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**NAVIGATING POTENTIALLY
CONFLICTING POLITICAL
RATIONALITIES: DISCURSIVE
STRATEGIES ABOUT “FAMILY”
IN ALBERTA’S CHILD WELFARE LAW**

Joshua Freistadt*

***Abstract:** This paper empirically investigates how lawmakers navigate family law’s contested terrain. Using Alberta’s newest child welfare law, the Child, Youth and Family Enhancement Act (2004) as a case, I explain the discursive strategies used to pass this unique law through a socio-political context dominated by political rationalities with partially divergent ideas of “family”. Analysis reveals two dominant discursive strategies. The first creates a discursive framework that expels welfarist rationalities and centers tensional neoliberal and neoconservative logics. The second navigates the tensions*

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between neoliberal and neoconservative images of family by constituting the content of families as autonomous and responsible while leaving the form of families indeterminate. Together these strategies were flexible enough to ensure the law's passage through a divided legislature, while at the same time increasing interpersonal responsibility. I demonstrate that the only conclusion one can make about "family" in this context is that it is a calculation of responsibility that excludes the state. I problematize the techniques and concepts used to present this law and suggest reforms to make the construction of family law a more meaningfully inclusive process.

INTRODUCTION

From all corners, we hear endlessly about the "crisis of the family". Neoconservatives use this cry to bemoan the declining prevalence of continuously-married, heterosexual, nuclear, male breadwinner families, alleging that the demise of this "traditional" family form signifies a loss of morality and the dissolution of a functional gendered division of labour.¹ This "family crisis" discourse exclaims that its narrow definition of family is the only proper familial form and, as such, ought to receive state protection, support, and glorification.² Neoliberal discourse, in contrast, aims primarily to privatize state responsibilities by downloading them onto markets,

¹ See e.g. C. Gwendolyn Landolt, "Who is in Charge of the Family?" (Paper presented to the Institute of Canadian Values 2005 Embrace Democracy Conference, 30 November 2005), online: REAL Women of Canada <<http://www.realwomenca.com/page/pubanalys8.html>>.

² Brenda Cossman, "Family Feuds: Neo-Liberal and Neo-Conservative Visions of the Reprivatization Project" in Judy Fudge & Brenda Cossman, eds., *Privatization, Law, and the Challenge to Feminism* (Toronto: University of Toronto Press, 2002) 169 [Cossman, "Family Feuds"].

communities, families, or individuals.³ This discourse's "family crisis" proclaims that the welfare state's intrusion into the private sphere erodes interpersonal responsibility. To achieve their agenda neoliberals casts flexible and pragmatically-oriented family definitions.⁴ Welfarist-inspired discourses declare their own "family crisis" by arguing that the rampant individualism of neoliberalism undercuts people's desire to care for others, while economic privatizations strain people's ability to care for family members by forcing them to spend greater time in paid labour.⁵ Here the image of family displays interpersonal bonds themselves embedded in larger socio-political contexts; as such, the state and the entire citizenry share the responsibility to care for all individuals.

When all these political rationalities find voice, they demonstrate yet another "crisis of the family", namely, the difficulty of forming a singular conception of "family" in the contemporary political arena.⁶ This definitional crisis raises intriguing questions about the development of family law when

³ Judy Fudge & Brenda Cossman, "Introduction: Privatization, Law, and the Challenge to Feminism" in Judge Fudge and Brenda Cossman, *ibid.*, 3 [Fudge & Cossman].

⁴ See Cossman, "Family Feuds", *supra* note 2.

⁵ See *ibid.*; Ulrich Beck & Elisabeth Beck-Gernsheim, "Families in a Runaway World" in Jacqueline Scott, Judith Treas, & Martin Richards, eds., *The Blackwell Companion to the Sociology of Families* (Malden: Blackwell, 2004) 4 [Beck & Beck-Gernsheim].

⁶ See Judith Stacey, "Backward toward the Postmodern Family: Reflections on Gender, Kinship, and Class in the Silicon Valley" in Barrie Thorne & Marilyn Yalom, eds., *Rethinking the Family: Some Feminist Questions*, rev. ed. (Boston: Northeastern University Press, 1992) 91; David Cheal, "Unity and Difference in Postmodern Families" (1993) 14:1 *Journal of Family Issues* 5; Beck & Beck-Gernsheim, *ibid.*

parties hold divergent ideas about its very subject matter—family. How do lawmakers navigate family law’s rocky terrain and competing imagery? What family portrait emerges from these conflicting rationalities? How do these various discourses co-join, co-opt, and exclude one another in the construction of family laws?

In this article, I explicate how Alberta’s newest child welfare law — the 2004 *Child, Youth and Family Enhancement Act* (“*CYFEA*”)⁷ — employs the idea of “family” under circumstances wherein “family” is a contested construct. I use multiple documentary sources to analyze the *CYFEA*’s construction and its image of “family”. These texts include: (i) the *CYFEA* and related government documents, (ii) the legislative debates surrounding the two Bills comprising the *CYFEA*, (iii) published reviews of Alberta’s Ministry of Children’s Services, (iv) news articles about child welfare, and (v) legislative debates involving earlier attempts to revise child welfare law in Alberta. A detailed examination of these documents reveals two discursive strategies that enable the law’s creation in the face of conflict. The first strategy develops a discursive framework that is unchallengeable in the legislative assembly and effectively silences welfarist discourses critical of neoliberalism’s affect on families. The second discursive strategy allows the form of familial relations to remain indeterminate, while the content of “family” remains concerned with permanent responsible bonds. I argue that these strategies were sufficiently flexible to ensure the law’s passage through a legislature dominated by both neoliberal and neoconservative rationalities. I then argue that within these discursive strategies the only conclusion one can make about “family” is that it is a calculation of responsibility that excludes the state.

⁷ R.S.A. 2000, c. C-12 [*CYFEA*].

These arguments unfold in four parts. First, I explicate the *CYFEA*'s context and emergence. This discussion further explains the above three political rationalities and shows that Alberta contains each perspective. Second, I display and problematize the discursive framework politicians used to reframe child welfare as an issue of familial responsibility. In so doing, I outline the new casework approach the *CYFEA* encourages, highlighting how it manifests both neoconservative and neoliberal logics. Third, I dissect the resultant construction of "family" in the *CYFEA*. Here I demonstrate the ambiguity surrounding family *form*, yet the rigidity concerning the *content* of proper familial relations. Finally, I discuss the broader implications this analysis reveals and suggest reforms to the ways we create family and child welfare laws.

CONTEXT AND EMERGENCE OF THE *CYFEA*

Political Rationalities: Family Resemblances and Family Feuds

Political rationalities demonstrate regularities in the hectic field of political discourse. They are belief systems, expressed through consistent language, that project (i) the ideals to which systems of government ought to aspire and (ii) the appropriate division of responsibilities required to achieve these ideals.⁸ The above three discourses—neoliberalism, neoconservatism, and welfarism—represent three distinct political rationalities that hold unique visions of the responsibilities of state agencies, private markets, individuals, and families. Neoliberal political rationality bases itself on 19th century laissez-faire policies and takes individual freedom as the principle aim of government. It emphasizes individual responsibility and

⁸ Nikolas Rose & Peter Miller, "Political Power beyond the State: Problematics of Government" (1992) 43:2 *British Journal of Sociology* 173 [Rose & Miller].

attempts to position the market as the primary mechanism for the production and distribution of goods and services. To this end, this rationality attempts to de-center the state's role in social provision through fiscal conservatism and the offloading of many previous state responsibilities onto families and private enterprise.⁹ Welfarism situates social solidarity as the primary objective of government. It attempts to build social solidarity by defining risks as products of the social structure and by devising state-led plans of shared insurance, social assistance, and full employment to manage these risks. An emphasis on shared responsibility allows more obviously state-centered intervention into spheres which other rationalities constitute as private.¹⁰ Neoconservatism envisages good government as the establishment of authoritative structures that maintain order. This rationality employs a social conservatism that views the gendered authoritarian power structures of the nuclear, heterosexual, male breadwinner family ("The Family") as favorable due to the strict order and functional division of labour such family forms allegedly impart. This rationality attempts to promote authoritative structures through pro-(traditional)-family policies and "get tough" law-and-order agendas. Through these efforts, neoconservatives promote middle-class lifestyles, champion heteronormativity, and replicate gender hierarchies that position men as powerful

⁹ Rose & Miller, *ibid.*; Fudge & Cossman, *supra* note 3; Jennifer Koshan & Wanda Wiegers, "Theorising Civil Domestic Violence Legislation in the Context of Restructuring: A Tale of Two Provinces" (2007) 19:1 CJWL 145 [Koshan & Wiegers].

¹⁰ Rose & Miller, *ibid.*; Jacques Donzelot, "The Promotion of the Social" (1988) 17:3 *Economy and Society* 394.

public figures and women as domestic servants in the private sphere.¹¹

Many authors depict eras of government as evidencing only one political rationality (e.g. “the welfare era”), or combine neoliberal and neoconservative rationalities into a unitary category of “New Right”, or use neoliberalism as a theoretical catch basin to describe all contemporary political programs. The field of political discourse, however, is always pluralistic and different rationalities often take contrary positions. Critical analysis ought to take into account that when each government attempts to govern a population, they try to negotiate the similarities and differences amongst the various rationalities voiced in the pluralistic arena.¹²

The tensions between rationalities are particularly evident in their approach to families. Although these different rationalities might sometimes reinforce each other’s conception of family—for instance, when welfarist rationalities of state

¹¹ Koshan & Wieggers, *supra* note 9; Barrie Thorne, “Feminism and the Family: Two Decades of Thought” in Barrie Thorne & Marilyn Yalom, *supra* note 6, 3 [Thorne].

