Forces to justify their position to maintain the ban. Through the Charter Task Force, the Canadian Armed Forces fielded surveys of both the general Canadian population and military personnel. The results indicated overwhelming support for maintaining the ban. Consequently, policy momentum had to overcome

the electoral incentives faced by policymakers whose constituents were in favour of the ban. Indeed, public opinion would have slowed down the process, rather than providing support for the momentum. I return to these mechanisms in the context of Australia after an exploration of the process that led to Australia's policy change.
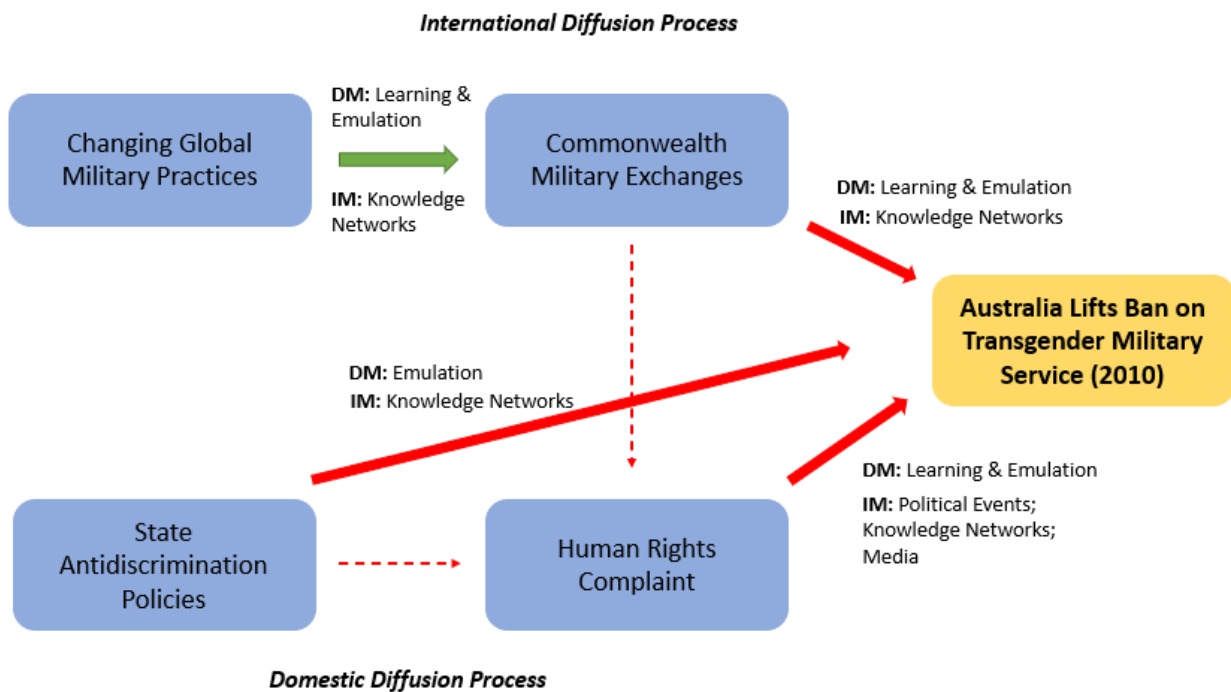
4.4   The Australian Case

4.4.1   Summary of the Australian Case

In November 1992, just over a month after the Canadian Armed Forces allowed lesbian, gay, bisexual, and transgender people to serve in the military, the Australian Defence Force also lifted its ban on gay and lesbian military service. However, the policy maintained a ban on transgender service until 2010. Unlike Canada, the Australian policy lifted its ban on "homosexual conduct" rather than identity (Riseman, 2016). The process by which the ban on transgender military service was lifted in Australia is illustrated in **Figure 4.4**. Ultimately, the combined pressure from both international and domestic diffusion processes led to the successful policy change. I also identify the diffusion mechanisms (DM) that help facilitate policy momentum and the intervening mechanisms (IM) that contributed to the success of policy momentum.

Empirically, **Figure 4.4** illustrates the major stages in the policy momentum process. The international level is very similar to the Canadian case because the global process would be nearly identical. However, since Australia's ban on transgender military service was lifted in 2010, the number of countries that had adopted more progressive policies was far greater than in 1992 when Canada lifted its ban. As a result, actors at the domestic level were able to place greater emphasis on the relationship that the Australian Defence Force has with other countries who had already changed their policies. For this reason, both policy learning and emulation are identified as the diffusion mechanisms because there was a stronger history of a successful policy (learning) and there was a clearer sense of the normative value (emulation) of the policy to maintain Australia's international reputation. In addition, the Australian Defence Force frequently participates in exchanges with Commonwealth militaries that had already changed their policies to allow transgender service.

The domestic pressure was largely a function of a human rights complaint filed by a transgender woman who had been discharged from the Australian Defence Force. She relied on personnel exchanges between Commonwealth militaries and state antidiscrimination laws to make the case that she was experiencing discrimination. As a result, **Figure 4.4** has two dashed arrows pointing from "state antidiscrimination politics" and "commonwealth military exchanges" to the "human rights complaint." To effectively trace how the ban on transgender service in the Australian Defence Force was lifted, I will briefly outline the origins of the broader LGBT+ ban and how the ban for gays and lesbians was lifted, followed by an analysis of the sequence of events that led to the repeal of the transgender ban in 2010. Ultimately, policy momentum through the combined pressure from changing global practices and domestic human rights challenges, led to the lifting of the ban on transgender military service in the Australian Defence Force.

Figure 4.4: Australian Military Policy Momentum

Note: This figure is a simplified illustration of policy momentum in the Australian case. The labels "DM" and "IM" are used to identify the diffusion mechanisms and intervening mechanisms, respectively

4.4.2   Detailed Australian Case

4.4.2.1   Historical Origins of LGBT+ Exclusion in Australia

The Australian Defence Force is comprised of the Royal Australian Navy, Australian Army, and the Royal Australian Air Force (RAAF). Prior to the Second World War, the only service that had a policy that explicitly banned homosexuals from serving was the Navy. According to Riseman (2018, p. 148), "[F]rom at least 1954, the Navy adopted the British Admiralty Fleet Orders in 'Unnatural Offences.'" The policy was updated in 1969 and reworded to provide regulations concerning "Abnormal Sexual Behaviour" which said: "[T]he individual who is a confirmed practising homosexual has no place in a disciplined Service – he is a potential security risk and a corrupting influence. As soon as it is known that a person is a habitual homosexual he must be discharged" (Navy Order, 1969; Riseman, 2018). The other services had unofficial bans on homosexuals, but a cross-service ban was not official until the 1980s. Prior to the more streamlined and government sanctioned approach to banning gays and lesbians, a small group of activists tried to tackle lesbian and gay employment discrimination and used the military's policy as an example.

Although few LGBT+ advocacy groups existed at the time, one of the most prominent groups was a Sydney-based organization called CAMP[107] Inc. Shortly after its founding in 1970, CAMP referenced the military ban in a 1971 newsletter after the Navy discharged five men on the basis that they were gay (Riseman, 2018). The focus of this piece and follow-up publications in the organization's newsletters were part of a broader discussion surrounding employment discrimination experienced by gays and lesbians. CAMP's efforts and participation in the Royal Commission on Human Relationships[108] ultimately led to a recommendation by the Royal Commission that said: "The Defence Department should remove automatic discrimination against homosexuals in the services and judge their qualifications on the same criteria as would be applied to heterosexuals" (Evatt et al., 1977, p. 124). This recommendation was the first time that a

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[107] Campaign Against Moral Persecution

[108] The Royal Commission on Human Relationships was the response to a failed attempt at reforming abortion law in 1974. The mandate was: "[T]o inquire into and report upon the family, social, educational, legal and sexual aspects of male and female relationships, so far as those matters are relevant to the powers and functions of the Australian Parliament and Government, including powers and functions in relation to the Territories" (Evatt et al., 1977)

government initiated report had recommended lifting the ban on homosexual military service (Riseman, 2018).

Despite the successful advocacy efforts by CAMP, the Australian Defence Forces did not make changes based on the recommendation. On the contrary, in 1982 the "Defence Forces Discipline Act" was introduced by the Australian government that made the ban on homosexual official for all services within Australian Defence Force. In September 1986, the Defence Force introduced Defence Instruction 15-3, a new set of instructions called "Homosexual Behaviour in the Australian Defence Force." The instruction reiterates the ban on gay and lesbian service members citing reasons such as "command and morale", "national security", "health"[109], and "protection of minors"[110] for the ban. Opponents of the policy echoed similar criticisms as people in the Canadian case, particularly with respect to the circular nature of the national security argument (Riseman et al., 2018). This policy was ultimately challenged through the Australian Human Rights Commission.

4.4.2.2 Lifting the Ban on LGB Military Service in Australia

Lifting the ban on gay and lesbian service in the Australian military followed a similar trajectory as the Canadian military in terms of timing and events that led to the policy change. In 1990 a member of the Army Reserve filed a complaint with the Australian Human Rights and Equal Opportunity Commission[111] arguing that she experienced discrimination based on her sexual orientation when she was discharged from the Australian Defence Force (National Defense Research, 2010; Smith, 1995). The complaint led to an investigation of her individual case and, ultimately, the lifting of the ban more broadly. Throughout 1991 and early 1992, the Australian Human Rights Commission negotiated with the Australian Defence Force in an effort to have the 1986 Defence Instruction repealed. The negotiations came to an end when the Defence Minister,

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[109] Under this reason, the instruction says "the health risks to persons engaged in homosexual activity are real and well documented" (Defence Instruction 15-3 as printed in Brown, 1992).

[110] The instruction says: "[P]arents permit their children who are minors at law to join the ADF; this places the Services in the role of 'loco parentis.' This responsibility requires that the minors be protected from aberrant behaviour" (Defence Instruction 15-3 as printed in Brown, 1992).

