BEYOND THE RIGHTS DEBATE

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WITHIN SOCIO-LEGAL theory, much has been written about the 'politics of rights', legal academics lining up to either defend or attack the struggle for rights in liberal democracies. Most progressive legal theorists agree that 'rights' (as objectives and rhetoric) are potentially problematic, for a variety of reasons. The main point of disagreement, as I read it, is between those who characterize 'rights' as abstract, individualistic, disempowering and obfuscatory (Freeman, 1982; Fudge, 1987, 1989; Gabel, 1984; Glasbeek, 1989a, 1989b; Kingdom, 1991; Mandel, 1989; Smart, 1989; Tushnet, 1984), and those who say rights struggles *may* be these things, but they can *also*, perhaps simultaneously, be *em*powering, necessary, foci for resistance (Hunt, 1991; Matsuda, 1987; Minow, 1990; Schneider, 1986; P. Williams, 1987; R. Williams, 1987).

From either a Marxist or poststructuralist position, 'rights critics' argue that current rights struggles are either examples of a depoliticized culture, or questionable invocations of dangerous discourse. 'Rights defenders', on the other hand (some of whom also espouse socialist and poststructural perspectives), emphasize the positive effects of rights struggles upon social movement mobilization and individual consciousness, while tending to marginalize the structural and discursive constraints noted by the 'rights critics'. Much of this discussion has tended, in my view, to be clouded by a confusing use of terms whereby concepts such as 'rights', 'law', 'the state' and 'litigation' are collapsed and employed interchangeably.

A parallel development has been the emergence of an extensive literature on 'the new social movements' (Cohen, 1985; Melucci, 1989; Mouffe, 1988; Offe, 1985; Touraine, 1985). Initially, those using the phrase noted the proliferation of activist struggles, often perceived to be located in the realm of 'culture', crossing

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and seeming to deny class-based consciousness and agency. Some, such as Laclau and Mouffe (1985), saw in this development the inevitable fragmentation of social struggle in advanced capitalism, and viewed this as promising the *positive* rearticulation of an oppositional counter-hegemonic project. Others have been more critical of 'new movement' theory, arguing that it tends to be, among other things, eurocentric and insufficiently attentive to economic questions (Epstein, 1990; Gelb, 1990; Plotke, 1990).

In a recent article, Judy Fudge and Harry Glasbeek (1992) have taken up many of these ideas. They write that a 'politics of rights', led by the 'new social movements', is threatening to shift social struggle away from the structural conditions at the root of inequality – economic restructuring in late capitalism (postfordism). This economic context precludes the politics of rights from becoming a 'politics of transformation' (1992: 66).

> The danger is that it is possible that new social movements, with their concern to preserve the autonomy of resistance based on different oppressions, which, in large part, reflect the social relations of production, may reinforce the dominant hegemony, rather than pose a challenge to it. In short, the politics of the new social movements may be channelling struggles without challenging the deeper relations of subordination. Just now, the material conditions which characterize political economies of the advanced industrial states make this quite likely. (1992: 64)

These are strong and provocative claims.

In this paper, I consider Fudge and Glasbeek's approach in light of my own research on one such social movement – the lesbian and gay rights movement in Canada, the country which forms the main subject of their analysis. Fudge and Glasbeek's argument, although not directed at any specific movement, would seem to lead to the abandonment of the lesbian and gay rights movement, and several others, as agents of social transformation. I disagree.

I begin by setting out their views, and then follow this by examining several of their contentions. Although I am quite critical of Fudge and Glasbeek's analysis, I also explore the contributions of several 'rights defenders' and argue that both sides of the debate offer similarly reductionist paradigms. The paper is organized around three primary themes: the concept of 'transformation'; the relationship between law and social change; and the role of right-wing social movements.

THEIR ARGUMENT

Fudge and Glasbeek begin by noting two related developments in recent years. First, the Left's awareness that substantive inequalities and discriminations have not withered away despite the granting of many formal legal rights. This has led to the posing of questions such as – how do we make the liberal promise of equality a reality? How do we transform political struggle to end substantive discriminations? Second, they note that many of the socialist analyses and strategies associated with Marxism are now seen to be redundant, obsolete or just plain wrong. This increasing concern with diverse inequalities, coupled with the

decreasing significance of a class-based politics, has led, in Fudge and Glasbeek's view, to the emergence of a 'politics of rights', a place, they argue, where things are currently 'at' (1992: 46). Politics of rights advocates, Fudge and Glasbeek suggest, view rights as the 'bedrock' of a new society. Fighting for the extension and expansion of rights is now a 'counter-hegemonic' strategy (1992: 46–7). Fudge and Glasbeek argue that, from the advocate's perspective, 'moral rights claims' are seen as the 'theoretically and practically correct' form of politics (1992: 47) and modern social movements as the 'new' agents of transformation (1992: 48).

After making these opening remarks, Fudge and Glasbeek move on to a discussion of 'New Times', the manifesto written by Stuart Hall and several other British theorists in 1988. Taking issue with the New Times analysis, Fudge and Glasbeek argue that Hall and others focus excessively upon the *cultural* shifts inaugurated by the postfordist economy, seeming to believe 'politics is detached from economics' and ignoring the ways in which postfordism is *not* an *inevitable* economic development (1992: 48). Instead, Fudge and Glasbeek maintain that the economic restructuring known as postfordism is a strategy developed and implemented by capital and the state, which has exacerbated individualism and commodification (1992: 61). Thus, they argue that capitalism is relevant, both to social analysis and as a site of struggle, indeed more than ever before (1992: 61–3; 65).

In presenting their case, Fudge and Glasbeek discuss the ways in which liberal democracies have increased 'repression' in late capitalism (1992: 48–9). There are more prisons, more people incarcerated in them, and civil rights generally have been eroded. States with the most entrenched rights regimes can be the most active in fostering repression (1992: 49). Fudge and Glasbeek relate these 'repressions' to the restructuring of global capital. Rights advocates, they argue, only solidify the aims of this restructuring by insisting upon the individualistic recognition of the very fragmented identities deliberately developed and exploited by postfordism (1992: 61; 63–4). According to Fudge and Glasbeek, a veritable human rights industry has arisen world wide; what rights advocates have failed to do, however, is show how to 'implement a practical politics of rights', rather than just confront the powerful with their abuses (1992: 50).