¹² On collapsing neoliberal and neoconservative positions or the use of the “New Right” as a coherent concept see e.g. Nigel Parton, *Governing the Family: Child Care, Child Protection and the State* (London: Macmillan, 1991) [Parton, *Governing Family*]; John J Rodger, *Criminalising Social Policy: Anti-Social Behaviour in a Decivilised Society* (Portland, Oregon: Willian Publishing, 2008); Katherine Teghtsoonian, “Neo-Conservative Ideology and Opposition to Federal Regulation of Child Care Services in the United States and Canada” (1993) 26:1 *Canadian Journal of Political Science* 97 [Teghtsoonian]. On the critique of these positions and the idea that one can identify an era with a singular rationality see Nikolas Rose, Pat O’Malley & Mariana Valverde, “Governmentality” (2006) 2 *Annual Review of Law and Social Science* 83.

intervention replicate the traditional family form of neoconservatism,¹³ or when neoliberal fiscal conservatism refuses government intervention in child care and confirms the authority of the hierarchical gendered family,¹⁴ or when neoconservative promotion of The Family legitimates the offloading of state programs¹⁵ – they are not reducible to each other and frequently exist in conflict. Brenda Cossman perceptively notes that a unified vision of family no longer necessarily exists within contemporary politics and that the dominant political rationalities can hold competing ideas about proper familial relations.¹⁶ Welfarist discourses that stress shared and state responsibility can apply to programs to protect marginalized family forms, thus opposing neoconservative logics.¹⁷ Neoconservatives lobbying for programs to support The Family diverge with neoliberal efforts to minimize state financial provision.¹⁸ Additionally, while both neoliberal and neoconservative logics might argue that welfarist measures diminish the importance of inter-familial relations, neoliberal strategies readily extend familial status beyond The Family if diluted state responsibilities result, thereby upsetting

¹³ See Dorothy Chunn, “Rehabilitating Deviant Families Through Family Courts: The Birth of “Socialized” Justice in Ontario, 1920-1940” (1988) 16 *Int’l J. Soc. L.* 137 [Chunn].

¹⁴ See Teghtsoonian, *supra* note 12.

¹⁵ Cossman, “Family Feuds”, *supra* note 2.

¹⁶ *Ibid.*

¹⁷ See e.g. Jean Lafrance, “Does Our Path Have a Heart? Children’s Services in Alberta” in Trevor Harrison, ed., *Return of the Trojan Horse: Alberta and the New World (Dis)Order* (Montreal: Black Rose Books, 2005) 269 [Lafrance].

¹⁸ Cossman, “Family Feuds”, *supra* note 2; Lorna Erwin, “Neoconservatism and the Canadian Pro-Family Movement” (1993) 30:3 *Canadian Review of Sociology and Anthropology* 401.

neoconservative positions. Indeed, conferring legal status to diverse families, such as single-parent families and same-sex unions is the biggest point of contention between neoliberal and neoconservative positions. Both political rationalities might grudgingly agree that some deviant families require state intervention, but their opinions on the reconstitution of families and the granting of legal status to family forms that upset heterosexual norms and gender hierarchies differ remarkably.¹⁹

Historical Dominance of “The Family” Despite Competing Political Rationalities

Tensions and collusions among the above three political rationalities, or their earlier (non-“neo”) variants, have coloured the history of child welfare law. The first child protection legislations, for instance, embodied a welfarist rationality that challenged the dominant conservative logic of *paterfamilias* (power of the patriarch over the household) and advocated a strong state role through the doctrine of *parens patriae* (the state as a parent of the nation).²⁰ These

¹⁹ Cossman, “Family Feuds”, *ibid.*; Koshan & Wieggers, *supra* note 9.

²⁰ For overviews of child welfare development in Canada see Nicholas Bala, “Child Welfare Law in Canada: An Introduction” in Nicholas Bala, *et. al.*, eds., *Canadian Child Welfare Law: Children, Families and the State*, 2nd ed. (Toronto: Thompson Educational Publishing, 2004) 1 [Bala]; Bryan Hogeveen, “‘The Evils with Which We are Called to Grapple’: Elite Reformers, Eugenicists, Environmental Psychologists, and the Construction of Toronto’s Working-Class Boy Problem, 1860-1930” (2005) 55 *Labour/Le Travail* 37; Ewan MacIntyre, “The Historical Context of Child Welfare in Canada” in Brian Warf, ed., *Rethinking Child Welfare in Canada* (Toronto: McClelland & Stewart Inc., 1993) 13 [MacIntyre]; Karen Swift, “Contradictions in Child Welfare: Neglect and Responsibility” in Carol Baines, Patricia Evans, & Sheila Neysmith, eds., *Women’s Caring: Feminist Perspectives on Social Welfare* (Toronto: McClelland & Stewart, 1991) 234 [Swift]; Marilyn Callahan, “The

interventionist measures, however, also had to negotiate liberal rationalities that maintained the sanctity of private spheres from government involvement.²¹ In Alberta, as elsewhere,²² the relative dominance of each of these competing political rationalities has resulted in an initial child welfare trajectory from privatized care under charitable organizations, as codified in the 1909 *Children's Protection Act of Alberta*,²³ to primarily state-run protection and prevention services, as initially outlined in the 1925 *Child Welfare Act*.²⁴ While this transition mirrors a broader shift in Western nations toward welfarist mentalities, every child welfare law along the way must, as Nigel Parton notes, navigate liberal and conservative premises and devise a legal basis for intervening in families “in a way that does not undermine the family and convert all families into clients of a sovereign state”.²⁵

Admittedly, competing visions of who is responsible for child protection, whether the state, the community, or the family, continually haunt Alberta's child welfare politics. Nevertheless, despite these ever-present struggles over the proper division of responsibilities, previous child welfare law

Administrative and Practice Context: Perspectives from the Front Line” in Brian Warf, (*ibid.*), 64.

²¹ See Parton, *Governing Family*, *supra* note 12.

²² For histories of child welfare that compare multiple Canadian jurisdictions see Bala, *supra* note 20; MacIntyre, *supra* note 20.

²³ R.S.A. 1909, c.12.

²⁴ RSA 1925, c.4. For historical reviews of Alberta child welfare law see Michael Rothery et al. “Local Governance of Child Welfare Services in Alberta” (1995) 74:3 *Child Welfare* 587; Lucinda Ferguson, “Uncertainty and Indecision in the Legal Regulation of Children: The Albertan Experience” (2007) 23 *C.J.F.L.* 159.

²⁵ Parton, *Governing Family*, *supra* note 12 at 104.

in Alberta, and Canada more generally, held a relatively coherent vision of family. Aside from a temporary lapse with the creation of the 1984 *Child Welfare Act* (“CWA”),²⁶ the dominant historical trend in Alberta child welfare law has been to protect and champion the Caucasian, middle-class, nuclear, heterosexual, male breadwinner family. This singularly preferred form of The Family manifested itself through the law’s delineation of parental responsibilities and causes for intervention. For example, as Karen Swift convincingly argues, formulating neglect as grounds for intervention demonstrates a bias toward middle-class domestic standards which pathologize impoverished parents (read: mothers) and impose behavioural standards that correspond most consistently with The Family.²⁷ In the past, child welfare and family court practices enforced this familial form in two ways. First, they attempted to keep Caucasian, nuclear, male breadwinner families together.²⁸ Second, they viewed families not of this configuration as deviant and attempted to place their children in homes that contained these features. Children from single-mother households, for instance, made up half of all child welfare cases in the mid-1980s yet single-mothers comprised only 13 percent of all Canadian households.²⁹ The vast number of First Nations children removed from their homes further testifies to the preferred family form.³⁰ From the early-1960s to

²⁶ R.S.A. 1984, c. C-8.1. I explain this change further below, see the text which accompanies note 91.

²⁷ Swift, *supra* note 20; On the dominance of The Family in child welfare, see also Andrew Armitage, “The Policy and Legislative Context” in Brian Warf, *supra* note 20, 37; MacIntrye, *supra* note 20.

²⁸ Chunn, *supra* note 13.

²⁹ Marilyn Callahan, “Feminist Approaches: Women Recreate Child Welfare” in Brian Warf, *supra* note 20, 172 at 182 [Callahan, “Feminist Approaches”].

the late-1970s, as provincial child welfare programs extended to reserve lands, Canada witnessed a fivefold increase in First Nations adoptions. By 1977, nearly 40 percent of children in the Alberta government's care were First Nations, the majority of whom officials placed into middle-class caucasian, two-parent families, earning this period the infamous title of "the sixties scoop".³¹

Alberta's Politics: Neoliberalism and Neoconservatism, Tensions and Collusions

The late-1980s moved Alberta's approach to families into a more tensional and unresolved political context. During this time, the Progressive Conservative ("PC") government's support came largely from rural, religious, pro-family, and anti-feminist groups. These groups exchanged votes for the PCs in return for considerable lobbying resources to ensure the longevity of the "traditional" family and the mother-as-caregiver.³² They had considerable success. For instance, in the

³⁰ Andrew Armitage, "Family and Child Welfare in First Nations Communities" in Brian Warf, *supra* note 20, 131 [Armitage, "First Nations"]; Christine Davies, "Native Children and the Child Welfare System in Canada" (1992) 30:4 *Alberta Law Review* 1200 [Davies]; Federal/Provincial/Territorial Working Group on Child and Family Services Information, *Child Welfare in Canada 2000: The Role of Provincial and Territorial Authorities in the Provision of Child Protection Services* (Quebec: The Secretariat of the Federal/Provincial/Territorial Working Group on Child and Family Services Information, 2002); Marlee Kline, "Child Welfare Law, 'Best Interests of the Child' Ideology, and First Nations" in Susan Boyd & Helen Rhoades, eds., *Law and Families* (Burlington: Ashgate, 2006) 291 [Kline, "Best Interests"]; Patricia Monture, "A Vicious Circle: Child Welfare and the First Nations" (1989) 3 *C.J.W.L.* 1 [Monture].

