SOCIAL MOVEMENT POLITICS
AND THE
CHARTER OF RIGHTS
OUTSIDE THE COURTS
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Abstract

It is often argued that such 'new social movements' as lesbian and gay rights, feminism, and anti-racism nourish aspirations which are completely different from those advanced by their orthodox socialist predecessors. Contemporary social change politics, it is held, are informed by 'postmaterialist' values. This study, "Social Movement Politics and the Charter of Rights Outside the Courts," challenges such a view by analyzing the testimony made by a range of social movement organizations before the Canadian federal government's 1992 special parliamentary committee hearings on the constitution.

"Social Movement Politics and the Charter of Rights Outside the Courts" reveals that so-called postmaterialist groups (such as feminist, lesbian and gay and anti-racist organizations) are concerned emphatically with material issues. At the same time, 'materialist' groups like unions and antipoverty organizations demonstrate a profound concern for their symbolic status in the political community, thus confounding the postmaterialism dichotomy.

Therefore, this study argues, the postmaterialist dichotomy is too crude an analytic tool for capturing contemporary social change struggles accurately. Instead, the full range of social movements, 'new' and 'old', must be reassessed. In Canada, the new presence of the Charter of Rights and Freedoms has proven a rallying point for all
major contemporary social change movements. It provides a common institutional context of action within which social change politics can be studied.

This study's analysis of the discursive use of the Charter by social movement organizations isolates several emergent distinctions among social movements that will prove crucial to the evolution of social change politics in Canada. These are: 1) the contrasting institutional identifications of antimajoritarian and state-expansionist groups, which are induced by the new availability of justiciable rights; 2) the divergent attitudes evinced by ethnic and visible minorities towards the norms established by the Charter's sections 15 and 27; 3) the considerable difference in political advantage that Charter enumeration gives recognized over unrecognized movements.
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Introduction

Contemporary social change movements differ in many crucial respects from the predominantly orthodox socialist tenor of pre-World War II political activism. No longer can it plausibly be asserted that

The current mass struggle for women's political rights is only an expression and a part of the proletariat's general struggle for liberation. ... Fighting for women's suffrage, we will also hasten the coming of the hour when the present society falls in ruins under the hammer strokes of the revolutionary proletariat.1

Instead, 80 years later,

What is now in crisis is a whole conception of socialism which rests upon the ontological centrality of the working class, upon the role of Revolution, with a capital 'r' ... The plural and multifarious character of contemporary social struggles has finally dissolved the last foundation for that political imaginary.2

* * *

This study is about the politics of progressive social change; about collective struggles aimed at creating a better collective life. At least since the 1960s, in the vanguard of the politics of progressive social change have been the so-called 'new social movements', collectivities grouped under such rubrics as lesbian and gay rights, environmentalism, feminism, and anti-racism. These struggles join the more traditional social movements of

workers and poor people in refusing fundamentally to accept the status quo, in believing that our society requires radical change and that citizens must come together, politically, to achieve it.

Many theorists have emphasized the novelty of these 'new' social movements as against the 'old' ones of working and poor people. F.L. Morton and Rainer Knopff have gone so far as to claim that "the 'life-style issues' that preoccupy the new postmaterialist left are quite different from the issue of economic redistribution, which lies at the core of the old, working-class left." This study aims to challenge such an emphasis. We must, I insist, try to view contemporary radical politics afresh; and this means resisting the temptation to understand the present by simply positing it as the inverse reflection of some monolithically-conceived 'past'.

Why the Charter?

There is a myriad of potential ways to develop new knowledge about contemporary social change politics. In Canada, one of the most exciting is to focus on how the 1982 entrenchment of the Charter of Rights and Freedoms has transformed fundamentally, both inside and outside the courts, the institutional context in which social change strategies are prosecuted. Studying the institutional

structures within which individuals and groups act is crucial to any predictive or analytic enterprise in political studies.