The specific focus for Fudge and Glasbeek's analysis is the *Canadian Charter of Rights and Freedoms*, a constitutionally entrenched rights document each has extensively critiqued on a number of occasions (Fudge, 1987, 1989; Glasbeek, 1989a, 1989b; Glasbeek and Mandel, 1984). By showing the failure of the *Charter* to effect substantive social transformation, and by relating the politics of new social movements to the making of rights claims and a reliance on constitutional litigation, they hope to demonstrate the poverty of the 'politics of rights'. They argue, relying upon legal cases restricting the rights of workers and increasing those of corporations, that the *Charter* has not proved to be a transformative instrument (1992: 52–3). Recognizing that some gains have been made in the area of due process, Fudge and Glasbeek, following Michael Mandel (1989), contend that such rights mask the reality of prison population growth and administrative techniques of surveillance (1992: 53–4).

Because the *Charter* gives to individuals the right to challenge legislation and official policy but not 'private action', Fudge and Glasbeek maintain that it fosters a view of 'the state as the prime site of oppression' (1992: 54). This, they suggest, is just what *Charter* drafters hoped for, intent as they were upon protecting the inviolability of private owners. They also discuss the ways in which *Charter* rights have been claimed, and won, by corporations and right-wing individuals (1992: 54). Even cases counted by progressive forces as 'wins' are not, Fudge and Glasbeek assert, 'transformative'. More generally, the *Charter*'s rights tend to support the 'commodification of everything' (1992: 55).

Anticipating that they might be accused of a narrow 'win/loss' assessment, while neglecting positive effects beyond the question of who is victorious in court, Fudge and Glasbeek go on to consider arguments which suggest that rights discourse is helpful in organizing and mobilizing political struggles. They find that 'the results are in and they are bad' (1992: 56).

> There is no evidence, however, that the courts have been a terrain of insurgency in the past and there is none that they have been so since the Charter was proclaimed . . . there is simply no evidence that there is more, and better, organization of progressive politics than there would have been without the advent of constitutional litigation. (1992: 56)

Moreover, they argue that, in this area too, it is just as likely that the *Charter*'s effects have been negative, rather than positive (1992: 56).

The deeper point in Fudge and Glasbeek's analysis is that constitutional litigation, and the politics of rights generally, are categorically *not* means for substantive social transformation, nor for achieving the goals of new social movements. To begin with, 'the rights claims of new social movements are likely to be channelled into legalized politics' (1992: 56). Rights claims become identified with *legal* claims, and this engenders a dependency upon achieving change through legal processes. This leaves unchallenged the myriad of factors 'external to law' that determine the possibilities of litigation, for example the appointment of the Reaganite bench in the United States and so on (1992: 58). For Fudge and Glasbeek, 'changes external to law drive the politics of litigation, not the other way round' (1992: 58). Furthermore, social movements, in attempting to achieve changes which go to the heart of social relations, are thwarted by 'elements' within legal discourse itself which 'block' their success (1992: 59). These elements include such hegemonic concepts as the public/private distinction, individualism and commodification (1992: 59). Finally, citing the analysis of Carol Smart (1989), Fudge and Glasbeek argue that legal discourse is itself transformative of radical politics in a negative way, that 'the requirements of legalized politics' cause social movements to 'recast some of their claims . . . thereby changing and de-radicalizing the nature of these claims' (1992: 59).

Having pierced the 'correctness' of 'the politics of rights', Fudge and Glasbeek then turn their attention to the question of whether new social movements are viable agents of social transformation. They argue that new movements are not directed towards transforming the economy, and further maintain that these movements are divided, and that their form of politics is not the province of the

Left alone (1992: 60–1). They find, in these facts of internal strife and the existence of right-wing 'new' movements, that 'new movement' advocates lack a 'normative theory . . . for any coherent form of politics' (1992: 61).

The underlying basis to Fudge and Glasbeek's analysis is made explicit in the final pages. As I read their argument, they contend that diverse oppressions, the kinds of identities and struggles new movements represent and engage in, should be regarded as *morally* urgent and serious, and that 'it makes sense for [new movements] to use the language of rights' (1992: 66). However, the concepts of capitalism and class retain the most explanatory power at the political or analytic level, and must be the focus of opposition for a truly 'transformative' project (1992: 62, 66). Returning to the ideas with which they began their paper, Fudge and Glasbeek maintain that capitalism is more pervasive, even more insidious than ever before; indeed, that is why it has become even less talked about in academic and activist circles. This latter development, however, does not mean that capitalism and class are any less relevant to people's lives.

According to Fudge and Glasbeek, capitalism 'makes use of' and 'exploits' gender and race hierarchies which predate it by 'utilizing historical lines of fragmentation to impose flexibility on labour' (1992: 63–5). Class shapes the form of these other oppressions, while these other oppressions shape relations within a class (1992: 63). Within capitalism, the experience of inequality is deflected onto these other areas; in this way, the economic order is protected and rendered superfluous to social struggle. As noted earlier, Fudge and Glasbeek argue that it is 'quite likely' that new social movements, by focusing upon these epiphenomenal relations, are 'reinforcing dominant hegemony' and 'channelling struggles without challenging the deeper relations of subordination' (1992: 64).

In their concluding paragraph, Fudge and Glasbeek acknowledge why social movements feel they need to make rights claims and, indeed, the writers agree that they should. They do not wish to be misunderstood, to be taken as 'objecting' to rights (1992: 66). At the same time, however, they argue that the politics of rights is not only insufficient but probably dangerous; instead, they advocate a 'politics of transformation' to relate the concerns of new movements to developments in the restructuring of capital (1992: 66).

RESPONSE

'TRANSFORMATION' FOR WHO, OF WHAT, AND BY WHOM?

Fudge and Glasbeek's analysis proceeds from the assumption that economic class, its production by 'late capitalism', and the role of the working class as primary agent of change remain the key elements for any theory of social transformation (this last assumption must be implied from their rejection of the 'new movements' as such agents). By decrying the 'detachment of politics from economics' (1992: 48) they simultaneously assert that the primary form of *transformative* politics is one oriented towards the economy. The model of the state and law that Fudge and Glasbeek employ suggests a class instrumentalism;

although they never explicitly claim that a 'ruling class' grants legal rights to facilitate capital restructuring, such a view would seem to underpin their model. State actors are seen as ruling class functionaries: why else would the drafters of the *Charter* 'intend' the document to be an instrument that would solidify class power (1992: 54)? Fudge and Glasbeek may not *want* to be interpreted as 'objecting to rights' (1992: 66) but they are unequivocal on two points: first, that social movements and the politics of rights are not about social transformation and, second, that the rights struggles of these movements tend to reinforce and exacerbate central aspects of late capitalism.