[111] Now known as the Australian Human Rights Commission.

Senator Robert Ray, reaffirmed the policy in June 1992 (Brown, 1992; Burdekin, 1992; Riseman et al., 2018).

After the Minister of Defence made it clear that the ban would not be lifted by the Department of Defence, the Australian Human Rights Commission brought this issue to the attention of the Justice Department and the Attorney General at the time, Michael Duffy. The argument for lifting the ban as presented to the Attorney General was that it "violated Australia's obligations under both the International Labour Organization standards and the International Covenant on Civil and Political Rights" (Riseman et al., 2018). This argument was sufficient for the Attorney General to investigate whether the ban was consistent with international law and led the Prime Minister, Paul Keating, to form the Caucus Joint Working Group on Homosexual Policy in the Australian Defence Force. The report of the Working Group was submitted in September 1992 and discussed international and domestic obligations regarding discrimination, comparisons with Australian police forces, and policies of other militaries around the world.

The working group determined that existing domestic policy (as of September 1992) would not compel the Australian Armed Forces to lift the ban (National Archives of Australia, 1992). However, several articles in the International Covenant on Civil and Political Rights and the International Labor Organization Convention 111: Discrimination (Employment and Occupation) were deemed relevant. Although the Working Group determined that the uniqueness of the Defence Force was considered justifiable grounds for discrimination, concern over ignoring the international obligations at the federal level was expressed. In particular, the group expressed concern with how the Australian states and territories would react if the federal government "does not practice what it preaches with regard to international conventions that it has signed" (National Archives of Australia, 1992).

The working group also compared the ban to policies within Australian police forces and other militaries in the world. During the committee hearings, police commissioners from the states, including states such as Tasmania where homosexuality was still illegal, expressed acceptance of homosexual police officers. Since the state police forces had been allowing gays and lesbians to be officers since the early 1980s, the Committee felt it was important for the Australian Defence Force to consider these examples (National Archives of Australia, 1992). Further, at the time of writing the report, eight countries allowed gays and lesbians to serve in the military: Austria, Belgium, Denmark, Norway, The Netherlands, South Africa, Sweden, Switzerland. The countries

that banned homosexual service members were Britain, Canada, Greece, India, Italy, New Zealand, Pakistan, Spain, Turkey, and the United States. It was noted that some countries such as Canada were considering the recommendation to end its prohibition of homosexual military service (National Archives of Australia, 1992). Much of this information was also communicated in a report from the Australian Human Rights Commission that was set to Attorney General, Michael Duffy in September 1992 (Burdekin, 1992). After significant debate and disagreement between the Department of Defence and the Department of Justice, the ban on gay and lesbian military service was lifted in November 1992.

Although the focus of this article is on how policy momentum provides an optimal framework for understanding removing the ban on transgender military service, the process of lifting the ban on homosexuality creates the foundation of policy momentum in the future. Arguably, the evidence presented thus far presents its own case of policy momentum, with pressure from the Australian Human Rights Commission and consideration of both domestic police forces and international peers.[112] A more detailed analysis on the application of policy momentum to the lesbian and gay ban is beyond the scope of this project. However, as I argue below, similar dynamics occur in the late 2000s and early 2010 when the issue of transgender service people is brought forward.

4.4.2.3   Lifting the Ban on Transgender Military Service in Australia

Despite repealing the ban on lesbian, gay, and bisexual military service in November 1992, transgender people were still unable to openly serve or transition while serving (Riseman et al., 2018). The recognition of transgender people in the Australian Defence Force (ADF) was first acknowledged in 1996 as part of the ADF's submission to the Senate and Legal Constitutional References Committee Inquiry on the Sexuality Discrimination Bill.[113] If successful, the bill would

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[112] In the case of lifting the ban on transgender people in the military, the repeal of the ban on gay and lesbian military service acts as an intervening mechanism. In a more complete discussion of policy momentum, McMahon (2022b) adopts the definition put forward by Mahoney (2021, p. 124) that argues an "intervening mechanism is both an outcome of an initial cause and a cause of a final outcome." The repeal of the gay and lesbian ban is an outcome of an initial process but is also part of the process that ultimately let transgender people serve in the Australian Defence Force.

[113] In November 1995, Australian Democrats Senator Sid Spindler introduced the Sexuality Discrimination Bill that would "ensure that people receive equal treatment in areas governed by Commonwealth law and are protected against discrimination on the grounds of their sexuality or their transgender identity" (Spindler, Senate Debates, 29 November

have prohibited discrimination based on "sexuality or transgender identity" (Spindler , Senate Debates, 29 November 1995). In its written submission and oral testimony, the Australian Defence Force opposed the inclusion of transgender service because it could create confusion around gender roles and diminish morale within the service (Riseman et al., 2018). The compromise that the Defence Force suggested was that individuals could "discharge, have gender reassignment surgeries, and would be welcome to re-enlist under their new gender" (Riseman et al., 2018, p. 176). The Sexuality Discrimination Bill was not successful which allowed the Australian Defence Force to continue excluding transgender people form enrolling.

Even though the Australian Defence Force actively opposed transgender personnel in an unofficial capacity, the first formal policy, called "Defence Instructions (General) PERS 16-16: 'Trans-gender Personnel in the Australian Defence Force", was issued in April 2000. The document states that transgender people are unfit for service because they have a psychiatric disorder:

> A person undergoing or contemplating gender reassignment would not normally be suitable for recruitment into the ADF because these individuals suffer from a condition known as gender dysphoria. This is a psychiatric disorder characterised by both a strong and persistent cross gender identification, and a persistent discomfort with their sex or role of that sex. Consistent with the current ADF medical and recruiting policy, a person undergoing or contemplating gender reassignment cannot be considered suitable for service in the ADF because of the need for ongoing treatment and/or the presence of a psychiatric disorder (Commonwealth of Australia, 2000, paras. 5-6).

Consistent with the Defence Force's position in the 1996 Inquiry on the Sexuality Discrimination Bill, the directive also outlines the detrimental effects that a transgender person would have on morale and cohesion and outlines the reapplication process once a medical transition has taken place. The requirement of a medical transition was "generally interpreted as a ban on transgender service" because it not only had a narrow definition of transgender people, but also banned those who did not seek gender reassignment surgery (Riseman et al., 2018, p. 177).

Similar to the Canadian case and lifting the ban on gays and lesbians in Australia, the ban on transgender people became the target of a human rights complaint. Bridget Clinch, a former

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1995). In May 1996 the Senate referred the Bill to an Inquiry by the Senate Legal and Constitutional References Committee and ultimately presented its report in December 1997.

Infantry Captain in the Australian Defence Force, is credited with publicly challenging the ban on transgender people in the ADF. Clinch joined the Australian Defence Force, specifically the Australian Army, in 1997 and enlisted full-time in 1999. After being diagnosed with gender dysphoria and starting hormone treatment[114] in 2009, she wrote a letter informing her team and supervisor about her transition. In a personal interview with Bridget Clinch , she described the experience of coming out to her colleagues as an uncontroversial event:

> I was the second in command of our adventurous training wing. So when I sort of came out to my unit, they were just like, 'oh, well, don't take too long off over Christmas, because we need you back here instructing on the climbing courses and stuff', you know, like don't waste too much time. And everyone was really cool and I was like, whoa, this is really gonna be all right. You know, this is gonna work. I'm gonna be able to transition and it's just gonna happen (Personal Interview, June 2021).

She emphasizes how different her experience was with the "higher ups" or those higher in the chain of command. Ms. Clinch said "the higher ups tended to be the worst. That was the weird thing. I kind of thought they might have been able to get on board" (Personal Interview, June 2021). From the time she came out to her team to her discharge from the Defence Force, she describes the experience as "a nightmare" with "hostility and resistance at every step of the command chain from then onwards" (Personal Interview, June 2021; Riseman et al., 2018, p. 234).

The Australian Defence Force requires every member to be medically approved and suitable for employment and deployment. As a result of her gender dysphoria diagnosis, Ms. Clinch was required to appear before the Medical Employment Classification Review Board[115] to determine whether she was fit to continue serving in the Defence Force. Shortly after the request to appear before the medical review board, she received her termination notice in March 2010. This initial decision was overturned because "there was a bunch of procedural fairness issues with my initial medical review board because they jumped straight from medical review board to here's your termination notice, get out…so obviously you can't just hand someone medical review board

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[114] Gender dysphoria is "a marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration." People with gender dysphoria may seek medical intervention to help treat the condition such as hormone therapy or gender reassignment surgery (Taylor et al., 2018)

[115] The Medical Employment Classification Review Board examines the ADF member and also examines their medical record for the purposes of determining whether they are incapacitated in the long term, for Defence service (Australian Government, 2020)

and termination notice at the same time…you've gotta go through all of the, the steps of review. And so given that timeframe and given both of the things at once, it's impossible to do that" (Personal Interview, June 2021). After the initial dismissal was overturned internally, Clinch went through the full review process and presented several pieces of evidence to persuade the Australian Defence Force to lift its ban on transgender service members.

When asked to describe the types of information she brought to the medical review board, Clinch said:

> [T]he main things that I was leaning pretty heavily on was the fact that the Brits and Canadians had both deployed people on operations after supporting them through a medical transition and letting them continue to serve. And I guess was always the primary concern. Like we can't do this because you'll be not deployable for too long or at all, [and] if you're not deployable at all, you get discharged. That's kind of how everything works. So that was kind of my thing was try and find evidence of the fact that other militaries have done this and so I found it (Personal Interview, June 2021).