³¹ Kline, "Best Interests", *ibid.*

³² See Lois Harder, *State of Struggle: Feminism and Politics in Alberta* (Edmonton: The University of Alberta Press, 2003) [Harder,

late-1980s Don Getty's PC government created the Premier's Council in Support of Alberta Families with the explicit intention "to strengthen the family, to provide reasons why the family is stronger, why mothers will stay in the house".³³ In the early-1990s, Ralph Klein continued this tradition of protecting The Family by threatening to disband the Alberta Human Rights Commission when it began to investigate complaints based on sexual orientation.³⁴ Additionally, when a same-sex couple sued the PCs in 1999,³⁵ arguing that the spousal provisions under the *CWA* were discriminatory since they excluded same-sex partners from adoption, the Klein PCs, fearing a more lenient Supreme Court decision, allowed private same-sex stepparent adoptions but continued to declare the primacy of The Family and refused to grant same-sex adoptions in public processes.³⁶ Neoconservative family values were thus alive and well in Alberta politics after the 1984 *CWA*. Neoliberal initiatives, however, also became central features in Alberta's political landscape. In particular, immediately after taking office in 1993 the Klein government ordered an overall 20 percent spending reduction for the fiscal

Feminism in Alberta]; Gillian Anderson & Tom Langford, "Pro-Family Organizations in Calgary, 1998: Beliefs, Interconnections and Allies" (2001) 38:1 *Canadian Review of Sociology and Anthropology* 37.

³³ Don Getty quoted in Harder, *Feminism in Alberta*, *ibid.* at 4-5.

³⁴ Harder, *Feminism in Alberta*, *supra* note 32.

³⁵ *A (Re)* [1999] A.J. No. 1349 (Alta. Q.B.).

³⁶ *The Miscellaneous Statutes Amendment Act*, S.A. 1999, c.26, s.4, s.25. See also Harder, *Feminism in Alberta*, *supra* note 32; Shawn Ohler "Alberta shift on same-sex adoption a ploy to head off judges: Minister: Key term is 'step-parents': Gay rights activists applaud surprise announcement" *National Post* (23 April 1999) A11.

year.³⁷ They soon followed this by replacing social assistance with workfare,³⁸ which effectively cut social assistance claims in half between 1993 and 1996³⁹ and made Alberta the province with the lowest benefits for single parents.⁴⁰ These changes also reduced the time a new mother could spend on assistance, from 2 years to 6 months, without having to undertake skills training programs and attempt to integrate into the workforce.⁴¹ While family values rhetoric helped legitimate some of these neoliberal reforms, there was little in these reforms to assist families of any kind, let alone the “traditional” family deemed worthy of support by neoconservatives.⁴² Neoliberalism undercut the abilities of all families and offered state help to none. Consequently, the two dominant political rationalities in Alberta stood in potential conflict.

³⁷ Alberta Children’s Services, *Child Welfare Caseload Growth in Alberta: Connecting the Dots* by Val Kinjerski & Margot Herbert (Edmonton: Alberta Children’s Services, 2000) [Kinjerski & Herbert].

³⁸ The workfare program lowered welfare payments, clawed-back benefits, tightened eligibility criteria, and eliminated supplementary benefits such as telephone and recreation allowances. See Kinjerski & Herbert, *ibid.*; Lafrance, *supra* note 17.

³⁹ Lois Harder & Linda Trimble, “The Art of Contradiction: Women in Ralph Klein’s Alberta” in Trevor Harrison, *supra* note 17, 297; Kinjerski & Herbert, *ibid.*

⁴⁰ Kinjerski & Herbert, *ibid.* at 45; Lafrance, *supra* note 17 at 277.

⁴¹ Kinjerski & Herbert, *supra* note 37.

⁴² Harder, *Feminism in Alberta*, *supra* note 32.

Counter-Discourse in Alberta: Child Welfare Caseload Growth

The *CYFEA* emerged out of these complications and contradictions. Alberta's child welfare programs witnessed their first neoliberal restructuring through the 1995 Action Plan for Children's Services, which sought to reduce Children's Services to 10 percent of its former capacity.⁴³ Eighteen Regional Child and Family Service Authorities and 16 First Nations and Family Services Agencies, each led by volunteer community boards, took over child welfare administration, decisions about grant allocation, and service delivery. The PCs mandated these Regional Authorities to privatize services, while the government retained only their legislative functions and powers of audit.⁴⁴

Alberta witnessed a huge increase in child welfare caseloads following these neoliberal reforms. From 1992/1993 to 1999/2000 the average annual caseload for child welfare services grew by 82 percent to an average of 12,783 cases.⁴⁵ The number of individual children served in a single year grew by 60 percent to 22,905.⁴⁶ Child welfare expenditures also rose 83 percent from \$160 million in 1992/1993 to an estimated

⁴³ Marlee Kline, "Blue Meanies in Alberta: Tory Tactics and the Privatization of Child Welfare" in Susan Boyd ed., *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997) 330 [Kline, "Blue Meanies"].

⁴⁴ See Kinjerski & Herbert, *supra* note 37; Kline, "Blue Meanies", *ibid.*

⁴⁵ Kinjerski & Herbert, *ibid.* at 1. The average yearly caseload "is the average of the twelve official monthly caseloads. The monthly average caseload is the number of cases open at the start of the month, plus the cases opened during that month minus the cases closed during that month" (*ibid.* at 18).

⁴⁶ *Ibid.* at 1.

\$293 million in 1999/2000.⁴⁷ These funding increases, however, only reflected caseload growth and did not constitute additional resources for new programs; in fact, during this period the PCs continually under-funded child welfare, as each year's budget was consistently less than the amounts required.⁴⁸

The Office of the Children's Advocate was the first organization to shed light on this caseload increase. Both the 1996/1997 and 1997/1998 annual reports, compiled by two different Advocates, exposed the yearly increases in child welfare caseloads.⁴⁹ The 1997/1998 report eventually documented a 55.9 percent swell in caseloads from 1994 to 1997/1998, despite repeated earlier warnings by the Office of the Children's Advocate that a crisis was looming.⁵⁰ Children's Advocates squarely and publicly blamed the PCs' reforms to both social assistance and Children's Services for reducing available services and increasing caseloads. As Brian Laghi wrote in the *Globe and Mail* on October 17, 1997:

⁴⁷ *Ibid.*; Lafrance, *supra* note 17 at 274.

⁴⁸ Kinjerski & Herbert, *ibid.* at 19.

⁴⁹ Jean Lafrance's report for 1996/1997 showed a 16 percent increase in caseloads compared to the year prior. (See Brian Laghi "Alberta's abused children wait-listed for aid" *The Globe and Mail* (17 October 1997) A6 [Laghi]). Bob Rechner's 1997/1998 report showed a 8.9 percent increase from the year prior (See Larry Johnsrude "Budget restraints hurting children: Provincial advocate says demand outstrips resources; review pledged" *Edmonton Journal* (7 August 1999) A7 [Johnsrude]; Alberta Children's Advocate, *Annual Report 1997-1998* (Edmonton: Alberta Children's Services, 1999) at 8 [Children's Advocate, *Report 1997-1998*]).

⁵⁰ Johnsrude, *ibid.*; Children's Advocate, *Report 1997-1998*, *ibid.*; Mark Lisac, "Political inertia plagues child welfare: Little evidence of will needed to fix ailing system" *Edmonton Journal* (7 August 1999) A12 [Lisac].

Mr. Lafrance [Alberta's Children's Advocate at the time] said government welfare reform may be to blame for some of the increase. Under Premier Ralph Klein's administration, single parents with young children have been forced to search for employment, a factor that is creating difficulties for families, he said. Mr. Lafrance also said he has been forced to intervene in situations where parents were threatened with having to relinquish their children to child-welfare authorities because they could not meet basic needs. Some child-welfare officials have provided overburdened families with money for food by juggling other budgets.⁵¹

Lafrance's report went on to argue that the shift towards a privatized child welfare system led to high staff turnover and thus increased caseloads for existing workers; this, in turn, meant many children did not receive speedy, permanent plans about their fate.⁵² The following Children's Advocate, Bob Rechner, similarly decried that "[t]he common element in these symptoms of distress is a shortfall of resources. Staff time, money for appropriate placement resources, and funding for support services are all under pressure to meet steadily increasing needs".⁵³ Rechner challenged the Children's Services Minister to initiate an independent study of the reasons for the caseload growth.⁵⁴

⁵¹ Laghi, *supra* note 49.

⁵² *Ibid.*

⁵³ Children's Advocate, *Report 1997-1998*, *supra* note 49 at 8.