As Samuel Bowles and Herbert Gintis argue, people act with others not only to get but to become. The key to understanding collective action ... lies in the observation that ends are not pregiven, and hence that there is a constitutive aspect of social interaction. In other words, individuals enter into practices with others not only to achieve common goals, but also to determine who they are and who they shall become as social beings.4

If action is constitutive in the manner which Bowles and Gintis suggest, then understanding the institutional contexts within which people act to achieve social change is of absolutely crucial importance.

As a contribution to the development of a better understanding of contemporary social change struggles in Canada, this study aims to uncover how the new Charter-structured institutional context establishes pressures, limits and stimuli that help to determine the manner of development of contemporary Canadian social movements. As Patrick Monahan claims,

the Charter may well be the single most important political development in Canada this century. ... The significance [of the Charter] cannot be appreciated merely by looking to the Charter decisions of the courts.5

How then, this study asks, is the Charter likely to shape and influence the identities, goals and lessons that progressive social movements bring to their future endeavours?

Method of Investigation

This study investigates the political aims, tactics and strategies of a wide variety of social movement organizations; from traditional unions to newer feminist, environmentalist, anti-racist, and gay and lesbian groups.6 My intention, however, is not to provide a comprehensive account of the aims, tactics and strategies of these groups. Rather, the empirical focus of the study is twofold. First, it will examine social movement politics in a common arena; namely, the parliamentary hearings on the Canadian federal government's 1992 constitutional amendment proposals. Second, it will focus particularly on how the various groups studied employ the same political instrument—the Charter of Rights and Freedoms. This empirical focus is complemented by an attempt to predict, by focusing on how the Charter-structured context of action influences social movement dispositions and strategies, future patterns of development.

6 For a complete list of organizations involved in the study, see the Appendix. I have not included Quebec nationalist or First Nations organizations because 1) their national aspirations make them differ radically from the other groups in the study; 2) as groups opposed profoundly to the pan-Canadian purposes of the Charter, they do not employ the same discursive field of Charter rights as do this study's other groups. The Native Women's Association of Canada is included because of their emphatic support for the Charter.
in Canadian social change politics.

Structural Outline

Chapter One, "On Understanding Social Change Struggles," takes as its point of departure a recent article by Ian Brodie and Neil Nevitte, "Evaluating the Citizens' Constitution Theory." Brodie and Nevitte hold that studying the Charter's political role as a way of understanding social movement activism is inferior to investigating the alleged spread of postmaterialist values. I argue that Brodie and Nevitte's 'postmaterialist' critique is mistaken. To support this argument, I show that an empirical study using the dichotomy between materialist and postmaterialist politics to analyze Canadian social movements, Morton and Knopff's "The Supreme Court as the Vanguard of the Intelligentsia: The Charter Movement as Postmaterialist Politics," is marred severely by the fundamental inaccuracy of the postmaterialism thesis. Although Morton and Knopff claim that postmaterialist values lead to a social movement preoccupation with non-material 'lifestyle issues', their study demonstrates that contemporary social movements, no less than their 'materialist' predecessors, continue to seek state expansion in order to combat material inequality.

Chapter One finishes by noting that several insightful accounts of contemporary radical politics point to a

7 Canadian Journal of Political Science 26:2 (June 1993).
8 Supra, n.3.
tactical commonality among contemporary social movements. This tactical convergence most prominently features the use of rights as a liberatory strategy. Thus, I conclude, focusing on the extra-legal use of the Charter by social movements is a helpful way to begin reconceptualizing the contemporary scene. Such a focus brings the researcher directly into the political and institutional arena most likely to structure the future development of social movement strategy.

Chapter Two, "Social Movements and the Charter," is the study itself. It is based on the testimony of social movement organizations to the 1992 Beaudoin-Dobbie parliamentary committee and is broken up into four sections. The first section, New Social Movements: Not So New as One Might Think, demonstrates empirically that the postmaterialism dichotomy misconstrues social movement politics. The section's main argument is twofold. First, 'symbolic' political tactics are often instrumental means of pursuing material ends. Second, 'materialist' groups, such as unions and antipoverty groups, are emphatically concerned with the 'symbolic' question of their status in the political community.