Further, she assumed that the Australian Defence Force would be onboard with lifting the ban due to the frequent international cooperation among Commonwealth militaries including Canada, Australia, the United Kingdom, and New Zealand, all of which had lifted bans on transgender people. Clinch described the process as:

> [W]ith all the Commonwealth countries there's military exchanges between Australia, UK, New Zealand, and Canada. We all exchange serving officers and stuff. And we have an exchange where we'll send some of our candidates to your [Canadian] Royal Military College and you'll send some to ours [Australian Military College]. You know, there was a Kiwi[116] in my class and there was a [Australian] guy I met that went to New Zealand to do his course there. And so our training is literally interchangeable within the Commonwealth militaries to the point where we just hand someone over to another military for a year or a year and a half and say, 'hey, train them' (Personal Interview, June 2021).

After describing the exchange process, she said "I honestly thought that I could just convince them and explain 'Hey, this is how it is – we're actually behind everyone else on this and here's the UK stuff and here's the Canadian stuff and can we just sort this out and move on and not make a big deal?' But you know, they decided to make a big deal" (Personal Interview, June 2021).

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[116] A common term used to describe someone from New Zealand.

The international evidence that Ms. Clinch used in an effort to convince the Australian Defence Force to change its policy was likely not news to the people higher up the chain of command. Given the extensive international research that occurred in the early 1990s to determine whether to lift the ban on gays and lesbians, it is reasonable to assume that similar research was being conducted at this time on transgender policies in other militaries. Ms. Clinch also shared that the military was in communication with the Australian Federal Police, who had accepted transgender officers and supporting medical transitions for a long time prior to her experience in the military. The research that Clinch conducted and presented combined with the conversation between the military and federal police provides evidence of the pressure "from above" that policy momentum theorizes as one part of the process toward policy change. It also illustrates the contribution of knowledge networks within the policy momentum framework. The Australian Federal Police and the Australian Defence Force form a network that shared knowledge on how transgender people can be included in their respective agencies.[117] The position of the Australian Federal Police likely helped alter the Australian Defence Force's perspective on including transgender people.

Clinch also presented evidence from the domestic context to aid in her case. She said "I also looked locally. I was looking at our antidiscrimination laws" (Personal Interview, June 2021). At the time (2010), the federal government did not have protections on the basis of gender identity or sexuality, but several Australian states had prohibited discrimination based on sexual orientation and gender identity. Although state antidiscrimination policies did not apply to the military as a federal agency, providing evidence that state-level employers are not allowed to discriminate based on gender identity suggests that the pressure "from below" as described in policy momentum was also emerging. However, this was not sufficient evidence to create policy change.

The ban on transgender service was ultimately lifted after Clinch launched a human rights complaint with the Australian Human Rights Commission. She describes the complaint as "a bit of a Hail Mary because it wasn't covered under any Commonwealth law" (Personal Interview, June 2021). The rationale for filing the complaint was to get more political and media attention on her case. Clinch said: "I knew I needed to get more eyes on what was going on because I knew if [the Defence Force] could keep it quiet, I'd just be brushed under the carpet and I'd be gone"

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[117] This was also the case in 1992, when the Australian Defence Force lifted its ban on gay and lesbian personnel.

(Personal Interview, June 2021). Indeed, Clinch's instinct appears correct. In describing the experience of filing the human rights complaint she said: "[I]t's it's amazing to start to see the inner workings of that Canberra, capital city bubble... Like if something was put out online, the minister was briefed on it the next morning…whatever articles came out [about the case] or whatever I did, they knew about straight away. It was just crazy. But the human rights thing, I think was one of the steps that sort of saved my butt a bit because it got external pressure on them straight away" (Personal Interview, June 2021).

In recognizing the "external pressure" put in the Australian Defence Force, Clinch illustrates how policy momentum was gaining strength and being affected by domestic mechanisms such as the media, knowledge networks, and political events. Similar to the Canadian Armed Forces keeping a close eye on Michelle Douglas' case, the Australian Defence Force and the Minister of Defence were closely following the developments of Bridget Clinch's case. In fact, just as Douglas' case did not make it to trial, Clinch's case did not go to a tribunal because the ban was lifted before it could happen.

Within the Australian Defence Force, pressure to lift the transgender ban was also mounting. At the same time that Bridget Clinch was publicly challenging the policy, a transgender woman in the Air Force, Amy Hamblin, was challenging the policy using internal channels. In an interview with an individual with knowledge of how the ban was lifted, they said:

> Amy was caught dressing [as a woman] and she told her chain of command that she intended to challenge the band as well, but she, instead of going to the human rights commission intended to challenge through the internally within the ADF. So the way I read it, Amy put extra pressure on what was going on already. So certainly she played a very important role in this, but Bridget's case, when you look at the documentary trail, the paper trail, her case was sort of the dominant catalyst (Personal Interview, May 2019).

As neatly summarized by the quote above, Amy's case contributed to the pressure that the Australian Defence Force was already experiencing with Bridget Clinch. Even though Clinch's case is identified as the "dominant catalyst", the internal pressure helped strengthen the policy momentum. In September 2010, the Australian Defence Force announced the repeal of the transgender ban which meant "transgender members could now openly enlist, serve, and transition within the ADF" (Riseman et al., 2018, p. 177).

The process that led to lifting the ban on transgender people in the Australian Defence Force is best explained by the policy momentum framework. The momentum that was successful in 2010 benefited from the foundation set in the early 1990s but was a separate process that was propelled by changing international practices, law enforcement knowledge networks and political events such as human rights complaints that garnered media attention. The evidence suggests that domestic pressure was created in three ways. First, Ms. Clinch could not rely on federal human rights legislation because a prohibition on discrimination based on gender identity did not exist. As a result, she relied upon state level antidiscrimination laws to demonstrate that the Australian Defence Force policy is not consistent with state-level policies. Second, compared to its domestic peers (the Australian Federal Police), the Australian Defence Force was a laggard on including transgender people. The domestic peer network among law enforcement agencies created a learning opportunity for the Defence Force on how transgender people can be incorporated into the military successfully. Finally, the intentional public nature of Bridget Clinch's human rights complaint created pressure on the government through a political event (the complaint itself) and the media. The Minister of Defence was briefed on every step in Ms. Clinch's case and would have been aware the any media coverage that surrounded the case.

Of course, the policy momentum framework depends on the creation of international pressure. In the Australian case, the evidence suggests this pressure came from two sources. First, the military exchanges that occur across the Commonwealth countries demonstrated to the Australian Defence Force that not only was Australia's policy was out of date compared to its peers. Moreover, Clinch presented policies from Canada and the United Kingdom that showed transgender people could serve. Second, given the similarities with lifting the ban on gays and lesbians, it is reasonable to assume that the Australian Defence Force was doing its own research on global practices and the international obligations that Australia is expected to follow. The pressure from each direction, domestic and international, combined in the late 2000s and was ultimately responsible for the military policy change. While each of these sources of pressure were insufficient to cause policy change on their own, in combination they created sufficient conditions for change to occur.

4.4.3   Intervening Mechanisms in Australia

In the prior section, I outlined the historical origins of the Australia lifting its ban on transgender military service. As previously outlined, policy momentum relies upon an examination of the five intervening mechanisms that affect policy momentum: public opinion, media attention, government ideology, knowledge networks, and political events. Similar to the Canadian case, knowledge networks, political events, and the media are the intervening mechanisms that were most influential. Public opinion and political ideology were not significant mechanisms in this case.

In the Australian setting, knowledge networks also played an integral role in repealing the transgender ban. The networks were both international and domestic in nature. The international network was specifically comprised of Commonwealth countries. As highlighted by Bridget Clinch, there are frequent military exchanges between Australia, the United Kingdom, New Zealand, and Canada. This particular network of militaries was described as having interchangeable training and would communicate on the personnel that they allow to enlist. The domestic network centred on the Australian Federal Police. When Bridget Clinch was challenging the transgender ban, the Australian Defence Force reached out to the Australian Federal Police to better understand how transgender people can be integrated in the military. Relatedly, the public human rights complaint filed against the Australian Defence Force by Bridget Clinch forced the government to decide on whether the policy would remain in place or removed. Moreover, the internal complaint filed by Amy Hamblin contributed to the pressure being placed on the Australian Defence Force to lift the transgender ban. Prior to both complaints, lifting the ban on gay and lesbian military service also served as a political event that helped support the policy momentum.

Mirroring the Canadian case, the media encouraged swift action by the governments. More specifically, the threat of negative media coverage helped increase the pressure on the government. The Australian Defence Force publicly announced the repeal of the transgender ban in September 2010, which is speculated to be an intentional move to control the narrative. Riseman (2016, p. 147) suggests that the Australian Defence Force had flagged that it was in the process of repealing the policy "as early as May 2010" and the "public release before Bridget's story could appear in

the media"[118] seemed intentional. Although public opinion was only briefly mentioned, the concern over public embarrassment and eagerness to publicly announce the repeal before TV interview aired suggests that public perception was a consideration.

Finally, policy momentum theorizes that political ideology will condition how likely governments are to adopt policies and who they are willing to learn from. In contrast, the Labor Party, a centre-left party, was the government of the day both in 1992 and 2010 when the gay and lesbian ban was lifted and when the transgender ban was lifted, respectively. Even though a left-leaning party was in power, there was significant opposition and resistance from the Australian Defence Force and the Ministry of Defence in both processes.

4.5   Discussion

What explains the timing and sequencing of events that led to the repeal of the ban on transgender people serving in the Canadian and Australian militaries? The evidence suggests policy momentum. The combined pressure on the respective defence forces from changing global practices and domestic human rights claims produced conditions favourable for policy momentum to be successful. In 1992 when Canada changed its policy, there were few countries that had lifted their bans on lesbian, gay, bisexual, and transgender military service. However, archival documents suggest that the Canadian government was aware of the countries who had either lifted their bans or were considering lifting their bans. In 2010, when Australia changed its policy, there were several countries that had updated their policies, including the Commonwealth countries with which the Australian Defence Force participates in military exchanges. Domestically, the catalyst that propelled policy momentum forward in both countries was a human rights complaint. In Canada this complaint was from a lesbian who had been discharged from the Canadian Armed Forces, whereas the complaint in Australia was filed by a transgender woman who had been dismissed from the Australian Defence Force. In both cases, the pressure from the domestic and international levels was diffused through learning and emulation.