⁵⁴ Children's Advocate, *Report 1997-1998*, *supra* note 49; Lisac, *supra* note 50.

News reports, with dramatic headlines declaring “The Scoop is returning to Alberta”, claimed that Alberta’s caseload increase “was the largest in Canada”.⁵⁵ Leaders of professional social work agencies blamed PC cuts to social services and welfare. Jane Kruiken, President of the Alberta Association of Registered Social Workers, explained that “social infrastructure has been slashed and never been rebuilt, so we have high levels of need out there and nowhere for these people to go”.⁵⁶ Opposition critics⁵⁷ and anti-poverty agencies⁵⁸ also publicly condemned the government’s social assistance and social spending reforms for further marginalizing disadvantaged families. Reporters linked child welfare conditions to concerns about fiscal restraint, thus casting the caseload problem to a wider audience who, if unmoved by the ethical implications accompanying increased child welfare problems, might find resonance with their financial consequences. Mark Lisac of the *Edmonton Journal*, for instance, exposed that child welfare overshot its 1997/1998 budget by \$38 million.⁵⁹ Linda Goyette similarly, and perceptively, wrote in the *Edmonton Journal*:

⁵⁵ Linda Goyette “The Scoop is returning to Alberta; Kleinites won’t say why more families are being torn apart” *Edmonton Journal* (6 January 1999) A8 [Goyette].

⁵⁶ Jane Kruiken in Shelley Knapp “Child care workers ‘swamped’” *Calgary Herald* (8 January 2000) A1; also in Darcy Henton “Review rips into provincial adoption system” *Calgary Herald* (16 August 1999) A7. See also, John Mould, President of the Canadian Association of Social Workers in James Wood “Cuts called dilemma for social workers” *Edmonton Journal* (23 June 1998) B2.

⁵⁷ See e.g., Linda Sloan, then Liberal Social Services Critic, in Johnsrude, *supra* note 49.

⁵⁸ See e.g., Edmonton Social Planning Council’s comments in Goyette, *supra* note 55.

⁵⁹ Lisac, *supra* note 50.

Alberta has cut \$100 million from its social assistance budget since 1993, but has spent an extra \$70 million on child welfare. The greatest increase in the caseloads since 1993 has been the removal of children from their homes. You'd think that the Family Values preachers and fiscal hawks in the Tory caucus would be banging on their desks and demanding to know why.⁶⁰

This negative press eventually caused Children's Service Minister, Iris Evans, to agree to Rechner's request for an independent review. Evans assigned two former social workers, Val Kinjerski and Margot Herbert, to study the causes behind the burgeoning caseloads and recommend solutions.⁶¹ Kinjerski and Herbert's study was extensive. The authors reviewed child welfare literature and practices, examined government reports related to caseload growth, consulted child welfare practitioners in other jurisdictions, and surveyed and interviewed major stakeholders in Alberta's child welfare system, including front-line workers and Regional Authority CEOs.

In most respects, the authors' report corroborated earlier criticisms. Kinjerski and Herbert argued the move to community-based service delivery created an extremely high turnover rate that resulted in greater caseloads for remaining staff and denied children permanency by delaying child placement decisions.⁶² Echoing other child welfare watchdogs and the earlier discourse of social work professionals, the

⁶⁰ Goyette, *supra* note 55.

⁶¹ Lisac, *supra* note 50; Allyson Jeffs "Former mayor Reimer posted to child-welfare caseload review" *Edmonton Journal* (9 March 2000) B5.

⁶² Kinjerski & Herbert, *supra* note 37 at 4.

authors argued that social spending reductions in other departments contributed to caseload growth.⁶³ The report quoted a Regional Authority CEO as saying: “[w]elfare reforms, which were introduced in May, 1993, significantly impacted socio-economically disadvantaged families, ultimately causing additional children to be at risk and in need of Child Protection intervention”.⁶⁴ Kinjerski and Herbert substantiated this opinion by documenting that case determinations of “finding a guardian unable or unwilling to provide the necessities of life” increased by 44 percent from 1995/1996 to 1999/2000.⁶⁵

The report thus identified neoliberal strategies as the main causes of child welfare caseload increases. The recommendations Kinjerski and Herbert made aimed to reverse these strategies by re-implementing a welfarist approach of shared responsibility, increasing social provisions and social assistance rates, and reinstating a system of professional expertise.⁶⁶ They also encouraged the government to recruit trained professional staff and increase wages and benefits to retain qualified staff.

The image of family shared by all of these critics depicted an interpersonal unit embedded in a socio-political

⁶³ *Ibid.* at 36.

⁶⁴ *Ibid.* at 43.

⁶⁵ *Ibid.* at 26-27.

⁶⁶ For instance, one recommendation to the Minister of Children’s Services suggested that she “[c]ollaborate with government colleagues to set increased welfare rates for families”. Moreover, Kinjerski and Herbert stated that these rates should ensure that “[f]amilies with dependent children who are receiving welfare have enough income to provide their children with life opportunities similar to those of other children in their communities” (*ibid.* at 3).

context negatively affected by the state's devolution of responsibilities. Social workers and other child welfare advocates were thus aware of the negative strains privatization schemes placed on families. Their concerns about families and child welfare caseloads provided a counter-discourse to neoliberalism. This discourse, which resembles the contemporary welfarist political rationality, formed the impetus for reconsidering the *CWA* and creating the *CYFEA*; however, as I will demonstrate in the following section, it had little bearing on the *CYFEA*'s content and reformulation of public and private responsibilities.

REFRAMING THE DEBATE

The Government's Review: Features of the *CYFEA*

Obviously, solutions like shared responsibility and increased state provision conflicted with the PCs' ongoing neoliberal agenda. As a response to this welfarist counter-discourse, Children's Services Minister Iris Evans announced a full *non-independent* review of the *CWA*.⁶⁷ The review committee contained only one Member of the Legislative Assembly ("MLA"), a PC backbencher named Harvey Cenaiko, who chaired the committee.⁶⁸ The remaining members were management personnel from the Regional Authorities.⁶⁹ Similar to the Kinjerski and Herbert report, the Child Welfare

⁶⁷ Allyson Jeffs "Protection act for children under review: Child Welfare rules too rigid – minister" *Edmonton Journal* (24 May 2001) A6.

⁶⁸ *Ibid.*; Lynne Koziey "Cenakio heads wide-ranging review of Child Welfare Act" *Edmonton Journal* (24 May 2001) A11.

⁶⁹ Alberta Children's Services, *Strengthening Families, Children and Youth: Report and Recommendations from the Child Welfare Act Review, 2002* (Edmonton: Alberta Children's Services, 2002) [Alberta, *Review Report*].

Act Review thoroughly examined child welfare practices and legislation, held over 140 public consultations, met with current child welfare employees, and reviewed over 600 submissions from concerned stakeholders.⁷⁰ The review's report, entitled *Strengthening Families, Children and Youth: Report and Recommendations from the Child Welfare Act Review, 2002* ("Review Report"),⁷¹ provided the recommendations that formed the backbone for the *CYFEA*.

The Review Report set forth two central principles that guide the *CYFEA* and its new casework model: permanency and familial responsibility. The Review Report argues that permanency ought to be a central concern of the *CYFEA*. The Review Report declares, "[l]oving, stable, nurturing and sustainable relationships are imperative in a child's development. Children need *permanence* in their young lives as soon as possible as the developmental window for children is narrow".⁷² The *CYFEA* adds permanency as a "matter to be considered" that was not present in the *CWA*. The law now mandates all caseworkers to consider "the importance of stable, *permanent* and nurturing relationships for the child".⁷³ The Review Report also emphasizes that the *CYFEA*'s primary objective ought to be familial responsibility. In discussing the values that inspired the report's recommendations, the Review Report adds, "[t]he family is the most appropriate place for children to receive the care they need".⁷⁴ The *CYFEA* situates families' responsibilities to care for their children as another "matter to be considered" in all child welfare decisions. The *CYFEA* reads:

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.* at 5 [emphasis added].

⁷³ *CYFEA*, *supra* note 7 at s. 2(b) [emphasis added].

⁷⁴ Alberta, *Review Report*, *supra* note 69 at 5.

the family is responsible for the care, supervision and maintenance of its children and every child should have an opportunity to be a wanted and valued member of a family, and to that end

(i) if intervention services are necessary to assist the child's family in providing for the care of a child, those services should be provided to the family, insofar as it is reasonably practicable, in a manner that supports the family unit and prevents the need to remove the children from the family...⁷⁵

This consideration thus encourages workers to try to keep families together. In so doing, it ties the primary principles of familial responsibility and permanency to one another.

The new casework model, called the "Alberta Response Model", activates these principles through two main practices. The first is "differential response", whereby cases that workers see as low risk, or in which parents display a willingness to adopt personal change, undergo community support services that encourage parents to keep and improve their parental responsibilities, while cases where practitioners feel children are at higher risk, or parents are uncooperative, go through a full investigation.⁷⁶ The second is "concurrent planning", wherein caseworkers dealing with high-risk cases simultaneously develop two plans. The first "is the preferred plan and focuses on reunification with the child's family". The second "is an alternative or contingency long-term permanency plan, which may include adoption".⁷⁷ Only those cases seen as high-risk, then, face the usual tutelary complex involving the

⁷⁵ *CYFEA*, *supra* note 7 at s. 2(e).

⁷⁶ Alberta, *Review Report*, *supra* note 69 at 29.