Given these views, how could the rights claims of new social movements be seen as anything other than diversionary? Fudge and Glasbeek are not interested in evaluating the struggles of social movements on their own terms. Instead, their theoretical framework insists on the outcome of their analysis even before they have begun. This is reflected in their choice of examples. In discussing the results of constitutional litigation under the *Charter*, the examples Fudge and Glasbeek provide have, ironically, very little to do with the demands made by the new movements. They find that the *Charter* has benefited corporations and not workers, and conclude from this that it holds no promise for social movements. But, Fudge and Glasbeek have already shown (erroneously, I believe) that the 'new' movements are not about workers and employment rights – why then do they use this as an example? Unless one accepts the 'base/superstructure' Marxist metaphor, the *Charter* experience of labour unions and toy manufacturers says nothing about what might be on offer to other groups.

Fudge and Glasbeek do briefly discuss one social movement in the context of the *Charter* – the feminist movement (1992: 54–5). They describe how the *Charter* was initially used by men to attack legislation benefiting women; however, with the exception of the *Morgentaler* decision, they gloss over the many more recent cases perceived by feminist legal organizations to be 'victories' (see discussion in Razack, 1991). Many lesbians and gay men also perceive their recent legal rights struggles to have been increasingly successful (for example: *Haig; Knodel; Leshner*); for many, the *Charter*'s potential represents a huge advance over slow and grudging parliamentary reforms.

For Fudge and Glasbeek however, only 'class struggle' is worthy of the word 'transformative', or, at the very least, social movement struggle that directly confronts capitalism. Thus, they cover themselves in all respects by arguing that even where social movements win their rights claims (here they acknowledge this possibility), these wins simply 'reinforce' the capitalist economy (1992: 55).

To say that their analysis is class reductionist is to do no more than take them at their word. The difficulty with Fudge and Glasbeek's approach is that they are purporting to be evaluating the struggles of 'new' social movements; however, in keeping with several of the 'rights advocates' they criticize, this is just what they have not done. Instead, they seem to suggest two perhaps contradictory things: first, that late capitalism has produced 'difference' and the proliferation of identities and, second, that it exploits 'historical lines of fragmentation'. However, postfordism can hardly be said to have produced the identities of 'woman' or 'black' or even 'lesbian' and 'gay'. One could argue that postfordist

changes have reshaped the expression of these identities,[1] but this would be an argument to make, not presume. But neither are lesbian, gay and heterosexual identities necessarily 'historical lines of fragmentation'. These analytic problems are why, in my view, economic analysis is insufficient explanation for the regulation of sexuality.

However, even if one were to accept Fudge and Glasbeek's paradigm, problematic assumptions continue to abound. For example, difference is given only a negative connotation: it is functional to capitalism and therefore bad. It fragments opposition to capitalism and occludes class exploitation. From their perspective, postfordism has wrought nothing but inequality and oppression. Such a view, however, completely negates the *possibilities* and *potentials* of 'new' identities. There are many of us who, while experiencing serious deprivations based on our 'identities', nevertheless enjoy living them. Were we to follow Fudge and Glasbeek's programme for change would we not be seeking to do away with the very forces which (within their understanding) brought us into existence, or, at least, provide us with opportunities for resistance? Well, we might, perhaps, want to do this nonetheless. Indeed, many of the debates current in feminist theory are about how 'ultimate' social change in the area of gender must problematize and cease to take for granted the concept 'woman'. The 'politics of identity', which at many points in their article Fudge and Glasbeek confuse with the 'politics of rights', has been a topic of extensive debate *within* radical social movements (for example: Phelan, 1989; hooks, 1991). There may be a case for Fudge and Glasbeek to put to lesbians, gay men and other 'new' (and 'old') identities; but this is just what they do not do. And they most certainly give no indication that a new mode of production will not also exploit 'historical lines of fragmentation'; indeed, their analysis might even suggest this would be inevitable. Who is to say that we will be better off?

What kinds of demands should lesbian and gay movements be making? How do we determine whether a particular struggle is 'directed' at capitalism? The AIDS activist movement is a case in point; it encompasses analyses of and demands around sexuality, health care, medical practice, housing and employment policies, and a host of other areas (see Epstein, 1991; Patton, 1990). How does a class reductionist paradigm explain such a movement?

LAW AND SOCIAL CHANGE

LEGAL DETERMINISM At the outset of their paper Fudge and Glasbeek make this statement:

> The liberal norms associated with capitalist relations of production ... are premised on de jure equality. Distinguishing features, such as gender, race, ethnicity and sexual orientation, do not permit the imposition of different living conditions. (1992: 45)

The assumptions contained within this statement go to the heart of Fudge and Glasbeek's deterministic analysis of law. The authors neglect to mention that,

historically, 'liberal norms' *never* included *any* of the above 'categories'. And with respect to sexual orientation, in most jurisdictions *still do not*.

The application of de jure equality to previously excluded groups or identities is something that has been fought *for*. Liberalism was not born committing itself to the formal equality of lesbians and gay men. How could it have been when such subjects did not even exist at the time? Fudge and Glasbeek's refusal to take anything other than 'class' struggle seriously suggests that lesbian and gay movements have done nothing all these years. Instead, law somehow 'saw' lesbians and gay men and extended de jure equality to us.

Models of law as a ruling-class instrument incapable of being 'transformed' are seriously put into question by the fact that lesbian and gay movements have succeeded in achieving various forms of transformation. The meaning of 'human' in the phrase 'human rights' has been shifted, not just by lesbian and gay movements but by many other 'identities' struggling for change. There is no room in Fudge and Glasbeek's analysis for understanding the process by which 'slaves' or 'perverts' become 'citizens', the process by which a break in the boundaries of legal liberalism is *forced* (see Mouffe, 1992).

Similarly, the idea that elements in legal discourse 'block' substantive change is useful, so long as it is not repeated as orthodoxy. Fudge and Glasbeek seem to suggest that elements such as 'the public/private distinction' are rigid and unchanging. When social movements assert rights which challenge this traditional understanding, the 'distinction' pops up to 'block' them. The history of lesbian and gay legal reform, however, shows a far more complex dynamic at work.

Law initially offered (male) 'homosexuals' no 'private' realm whatsoever. The Wolfenden reforms, won through the campaigning of early 'homophile rights' organizations, constructed a narrow arena in which homosexual (usually male) sex was to be decriminalized. More recently, as Davina Cooper and I have argued elsewhere (1991), demands for lesbian and gay rights in the areas of adoption and fostering, reproductive technologies, and a whole host of other 'family sphere' areas, have confronted the liberal Wolfenden consensus. The 'public/private' distinction is no longer as tenable. In the area of sexuality then, this 'element' has indeed been transformed; in fact, it has been rendered tangential to many social policy discussions. These shifts in meaning, the ways in which seemingly solid elements are found to be somewhat porous, are not illusory games orchestrated by capitalist overseers. They are, rather, one way in which, through struggle, some kinds of 'transformations' are made.