Policy momentum relies upon the four mechanisms of policy diffusion and identifies five intervening mechanisms that can impact the success of policy momentum. **Table 4.3** summarizes

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[118] Bridget participated in an interview with the television show, Sunday Night, which aired in November 2010 (Riseman, 2016).

the primary diffusion mechanisms and intervening mechanisms that contributed to policy momentum in Canada and Australia. The primary diffusion mechanisms involved in lifting the ban on transgender people in the Canadian Armed Forces and the Australian Defence Force are learning and emulation. Policy learning occurs when information about the consequences of a policy in other units helps another unit decide whether to adopt the policy (Berry & Berry, 2007; Maggetti & Gilardi, 2016). Frequently, it this is understood as a policy is more likely to be adopted if it has been successful in other places.[119] While emulation is similar to learning, "it is not related to the objective consequences of a policy" (Maggetti & Gilardi, 2016, p. 91). Instead, emulation emphasizes the symbolic characteristics of the policy and suggests that states will "conform to their normative environment" (Maggetti & Gilardi, 2016, p. 91).

In Canada and Australia policy learning is evident throughout the policy momentum process. For instance, knowledge networks of politicians and lawyers in Canada and law enforcement bodies in Australia facilitated learning in the domestic context. The learning that occurred from the international level was primarily through internal research conducted by the government in response to human rights complaints. Emulation was particularly evident in the diffusion from the international to domestic level. The importance of conforming to the normative environment is stronger when there is growing evidence that there is a shift in global military practices. In particular, Australia lifting its ban in 2010 was comparatively late which was highlighted through the discussion of military exchanges with other Commonwealth countries. This discussion creates pressure to conform to the new standards of behaviour.

Table 4.3: Primary Diffusion and Intervening Mechanisms

Country	Diffusion Mechanisms	Intervening Mechanisms
Canada	- Learning - Emulation	- Political/Non-Political Events - Knowledge Networks - Media
Australia	- Learning - Emulation	- Political/Non-Political Events - Knowledge Networks - Media

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[119] According to Maggetti and Gilardi (2016, p. 90) success can be defined in relation to: "(a) the goals that the policy is designed to achieve, (b) the challenges of its implementation and/or (c) its political support."

Policy momentum theorizes that the likelihood of policy change can increase or decrease based on five factors: public opinion, media attention, government ideology, political events, and knowledge networks. The most influential factors in Canada and Australia were knowledge networks, political events, and to a lesser extent, the media. Importantly, the specific timing of domestic and international changes provides an explanation for the different timing of policy change in Canada (1992) and Australia (2010). More specifically, the knowledge networks in Canada between politicians and lawyers seeking to change discriminatory laws made them more attune to the different identities that were included under the definition of sexual orientation. As a result, transgender identity was included when the ban was lifted in Canada. Ultimately, the international and domestic sources of pressure were conditioned by knowledge networks, political events, and the media which strengthen the policy momentum that lifted the military bans on transgender people in Canada and Australia.

4.6   Conclusion

Policy momentum draws on insights from global and domestic policy diffusion and multilevel governance to explain how the interaction of international and subnational pressure creates the conditions for national policy change to occur. These case studies help identify different sources of domestic pressure that can exist when the policy area is strictly within the national government's jurisdiction. In the context of Canadian and Australian military policies on transgender service, policy momentum provides a more holistic framework for understanding the sequence of events that led to the repeal of the bans. The international pressure from other militaries changing their policies and the domestic knowledge networks worked together to create the conditions suitable for policy momentum to be successful and create policy change.

The application of policy momentum in Canada and Australia can help generate important insights on the timing of change in militaries across Western democracies. Despite nearly two decades separating the two cases discussed in this article, similar processes were working together to create change. Policy momentum can help identify influential sources of pressure in other countries.

A more detailed exploration of global LGBT+ military service would be beneficial for future research. The most recent report on global policies was developed by The Hague Centre for

Strategic Studies in 2014. At that time, 18 countries allowed transgender people to serve openly in the military. The LGBT Military Index was developed alongside the report, but has not been updated (Polchar et al., 2014). As a result, there is limited research available to determine the number of countries that allow transgender military service, or even gay and lesbian service.

New applications of policy momentum may consider different policy areas that vary with respect to jurisdictional boundaries. For instance, a policy area that has shared jurisdiction between two or more governments would likely change how policy momentum operates. Increasing the number of actors with decision-making power might also affect which factors are most influential in conditioning the strength of policy momentum. On the other hand, a unitary system could also experience pressure from "above" and "below" such that policy momentum could provide new insights on policy change in a more centralized institutional arrangement. Varying the institutional arrangement could also mean considering policies in a unitary system.

Additionally, future research could also explore whether policy momentum always leads to progressive policy change. Previous research on the LGBT+ rights suggests that the movement that has created opportunities for LGBT+ rights expansions has consistently experienced countermovements with the sole focus of stopping or reversing political gains (Ayoub, 2019; Ayoub & Page, 2019; Bosia et al., 2020) It is plausible that policy backlash is also the result of policy momentum generated by countermovements.

4.7   References

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5   Conclusion

Western democracies are experiencing a widespread shift towards greater recognition of transgender rights in public policy, yet the timing of this recognition differs across states. Historically, transgender identities and lesbian, gay, and bisexual (LGB) identities have been conflated (Taylor et al., 2018) and grouped together in policy(Lewis et al., 2014), which has resulted in transgender and LGB activists (more commonly referred to as the LGBT+ community) forming political coalitions with each other to pursue their individual and collective goals (Green, 2000; Haider-Markel et al., 2019). Over the last two decades, however, public policy has shifted to recognize and treat sexual orientation and gender identity as distinct, especially as LGB policy changes have tended to occur separately from and prior to changes related to transgender recognition. Transgender recognition policies have also been adopted at different points in time by countries that are quite similar to each other. In this dissertation, I developed a novel theoretical framework called policy momentum as a more holistic explanation for the variation in timing of transgender inclusion in public policy. Unlike existing work on policy diffusion, which emphasizes domestic or international processes, I demonstrate how the pressure developed from multiple levels can work together to create conditions that are more likely to produce policy change

Empirically, the dissertation draws upon an extensive collection of archival documents, including previously classified collections, and 40 elite interviews. I employ process tracing to trace the sequential chain of events in policy changes to human rights legislation and military policy in Canada and Australia. I argue that traditional conceptions of policy diffusion fail to account for the multidirectional and multi-jurisdictional complexity inherent in many instances of policy diffusion and policy change and therefore produce incomplete explanations of the global and domestic factors that influence transgender policy change cross-nationally. Instead, this dissertation suggests that the presence and timing of the two levels of pressure are decisive for when policy change occurs.

5.1   Explaining Transgender Inclusive Public Policy

This dissertation presents a new theoretical framework called policy momentum to explain the cross-national timing of inclusive public policy for transgender people in Western democracies. This framework draws on insights from global and domestic policy diffusion and multilevel governance to explain how the interaction of international and domestic pressures creates the conditions for national policy change to occur. Policy momentum provides a compelling explanation for the timing of transgender policy change in Canada and Australia.

In the first article of this dissertation, I provide a detailed outline of the theoretical framework that I call *policy momentum*. Building upon the directional elements of policy diffusion and the jurisdictional flexibility from multilevel governance scholarship, I conceptualize policy momentum as the multidirectional accumulation of pressure from two separate levels, which in turn can generate policy change at a third level. Policy momentum provides a means of theoretically integrating and specifying how multilevel and multidirectional global and domestic policy diffusion processes *together* can produce national policy change. The mechanisms of diffusion are well-established in the literature (e.g., competition, coercion, emulation, and learning) but this dissertation also identifies five intervening mechanisms that can strengthen or hinder policy momentum: public opinion, media, government ideology, events, and knowledge networks. Although they are not deterministic, the intervening mechanisms can act as filters through which policy momentum passes and thus can alter the shape of the policy outcome. To demonstrate the usefulness of policy momentum, the second and third articles apply the framework to human rights legislation and military policies in Canada and Australia.

In articles 2 and 3, I explore the explanatory power of policy momentum by applying the framework to explain the timing and pace by which Canada and Australia amended human rights legislation (article 2) and lifting the ban on transgender military service (article 3). There has been a global shift toward greater inclusion of transgender people in public policy, particularly in the human rights space. In article 2, I trace the processes that led to Canada and Australia amending their respective human rights codes to include gender identity as a prohibited ground of discrimination. Canada amended its *Canadian Human Rights Act* in 2017 to prohibit discrimination based on gender identity and gender expression, whereas Australia amended its *Sex Discrimination Act* to include gender identity in 2013. By tracing the origins of policy change, it becomes clear that the multidirectional and multi-jurisdictional theorization of diffusion provides

the most holistic explanation for the inclusion of gender identity in Canada's and Australia's human rights legislation.

In Canada, the national government was strongly influenced by the policy changes that occurred at the subnational level. By the time the federal government changed its policy, all provinces and territories had prohibited discrimination based on gender identity through policy learning and policy emulation. The vertical diffusion process from the provinces to the federal government created pressure on the government through knowledge networks that appealed to the inclination to protect its reputation of being a global human rights leader. The emergence of a global norm was acknowledged in Canada (e.g., discussion of the Yogyakarta Principles) and contributed to policy momentum. While an important component of the process, I argue it complemented the domestic ("bottom-up") pressure that was exerted on the national government. In contrast, the Australian government was strongly influenced by the top-down vertical diffusion processes that created pressure from the international level through knowledge networks. More specifically, the focus of the Australian federal government was on its international obligations through human rights agreements (e.g., the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*). Similar to Canada, many of the Australian states had already updated their human rights frameworks to prohibit discrimination based on gender identity and this fact was acknowledged by the Australian government during the decision-making process. As a result, the domestic diffusion process complemented the international pressure on the national government. Using policy momentum, I demonstrate how the specific timing of domestic and international processes explains the different timing of policy change in Canada (2017) and Australia (2013). In addition, a number of intervening mechanisms were important. In particular, the national consultations that Australia had in 2008 and 2012 to develop a unified human rights framework were political events that helped propel policy momentum and achieve change at an earlier time compared to Canada.