Section two of Chapter Two, Types of Rights: Why and How?, surveys the variety of ways rights were depicted and deployed by social movement organizations during the Canada Round hearings. It is particularly concerned to illustrate that the attraction of rights for social movements stems
from the remarkable flexibility of rights discourse and from the ability of rights claims to exploit the dominant liberal understanding of political community as a device for protecting its members' rights.

Section three of Chapter Two, *The Context of the Charter*, analyzes the role that the specific provisions of the Charter play in structuring patterns of development of social movement politics. I begin by examining aspects of the Charter's political role which may make achievement of social movement objectives more likely. I argue that the Charter's most helpful function for social movement strategy has been to enshrine a substantive as opposed to merely formal understanding of equality. Thus, the Charter provides social movements with an authoritative, and hence extremely powerful, discursive tool for legitimating the substantive equality aspirations of marginalized groups.

However, Section three also presents disturbing evidence that the practice of enumerating specific groups in separate clauses of the Charter creates unhealthy tensions between different social movements. I refer in particular to the fact that the values of racial equality and anti-discrimination are enshrined in section 15 while Canada's "multicultural heritage" is recognized in section 27. This constitutionally-induced separation of the discourses of multiculturalism and anti-racism led to severe conflicts between visible- and ethnic-minority organizations during the Canada Round. Ethnic- and visible-minority
representatives struggled competitively to aggrandize the status of their 'own' clause and tended often to ignore, even to denigrate, each other's concerns. This competition, I demonstrate, is traceable directly to the cleavage between ethnic- and visible-minority constitutional interests caused by the differential locations in the Charter of sections 15 and 27.

There is also a pronounced divergence of interest between social movements recognized in one or another of the Charter's enumerative provisions and those groups which are not. Unenumerated groups envy the organizational stimuli and the enhanced public presence and political legitimacy that Charter recognition provides; enumerated groups want to maintain the Charter's legitimacy by keeping the document as 'uncluttered' as possible. Unrecognized groups are at a crucial disadvantage, I argue, because recognition within the Charter provides groups so favoured with increased organizational capacity, public presence and political legitimacy. Furthermore, by defending and exploiting their Charter-derived interests enumerated groups acquire a level of political sophistication that unrecognized groups find hard to match. Thus, the institutional 'deck' is stacked against unenumerated social movements. Paying attention to this gap in political capability between recognized and unrecognized movements, I argue, is a helpful way of determining which social movements are most likely to be politically effective in the future.
The final section of Chapter Two, Section four, is about Charter Learning. This section examines how, and what, different social movements seem to have learned from the Charter, and offers direct evidence of the emerging difference in political sophistication between recognized and unrecognized movements. The Charter Learning section finishes by suggesting that the different ways in which social movements identify with the Charter lead them to adopt different attitudes regarding the desirable balance of institutional power in Canadian federalism. Groups whose main political priority is gaining protection against unjust majoritarianism are more likely than groups primarily concerned with expanding the state to support decentralization of federal government powers. This difference, I argue, can be explained by noting that the Charter's ability to protect national values makes counter-majoritarian groups far more comfortable with decentralization than they would be without a Charter. Thus, I conclude, a particularly powerful cleavage between different contemporary Canadian social movements will be that separating 'counter-majoritarian' groups from 'state expanders'.

This study establishes the centrality of the Charter to the ongoing development of social change struggles in Canada. The flexibility and imaginative power of rights discourse, the Charter's facility in helping to promote a reconceptualization of equality in substantive terms, and
the various political attractions offered by Charter recognition will continue to stimulate social movements to engage in "Charter-claiming behavior."9 Thus, focusing on the differences the Charter stimulates among various social movements will continue to be a very useful way of analyzing the development of Canadian social movement politics. These differences include most prominently: 1) the section 15/27 cleavage between visible and ethnic minorities; 2) the difference in political capability between enumerated and unenumerated groups; 3) the distinction between counter-majoritarian groups and state-expanding ones.