Finally, the determinism that Fudge, Glasbeek and others grant to law overlooks the ways in which social movement actors engage in a process of self-censorship long before rights claims enter *any* public arena. Movement activists on both the Left and the Right, exercising the agency that many theorists would deny them, constantly make conscious, strategic, pragmatic decisions about what can and can not be said publicly. I come back to this point further below.

THE CHARACTERIZATION OF MOVEMENT ACTIVISTS For many left-wing legal academics, non-class-based rights claims are nothing more than a 'buying off' of

progressive energies. They suggest that individuals and social movements are 'fooled' by the promise of rights. Rights become reified in political struggle, by a duped or mystified constituency labouring under a kind of false consciousness. Michael Mandel, for example, refers to *Charter* rights as a 'hoax' (1989: 308), while Judy Fudge has elsewhere indicated that *Charter*-using feminists 'accept' prevailing discourse, 'assume' the state is an instrument, and 'see' the courts as autonomous and rights claims as self-executing (1989: 459). Elizabeth Kingdom (1991), citing Fudge, makes a similar argument for Britain. While I accept and am persuaded by many of the arguments made by these writers, I find this view of social movement struggle to be somewhat unhelpful – at least with respect to lesbian and gay political activity.

Within lesbian and gay rights movements, few, if any, people believe that winning human rights will achieve equality, much less liberation.[2] The acquisition of formal rights was always one strategy among many. Gaining such rights was viewed as a necessary step, as much a symbolic hurdle as a material benefactor (for example, Rayside, 1988). 'The law' was resorted to because it was there, human rights structures existed and, as modern lesbian and gay identity emerged and consolidated, analogies between lesbian and gay experience and other 'oppressions' were made. While the public rhetoric of lesbian and gay rights activists might suggest that discrimination against lesbians and gay men would end with the granting of equality rights (and the problems arising from this pose different questions), few were so naive as to seriously believe this (see Khayatt, 1990; Ross, 1990). The discourse deployed was strategic and hopeful, not indicative of a wistful, trusting, submissive approach to law or belief in law's neutrality, objectivity and so on.

In interviewing lesbian and gay rights litigants and lawyers, I found that few concerned themselves with the meanings of 'rights' per se, nor with many of the issues with which theorists occupy themselves. Instead, people cared about the extent to which they received publicity and were able publicly to communicate their lesbian or gay politics, and/or mobilize others. For many, impact on a personal level was not due to qualities intrinsic to rights rhetoric or claims, but was simply a consequence of being engaged in public legal struggle.

Karen Andrews, for example, went to court to have her household declared a legal 'family' for the purposes of receiving dental coverage, not for 'rights' in the abstract (Andrews, 1989). She found her experience with the legal process to be 'a productive use of anger' (interview), despite losing her case (*Andrews* v *Ont.*) and having her grounds for appeal rendered moot. She believes that her litigation made people think about lesbian and gay issues, and have to look at pictures of a lesbian couple on the front page of their newspaper for the first time (interview). According to Andrews, the litigation process was a success, regardless of outcome, as she was able to appear regularly in the media and be a prominent public spokesperson (interview).

Brian Mossop and Ken Popert, two gay litigants whose 'family benefits' case is currently before the Supreme Court of Canada, agree with this assessment. For them, their legal case was simply a 'way of getting yourself on radio or television, so you can say things and millions of people can hear it' (Mossop, interview).

> There are only a limited number of ways in a society like ours that you can gain access to the mass media, one of them is to hold demonstrations, one of them is to launch some kind of legal case. The media defines the forums in which it's possible to find the platforms. . . .
>
> It's very useful now we have the *Charter of Rights*, it's a legitimate subject, no one questions, as they might have before the *Charter*, whether there is such a thing as 'rights'. . . . Rights gives you a language. (Popert, interview)

Somewhat unsurprisingly, Andrews, Mossop and Popert were all quite dismissive of academic opinion condemning rights struggles. Karen Andrews finds academics to be disrespectful of social activists, and believes they write little of relevance to 'real people' (interview). According to Ken Popert, 'It's only lawyers and academics who actually are fooled and think that rhetoric is the only thing going on. Most people understand what the real questions are, even though it's being cast in a different way' (interview). Brian Mossop argues that when he appeared on radio shows about his case, callers wanted to talk about 'homosexuality', not rights, or law, or litigation. The ability to do this, gain access to the media to talk about homosexuality, was the whole point of the case.

> The main audience is the youngest generation of people who are listening, people who maybe have not come out yet . . . who are worried about what life holds in store for them. We go on the radio and say – here we are, we're a gay couple . . . it doesn't have to be all that bad . . . maybe you could consider telling one of your parents . . . the whole point is for people to come out earlier and earlier and earlier. . . . (Mossop, interview)

Other activists have different concerns. Gwen Brodsky, the lawyer acting for the coalition of progressive organizations intervening in the *Mossop* case, argues that the *Charter*'s advent has encouraged social movements to build coalitions and think about what equality *means* in the concrete:

> . . . the possibility of increasing rights, to take steps to secure more rights, has helped the community-based organizations to mature, and has given them a focus that they didn't have before. It has created both the opportunity and the necessity to try and figure out what's being talked about in any given circumstance where equality is the essential objective. Ten years ago, I don't think there were conversations in community organizations about what equality *meant*. The lobbying was more ad hoc, there was not much opportunity to figure out unifying themes. . . . (interview)

The *Charter* has afforded an opportunity for social movement organizations to engage in such discussions; doing so has helped to foster a 'rights consciousness' among participants that 'does not advocate equality for some, at the expense of others' (Brodsky, interview).

Interestingly, Brodsky closely ties these developments to the Court Challenges Programme which, until 1992 (subsequent to the interview), provided public funding to groups seeking to challenge discriminatory laws.