In the third article of the dissertation, I apply policy momentum to explain the timing by which the Canadian Armed Forces and the Australian Defence Force lifted their bans on transgender military service. The Canadian Armed Forces lifted its ban in 1992 at the same time as lifting the ban on gay, lesbian, bisexual service members. Although the Australian Defence Force also repealed its ban on gay, lesbian and bisexual service members in 1992, transgender people were unable to openly serve until 2010. As Commonwealth countries with close military

ties, the 18-year gap between Canada and Australia is somewhat puzzling. Using policy momentum to explain this puzzle, I identify how the combined pressure on the respective defence forces from changing global practices ("above") and domestic human rights claims ("below") explain the timing of policy change.

When Canada changed its policy in 1992, there were few countries that had lifted their bans on lesbian, gay, bisexual, and transgender military service. However, previously classified archival documents suggest that the Canadian government was aware of the countries who had either lifted their bans or were considering lifting their bans. In 2010, when Australia changed its policy, there were several countries that had updated their policies, including the Commonwealth countries with which the Australian Defence Force participates in military personnel exchanges. Domestically, the catalyst that propelled policy momentum forward in each country was a human rights complaint. In Canada this complaint was from a lesbian who had been discharged from the Canadian Armed Forces, whereas the complaint in Australia was filed by a transgender woman who had been dismissed from the Australian Defence Force. In both cases, the pressure from the domestic and international levels was diffused through learning and emulation. The intervening mechanism that helps explain the cross-national variation is knowledge networks. More specifically, the knowledge networks in Canada between politicians and lawyers seeking to change discriminatory laws made them more attune to the different identities that were included under the definition of sexual orientation. As a result, transgender identity was included when the ban was lifted in Canada, but not when Australia lifted its ban on gay and lesbian military service.

5.2   Contributions of the Dissertation

This research offers both theoretical and empirical contributions. Theoretically, I build on the existing policy diffusion literature by offering a new way of conceptualizing the role of directionality and jurisdiction in policy diffusion processes. I develop a new framework called *policy momentum* to theoretically integrate and specify the multidirectional and multi-jurisdictional sources of pressure that interact to produce the conditions for national policy change to occur. As a result, I directly address the criticism that the policy diffusion literature frequently "simplifies the adoption of policy innovations across government units (i.e., cities, states, or nations) by overlooking the complex governance environment in which solutions are implemented

and the multidirectional pressure governments face to adopt similar policies" (Fay & Polischuk, 2021, p. 1). Indeed, policy momentum situates the timing of policy change at the centre of "top-down" *and* "bottom-up" diffusion in which there are multiple horizontal, peer, and vertical diffusion processes at both levels that allow for multiple jurisdictions to interact on a policy area.

Within the framework, I also identify five intervening mechanisms that can influence the likelihood of policy momentum generating change: public opinion, media attention, government ideology, political and non-political events, and knowledge networks. In practice, these mechanisms act as filters through which policy momentum passes, mediating its effect on policy outcomes. From a theoretical perspective, the intervening mechanisms can be used to help generate new and theoretically informed expectations to better understand the policy momentum process. For example, we might expect policy momentum to be conditioned by legislator responsiveness to public opinion. If a policy is extremely popular, we would expect legislators to be more likely to pursue that policy. However, policies that are unpopular with the public – and might therefore jeopardize the re-election of public officials – would limit the creation of policy momentum. The mechanisms also provide a way to better understand how different political motivations are activated. In this dissertation, I identify international reputation and electoral incentives as the main political motivations for pursuing policy change. As illustrated in the context of public opinion, these motivations can be activated by the intervening mechanisms. Identifying the political motivations and intervening mechanisms generate more precise theoretical expectations within the policy process.

From an empirical perspective, this dissertation offers a detailed account of the cross-national inclusion of transgender people in public policy through substantial archival research and 40 elite interviews. The social sciences have been slow to address transgender rights, especially within political science and public administration (Haider-Markel et al., 2019). Indeed, until the 2010s, transgender issues remained hidden in political science often because the topic was subsumed within LGBT+ issues more broadly and there were limited data available for analysis (Haider-Markel et al., 2019). This dissertation tries to address these lacunae by contributing new data and a comprehensive account of the inclusion of transgender people in two areas of Canadian and Australian public policy. It also shows that transgender politics is a related, but distinct and important area of research in its own right relative to LGB politics. While I am not the first person

to make this claim[120], the detailed qualitative accounts of the inclusion of transgender people in public policy put forward in this dissertation provide additional evidence that there can be important political and scholarly distinctions between policies on sexual orientation compared to policies on gender identity. Consequently, there are many opportunities for future research, as I will discuss below, to address the paucity of data on transgender political identity.

5.3   Policy Implications

The findings of this project offer several key takeaways for both policymakers and civil society actors. First, a key lesson from the policy momentum framework is that policy innovation can occur at any level of government and within different types of government systems. Although the opportunity for policy experimentation at the subnational level is a commonly known feature of federal states, the policy momentum framework highlights the importance of looking both domestically and internationally, regardless of the type of state. This dissertation focused exclusively on two federal states, but as I will discuss below, the multilevel pressure of policy momentum is not unique to federal states. Indeed, a unitary state with subnational governing entities (e.g., local or regional councils) can also experience policy momentum. Consequently, policymakers and civil society organizations seeking to promote change and place pressure on a particular government may identify new strategies for doing so by broadening their scope.

Relatedly, policy momentum redirects attention to a more holistic view of the policy process rather than simply the policy outcome. This implication is particularly relevant to civil society organizations who are interested in the development of new strategies to achieve change and deciding which policy is best for the interests that they represent. By understanding the process that led to a particular outcome, organizations can adapt or update their strategies to mirror the process that led to a preferred outcome. For instance, perhaps resources (which are often limited) are best used toward developing domestic or global connections to build a stronger knowledge network with shared interests. Stronger knowledge networks may not bring immediate change, but this dissertation provides evidence demonstrating the importance of knowledge networks in

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[120]See Casey and Reynolds (2015), Lewis et al. (2014), Haider-Markel et al. (2019), or Taylor et al. (2018).

changing both human rights frameworks and military policy in Canada and Australia to include transgender people.

Knowledge of the policy process is also relevant to policymakers who are seeking to pass a particular policy. A detailed understanding of the logistics around a similar or related policy area that was successful is useful for framing a particular issue, knowing the types of evidence used to combat opposition, and the organizations that worked with policymakers to push the policy forward. Although this informally happens through conversations among policymakers, institutional memory can be limited in scope and recollection becomes increasingly challenging as time moves on. Policy momentum can be used as a strategic analytical tool to map the historical policy process to inform the choices of current policymakers.

Another policy implication related to the strategic choices of actors in the policy process is that the domestic context has important consequences for how the pressure from policy momentum translates into a policy outcome. In particular, the intervening mechanisms and political motivations highlight important elements of the policy process without specifying particular relationships between the mechanisms and motivations. Instead, policy momentum recognizes that the interactions between the mechanisms and motivations may change in different contexts. This presents a unique opportunity for policymakers and civil society organizations to frame issues in a way that promotes a particular interaction between the mechanisms and motivations. For example, in the Australian human rights case study, the Australian government was very motivated by its international obligations and wanted to avoid any perception that the government was violating those agreements. With this type of knowledge, actors supporting a particular policy may find it more productive to approach the topic in a way that activates the international reputation motivation. This strategy could take many forms, but actors may choose to rely on international knowledge networks or media attention to activate the international reputation motivation. Policy momentum creates opportunities to expand the ways in which actors in the policymaking process can interact with each other.

5.4   Limitations

There are limitations that are involved in any form of scholarly inquiry. For this dissertation, there are methodological, theoretical, and empirical limits that deserve acknowledgment. First, I rely on

case studies to trace the sequence of events that led to policy change in Canada and Australia. Case study research is well suited for "detailed consideration of contextual factors" and are "much stronger at assessing *whether* and *how* a variable mattered to the outcome than at assessing how much it mattered" (George & Bennett, 2005, p. 25). As a result, I cannot state with precision the relative strength of policy momentum's intervening mechanisms or how strongly each mechanism impacts the political motivations. Instead, I am only able to identify and explain how the mechanisms and motivations mattered in each case. Relatedly, as a framework, policy momentum may have limited generalizability. Single case studies are a strong tool for understanding complex and nuanced chains of events. This approach allows for empirical and theoretical richness that large-N studies cannot accommodate. However, the tradeoff is that case studies are limited in terms of their ability to estimate "the generalized causal effects or causal weight of variables across a range of cases" (George & Bennett, 2005, p. 25).

Methodologically, I rely on process tracing[121] to evaluate the evidence gathered through elite interviews, archival documents, and other primary documents. It is important to acknowledge that analyzing and weighing the evidence is an interpretive exercise. When using these tools, the goal is to make claims about the relative strength of the potential explanations given the evidence at hand. As a result, there may be some disagreement with my interpretation of different pieces of evidence. However, as a whole, the evidence in this dissertation supports my argument that policy momentum explains the inclusion of transgender people in human rights legislation and military policy in Canada and Australia.