In conclusion, this study argues that the increasing tactical convergence among social movements around the discursive tools of rights and the Charter suggests that Charter-derived distinctions between different social movements will prove central to the development of social change politics in Canada.

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9 The term is from Monahan, "The Charter Then and Now."
Chapter 1: On Understanding Social Change Struggles.

In a recent article, Ian Brodie and Neil Nevitte suggest that to study contemporary Canadian social change struggles by concentrating on how these are stimulated and shaped by the Charter of Rights is, at best, a partial and potentially misleading approach. Such a conclusion follows from Brodie and Nevitte's attempt to demonstrate that Alan Cairns makes a spurious link between the entrenchment of the Charter and certain recent transformations in Canadian politics.

Brodie and Nevitte argue, against Cairns, that the rise in Canada of "unconventional and elite-challenging political behavior" and the new "politicization of such minority issues as the status of women, the politics of ethnicity and the position of native populations" have nothing to do with the entrenchment of the Charter. Instead, Brodie and Nevitte claim that these phenomena are best explained by

'New Politics' theory. The core thesis of New Politics is that the recent post-World War II interlude of relative peace and economic security has created an affluent public in the capitalist West for whom such 'postmaterial' aspirations as ending the subordinate status of women and minorities and increasing the frequency and quality of opportunities for effective citizen political participation are more important than material concerns such as wage, price and taxation levels. Thus, investigating the spread of postmaterialist values is posited as a better method than Cairns's neo-institutionalist focus on the Charter for understanding contemporary social movement politics.

I argue that Brodie and Nevitte are incorrect in recommending New Politics over focusing on the Charter as a way of understanding the rise of new styles and orientations in the politics of progressive social change in Canada. To engage in a point-by-point refutation of the specifics of the authors' individual arguments is not my aim here.

Brodie and Nevitte are guilty of both a fundamental

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14 By 'social change politics' I mean struggles aimed at creating a better collective life, society or political community. Many of these struggles, such as feminism, environmentalism and lesbian and gay rights, are often grouped under the rubric 'new social movements'. However, social change politics can also encompass, for example, the defence organizations of workers and the poor.
misreading of Cairns and of a remarkably sloppy attempt to operationalize his Citizens' Constitution Theory, shortcomings which have been ably identified and criticized by Cairns himself. Rather, I am interested in certain substantive-theoretical issues raised by Brodie and Nevitte's postmaterialist approach, a consideration of which is essential to a study focusing on contemporary social change struggles and the Charter.

Here is the postmaterialism thesis as stated by the founder of New Politics, Ronald Inglehart, in his famous 1971 article, "The Silent Revolution in Europe: Intergenerational Change in Post-Industrial Societies."

[Individuals] are acting in pursuit of goals which ... no longer have a direct relationship to the imperatives of economic security. These individuals--drawn largely from the younger cohorts of the modern middle class--have been socialized during an unprecedentedly long period of unprecedentedly high affluence. ... For [them] a set of 'post-bourgeois' values, relating to the need for belonging and to aesthetic [sic] and intellectual needs ... take top priorities.16

Thus, postwar economic affluence creates postmaterial political attitudes, i.e. ones 'relating to the need for belonging and aesthetic and intellectual needs'.

However, the postmaterialism thesis faces fatal difficulties when applied to the actual political world of collective struggle. For example, F.L. Morton and Rainer

Knopff's attempt to deploy the postmaterialism thesis to study the use of the Charter by social movements puts the tenability of the materialism/postmaterialism dichotomy as a way of explaining 'new politics' in serious doubt. Morton and Knopff begin by positing that

The Charter is better understood in the larger context of a coalition of social movements that we call the 'Court Party', which is the Canadian expression of the new politics of postmaterialism found in most Western industrial democracies.17

Their larger argument is that new left social movements have "hijacked" the Charter, using the antimajoritarian instrument of judicial review of constitutionally-entrenched rights to expand the scope of state intervention against the better judgment of the middle-class, taxpaying majority. However, Morton and Knopff's stress on the centrality of interventionism to the goals of the 'Court Party' contradicts the anti-statism suggested by the postmaterialism thesis, thus revealing the inadequacy of the postmaterialism dichotomy for comprehending social movements employing the Charter.