> . . . if there hadn't been any money available through the Court Challenges programme to allow groups to undertake litigation, and to have national

> consultations to formulate their positions in the litigation, the Charter would not have had the effect I'm talking about *at all*. . . . (interview)

Brodsky's comments suggest that critical scholars have perhaps devoted insufficient attention to the positive role of federal funding programmes in facilitating social movement networking. Progressive writers often focus on how state funding constrains and co-opts actors and movements (for example, Findlay, 1987; Schraeder, 1990); however, Brodsky argues that this was not the case with the Court Challenges Programme. Administrators usually acted in an arms-length fashion, and did not attempt to control or police the organizations they funded. However, at the time I interviewed her – prior to the cancellation of the Programme – Gwen Brodsky also noted that Ministry bureaucrats were increasingly attempting to assert control over the Programme, one recent change having been to curtail meeting funds allocated to legal coalitions (interview). According to Brodsky, many of the positive effects facilitated by social movement *Charter* litigation would therefore no longer be possible.

Rights activists, such as Gwen Brodsky, are not uncritical, naive believers in the power of rights claims to solve substantive social inequalities. Rather, they argue that rights documents are here to stay (for some time, anyway), and that there are positive ways to work within existing rights regimes.

> Where the *Charter* is concerned, I prefer to think of myself as a thoughtful realist. I believe that the *Charter* can have a positive role in struggles for progressive social change, but that in order for its potential to be achieved *Charter* litigation needs to be: rooted in community-based politics, combined with other political strategies, and regarded critically by its users. The *Charter* has the power to effect change, whether that change be regressive or progressive; that is why I have devoted energy to arguing in favour of progressive interpretations, public funding for access to *Charter* rights by members of disadvantaged groups, and increased accountability on the part of government respondents in *Charter* cases. I also believe in the value of allowing the voices of marginalised groups to be heard. . . . (Brodsky, personal communication to author)

RIGHTS ARE NEITHER 'GOOD' NOR 'BAD' I do not mean to suggest, however, that rights struggles will always have only positive effects. I find the rather extravagant claims of writers such as Alan Hunt (1990) or Martha Minow (1990) as difficult to accept as those of some rights critics. Hunt (1990), for example, following Laclau and Mouffe (1985), argues that new social movements 're-combine' elements of existing discourse to construct new liberatory ones. Here, however, I would have to agree with Fudge and Glasbeek: 'to say that it is so does not make it so' (1992: 60).

There is no reason why progressive social movements *necessarily* rearticulate rights in such a way as to challenge power relations. On the contrary, many social movements deploy rights rhetoric conventionally; indeed, doing so often plays an important role in the short-term success of particular campaigns. Furthermore, the perspective of Hunt and others would seem to reify 'discursive struggle', finding it capable of achieving almost anything – most of which is

somehow assumed to be progressive. While the rights critics tend, in my view, to be overly dismissive and apocalyptic, the rights defenders take insufficient account of the limits and constraints within which social movements work (see Fudge, 1987, 1989). Not all social actors have access to similar resources, means of communication and so on. In addition, 'discursive elements' cannot simply be, as Martha Minow seems to suggest, 're-invented' and disseminated at will (1990: 306–7). As Smart has shown, powerful, oppressive discourses such as law can play a 'colonizing' role, 're-combining' the expressions of progressive movements in unprogressive ways (1989). And, as Joel Bakan has persuasively argued, institutional constraints can render the best intentions ineffective (1991).

Hunt finds further encouragement from the fact that rights claims assist in the construction of subjects and identities (1990). I have no argument with this; however, why should this process be seen as an unqualified 'good'? Surely questions to do with what kinds of subjects, and identities oriented to what end, must be posed. Elsewhere I have suggested that the forms within which many lesbian and gay rights claims are made entrenches the binary opposition between hetero- and homosexualities rather than seeking to transcend it (Herman, forthcoming, 1993). Human rights regimes pose, like criminal law, their own dilemmas of regulation. Is the minority model of homosexuality called into being through many lesbian and gay rights claims necessarily a positive, progressive one? Should we equally celebrate the right wing's construction of their own identity as the 'defender of civilization and family' during these same struggles?

Martha Minow (1990), another 'rights defender', suggests that, in the United States, the language of rights has a particular resonance, that rights rhetoric is so much a part of the fabric of social life that its deployment can achieve a kind of shared understanding. Rights rhetoric 'makes those in power at least listen' (1990: 297). She argues that 'The language of rights thus draws each claimant into the community and grants each a basic opportunity to participate in the process of communal debate' (1990: 296). How helpful is this analysis, particularly to legal cultures other than the American?

It seems apparent that, in Canada, the articulation of lesbian and gay rights with liberal equality principles has succeeded in building a kind of interpretive community. In the struggle to achieve a 'sexual orientation' amendment to the *Human Rights Code* of Ontario in 1986 (known popularly as 'Bill 7'), a liberal consensus was achieved among mainstream politicians and press that 'homosexuals' deserved jobs and housing. As Rayside and Bowler have suggested, this consensus may extend to a majority of the Canadian 'public' (1988). If one takes the view that a consensus formally condemning discrimination is a prerequisite for more substantial shifts in practice and opinion, then this achievement is no small success. However, it can be just as easily argued that the interpretive community that Bill 7 and similar struggles establish is an elite one. A community of politicians and press editorial boards may not necessarily be the one a progressive lesbian and gay movement wishes to build – especially if the wider public continues to maintain a simultaneous belief in the 'unnaturalness' of homosexuality (Rayside and Bowler, 1988). Just as we must ask 'what identities',

we must also ask what or whose 'community' are we talking about? It is doubtful whether those who respond positively to a general call for 'lesbian and gay rights', while maintaining disgust with homosexual expressions, are actually being gathered into a 'community' at all. Simply because rights rhetoric is powerful, and tends to get the best response, does not mean that anything terribly significant has happened.

One might also ask, how deep are these understandings? At what point do 'those with power' *stop* 'listening' (assuming they started)? There is reason to suggest that 'dialogue' (Minow, 1990: 296) (assuming there was one) breaks down as soon as rights are given concrete *meaning*. While a majority of Canadians support 'equal rights' for lesbians and gay men, it is unlikely that this 'community' will exist once these rights are seen to be operationalized in adoption and fostering procedures, in alternative insemination policies, in affirmative action programmes and so on. Practical issues such as these are often shifted to the margins when rights rhetoric is deployed, and there may be little advantage to creating shared understandings at abstract levels. Indeed, one could argue that rights rhetoric and legal frameworks actually *inhibit* serious dialogue (see Fudge, 1989; Milner, 1989) – this certainly seems to have been the case with Bill 7 where concrete issues were only discussed in order to reassure the heterosexual public that the *Human Rights Code* amendment would have no effect upon them.[3] Furthermore, Bill 7 demonstrates that Ontario's New Christian Right succeeded in building their own interpretive community.[4] There is little evidence that each community engaged with each other in any meaningful way, nor is there any reason to think that they would.