Theoretically, my research builds on the large body of research dedicated to policy diffusion. Policy momentum relies upon the four diffusion mechanisms - competition, coercion, emulation, and learning - to explain how policies diffuse. While there is consensus on the role of interdependence on policy diffusion, separating the effects of the four mechanisms can be difficult (Shipan & Volden, 2008). The application, conceptualization, and measurement of diffusion mechanisms varies greatly across studies (Maggetti & Gilardi, 2016). Even though there is space to improve the measurement of diffusion mechanisms, the inferences generated from policy momentum remain the same.

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[121] On process tracing, see Collier (2011), Bennett and Checkel (2015), and Trampusch and Palier (2016).

Finally, there are empirical constraints with historical projects. While I was able to speak with many people involved in changing human rights legislation in Canada (2017) and Australia (2013), it was far more challenging to find interviewees with knowledge of lifting the ban on transgender military service in the 1990s in Canada. Since Australia lifted its ban on transgender people in 2010, the archived documents are still classified and potential interviewees were reluctant to speak, in part due to the sensitivity of discrimination.

The legal and politically sensitive nature of the military cases created barriers to accessing data and communicating with interviewees. For example, the exclusion of LGBT+ people from the Canadian military was part of a broader campaign to exclude LGBT+ people from the federal public service, the RCMP, and the Armed Forces between the 1950s and the 1990s (Kinsman & Gentile, 2010). In Canada a class-action lawsuit was filed in 2016 on behalf of the survivors of the "LGBT Purge" that was settled in 2018 (Government of Canada, 2020). Due to the explicit state-sanctioned discrimination and the public shaming of the government, archival documents were difficult to access and heavily redacted. In addition, individuals involved in the process were reluctant to speak with me. Nevertheless, triangulating[122] evidence from interviews with individuals that have deep knowledge of the cases, archival documents, media reports, Hansard transcripts, and a wide range of other publicly available documents, helped alleviate many of the empirical constraints.

5.5   Directions for Future Research

Future research may follow two primary avenues: extending the application of the framework and exploring specific elements of the framework in more detail. New applications of policy momentum would benefit from a careful consideration of how *policy momentum* manifests in different governance settings. While this theoretical framework has been developed using two federal countries, domestic and international sources of pressure can also exist in a unitary system.

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[122] Triangulation is "particularly important in research that involves elite interviews in order to obtain a fuller picture of the situation being investigated, particularly when researching areas that are politically sensitive" (Natow, 2020, p. 161)

In other words, multilevel governance structures exist in unitary states as well, which may create the institutional context within which *policy momentum* can operate (Alcantara et al., 2016).

Scholars might also explore whether policy momentum always leads to progressive policy change. Previous research on the LGBT+ rights suggests that efforts to expand LGBT+ rights have consistently experienced countermovements with the sole focus of stopping or reversing political gains (Ayoub, 2019; Ayoub & Page, 2019; Bosia et al., 2020). It is plausible that policy backlash is the result of policy momentum generated by countermovements. Relatedly, it is also worth considering the conditions under which national governments successfully resist *policy momentum*. While this framework helps to explain the timing of policy change, it does not presume that policy change is inevitable.

Another promising area of research might be to apply the policy momentum framework to other policy areas. Policies can vary in terms of their ideological or partisan salience (Farstad, 2017; Pogorelis et al., 2005). The capacity of a policy to attract and retain public attention may shape the efficacy of policy momentum. In addition, each policy area has different ecosystems of actors interested in shaping the policy outcome (Baumgartner et al., 2009; Howlett, 2002; True et al., 2007). The types of actors and the roles that they undertake may change the sources of pressure, the political motivations, or the intervening mechanisms that are involved in the policy momentum process.

Future research might also build on policy momentum as a framework by changing the unit of analysis or offering new information on different elements of policy momentum. In article 1 of the dissertation, I discuss how the policy momentum process could theoretically be applied in a subnational context because subnational governments can also experience pressure from "below" and from "above." Not only would this change of context alter the sources of pressure, but the diffusion mechanisms at work may change and the intervening mechanisms might behave differently. Moreover, a different unit of analysis will introduce new jurisdictional arrangements and potentially different governmental structures that can impact the policy momentum process.

Finally, policy momentum identifies a multidirectional diffusion process with five intervening mechanisms that can activate two political motivations. To continue the development of the framework, scholars may consider exploring whether patterns emerge between the intervening mechanisms and political motivations. For instance, perhaps knowledge networks consistently activate the international reputation motivation due to a particular event, or public

opinion more frequently activates the electoral consequences motivation. Moreover, examining the intervening mechanisms to understand the nuances of each mechanism in the policy momentum process would be beneficial.

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Appendices

Appendix A: Research Ethics Board Approved Documents for Interviews

The following documents were approved by Western University's Research Ethics Board and used to contact potential interview participants. The documents included are: the letter of information, the email script, the verbal consent form, and the interview script.

<u>Letter of Information</u>

Project Title:
Transgender Visibility in Military Policy and Anti-Discrimination Legislation: Comparing Canada and Australia

Document Title:
Letter of Information – Interview Participant

Principal Investigator
Christopher Alcantara, PhD
Associate Professor
Department of Political Science
Western University

Co-Investigator

Nicole McMahon

PhD Candidate

Department of Political Science

Western University

1. **Invitation to Participate**

You are invited to participate in a study on the inclusion and exclusion of transgender individuals in public policy.

This study attempts to determine what explains the recent changes in public policies that include transgender individuals, as well as to better understand how meaningful the policy changes have been to transgender people

Based on primary documents from and/or information on your website, your organization has been identified as one that has played a prominent role in promoting the inclusion transgender people

in public policy. As part of this study, you will be asked to participate in a telephone or in-person research interview lasting between 30-60 minutes at a time and/or place of your choosing.

2. Why is this study being done?

Transgender individuals have historically been met with fierce opposition or indifference when seeking political recognition. As a result, transgender people have long been excluded and ignored by policymakers and the paucity of literature on transgender policy issues tends to reflect this fact. In June 2017, however, the Canadian government signaled an important shift in its approach by amending *The Canadian Human Rights Act* to include gender identity and expression as prohibited grounds of discrimination. Similarly, in August 2013, Australia amended its S*ex Discrimination Act* to prohibit discrimination based on gender identity despite decades of state apathy. This project seeks to explain why transgender policy change has occurred in Canada and Australia and understand how meaningful the changes are to the transgender population.

3. How long will you be in this study?

Study participation is limited to a short 30-60 minute interview. Participant time will be limited to the time they spend engaging with study investigators.

4. What are the study procedures?

If you agree to participate, we will arrange an in-person or telephone interview at a time and place of your choosing. The interview will last between 30 and 60 minutes based on the time you have available and will include open-ended questions based on your knowledge and experience. An audio recording will be made of the interview and I will take written notes. If you would prefer not to be recorded, you are free to indicate this preference and no audio recordings will be made and only handwritten notes will be taken.

Information obtained in the interview, including direct quotations, may appear in conference papers and presentations, scholarly journal articles, scholarly books and/or other written publications. Participation in this study is completely voluntary and you would be free to not answer any questions, to end the interview at any time and/or to choose not to be identified in the dissemination of this research (both as an individual and organization). Please note, you will not be identified in results unless you indicate that your information can be reported. You also have

the right to have any information given during the interview not used in the study up to one month after the interview (or possibly later if the information has not yet been included in research products under review).

5. What are the risks and harms of participating in this study?

There are no known or anticipated risks or harms. The only possible harm might be if a participant accidentally gave confidential and/or politically sensitive information during the interview. This risk will be minimized in the following manner:

- The participant is reminded at the start of the interview that:
  Participation in this study is completely voluntary and you would be free to not answer any questions, to end the interview at any time or to remain unidentified in the results of the study. You also have the right to have any information given during the interview not used in the study up to one month after the interview (or possibly later if the information has not yet been included in research products under review).

- During the interview, if the researcher feels the participant has given information that might be confidential or politically sensitive, they will verbally ask the participant to confirm their consent related to that specific piece of information and this will be explicitly recorded in the field notes; and

After the interview, if the researcher feels the participant has given information that might be confidential or politically sensitive, they will ask the participant, to confirm their consent related to that specific piece of information and this will be explicitly recorded in field notes. Quotes requiring consent will be accessible to the participant through OWL, Western's learning management system. OWL is powered by Sakai, an open source set of software tools designed to help instructors, researchers, and students create websites for collaboration.

6. What are the benefits of participating in this study?

No direct benefits. You may not directly benefit from participating in this study but information gathered may provide benefits to society as a whole, including enhanced knowledge of public policy processes.

7. Can participants choose to leave the study?

Yes. If you decide to withdraw from the study, you have the right to have any information given during the interview not used in the study up to one month after the interview (or possibly later if the information has not yet been included in research products under review). If you wish to have your information removed please let the researcher know. We will provide you with any new information that may affect your decision to stay in the study.

8. How will participants' information be kept confidential?

This study may use personal quotes, titles, names, or other identifying information within the publication unless the participant wishes to remain anonymous, in which case, any quotes will not be directly attributed. If you have requested that your name and/or organization be kept confidential, they will not appear in any dissemination of the research.

The information collected as part of this study may also be used as part of future research projects. In doing so, your decision regarding anonymity will still be adhered to. Additionally, you may choose to not have your information used in future research projects.

The researcher will keep any personal information about you, including field notes and audio files, in a secure and confidential location for 7 years. A list linking your study number with your name will be kept by the researcher in a secure place, separate from all field notes and audio files which will only contain your study number to protect confidential data.

Representatives of Western University Non-Medical Research Ethics Board may require access to your study-related record to monitor the conduct of the research.

9. Are participants compensated to be in this study?

No.

10. What are the rights of participants?

Your participation in this study is voluntary. You may decide not to be in this study. Even if you consent to participate you have the right to not answer individual questions or to withdraw from the study at any time. If you choose not to participate or to leave the study at any time it will have no effect on your personal or professional well-being.