Inglehart's concept of postmaterialism is meant to describe a "broad shift in emphasis from economic issues to life-style issues,"18 with postmaterialists "tend[ing] to be suspicious of ... big government."19 However, Morton and Knopff's investigation of the actual Charter struggles of actual social movements reveals the serious contradictions

18 Inglehart, "Silent Revolution," 1012.
19 Inglehart, "Post-Materialism," 896.
plaguing any attempt to offer postmaterialism as a label accurate for describing its chosen subject. Morton and Knopff, pace Inglehart, find that so-called postmaterialist groups "active in Charter politics are concerned not with restricting government policy and intervention but with expanding it." 20 Such groups use the Charter "to force the expansion of state services, benefits, or regulation." 21 Their "policy agendas reject formal 'equality of opportunity' in the name of 'equality of results'." 22 And, finally, postmaterialist groups that depend on state-funding "overwhelmingly support increased government intervention in the economy and society." 23

Thus, the postmaterialism thesis that there is a crucial political divide, in Morton and Knopff's own words, between the "'life-style issues' that preoccupy the new, postmaterialist left" and the "issue of economic redistribution which lies at the core of the old, working-class left," 24 is confounded by the authors' attempt to deploy the dichotomy as a tool of political analysis. This is why even Morton and Knopff's own description of the postmaterialism concept is so radically at odds with their portrait of the goals and behavior of the groups they study.

For instance, Morton and Knopff attempt to justify their argument about the "post-materialist bias of Charter

21 Ibid, 68.
22 Ibid.
23 Ibid, 69.
24 Ibid, 75.
politics" by pointing out that conservative litigants, such as the National Citizen's Coalition, REAL Women, and anti-abortion crusader Joe Borowski, have lost high-profile Charter cases. "[T]hese conservative groups may be Court Party 'wannabes' but their dismal bottom line shows that they are decidedly swimming against the ideological tide."25 Yet, on even Morton and Knopff's own definition of postmaterialism, which dichotomizes between "life-style issues" and a concern for "economic redistribution,"26 it is unclear how these conservative groups could not be considered postmaterialist. The National Citizen's Coalition is interested in 'freedom from government', and REAL Women and the anti-abortion movement in 'traditional family values'--life-style, non-redistributionist issues as much as they are anything else.27

Considering the actual aims of so-called postmaterialist groups confounds the New Politics thesis which authors such as Brodie and Nevitte and Morton and Knopff argue illuminates the politics of social movements and the Charter. The substantive goals of real social change movements invoking the Charter are not captured adequately by the postmaterialism label. Many of these

25 Ibid, 70.
26 Supra, n.24.
27 It is also highly unlikely that these conservative groups' allegedly non-postmaterialist status could be justified by claiming that their supporters are somehow different in class terms from the postmaterialists, who Morton and Knopff claim "enjoy high levels of education, affluence, and mobility." Ibid, 65.
groups continue to harbour such classically materialist aims as advocating a meaningful redistribution of wealth in order to bring about a greater degree of social and economic equality than currently prevails. Postmaterialism is in fact a concept sufficiently vague that nearly any movement, new or old, left or right, could conceivably be placed under its rubric.