Other rights defenders, and I include here theorists such as Patricia Williams (1987) and Elizabeth Schneider (1986), have suggested that, for 'black people' and 'women' in the United States, the expression of demands in the form of rights, the use of 'rights rhetoric', has been empowering and self-affirming. Rights claims, for Patricia Williams (1987), are important symbolic expressions for those who have historically been denied 'self'-ownership (see also R. Williams, 1987; Matsuda, 1987). Interestingly, many of the writers making such claims were active themselves within social movements and, thus, speak out of their own senses/feelings about how that experience affected them and their colleagues. Such a perspective is meant to be a corrective to the perceived excessive negativity of the CLS and Marxist 'rights critique'. bell hooks, speaking in a different context, has written 'the civil rights movement made it possible for me to be talking' (1991: 219).

Despite my own difficulties with the left-wing critique of law/rights/litigation, I would nonetheless question to what extent these 'rights defenders' have responded to the substance of the critique. It is not enough simply to say that rights assertion is 'self-affirming'. One must ask, what 'self' are we talking about? And who is doing the 'talking' on our behalf? The lesbian and gay 'self' publicly affirmed through struggles like Bill 7 is largely the construct of liberal discourse – the abnormal member of an immutable sexual minority who deserves tolerance and protection, rather than repression and discrimination (see also Cooper, 1992). I do not believe that this 'subject' is one to unquestioningly celebrate. Such

matters are one focus of current debates within social movements; however, they can hardly begin to be posed within Fudge and Glasbeek's or Hunt and Minow's equally reductionist paradigms.

THE ROLE OF THE RIGHT AND PROGRESSIVE SOCIAL MOVEMENTS

At several points in their article, Fudge and Glasbeek note that right-wing movements are 'movements' too that also make their own rights claims. Rights discourse, they suggest, is not the property of progressive forces. Aside from the fact that rights rhetoric is available to the Right, the latter also uses *Charter* cases similarly to achieve such things as social movement mobilization, and to communicate their politics to a wider audience. While I agree with this assessment, surely all strategies for change are potentially available to all those seeking it. Struggles between social movements are exactly *about* and *over* the power to interpret social relations (see also Fields, 1991; Harding, 1991). In the case of lesbians, gay men and their opponents, the meaning of 'family', 'spouse', 'normal' and, indeed, 'woman' and 'man' are at stake. Certainly, not all social movements have equal resources to engage in these battles, and this is a point somewhat underplayed by the rights defenders. Yet, the fact of resource inequality says little about the intrinsic value of any particular goal.

Furthermore, Fudge and Glasbeek only discuss the Right in the context of how right-wing forces might benefit from rights rhetoric and documents. When noting how legal discourse 'deradicalizes' social movement politics, they neglect to consider the application of this idea to the Right itself. For example, in one 'gay rights' case (*Mossop*), the conservative Christian coalition intervening in the litigation saw its sexual politics, emphasizing the 'unnatural' and 'depraved' aspects of homosexuality,[5] entirely excised from the legal process.[6] One could argue that the 'hegemony' of liberal legalism thus had similar 'deradicalizing' effects for this movement as for progressive 'new' ones. Depending on who was 'deradicalized' the most (assuming such an evaluation was possible) we might then wish to argue that, in certain circumstances, the making of rights claims was more 'successful' for progressive forces than the Right.

To illustrate this more specifically, in the *Mossop* case, a strategic decision was made by the Salvation Army (who largely controlled the litigation for the New Christian Right [NCR] coalition) *not* to argue the case as one about 'gay rights'. When interviewed, both Don Hutchinson, the Army's legal adviser, and Ian Binnie, the coalition's lawyer, consistently maintained that the case was about the definition of 'family' and not about 'gay rights'. At the same time, both Hutchinson and Judy Anderson, president of the anti-feminist lobby Realwomen, repeated several times that they had no wish to 'gay bash' or to be *perceived* as 'gay bashers'. What can we take from this?

It seems clear that some NCR leaders feel that 'gay rights' has gained a certain institutional legitimacy; publicly, sections of conservative Christianity have acknowledged that, at this point in time in Canada, it is not 'acceptable' to deny lesbians and gay men some ambiguously defined measure of 'human rights'.

Indeed, the Salvation Army categorically did not wish to fight the *Mossop* case using rights rhetoric at all (Hutchinson and Binnie interviews). The impact of a 'culture of rights' has, thus, imposed constraints upon the expression of NCR politics.

And, yet, at the same time, rights rhetoric can play a more positive role for the Right. Helvacioglu (1991) has argued that, in the United States, the New Christian Right has turned to a strategy of local protest in which rights rhetoric is increasingly deployed. This, Helvacioglu suggests, may prove more profitable for conservative Christian activists than illiberal outbursts, particularly given the social power of rights claims and a constitutional history of protecting religious minorities (1991: 121). In Canada, it seems evident that past NCR attempts to shock and appal Canadians with tales of homosexual depravity have been largely unsuccessful.[7] It thus seems probable that the Canadian NCR will soon learn to rearticulate its demands in a different register. However, will the same process occur for them as has occurred for their opponents? Conservative Christians prefer to constitute themselves as the 'moral majority'; however, by claiming their own 'rights', they implicitly accept the liberal paradigm which constitutes them as a 'minority' in need of 'protection'. In other words, what will be the contradictory effects upon their social movement for conservative Christians deploying a politics of liberalism? And, how 'effective' might such strategies prove?[8]

CONCLUDING REMARKS

In my view, theorists such as Judy Fudge and Harry Glasbeek are reacting to several different things: the 'postmodern turn' in current social theory; certain forms of 'identity politics'; and the marginalization of their own areas of academic interest. They seem to be deeply disturbed by what they might perceive as the frivolous, naive and anti-Marxist character of 'trendy' political discourse. I have a great deal of sympathy with this view. I therefore feel a certain ambivalence, not least because I respect the work of both these scholars, when being critical of their approach as I have been here.

However, the issues that concern them – poverty, unemployment, de-skilling and so on – also concern many people (such as myself) associated with 'new' social movements. I am not satisfied by Fudge and Glasbeek's willingness to accord non-class-based oppressions significance at a 'moral' level (1992: 62). Issues such as sexuality have always been considered *by liberals* as moral, and not 'political'. Neither am I amused by their association of lesbian, gay and other social identities solely with the evils of late capitalism. Furthermore, the title of Fudge and Glasbeek's article, the play on the word 'class', which suggests that those seeking rights are engaging in something shoddy, is unfortunate.