You do not waive any legal right by consenting to this study.

11. Whom do participants contact for questions?

If you have any questions about this research study, please contact the Principal Investigator:

Christopher Alcantara, PhD
Associate Professor
Department of Political Science
Western University

You may also contact the co-investigator:

Nicole McMahon

PhD Candidate

Department of Political Science

Western University

If you have any questions about your rights as a research participant or the conduct of this study, you may contact The Office of Human Research Ethics (519) 661-3036, 1-844-720-9816, email: ethics@uwo.ca. Everything that you discuss will be kept confidential.

12. Consent

Participation in this interview is indication of your consent to participate. Verbal consent will be obtained at the start of the interview related to the use of: audio recording; the citation of direct

quotes; and the use (or not) of your name, title and organization in any dissemination of the research.

This letter is yours to keep for future reference.

Email Script

Subject Line:

Invitation to Participate in Research

OR

Request for Research Interview

Email:

Dear _____:

My name is Nicole McMahon and I am a PhD Candidate in political science at Western University in London, Ontario, Canada. I am currently conducting a research project on the inclusion of transgender individuals in public policy. The study is attempting to determine what explains the recent changes in public policies that include transgender individuals and understand how meaningful the policy changes have been to transgender people.

Based on primary documents and/or information on your website, your organization has been identified as one that has been closely involved in promoting the inclusion of transgender people in public policy. Would you be willing to speak to me on the telephone or in-person about your experiences with this issue at a time and place of your choosing? The interview would last between 30 and 60 minutes depending on the time you have available. Participation in this study is completely voluntary and you would be free to not answer any questions, to end the interview at any time and/or to remain fully anonymous (both as an individual and organization) in terms of being cited in any dissemination of research.

If you are willing to grant me a research interview and/or would like any more information on this project, please contact me at this email or the contact information below. I have also attached a more detailed Letter of Information to this email. Please note that a gentle reminder email will be sent in approximately one week and thank you very much in advance for your consideration.

Regards,

Nicole McMahon

Nicole McMahon
PhD Candidate
Department of Political Science
Western University

Principal Investigator:
Christopher Alcantara, PhD
Associate Professor
Department of Political Science
Western University

Verbal Consent Script

Project Title:

Transgender Visibility in Military Policy and Anti-Discrimination Legislation: Comparing Canada and Australia

Interview Code:

Questions:

Do you confirm that you have read the Letter of Information [or the Letter of Information has been read to you] and have had all questions answered to your satisfaction?
☐ **YES** ☐ **NO**

Do you agree to participate in this research?
☐ **YES** ☐ **NO**

Do you agree to be audio-recorded?
☐ **YES** ☐ **NO**

Do you consent to the use of personal, identifiable quotes obtained during the study in the dissemination of this research?
☐ **YES** ☐ **NO**

Do you consent to the use of unidentified quotes obtained during the study in the dissemination of this research?
☐ **YES** ☐ **NO**

Do you agree to have your name, title and/or organization used in the dissemination of this research?

☐ **YES** ☐ **NO**

Interview Script and Questions

Project Title:
Transgender Visibility in Military Policy and Anti-Discrimination Legislation: Comparing Canada and Australia

Interview Code:

Preliminary Questions

Before we begin, I'd like to ask you a few preliminary questions:

Question	Participant's Response (for closed-ended: ✓ = yes, X = no)
How much time do you have?	
Have you had a chance to read the Letter of Information?	
Would you like me to review it with you or do you have questions about the Letter of Information?	
One point from the Letter that I would like to remind you about is that: Your participation in this study is voluntary. You can decide not to be in this study. Even if you consent to participate, you have the right to not answer individual questions, to withdraw from the study at any time or to have any information given during the interview not used in the study. Do you have any questions about this?	
Would you mind if I audio-recorded this interview?	
Do you mind if I use personal, identifiable quotes from this interview in the dissemination of this research? This means that your name,	

title, and organization may appear to identify the source of the quote.	
Do you mind if I use unidentifiable quotes from this interview in the dissemination of this research? This means that quotes from this interview would be used but the source would only be identified generically and would not be linked to your name or organization.	
Do you mind if I use your name in the dissemination of this research? This means that, while no quotes would be linked to you, your name would appear in the bibliography as someone who was interviewed.	
Do you have any questions before we begin?	

Interview Questions

Politicians

In your view, how do transgender issues get on the political and policy agenda?

Why did you take an interest in transgender issues? Was there anyone or anything that encouraged you to pursue this issue?

What factors made the policy change easy to achieve? What were the barriers?

How was your party or department involved in changing the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)? Which other departments or organizations were involved? Why do you think the legislation was not changed sooner?

What, if anything, do you perceive to be the greatest barrier to accessing the policymaking process for transgender organizations? Have your or your party made changes to make it more accessible? Which actors do you think were most influential in the initial promotion of lifting the ban on transgender people in the military?

How were you or your party involved in lifting the ban on transgender people serving in the military? Which other political actors or organizations were involved?

In your view, why were transgender individuals banned from serving in the military despite lifting the ban on gays, lesbians, and bisexuals? (Australia)

Which actors do you think were most influential in the initial promotion of adding gender identity and gender expression to the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)?

How were you or your party involved in changing the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)? Which other organizations were involved? Why do you think the legislation was not changed sooner?

What is your view on government passing legislation like adding gender identity and gender expression to the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)?   Have you heard views contrary to your own?
Have some transgender policy issues taken priority over others? If so, what are they and why?

How relevant were similar policies internationally when drafting the legislation?

What does an ideal policy look like that protects the human rights of transgender people? Does the current legislation fit that description?

What does an ideal policy look like that promotes transgender people to serve in the military? Does the current policy reflect that?

Can you comment on the role of the media in helping or hindering the passing of transgender inclusive policies?

Can you comment on the role of the other political parties in helping or hindering passing legislation that includes transgender people in the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia) or in the military?

Where do you believe public opinion was regarding the inclusion of transgender people in the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia) at the time?

Where do you believe public opinion was regarding the lifting the ban on transgender people in the military at the time?

How relevant were international agreements on human rights in the policy-making process?
Can you comment on how your constituency reacted to the policy? (either human rights code amendment or lifting the ban on serving in the military)

Were you satisfied with how the policy-making process occurred? Were you happy with the outcome? Why or why not?

How relevant were judicial decisions regarding transgender human rights in the policy-making process?

Is there anything you would like to add?

Can you suggest other people I might want to talk to regarding my research transgender policy change?

Civil Servants

In your view, how do transgender issues get on the political and policy agenda?

Why did you take an interest in transgender issues? Was there anyone or anything that encouraged you to pursue this issue?

What factors made the policy change easy to achieve? What were the barriers?

How was your department involved in changing the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)? Which other departments or organizations were involved? Why do you think the legislation was not changed sooner?

Have you or your department been consulted in the drafting of transgender public policy? If so, for which policies and what was the extent of your involvement?

What, if anything, do you perceive to be the greatest barrier to accessing the policymaking process for transgender organizations?

Which actors do you think were most influential in the initial promotion of lifting the ban on transgender people in the military?

How was your department involved in lifting the ban on transgender people serving in the military? Which other organizations or political actors were involved?

How relevant were similar policies internationally when drafting the legislation?

In your view, why were transgender individuals banned from serving in the military despite lifting the ban on gays, lesbians, and bisexuals? (Australia)

Which actors do you think were most influential in the initial promotion of adding gender identity and gender expression to the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)?

How were you or your department involved in changing the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)? Which other organizations were involved? Why do you think the legislation was not changed sooner?

What is your view on government passing legislation like adding gender identity and gender expression to the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)? Have you heard views contrary to your own?

Have some transgender policy issues taken priority over others? If so, what are they and why?

What does an ideal policy look like that protects the human rights of transgender people? Does the current legislation fit that description?

What does an ideal policy look like that promotes transgender people to serve in the military? Does the current policy reflect that?

Can you comment on the role of the media in helping or hindering the passing of transgender inclusive policies?

Can you comment on the role of the other political parties in helping or hindering passing legislation that includes transgender people in the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia) or in the military?

Where do you believe public opinion was regarding the inclusion of transgender people in the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia) at the time?

Where do you believe public opinion was regarding the lifting the ban on transgender people in the military at the time?

How relevant were international agreements on human rights in the policy-making process?
Were you satisfied with how the policy-making process occurred? Were you happy with the outcome? Why or why not?

How relevant were judicial decisions regarding transgender human rights in the policy-making process?

Is there anything you would like to add?
Can you suggest other people I might want to talk to regarding my research transgender policy change?

Activists

What is the membership base of your organization?

In your view, how do transgender issues get on the political and policy agenda?

Why did you take an interest in transgender issues? Was there anyone or anything that encouraged you to pursue this issue?

What strategies has your organization used to gain influence in the policy making process? Do your strategies change under a Liberal or Conservative government?

How was your organization involved in changing the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)? Which other organizations or political actors were involved? Why do you think the legislation was not changed sooner?

Have you or your organization been consulted in the drafting of transgender public policy? If so, for which policies and what was the extent of your involvement?

What, if anything, do you perceive to be the greatest barrier to accessing the policymaking process for your organization?
Which actors do you think were most influential in the initial promotion of lifting the ban on transgender people in the military?

How was your organization involved in lifting the ban on transgender people serving in the military? Which other organizations were involved?

In your view, why were transgender individuals banned from serving in the military despite lifting the ban on gays, lesbians, and bisexuals? (Australia)

Which actors do you think were most influential in the initial promotion of adding gender identity and gender expression to the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)?

How were you or your organization involved in changing the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)? Which other organizations were involved? Why do you think the legislation was not changed sooner?

What is your view on government passing legislation like adding gender identity and gender expression to the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia)?   Have you heard views contrary to your own?
What are the most important policy priorities for trans people in Canada/Australia?