⁷⁷ *Ibid.* at 30.

threat to dissolve parental rights. In cases where workers might transfer parental rights, the law mandates them to consider “the benefits to the child of placement within the child’s extended family”.⁷⁸ Nevertheless, the Alberta Response Model emphasizes preserving earlier familial configurations.

The *CYFEA*’s concurrent planning model, its stronger emphasis on maintaining children in their families, and its shortened timelines for decision-making distinguish it from the *CWA*’s earlier casework approach. Under the *CYFEA*, the maximum time a child can spend in state care before a caseworker finds an alternative permanent adoption is 15 cumulative months.⁷⁹ Prior to the *CYFEA*, each temporary guardianship order allowed a child to be in state custody for up to three years. Moreover, a worker could place multiple temporary guardianship orders on the same child, often leading to numerous placements and some children spending a considerable amount of their childhood in state-subsidized care. The Review Report argued that this new “process fosters early decision-making for the permanent care of children by reducing the time it takes to achieve a permanent placement for children and youth in their familial home, with extended family, in their community or through adoption”.⁸⁰ The Alberta Response Model demonstrates that placement preferences follow this same order: familial home, extended family, different household within the community.

⁷⁸ *CYFEA*, *supra* note 7 at s. 2(h)(i).

⁷⁹ *Ibid.* at s. 33.

⁸⁰ Alberta, *Review Report*, *supra* note 69 at 30.

Blending Neoliberal and Neoconservative Logics

In prioritizing and linking together permanency and family responsibility the Review Report and the Alberta Response Model begin to blend neoliberal and neoconservative political rationalities. Proclamations that the law will “support the family unit” and attempt to preserve family configurations echo neoconservative declarations about the importance of the family,⁸¹ while decreased timelines and resource allocation through risk determination signify neoliberal themes about reduced state responsibility.⁸² Conspicuously absent from the Review Report is any welfarist discourse about the state’s role in the child welfare caseload increases. The Review Report effectively reframes the child welfare debate solely along the lines of increasing familial responsibility and encouraging this responsibility indefinitely.

Reframing According to Albertans’ Opinions and “Best Interests”: First Discursive Strategy

The Child Welfare Act Review not only provided an opportunity to reframe child welfare problems along these two principles, it also offered a convenient justification for this reframing. In particular, the idea that the review represented Albertans’ views formed a primary discursive frame used during the legislative debates. Every discussion of the *CYFEA*’s

⁸¹ *CYFEA*, *supra* note 7 at s. 2(e). On family supports and preservation as a neoconservative strategy see Koshan & Wieggers, *supra* note 9.

⁸² On the importance of risk in neoliberal discourses and strategies see Nikolas Rose, *Governing the Soul: The Shaping of the Private Self* (New York: Routledge, 1990) [Rose, *Governing Soul*]; Nikolas Rose, “Governing “Advanced” Liberal Democracies” in Andrew Barry, ed., *Foucault and Political Reason* (London: UCL Press, 1996) 37; Pat O’Malley, “Risk and Responsibility” in Andrew Barry, (*ibid.*) 189.

first bill opened with the claim that the “legislation is based on what was heard from Albertans during the Child Welfare Act Review that was launched in the Spring of 2001”.⁸³ The Opposition even defended its acceptance of the new law based on the perception that individuals involved in the review had their concerns met.

I have to say that given the length of the bill and the topics that were covered and the changes that we find here, there was surprisingly little contact with our office about it. ... I attribute that in part to the department and the manner in which the review of the act was carried out across the province. I think the people had an opportunity to have their say and to check and see if their concerns are reflected in the legislation.⁸⁴

The assumption that drove all members, and set the parameters for debate, was, then, that the Review Report reflected Albertans’ views and as such ought to shape the *CYFEA*. Apparently, if counter-claims or a welfarist rationality were not present in the *CYFEA*, it was because Albertans did not want them to be.

A second discursive frame that intertwined the primary principles of permanency and familial responsibility with the child’s “best interest” further expelled any welfarist rationality from the legislative debates. The PCs continually maintained that the children’s “best interests” remain the foremost consideration in the Alberta Response Model. Indeed, in the preamble to the “matters to be considered” the *CYFEA* states,

⁸³ *Alberta Hansard*, (4 March 2003) at 256 (Cenaiko).

⁸⁴ *Alberta Hansard*, (29 April 2003) at 1317 (Massey).

“all persons who exercise any authority or make any decision under this Act relating to the child must do so in the best interests of the child”.⁸⁵ However, the “matters to be considered” are themselves used to calculate the child’s “best interests”. Cenaiko’s discussion in the Committee of the Whole demonstrates the conflation of “best interests” with the principles found in the “matters to be considered”. Cenaiko states,

Mr. Chairman, section 2 [i.e. the matters to be considered] has in fact been strengthened to clarify that the best interest of the child is the overarching consideration when making decisions concerning a child in need of intervention. The other matters set out in section 2 must be taken into account when making decisions affecting the child. ... *While these fundamental considerations may inform the determinations of best interests, they do not override that determination.*⁸⁶

The reasoning here is problematic. On the one hand, the “best interests of the child” are the primary consideration and the “matters to be considered” apparently only “inform” them. On the other hand, the “matters to be considered” are the only means of calculating the “best interests of the child”. There is no clear distinction between the “matters to be considered” and “best interests”. As such, permanency and familial responsibility, codified in the “matters to be considered”, must be in the child’s “best interests”. Consequently, the Alberta Response Model, which puts these primary principles into practice, must also be in the child’s “best interests”.

⁸⁵ *CYFEA*, *supra* note 7 at s. 2.

⁸⁶ *Alberta Hansard*, (29 April 2003) at 1316 [emphasis added].

Presenting permanency and familial responsibility as (i) stemming from Albertans' views, and (ii) protecting the "best interests of the child" consequently made the *CYFEA* and the Alberta Response Model extremely difficult to challenge in the legislature. Using this discursive framework, MLAs could interpret any criticisms against the law as going against Albertans' wishes and failing to protect vulnerable children's interests. This is an untenable position for most MLAs. Politicians in a democratic system seldom dare to say they do not support what the electorate thinks is best, given that it is their job, by definition, to be public representatives. Moreover, the dominant conception of children as vulnerable and dependent persons requiring adult protection means that few MLAs could oppose an initiative that was in their "best interests".⁸⁷

The effectiveness of this discursive framework in the legislature evidenced itself in two ways. First, it encouraged widespread agreement with the *CYFEA*'s primary principles. This was readily apparent in Mr. Bill Bonner's (Liberal MLA) approving comments about the *CYFEA*:

[w]hen looking at the principles that were in the report and the principles that we see in this legislation, Mr. Speaker, *we all realize* that children are best served in "loving, stable, nurturing and sustainable relationships" and that these are absolutely paramount in the development of any child, and in order to have that stability, children need some type of permanence in a situation. I look at this particular bill, and certainly many, many of the recommendations and principles that are

⁸⁷ See Parton, *Governing Family*, *supra* note 12.

enshrined in this bill point to permanence in those situations.⁸⁸

Bonner's statement unquestioningly links permanency and "best interests" while expressing a pervasive concern with the Review Report. This suggests that this discursive framework presented the *CYFEA* in language that was innocuous enough to ensure most MLAs did not question the *CYFEA*'s content or the processes used to develop it.

Second, in the rare instances where agreement was not present, this discursive framework successfully countered criticisms. Take, as an example, Cenaiko's defense of the Alberta Response Model's decreased timelines, which Dr. Don Massey (Liberal MLA) suggested were simply PC cost-saving strategies:

[a]n issue was raised that provisions for shortened cumulative time in care will simply process children into the adoptive stream sooner and lessen the government's financial obligation for these children. Mr. Speaker, one of the goals of this act is to achieve earlier permanency for children who are under the guardianship of the child welfare director. The purpose of legislating cumulative time in care is to ensure that a child does not languish in the child welfare system. The need for early permanency was a major theme that emerged from the public consultation process. Research shows that the accelerated pace of development for young children increases the need for stability and opportunity to form a

⁸⁸ *Alberta Hansard*, (7 April 2003) at 847 [emphasis added].

permanent bond in the early years. The shortened cumulative time in care will be facilitated and supported by other changes in the act. In particular, concurrent planning will strongly emphasize early efforts to reunify the child and the family.⁸⁹

In a typical defense of the new casework model, Cenaiko argued that both familial responsibility and permanency emerged from Albertans' viewpoints and protected children's "best interests". In every case, when PCs framed rebuttals in this manner, MLAs accepted the defense.

These two discursive frames, (i) Albertans views, and (ii) permanency and familial responsibility meeting children's "best interests", thus formed a discursive framework that comprised the first discursive strategy used to pass this family law through a contested context. This strategy centered only neoliberal and neoconservative rationalities while silencing any welfarist counter-discourse that highlighted neoliberalism's negative impact on families.