What is missing from their analysis, and yet lies implicit within it, is any discussion of *values*. Fudge and Glasbeek must accept that most left-wing people are no longer willing to explain the contradictions of human existence solely in terms of class and economy – and this does not mean that we do not think these

factors are important (at more than a 'moral' level). The association of individual or group self-interest with the interests and concerns of others must be forged at the level of values, not by reference to the concept of a primary social determinant.

I agree with Laclau and Mouffe (1985) that there is no *necessary* link between diverse oppressions. Rather, the construction of a 'chain' is a social and political project. Fudge and Glasbeek scoff at this 'leap of faith' (1992: 63). Yet, as I read them, Laclau and Mouffe are not saying that the 'chain' *will* exist; only that it is a worthwhile, progressive goal to strive for (1985: 183–91). The expectation that sexism, racism and compulsory heterosexuality will disappear if we transform the economy surely requires as great, if not a greater, leap. And this is aside from the obvious point that the Left has been trying to transform the capitalist economy for a long time, with little success.

The 'rights debates', I would argue, are not so much about 'rights' or 'charters', but about underlying political analyses and visions and about who has power to define the terms of equality. Rights claims are neither inherently radical rearticulations nor dangerous and diversionary. More often than not they are neither, occasionally they may be both. To say that rights are difficult, complicated tools for social change does not mean that the struggle for their acquisition is doomed or that 'real issues' are being obscured. At the same time, an unreflexive seeking of rights and yet more rights may not bring about the changes to social relations many of us would like to see.

NOTES

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1. Thanks to Davina Cooper for talking this through.
2. Many subsequent observations and analyses emerge from my ongoing doctoral research; sources include: personal interviews; archival documentation; media analysis; and personal experience and knowledge. See Herman (1990, forthcoming, 1993).
3. During Bill 7, prominent politicians were widely quoted in the Ontario press listing the range of situations to which the *Code* did not apply.
4. The New Christian Right (NCR) is, within the sociology of religion, understood to be a relatively recent movement, with politics rooted in conservative Christian theology. Very broadly, they tend to believe that gender roles and heterosexual unions are God given, that Christ will return, and that only the 'saved' will survive Armageddon. The NCR could broadly be said to subscribe to the following 'platform': anti-abortion; anti-affirmative action; anti-communism; anti-welfare state; anti-feminism; anti-gun control; anti-lesbian and gay equality; pro-defence; pro-family. See Bruce (1990); Chandler (1984); Diamond (1989); Liebman and Wuthnow (1983); Jorstad (1987); Klatch (1987); Lienesch (1982).
5. I cannot here 'do justice' to the explicit, incredible and horrifying images of homosexuality within NCR literature. Brad Hayton, for example, an American

whose book *The Homosexual Agenda* is distributed by Focus on the Family (Canada) (one of the NCR organizations intervening in *Mossop*), contains countless references to excrement, bodily rot and assorted instruments 'homosexuals' apparently insert into their bodies; he even goes so far as to suggest that 'homosexuals' commit a disproportionate share of mass murders. See also Realwomen (1985) *Laws protecting homosexuals or so-called 'sexual orientation' legislation: How it will affect Canadians* (pamphlet).

6. See Federal and Supreme Court affidavits and factums of Realwomen et al. in *Mossop*. See also 'The Saints Go Litigating: The New Christian Rights and Legal Discourse' (unpublished paper by author). I have previously discussed the judgments in *Mossop*, see Herman (1991).
7. For example, such a right-wing campaign largely backfired in the 1986 Ontario struggle for a 'sexual orientation' amendment to the province's *Human Rights Code* (Bill 7).
8. In my doctoral research, I consider the relative 'success' of the NCR in detail.

CASES CITED

Andrews v *Ontario (Min. of Health)* (1988) 49 D.L.R. (4th) 584.
Haig v *Canada (Min. Justice)* [1992] (unreported judgment of the Ontario Court of Appeal).
Knodel v *B.C. (Med. Serv. Comm.)* (1991) 58 B.C.L.R. (2d) 356.
Leshner v *Ontario* [1992] (unreported judgment of Ontario Human Rights Tribunal).
Mossop v *Sec. of State* (1989) 10 C.H.R.R. D/6404; rev'd (1990), 71 D.L.R. (4th) 661, leave to appeal to Supreme Court of Canada granted.

BIBLIOGRAPHY

Andrews, Karen (1989) 'We Are Family', *Healthsharing* Fall: 18.
Bakan, Joel (1991) 'Constitutional Interpretation and Social Change: You Can't Always Get What You Want (Nor What You Need)', *Canadian Bar Review* 70: 307.
Bruce, Steve (1990) *The Rise and Fall of the New Christian Right: Conservative Protestant Politics in America 1978–1988*. Oxford: Clarendon Press.
Chandler, Ralph Clark (1984) 'The Wicked Shall Not Bear Rule: The Fundamentalist Heritage of the New Christian Right', p. 41 in D. Bromley and A. Shupe (eds), *New Christian Politics*. Macon: Mercer University Press.
Cicchino, Peter, et al. (1991) 'Sex, Lies and Civil Rights: A Critical History of the Massachusetts Gay Civil Rights Bill', *Harvard Civil Rights-Civil Liberties Law Review* 26: 549.
Cohen, Jean L. (1985) 'Strategy or Identity: New Theoretical Paradigms and Contemporary Social Movements', *Social Research* 52: 663.
Cooper, Davina (1992) 'Sexing the City: Lesbian and Gay Municipal Politics 1979–87', unpublished PhD thesis, University of Warwick.
Cooper, Davina and Didi Herman (1991) 'Getting the Family "Right": Legislating Heterosexuality in Britain, 1986–1991', *Canadian Journal of Family Law* 10: 41.
Diamond, Sara (1989) *Spiritual Warfare: The Politics of the Christian Right*. Boston: South End Press.
Epstein, Barbara (1990) 'Rethinking Social Movement Theory', *Socialist Review* 20: 35.
Fields, Echo (1991) 'Understanding Activist Fundamentalism: Capitalist Crisis and the "Colonization of the Lifeworld"', *Sociological Analysis* 52: 175.

Findlay, Sue (1987) 'Facing the State: The Politics of the Women's Movement Reconsidered', p. 31 in H. J. Maroney and M. Luxton (eds), *Feminism and Political Economy: Women's Work, Women's Struggles*. Toronto: Methuen.

Freeman, Alan (1982) 'Antidiscrimination Law: A Critical Review' p. 96 in D. Kairys (ed.) *The Politics of Law*. New York: Pantheon Books.