Even to narrow the claims of the postmaterialism thesis to demarcate broadly 'new' social movements from 'old' ones, by focusing solely on the wealth redistribution issue, is a fundamentally inadequate approach. Doing so involves mischaracterizing the most central aims of many new social movements. Iris Marion Young, for example, invokes a distinction between the aim of bringing about participatory decisionmaking and that of improving wealth distribution in order to identify 'new left social movements'. The "main focus" of new left social movements, Young argues, "is not distributive. They focus on broad issues of decisionmaking power and political participation."28

Young's characterization of the new left social movement agenda, however, serves to downplay unnecessarily what is for many such groups a crucial emphasis. To separate issues of participation from ones of redistribution serves to obscure the close relation between the two concepts, thus misconstruing the interrelated nature of the

28 Iris Marion Young, Justice and the Politics of Difference (Princeton: UP, 1990), 83.
inequalities of gender, race and class against which many contemporary socialists, feminists and anti-racists struggle. As Janine Brodie argues regarding the political underrepresentation and socioeconomic marginalization of women and visible minorities (key constituents of new social movements on all accounts), "the less powerful need politics to redress their inequality, but their inequality prevents them from achieving any significant measure of political power."29

However, when Young points out that new left social movements do not "usually [seek] to seize and transform state power,"30 she does point helpfully to a decisive break with the strictly class politics of an earlier era. Largely vanished is what Laclau and Mouffe call the "Jacobin imaginary," which

postulated 'society' as an intelligible structure that could be intellectually mastered on the basis of certain class positions and reconstituted, as a rational, transparent order, through a founding act of a political character.31

Thus, a certain commonality among such various progressive social movements as feminism, disabled rights, anti-racism, environmentalism and lesbian and gay rights can be noted, particularly at the level of tactics. That is, such groups seem to have adopted in common a certain posture towards the political order built on a perception of the

30 Young, Difference, 82.
31 Laclau and Mouffe, Hegemony and Socialist Strategy, 2.
insufficiencies of the older Marxist workers' movement. For instance, Laclau and Mouffe argue that the inspiration for contemporary anti-system struggles is in fact the French Revolution's achievement, "the invention of a democratic culture."32

Here lay the profound subversive power of the democratic discourse, which ... allow[s] the spread of equality and liberty into increasingly wider domains and act[s] as a fermenting agent upon the different forms of struggle against subordination. Many workers' struggles in the nineteenth century constructed their demands discursively on the basis of struggles for political liberty.33

Similarly, Bowles and Gintis argue for developing a post-Marxist politics because progressive social change in the liberal democratic capitalist societies has ... adopt[ed] the liberal language of rights and the goal of democratic empowerment. ... Democracy, not socialism, has been subversive in the United States.34

Thus, there is some validity to specifying a basic common nature among movements at the tactical level. The renewed focus by many contemporary social movements on the radical potential of such liberal-democratic concepts as personal rights and popular sovereignty suggests the contours of one particularly promising avenue of investigation. How are various ideological components of the regime 'liberal-democracy' pressed into service for radical political goals?

Thus, investigating how democratic struggles framed in

32 Ibid.
33 Ibid.
34 Bowles and Gintis, Democracy and Capitalism, 25, 63.
terms of personal and democratic rights are brought together at the discursive level by Canada's Charter of Rights and Freedoms seems a promising way to begin reconceptualizing social movement politics. The Charter's provisions and overall spirit exert a powerful influence on the fundamental stance taken by many movements toward the overall political regime. By bringing citizen identities directly into the constitutional order, the Charter gives citizens an incentive to become directly involved in constitutional politics, because constitutional change may affect their Charter rights. Furthermore, their possession of Charter rights gives citizens a lever with which to gain access to the constitutional process.35 This new influence of the Charter has been demonstrated in two main ways. The first demonstration was the cascade of citizen opposition to the Meech Lake constitutional amendment proposals on the ground that the amendments would dilute Charter rights.36 The second was the eagerness of Canada's political masters to demonstrate a new sensitivity to the new Charter-fostered norm of citizen participation in the subsequent Canada Round constitutional amendment attempt.37