Problematizing this Discursive Framework: Questioning What MLAs Did Not

Although MLAs did not question the discursive framework used to present the *CYFEA*, each of the discursive frames used contain significant problems that we ought to consider critically. Dorothy Chunn, Marlee Kline, and Chirstine Piper, among others, demonstrate that actors can easily manipulate the formulation of "best interests of the child" to particular

⁸⁹ *Alberta Hansard*, (7 May 2003) at 1530.

ends.⁹⁰ A brief consideration of the concept of “permanency”, and its link to children’s “best interests”, displays how this central concept likewise changes shape in different socio-political contexts as actors manipulate the notion to meet their own agenda. Permanency initially became a central concern in Albertan child welfare immediately following changes set forth in the 1984 *CWA* that led the Office of the Children’s Advocate to temporarily return over 200 First Nations children to their original communities. Caucasian foster parents employed “permanency” to challenge and reverse the Advocate’s decision in two cases before the Court of Queens Bench. These foster parents successfully argued that the children had formed psychological bonds with them, and that the *permanency* and stability of these bonds were more important in a child’s development than culture.⁹¹ The concept of “permanency” thus initially appeared on the Alberta child welfare scene to downplay the role of a child’s original culture and highlight the importance of psychological bonds with foster parents. Now, in a partial reversal demonstrating the ability to re-mould “permanency” to specific political ends, the *CYFEA* uses the term to emphasize preservation of pre-intervention familial homes. The fact that Alberta’s new child welfare strategy ignores child welfare professionals’ claims that mandating wage increases for caseworkers and offsetting poverty for families would improve children’s permanency further attests to the concept’s flexibility. Instead of seeing “permanency” as affected by socio-political changes, the *CYFEA* constructs permanency as stable care in a strictly familial setting. In fact, the online orientation for child welfare workers, titled *Building Strong Families: The Child, Youth and Family Enhancement*

⁹⁰ Chunn, *supra* note 13; Kline, “Best Interests”, *supra* note 30; Christine Piper, “Assumptions about Children’s Best Interests” (2000) 22:3 *Journal of Social Welfare and Family Law* 261.

⁹¹ Kline, “Best Interests”, *ibid.*

Act, repeatedly defines permanency, in boldface print, as “placement other than in the care of the director”.⁹² This emphasized definition demonstrates that concerns about permanency and children’s familial attachments are about reducing the time a child spends in state care just as much as, if not more than, they are about ensuring the child’s “best interests” and proper development.

The claim that the Review Report echoes Albertans’ views is also highly suspect. The participants in the review process included current child welfare workers and regional CEOs. Many of these persons were the same professionals who, only a year earlier in the report by Kinjerski and Herbert, stated that the PCs’ neoliberal social assistance reforms were the primary cause of child welfare problems. The participation of these same professionals suggests the child welfare review contained positions that were more critical than calls to bolster familial responsibility without increasing state responsibilities. Nevertheless, the Review Report does not mention any of these views and their attendant welfarist rationality. Instead, the PCs use populist rhetoric to deny critical elements of professional discourse and to present a new consensus based on the apparent expertise of the general public who allegedly demand familial, not state, responsibility.⁹³

⁹² Government of Alberta, *Building Strong Families: Child, Youth and Family Enhancement Act* (Alberta: Queen’s Printer, 2006), online: <<http://www.child.gov.ab.ca/enhancementact/Presentation/index.htm>>. Interestingly, this is the only directive on the website that appears in boldface typecast.

⁹³ Although here we see critical elements of professional discourse excluded from the law-making process, we should not conclude that professional discourses have no influence on the character of family law. Excluding critical elements does not mean lawmakers completely ignore professional discourses, which can also stress individual pathology and legitimate intervention. On the role professional social work and psychological discourses have in legitimating child welfare law and private-sphere interventions see

In fact, the idea that the Review Report reflects a consensus among Albertans' views begins to unravel in Cenaiko's letter to the Minister, which prefaces the report. He opens the letter by proclaiming the Review Report's "recommendations have been developed after listening to and reviewing the input of stakeholders from within Alberta".⁹⁴ However, he then writes:

[d]ifficult choices had to be made in coming up with some of the recommendations. In listening to and reviewing the submissions received, it was clear that people's views were strongly held and their values were expressed well. *Yet of course not everyone agreed with everyone else.* I want those who find that some of the recommendations are not what they had hoped, to know that I did hear their concerns and understand their issues. *The differing perspectives were weighed carefully and a balance had to be sought, but not at the risk of moving away from the values and principles expressed in this report.*⁹⁵

These claims are inconsistent. On the one hand, Cenaiko argues, in the Review Report and during the debates, that the *CYFEA*'s principles came from Albertans' opinions. On the other hand, Cenaiko concedes that in balancing the differing perspectives

e.g. Parton, *Governing Family*, *supra* note 12; Jacques Donzelot, *The Policing of Families* (London: Hutchinson & Co., 1979). On the diffusion of expertise and the new role it plays in law see Rose, *Governing Soul*, *supra* note 82.

⁹⁴ Cenaiko, "Letter from the Chair" in Alberta, *Review Report*, *supra* note 69 at ii.

⁹⁵ *Ibid.* [emphasis added].

the review committee aimed to avoid upsetting the report's values and principles. This second statement indicates that the *CYFEA*'s principles existed prior to considering Albertans' views and compiling the report. This inconsistency suggests that the PCs had a plan regarding what the *CYFEA* should look like before they initiated public consultations. The PCs, then, used these consultations to reframe the child welfare debate and make their decisions appear democratic, even though the conclusions were predetermined and unrepresentative of the political rationalities existing in Alberta at the time.⁹⁶

“FAMILY” IN THE *CYFEA*

Determinate content: What is Family? Responsible, Autonomous, Permanent

While those holding neoliberal and/or neoconservative positions might agree on excluding the welfarist rationality from the *CYFEA* and trumpeting familial responsibility, this does not mean that these two rationalities gel into a unified whole without tensions regarding their respective views of “family”. The discursive framework used to limit the *CYFEA* to a mixture of neoliberal and neoconservative rationalities clearly uses “family” as a central component, but what “family” exactly means in the *CYFEA* requires further explication.

⁹⁶ For a discussion of this strategy in other Albertan political contexts see Harder, *Feminism in Alberta*, *supra* note 32; Denis Soron, “The Politics of De-Politicization: Neo-Liberalism and Popular Consent in Alberta” in Trevor Harrison, *supra* note 17, 65.

Despite claims about preserving families, the *CYFEA*'s ability to disband some families demonstrates that the law's purpose is to preserve and support only *particular* families. Child welfare law dissolves those families that deviate from its image, while constituting ones it hopes will. Discussions about the groupings that child welfare attempts to preserve or create therefore reveal the *CYFEA*'s ideal image of "family". These discussions depict these ideal families as permanent havens of love, safety, and support that nurture children. Dr. Massey (Liberal MLA) demonstrated this when he suggested that the principle of permanency recognizes that "[e]very child in Alberta deserves a safe, stable home where they are nurtured by healthy families"⁹⁷. Liberal MLA Mr. Bonner's description of a family that went through an adoption also displayed those groupings created through child welfare law to be havens of love, safety, and nurturance. Bonner states,

[w]hen she finally indicated that they could adopt the child, everyone broke down and cried. The worker informed them that this was certainly part of the process and part of what she had to do in order that the child was going to be going into a *loving* environment, a *safe* environment, an environment that would *nurture* this child and help it develop as all of us would hope.⁹⁸

Meanwhile, those families that cannot display these stable nurturing qualities on their own accord undergo child welfare interventions that reconfigure them to do so or disband them entirely.

⁹⁷ *Alberta Hansard*, (7 April 2003) at 847.

⁹⁸ *Ibid.* at 848 [emphasis added].

Constructing the ideal family as loving, nurturing, and safe justifies the neoliberal devolution of state responsibilities onto families by depicting families as havens that easily care for their own. The *CYFEA*'s ideal family therefore coincides with the "responsible autonomous family" required by neoliberal strategies.⁹⁹ Additionally, this imagery of ideal families as loving, safe, and nurturing is not in outright conflict with neoconservative tendencies of protecting The Family. Not only does this image reflect neoconservative discourse by glorifying families as central institutions with powers beyond the state, the ideology of The Family and family values rhetoric unquestioningly link these characteristics to the heterosexual, nuclear, biologically related, male breadwinner family.¹⁰⁰ Documents produced by the Premier's Council in Support of Alberta Families, for instance, declare the superiority and loving characteristics of the traditional family by arguing that "a strong partnership between spouses is...important in modeling and teaching caring and loving behaviour to family members". In other documents, the council further argues that strengthening the nurturing qualities of families means "providing greater support, recognition, and respect for stay-at-home mothers".¹⁰¹ Neoliberal and neoconservative ideas of "family" can therefore coalesce around images of *what* families ought to be by stressing responsible autonomous families that care for themselves. Neoliberals use this imagery to justify downloading some state responsibilities onto families, while neoconservatives frequently depict these responsible autonomous families as traditional nuclear families.

⁹⁹ See Rose, *Governing Soul*, *supra* note 82.

¹⁰⁰ Thorne, *supra* note 11.

¹⁰¹ Premier's Council in Support of Alberta Families quoted in Harder, *Feminism in Alberta*, *supra* note 32 at 114.

Indeterminate Form: Who is Family? Neoliberal and Neoconservative Readings

Despite any tendency on the part of social conservatives to view responsible and autonomous families as typically nuclear heterosexual units, it is not clear in the *CYFEA* exactly *who* can comprise these stable, nurturing, and unconditionally loving relationships. This reveals a continued tension among the dominant rationalities informing the *CYFEA*. Both rationalities might agree on the content of ideal families and the need to reconfigure families into autonomous units, but their approaches to reconfiguration remain potentially at odds.