Have some transgender policy issues taken priority over others? If so, what are they and why?

What does an ideal policy look like that protects the human rights of transgender people? Does the current legislation fit that description?

What does an ideal policy look like that promotes transgender people to serve in the military? Does the current policy reflect that?

Can you comment on the role of the media in helping or hindering the passing of transgender inclusive policies?

Can you comment on the role of the other political parties in helping or hindering passing legislation that includes transgender people in the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia) or in the military?

Where do you believe public opinion was regarding the inclusion of transgender people in the *Canadian Human Rights Act/ Sex Discrimination Act* (Australia) at the time?

Where do you believe public opinion was regarding the lifting the ban on transgender people in the military at the time?

Were international organizations involved in any advocacy? If so, what organizations and how were they involved?

Were you satisfied with how the policy-making process occurred? Were you happy with the outcome? Why or why not?

Can you comment on how the population that your organization represents reacted to the policy? (either human rights code amendment or lifting the ban on serving in the military)

Has your organization engaged with the judiciary in cases of transgender human rights? If so, which ones? What was the extent of your involvement?

Is there anything you would like to add?

Can you suggest other people I might want to talk to regarding my research transgender policy change?

Appendix B: Fieldwork and Data Collection

Interviews were conducted in Canada and Australia between 2018 and 2022 in person, on the telephone, and on Zoom. In Canada, the in-person interviews were conducted in Ottawa in October 2018 and February 2019. I travelled to Australia in May 2019 and completed interviews in Sydney and Canberra. The telephone and Zoom interviews were primarily officials who were unable to meet with me during my fieldwork visits. In total, I interviewed 40 participants.

Interview participants for in-person and virtual interviews included political actors such as members of national and subnational legislatures and senators. I also spoke with public servants such as individuals who work for subnational and national human rights commissions. In addition, I was able to speak non-governmental organizations, activists, and other individuals involved in the process who were publicly identifiable (e.g., lawyers and academics). The interviewees were initially identified by consulting public documents such as Hansard records, court decisions, and non-governmental organization reports and statements.

As I spoke with interviewees, they provided me with additional names to contact or they shared my study with people who were deemed relevant to the project who would reach out to me. During the interviews, I always asked participants who else I should speak with who would have knowledge of the issue. This was an effort to increase the number of interview participants, especially with regard to historical events such has changes to military policy in the 1990s.

Each interviewee was initially contacted with an email that outlined the purpose of the study and why they had been contacted. The Letter of Information (Project ID: 111713) for the study was also attached and it provided more detail about the nature of the project, information about voluntary and informed consent, how data gathered during the interview would be used, and the procedures in place to guarantee anonymity if requested. I also followed up with a second reminder email if I had not heard from the potential participant after seven days. During the interviews, I reiterated the information about informed consent, obtained verbal consent to proceed with the interview, explained that they could withdraw from the study at any time, and reminded them that they could remain anonymous if desired. After the interviews were completed, I asked if there was any information that they wanted to be off the record, whether they wanted to approve the quotes or text attributed to them, and if they wanted to change their identification choice (e.g., remain anonymous). Some interviewees opted to remain anonymous and any identifying

information for those individuals has been excluded from the dissertation. Others agreed to be identified either by profession (e.g., a Senator) or by name and any information attributed to them is appropriately credited.

The interviews were semi-structured and typically took 30 to 90 minutes. The length of each interview depended on the amount of time the interviewee could allocate to speak with me. I confirmed the amount of time that they had before I started each interview. The average interview time was 40 minutes. I took handwritten notes in each interview and, when permitted by the participant, the interviews were audio recorded. I transcribed the audio recorded interviews in order to use quotes in the dissertation. I relied on my handwritten notes and the audio transcriptions to identify the sequences of events that led to transgender inclusive policy change, cross-national patterns, and motivations among actors involved in the process. Some direct quotes used in this dissertation have been lightly edited for grammar and clarity. This decision was informed by accepted practices within qualitative research to adapt the verbatim material to make it understandable and avoid unintentional "exposure" for the interviewee (Eldh et al., 2020).

Of the 40 interviews, 34 participants had knowledge of the inclusion of antidiscrimination policies in Canada and Australia and 6 participants had knowledge of changes to military policies. The number of interviewees for the military in particular is limited by the availability of people who were willing and able to speak about the Canadian and Australian militaries. The treatment of LGBT+ people in these militaries has been subject to public scrutiny in recent years which created a barrier to the interview process. In addition, it was far more challenging to find interviewees with knowledge of lifting the ban on transgender military service in the 1990s in Canada due to its historical nature. Moreover, since Australia lifted its ban on transgender people in 2010, the archived documents are still classified and potential interviewees were reluctant to speak, in part due to the sensitivity of discrimination.

While the number of military interviewees is small, I am confident with the reliability of my data collected for Article 3 of the dissertation. As Tansey (2007, p. 765) notes:

[T]he goal of process tracing is to obtain information about well-defined and specific events and processes, and the most appropriate sampling procedures are thus those that identify the key political actors – those who have had the most involvement with the processes of interest. The aim is not to draw a representative sample of a larger population

of political actors that can be used as the basis for making generalizations about the full population, but to draw a sample that includes the most important political players who have participated in the political events beings studied.

In other words, when using process tracing and elite interviews, the emphasis is on *who* we are able to speak with rather than *how many* people we are able to speak with. In accordance with the methodological discussion put forward by Tansey (2007), the individuals that I spoke with for the military chapter were few in number, but were the individuals with the most detailed information and were the most important political players in each country. Combined with other sources of evidence through triangulation, I am confident in the validity and reliability of my data.

Curriculum Vitae

Nicole McMahon

EDUCATION

2016-2022   Ph.D., Political Science

The University of Western Ontario

London, Ontario, Canada

2015   Master of Arts, Political Science

The University of Western Ontario

London, Ontario, Canada

2014   Bachelor of Arts, Political Science and Criminal Justice & Public Policy

The University of Guelph

Guelph, Ontario, Canada

PUBLICATIONS

Peer-Reviewed Journal Articles

McMahon, Nicole, Anthony Sayers, and Christopher Alcantara. 2021. "Political Donations and the Gender Gap during COVID-19." *Party Politics* doi:10.1177/13540688211047768

Caplan, Michelle, Nicole McMahon and Christopher Alcantara. 2021. "Representing the Constituency: Institutional Design and Legislative Behavior." *Representation* 57(4): 459-474. https://doi.org/10.1080/00344893.2020.1842798

McMahon, Nicole and Christopher Alcantara. 2021. "Running for Elected Office: Indigenous Candidates, Ambition and Self-government." *Politics, Groups and Identities* 9(2): 459-474. https://doi.org/10.1080/21565503.2019.1584750

McMahon, Nicole, Laura Stephenson and Christopher Alcantara. 2020. "The QFE: What is it
Good For?" *PS: Political Science & Politics* 53(1): 94-99
https://doi.org/10.1017/S1049096519001100

Other Publications

Anthony Sayers, Nicole McMahon, and Christopher Alcantara. 2021. "The COVID-19 crisis is
about physical infrastructure too." *Policy Options.* Montreal: Institute for Research on
Public Policy. May 5, 2021.

GRANTS AND SCHOLARSHIPS

External

2021	Consortium on Electoral Democracy's 2021 Democracy Checkup, Survey Module Student Competition Winner
2019 – 2020	Department of National Defence MINDS Initiative Doctoral Award
2019 – 2020	Department of National Defence MINDS Initiative Supplement
2019 – 2021	SSHRC Doctoral Fellowship
2019 – 2020	Ontario Graduate Scholarship (Declined)
2018 – 2019	Ontario Graduate Scholarship
2018	ICPSR Summer Program Saundra K. Schneider (Public Policy) Scholarship
2017 – 2018	Ontario Graduate Scholarship
2014 – 2015	SSHRC Canada Graduate Scholarship – Master's
2014 – 2015	Ontario Graduate Scholarship (Declined)

Internal

2021 – 2022	Research Training and Development Fund, Western University
2019 – 2020	Research Training and Development Fund, Western University
2017	Social Science Graduate Alumni Awards, Western University
2016 – 2020	Western Graduate Research Scholarship

2016   Chair's Scholarship, Western University

PRESENTATIONS

Conferences

2021. "Policy Momentum and Transgender Human Rights: Explaining National Anti-Discrimination Policy in Canada and Australia." Annual Meeting of the Canadian Political Science Association, Virtual (COVID-19).

2020. "A Movement within a Movement: Understanding Transgender Policy Change in Australia." Annual Meeting of the Canadian Political Science Association, Western University, London, ON. (Cancelled, COVID-19).

2019. "Public Opinion in the Provinces: Using Multilevel Regression and Poststratification to Estimate Support for Transgender Rights." Annual Meeting of the Canadian Political Science Association, University of British Columbia, Vancouver, BC.

2018. "Who Runs for Office and Why? Political Candidates and Indigenous Self-Government in Canada." (With Christopher Alcantara). Annual Meeting of the Canadian Political Science Association, University of Regina, Regina, SK.

TEACHING

Instructor of Record

2022   LGBTQ Politics: Policy and Representation
                 Western University, 4th Year Undergraduate

Teaching Assistant

2022   *Statistics and Data Analysis II: The Basics of Regression*, ICPSR Summer
                 Program in Quantitative Methods of Social Research

2021   *Foundations of Canadian Government & Politics* (2nd Year), Western
                 University

2021   *Statistics and Data Analysis II: The Basics of Regression*, ICPSR Summer
                 Program in Quantitative Methods of Social Research

2021   *Research Methods* (3rd Year), Kings University College (Western
University)

2017 – 2019   *Research Methods* (3rd Year), Western University

2016 – 2017   *Canadian Politics* (2nd Year), Western University