Fudge, Judy (1987) 'The Public/Private Distinction: The Possibilities of and the Limits to the Use of Charter Litigation to Further Feminist Struggles', *Osgoode Hall Law Journal* 25: 485.

Fudge, Judy (1989) 'The Effect of Entrenching a Bill of Rights Upon Political Discourse: Feminist Demands and Sexual Violence in Canada', *International Journal of the Sociology of Law* 17: 445.

Fudge, Judy and Harry Glasbeek (1992) 'The Politics of Rights: A Politics With Little Class', *Social and Legal Studies* 1: 45.

Gabel, Peter (1984) 'The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves', *Texas Law Review* 62: 1563.

Gelb, Joyce (1990) 'Feminism and Political Action', p. 137 in R. J. Dalton and M. Kuechler (eds), *Challenging the Political Order: New Social and Political Movements in Western Democracies*. Oxford: Polity Press.

Glasbeek, H. J. (1989a) 'A No-Frills Look at the Charter of Rights and Freedoms or How Politicians and Lawyers Hide Reality', *The Windsor Yearbook of Access to Justice* 9: 293.

Glasbeek, H. J. (1989b) 'Some Strategies for an Unlikely Task: The Progressive use of Law', *Ottawa Law Review* 21: 387.

Glasbeek, Harry and Michael Mandel (1984) 'The Legalization of Politics in Advanced Capitalism: The Canadian Charter of Rights and Freedoms', *Socialist Studies/Etudes Socialistes* 2: 84.

Harding, Susan (1991) 'Representing Fundamentalism: The Problem of the Repugnant Cultural Other', *Social Research* 58: 373.

Helvacioglu, Banu (1991) 'The God–Market Alliance in Defence of Family and Community: The Case of the New Right in the United States', *Studies in Political Economy* 35: 103.

Herman, Didi (1990) 'Are We Family?: Lesbian Rights and Women's Liberation', *Osgoode Hall Law Journal* 28: 789.

Herman, Didi (1991) '"Sociologically Speaking": Law, Sexuality, and Social Change', *Journal of Human Justice* 2: 57.

Herman, Didi (forthcoming, 1993) 'Reforming Rights: Lesbian and Gay Struggles For Legal Equality in Canada', PhD thesis, University of Warwick.

hooks, bell (1991) *Yearning: Race, Gender, and Cultural Politics*. London: Turnaround.

Hunt, Alan (1990) 'Rights and Social Movements', *Journal of Law and Society* 17: 309.

Jorstad, Erling (1987) *The New Christian Right, 1981–1988*. Lewiston: Edwin Mellen Press.

Khayatt, Didi (1990) 'Legalised Invisibility: The Effect of Bill 7 on Lesbian Teachers', *Women Studies International Forum* 13: 185.

Kingdom, Elizabeth (1991) *What's Wrong With Rights? Problems For a Feminist Politics of Law*. Edinburgh: Edinburgh University Press.

Klatch, Rebecca (1987) *Women of the New Right*. Philadelphia: Temple University Press.

Laclau, Ernesto and Chantal Mouffe (1985) *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*. London: Verso.

Liebman, Robert C. and Robert Wuthnow (eds) (1983) *The New Christian Right: Mobilization and Legitimation*. Hawthorne: Aldine Publications.

Lienesch, Michael (1982) 'Right-Wing Religion: Christian Conservatism as a Political Movement', *Political Science Quarterly* 97: 403.

Mandel, Michael (1989) *The Charter of Rights and the Legalization of Politics in Canada*. Toronto: Wall & Thompson.
Matsuda, Mari (1987) 'Looking to the Bottom: Critical Legal Studies and Reparations', *Harvard Civil Rights-Civil Liberties Law Review* 22: 323.
Melucci, Alberto (1989) *Nomads of the Present: Social Movements and Individual Needs in Contemporary Society*. London: Century Hutchinson.
Milner, Neil (1989) 'The Denigration of Rights and the Persistence of Rights Talk', *Law and Social Inquiry* 14: 631.
Minow, Martha (1990) *Making All The Difference: Inclusion, Exclusion, and American Law*. Ithaca: Cornell University Press.
Mouffe, Chantal (1988) 'Hegemony and New Political Subjects: Toward a New Concept of Democracy', p. 89 in C. Nelson and L. Grossberg (eds), *Marxism and the Interpretation of Culture*. Houndsmith: Macmillan Education.
Mouffe, Chantal (1992) 'Preface: Democratic Politics Today', p. 1 in C. Mouffe (ed.), *Dimensions of Radical Democracy: Pluralism, Citizenship, Community*. London: Verso.
Offe, Claus (1985) 'New Social Movements: Challenging the Boundaries of Institutional Politics', *Social Research* 52: 817.
Patton, Cindy (1990) *Inventing AIDS*. New York: Routledge.
Phelan, Shane (1989) *Identity Politics: Lesbian Feminism and the Limits of Community*. Philadelphia: Temple University Press.
Plotke, David (1990) 'What's So New About New Social Movements?', *Socialist Review* 20: 81.
Rayside, David (1988) 'Gay Rights and Family Values: The Passage of Bill 7 in Ontario', *Studies in Political Economy* 26: 109.
Rayside, David and Scott Bowler (1988) 'Public Opinion and Gay Rights', *Canadian Review of Sociology & Anthropology* 25: 649.
Razack, Sherene (1991) *Canadian Feminism and the Law: The Women's Legal Education and Action Fund and the Pursuit of Equality*. Toronto: Second Story.
Ross, Becki (1990) 'Sexual Dis/Orientation or Playing House: To Be or Not To Be Coded Human', p. 133 in S. D. Stone (ed.), *Lesbians in Canada*. Toronto: Between the Lines.
Schneider, Elizabeth (1986) 'The Dialectic of Rights and Politics: Perspectives from the Women's Movement', *New York University Law Review* 61: 589.
Schraeder, Alicia (1990) 'The State Funded Women's Movement: A Case of Two Political Agendas', p. 184 in R. Ng et al. (eds), *Community Organizing and the Canadian State*. Toronto: Garamond Press.
Smart, Carol (1989) *Feminism and the Power of Law*. London: Routledge.
Touraine, Alain (1985) 'An Introduction to the Study of Social Movements', *Social Research* 52: 749.
Tushnet, Mark (1984) 'An Essay on Rights', *Texas Law Review* 62: 1363.
Williams, Patricia (1987) 'Alchemical Notes: Reconstructing Ideals From Deconstructed Rights', *Harvard Civil Rights–Civil Liberties Law Review* 22: 401.
Williams, Robert (1987) 'Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory For Peoples of Colour', *Law and Inequality* 5: 103.