The *CYFEA* offers no definition of the relations that comprise a family or what social workers ought to look for when constructing families anew. In fact, for a law about “enhancing families”, the use of the term “family” is shockingly sparse. In a text of some 35,000 words, the *CYFEA* uses the term “family” only 33 times when not referring to the title of a service, 20 of which occur in the “matters to be considered”. From this section of the *CYFEA*, the only conclusion about familial relations is that they include children and the parents or guardians responsible for them.¹⁰² This is hardly surprising given that the *CYFEA* intends to (i) situate particular persons as responsible for children and (ii) evaluate these persons’ capabilities; however, it is also hardly a definition of family – the *CYFEA* offers no clear

¹⁰² That families contain children is obvious in considerations like, “the *family* is responsible for the care, supervision, and maintenance of *its children* and every *child* should have an opportunity to be a wanted and valued *member of a family*” (*CYFEA*, *supra* note 7 at s. 2(e) [emphasis added]). That families also contain parents or guardians responsible for children is clear in statements that mandate all placements to consider “the importance of a positive relationship with a *parent*, and a secure place as a *member of a family*, in the *child’s* development” (*CYFEA*, *supra* note 7 at s. 58.1(a) [emphasis added]).

conceptualization about who can and ought to be considered a guardian, a parent, or a child thereof.

Further confusion arises in other sections of the *CYFEA* and debates, which demonstrate that families might contain more than children and parents. For example, Debby Carlson (Liberal MLA) commented that the *CYFEA* “promotes the concept that the *child* is an active subject of rights but also the importance of *parents and family*”.¹⁰³ By separating children, parents, *and* family, comments like these display that the ideas are not necessarily reducible and that “family” does not mean the parent-child relation in all contexts. The *CYFEA*’s instruction that workers who remove a child from a household must “consult with the guardian *and other family members* to develop a plan” to return the child also suggests that guardians and children are not the only possible family members.¹⁰⁴ Additionally, many statements about “family” in the *CYFEA* and debates simply do not specify who comprises these entities. For instance, the bold declaration that “[t]he family is the basic unit of society”¹⁰⁵ leaves the persons who might compose this unit entirely unclear.

Adding to this ambiguity, in cases where social workers might transfer parental status, the individuals that could compose a family breaks past even these unspecified boundaries. The *CYFEA* directs all caseworkers in the concurrent planning phase to consider “the benefits to the child of a placement within the child’s *extended family*”.¹⁰⁶ Neither the *CYFEA* nor the debates clarify who qualifies as “extended family”. Seemingly, formulations of family contain some

¹⁰³ *Alberta Hansard*, (7 April 7 2003) at 846 [emphasis added].

¹⁰⁴ *CYFEA*, *supra* note 7 at s. 21.1(6) [emphasis added].

¹⁰⁵ *Ibid.* at s. 2(a).

¹⁰⁶ *Ibid.* at sec 2(i)(i) [emphasis add].

bounded, although unspecified, group of individuals (the “non-extended family”) to which “extended family” members are external yet connected. This confusion demonstrates the impossibility of drawing limits around family members and testifies to the definitional “crisis of the family”. Setting this perplexity aside, the crucial point is that the *CYFEA* mandates caseworkers to consider relations beyond the parent-child dyad as potentially appropriate contexts for childrearing. In contrast to the *CWA*, which Marlee Kline notes reinforced the importance of the nuclear family by viewing the extended family only as contributing to problems within child welfare families,¹⁰⁷ the *CYFEA* now lists extended families as helpful resources and possible alternatives to state care.

In private adoptions, another scenario where persons are transferring parental responsibilities, the relations within a “family” again potentially expand. The *CYFEA* allows all private adoptions “to go through the relative/step-parent adoption placement without involving a licensed agency or requiring a home assessment”.¹⁰⁸ This process allows “the birth parent to place her child with someone whom she has a close relationship or with a relative”.¹⁰⁹ As such, these measures extend the possibility of granting same-sex partners parental rights. Whereas the *CWA*’s earlier step-parent adoption provisions required one of the same-sex members to be the child’s biological parent, now the *CYFEA* could allow a person going through a private adoption to choose to give their child to a same-sex couple.

¹⁰⁷ Kline, “Blue Meanies”, *supra* note 43 at 337.

¹⁰⁸ *Alberta Hansard*, (7 April 2003) at 848 (Bonner).

¹⁰⁹ *Alberta Hansard*, (29 April 2003) at 1317 (Cenaiko).

In summary, the *CYFEA* and debates do not explicitly engage the relations that comprise a family and the implicit claims provide little clarity. Hidden in this ambiguity concerning family structure is a greater *potential* to consider diverse relations as appropriate settings for raising children. This contrasts sharply with past Canadian child welfare law, which venerated the caucasian heterosexual, nuclear, male breadwinner form as the ideal and morally appropriate site for child rearing. The potentially wider conceptualization of family also meshes with neoliberal programs by allowing caseworkers to consider a wider range of familial forms before determining that state care is the only remaining alternative. These broader considerations, however, also oppose the PCs' concurrent declarations about protecting The Family. As such, this *potential* expansion of *who* can comprise a family is in deep conflict with the Alberta government's strong socially conservative tendencies.

Functionally Indeterminate: Second Discursive Strategy

The tension between a potentially expanded familial definition and neoconservative familial ideas partly explains the obscure and indeterminate discussion—or perhaps more appropriately, avoidance—of family structure in the legislature. Although the discursive framework used in the debates successfully shed welfarist claims that families are embedded in socio-political contexts and were negatively affected by neoliberal strategies, it could not completely reformulate a singular idea of “family”. Rather, avoiding explicit discussion about who ought to comprise a family and allowing the image of “family” to remain broad and ambiguous allowed the *CYFEA* to pass in the legislature despite a government torn between its neoliberal fiscal conservatism and its social neoconservatism. Specifically, the indeterminacy surrounding family structure results in multiple interpretations and thereby allows MLAs to read into the *CYFEA* the familial imagery that best suits their current position or agenda. For instance, MLAs hoping to

appeal to a neoliberal rationality might see the Alberta Response Model's emphasis on familial responsibility and permanency as stressing the need to consider new familial forms in order to reduce state care. Alternatively, MLAs wanting to connect with neoconservative positions might view the emphasis on permanency and familial responsibility as suggesting that the original biological heterosexual relations that conceive a child are best because they are potentially the longest in duration and therefore express permanency and familial responsibility to the fullest extent possible.

The *CYFEA*'s private adoption provisions similarly enable interpretations that support the biological family's primacy, despite possibly expanding familial status by extending direct adoption processes. Specifically, the *CYFEA*'s new adoption terms declare the biological family's importance by releasing contact information about birth relatives without any opportunities for the parties concerned to place a veto.¹¹⁰ Thus, in both the private adoptions process and the Alberta Response Model, MLAs who held socially conservative notions of "family" could read into the multiple and ambiguous statements surrounding family structure the protection of The Family. This indeterminate reading likely helped the *CYFEA* pass in a legislature containing social conservatives, despite the fact that the overall processes implemented suggest a greater willingness to extend familial status in order to increase private responsibilities.

Counter Example

A failed attempt to reform the *CWA* demonstrates the *CYFEA*'s unique approach to family structure and the role this approach played making the *CYFEA* an uncontested reality. In 1994, the provincial Liberal Party introduced Bill 208 (the "Bill"), which argued that child welfare legislation should put greater

¹¹⁰ *CYFEA*, *supra* note 7 at s. 74.3

emphasis on parental responsibility, preventative services for “at risk” children, and child placement stability. All these themes take central positions in the *CYFEA* and each reflected a neoliberal rationality that was popular at the time. The debates surrounding this Bill, however, addressed family structure much more explicitly. Ms. Alice Hanson, who introduced the Bill, stated in second reading that the Bill’s intent was “[t]o secure permanent alternate placements, preferably in a context of stable, affectionate family relationships, for children who require removal from, and who cannot be safely reunited with their *biological families*”.¹¹¹ Neoconservatives heavily resisted this Bill and it was defeated.

While there was no public outcry about caseload increases to back the Bill and it was likely doomed from the start because the minority opposition introduced it, the explicit reference to family structure and the neoconservative biological family played a key role in dismissive arguments. Ms. Bonnie Laing (PC MLA), for instance, rallied to defend the traditional family alluded to in the Bill. She proclaimed, “it is the desire of this government as well as Albertans to preserve that autonomy of *American families*. Bill 208 would seriously jeopardize this autonomy, which Albertans have come to appreciate”.¹¹² Laing’s conflation of Albertan families and American families demonstrates that she either knows little about geography, or was concerned primarily with defending the superiority of the biological, heterosexual, nuclear, male breadwinner family form, which is frequently more succinctly referred to as “the American Family” by neoconservatives.¹¹³ The more explicit

¹¹¹ *Alberta Hansard*, (29 March 1994) at 939 [emphasis added].

¹¹² *Alberta Hansard*, (30 March 1994) at 997 [emphasis added].

¹¹³ Dorothy Smith, (1993) “The Standard North American Family: SNAF as an Ideological Code” (1993) 14:1 *Journal of Family Issues* 50.

engagement with family structure and the more explicit challenge to neoconservative definitions of The Family thus introduced another powerful set of rhetorical tools that could obstruct new child welfare laws by rallying to the defense of this traditional familial form.

This contrasting example shows that if the *CYFEA* took on a straightforward and direct engagement with the issue of who ought to comprise a family, it could have led to similar resistances and the *CYFEA* never coming into force. The *CYFEA* and surrounding debates are noticeably void of any references to family structure, let alone references to family structure that suggest the biological family so central to neoconservative rationality might be deviant and require intervention. Arguably, the ambiguous presentation and avoidance of who comprises a family reflects the contested socio-political context over this issue and avoids bringing this hotly contested topic to the surface. That is, in contrast to arguments that a lack of explicit engagement with “family” represents a tacit homogenous family image among politicians,¹¹⁴ I contend that the ambiguity surrounding “family” in the *CYFEA* allows multiple ideas about family structure to exist without bringing to light that many of these notions do not coincide. The indeterminacy surrounding family structure serves as another discursive strategy enabling the *CYFEA* to negotiate a tensional political context. This strategy allows politicians and citizens to align “family” with their own beliefs and interpretations. In so doing, readings of “family” that suggest The Family is paramount can coexist with conceptions favorable to neoliberal positions that hint at potentially expanding familial status.

¹¹⁴ See e.g. Shelley Gavigan, “Law, Gender and Ideology” in Anne Bayefsky, ed., *Legal Theory Meets Legal Practice* (Edmonton: Academic Printing and Publishing, 1988) 283.

IMPLICATIONS

Limits of indeterminacy: Excluding the State from Familial Responsibilities

Although the specific relations considered family are unclear, MLAs strictly differentiated the state from the family. Multiple statements contended that, as an entity separate from the family, the state's role is to hold families accountable for their responsibilities. In one specific example, Cenaiko proclaimed that the *CYFEA* places "increased emphasis through the court system on holding parents responsible for the parenting of their children".¹¹⁵ Additionally, claims that the *CYFEA* provides "increasing accountability for services delivered to children and families" demonstrate that service providers, including the state, are distinguishable from families.¹¹⁶

Distinguishing state entities from "family" excludes them from the category of actors primarily responsible for the everyday direct care and protection of children. This differentiation subverts the welfarist discourse that situated families as themselves parts of the larger socio-political fabric negatively affected by neoliberal rationality and therefore precludes any system of generalized shared social responsibility for child welfare. Such a presentation masks the active role that state strategies have in shaping families. In obscuring this role, the state legitimates downloading responsibilities onto individual family members because families appear as pre-political and therefore natural entities with essential capabilities and obligations for child rearing that ostensibly exist independent of state actions.¹¹⁷ "Family" is

¹¹⁵ *Alberta Hansard*, (10 March 2003) at 392 (Cenaiko).

¹¹⁶ *Ibid.*

¹¹⁷ See Kline, "Blue Meanies", *supra* note 43; Frances Olsen, "The Myth of State Intervention in the Family" in Susan Boyd and Helen

thus a calculation of responsibility; its only certain formula under the contemporary definitional “crisis of the family” is that the state is not equivalent to the family. Consequently, according to this formulation, responsibilities for caring for family members are not state responsibilities.

Unlikely Inclusivity: Discretion, Deferral, and Discrimination

Given the state’s exclusion from familial care responsibilities, it is unlikely that the *CYFEA*’s possibly expanded familial imagery will lead to any progressive change. First, nowhere in the *CYFEA* or the debates is there mention that the indeterminate presentation of family structure aims to encourage, respect, or promote familial diversity. Second, the possibility of expanding legal recognition of family forms remains only that: a possibility. The *CYFEA* defers decisions about the relations that comprise a family to child welfare workers’ discretion.¹¹⁸ Whether or not these decisions will embrace non-traditional familial forms or reinforce The Family, and what the reaction to these decisions will be, is a matter that requires further research. Finally, despite any semblances of formal equality in family status, the state’s refusal to provide substantive equality makes the *CYFEA*’s extension to non-traditional interpersonal relations far from progressive. This position denies the fact that some groups face systemic barriers that impede their ability to achieve the *CYFEA*’s ideal familial content of autonomous responsibility. As a case in point, the *CYFEA* reemphasizes neglect as grounds

Rhoades, *supra* note 30, 3; Nikolas Rose, “Beyond the Public/Private Vivision: Law, Power and the Family”, in Susan Boyd & Helen Rhoades, *supra* note 30, 33. Similarly, the state falsely appears as an entity without its roots in the family (see Jacqueline Stevens, *Reproducing the State* (Princeton: Princeton University Press, 1990)).

¹¹⁸ On the deferral of family definitions in law see John Dewar, “The Normal Chaos of Family Law” (1998) 61 *Mod. L. Rev.* 476.

for intervention in order to eliminate the prior practice whereby child welfare workers would use state resources to help families meet basic needs. This means that groups excluded from middle-class society will likely remain primary targets of child welfare law.¹¹⁹ The *CYFEA*'s governing gaze will therefore probably continue to discriminate against First Nations and women, especially single women. Both groups already face disproportionate levels of poverty and overrepresentation in the Canadian child welfare system; the *CYFEA* offers nothing to address this.¹²⁰

¹¹⁹ Although the *CWA* contains a definition of neglect similar to the *CYFEA*, the *CWA* dispersed this definition through the "matters to be considered". The *CYFEA*, on the other hand, emphasizes neglect in its own section of the legislation (*CYFEA*, *supra* note 7 at s. 1(2)). Moreover, the Review Report explicitly states that "[n]eglect should be clarified and reinforced as grounds for finding a child in need of protection" (Alberta, *Review Report*, *supra* note 69 at 12).

¹²⁰ On women as the main persons affected by neoliberal reforms see Fudge & Cossman, *supra* note 3; Susan Boyd, "Is There an Ideology of Motherhood in (Post)Modern Child Custody Law?" (1996) 5:4 *Social and Legal Studies* 495; Kline, "Blue Meanies", *supra* note 43. The *CYFEA* uses the gender-neutral language of "parents" and "guardians" in such a manner that it assumes that both sexes share domestic labour; in so doing the law provides no solution to women's actual overrepresentation in these tasks. On women as the primary targets of child welfare law, and single women's overrepresentation in the child welfare system, see Swift, *supra* note 20; Marilyn Callahan, "Feminist Approaches", *supra* note 29; Lafrance, *supra* note 17. PCs claim that the *CYFEA* takes new innovative measures to increase sensitivity to aboriginal culture (see Iris Evans' comments in Karen Kleiss "Legislation aims to keep families together" *Edmonton Journal* (1 November 2004) A3). Comparison of the *CYFEA* with *CWA*, however, shows that there are no new provisions concerning First Nations. On the overrepresentation of First Nations in the Canadian child welfare system see Armitage, "First Nations", *supra* note 30; Davies, *supra* note 30; Kline, "Best Interests", *supra* note 30; Monture, *supra* note 30.

Utility of Documenting Discursive Strategies: Towards Inclusivity

Highlighting the discursive strategies used to exclude particular voices is an initial step towards including diverse familial forms in meaningful ways. The above analysis documents that the non-independent review process, appeals to Albertans' views, and linking familial responsibility and permanency to "best interests" silenced a welfarist counter-discourse that saw neoliberal reforms as weakening families. Knowing these strategies enables us to consider ways to resist them in the future. In particular, rather than allow a single MLA to lead a consultation with all Albertans, I suggest we advocate for law-making processes that entail forming all-party review committees. These committees ought to consult the workers and clients who deal with child welfare every day, not some amorphous construct of "Albertans". This format would keep politicians from ignoring those most directly affected by child welfare systems and neoliberalism. Problematizing the *CYFEA*'s central discursive frames and concepts such as "permanency", "best interests", and "Albertans" aims to force a reconsideration of family law and develop a space for previously silenced rationalities.

Revealing the indeterminacy surrounding family structure also provides an opportunity to reopen family law discussions. The analysis of "family" here demonstrates that Albertan politics is not without its own internal struggles and contradictions. Displaying these contradictions might serve as impetus to divide the allegedly coherent New Right and invite a reconsideration of the division between public and private responsibilities.¹²¹ Alternative visions exist and are possible if politicians do not strategically remove them from the lawmaking process.

¹²¹ See Cossman, "Family Feuds", *supra* note 2.

CONCLUSION

This paper demonstrates how lawmakers handle the contemporary uncertainty surrounding the concept of “family”. The *CYFEA*’s existence in a province that contains multiple political rationalities, each with potentially conflicting ideas of “family”, made it a particularly apt case for this investigation. I argue that a detailed examination of the *CYFEA*’s creation demonstrates two primary discursive strategies used to handle the tensions surrounding “family”. First, the Alberta government used its own child welfare review to implement a discursive framework that silenced claims that neoliberal reforms negatively affect families. This discursive framework erased welfarist discourses and codified neoliberal and neoconservative discourses supporting permanency and familial responsibility. In so doing, this discursive strategy creates a new casework model that heightens attempts to constitute the content of families as permanently autonomous and responsible caregivers. The second discursive strategy entailed an indirect and ambiguous handling of the topic of family structure. This strategy allowed the *CYFEA* to pass in the legislature, despite a socio-political climate where members typically contested who ought to receive legal recognition as a family.

Both these strategies were flexible enough to ensure the law’s passage while at the same time increasing interpersonal responsibility. The only determinate conclusion about who comprises a family that one can draw from the *CYFEA* is that family responsibilities do not fall on the state. As such, any potential expansion or formal equality in legal family status is unlikely to be progressive unless lawmakers create efforts to increase substantive equality among groups. While the *CYFEA* is unique insofar as it does not contain an obvious and explicit promotion of The Family, it will likely continue to single out particular disadvantaged interpersonal configurations in an exclusionary fashion. Outlining and

problematizing the discursive strategies used to create this law provides initial steps toward reopening the law and calling for more meaningfully inclusive law-making processes.