The explicit recognition of particular citizen

35 On these points about the Charter providing citizens with an incentive to participate and with a potential lever into constitutional politics, see Cairns, "Citizens and Governments."
36 See esp., Cairns, "Citizens and Governments."
identities in the constitution's enumerative provisions has also changed citizen identities in Canada. For example, Cairns shows that the recognition of the Metis as members of the constitutional category 'aboriginal' in section 35 of the 1982 Constitution Act had the effect of leading to the dismantling of the Association of Metis and Non-Status Indians of Saskatchewan. The new constitutional identity won by Metis people dictated forming a new and separate organization to defend the interests of a newly-defined group.38 Becoming the bearer of an authoritative, constitutional identity transforms political identity profoundly. For example, without the Charter the Canadian women's movement would not have at its forefront the Women's Legal Education and Action Fund. Nor would it have the powerful collective memory of having won against considerable odds the Charter's special women's equality rights clause, section 28.39

These profound effects of the Charter's entrenchment--bringing citizen identities into the constitutional order, giving citizens a lever with which to gain direct access to the highest moments of Canadian political life, and transforming citizen identities--will continue to have a

massive impact on social movement politics. Thus, my fundamental conviction that the post-Marxist landscape of radical politics must be remapped in a way that avoids simplistic dichotomization links up with a second key notion. This is that, in Canada, any such remapping must begin with an attempt to grapple with the impact of the Charter on social movement aspirations and strategy.
Chapter 2: Social Movements and The Charter

Section 1. 'New' Social Movement Politics: Not So New as One Might Think.

I suggested in Chapter 1 that a distorted depiction of contemporary social change politics arises from New Politics' focus on the alleged postwar shift "from giving top priority to physical sustenance and safety, toward heavier emphasis on belonging, self-expression and the quality of life."40 Examining the testimony of social movement organizations from the 1992 parliamentary hearings on the Canadian federal government's constitutional proposals provides ample support for this assessment.41 The central distinction around which the postmaterialist thesis revolves, between new movements with primarily expressive aspirations and old movements with mainly material ones, is invalid. Certainly, many groups appearing before the Committee demonstrated an aggressive concern for their place within the Canadian constitution's "symbolic order."42 However, even the most cursory look at

40 Inglehart, "Post-Materialism," 880.
41 The joint Senate-House of Commons parliamentary committee holding the hearings, chaired by Senator Gerald Beaudoin and MP Dorothy Dobbie, was called the Special Joint Committee on a Renewed Canada. The Committee's hearings began on 25 September 1991; it issued its report, Report of the Special Joint Committee on a Renewed Canada (Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons, No. 66, 33d Session of the 34th Parliament) on 28 February 1992. The federal constitutional amendment proposals that were the subject of the hearings are found in Canada, Shaping Canada's Future Together (Ottawa: Ministry of Supply and Services, 1991).
42 The term is from Raymond Breton, "Multiculturalism and Canadian Nation-Building," in Alan C. Cairns and Cynthia
the Canada Round social movement organization testimony reveals the implausibility of explaining such concern as a reflection of the status aspirations of groups able to take "economic security [and] safety needs ... for granted."43

Concerns for personal safety were a major reason lesbians and gays sought "recognition from the federal government"44 during the Canada Round. Parents and Friends of Lesbians and Gays (PFLAG) did not insist that the proposed 'Canada Clause' constitutional preamble "acknowledge sexual orientation"45 because of some fanciful new-age desire for psychological fulfillment. PFLAG sought symbolic affirmation that homosexuals are valued members of the Canadian polity in order to gain an authoritative condemnation of the "harassment, discrimination ... prejudice [and] crippling physical and emotional abuse" visited on lesbians and gay men.46 Thus, relegateing 'symbolic' demands to the purely 'cultural' and 'expressive' domains of politics can be erroneous and insulting to groups voicing them. Far more helpful for understanding social movement politics is to appreciate that, because the constitution is a polity's most authoritative and visible communicative medium, symbolic recognition within the

Williams, eds., The Politics of Gender, Ethnicity and Language in Canada (Toronto: U of T Press, 1985). Breton is not arguing the postmaterialism thesis.
44 Parents and Friends of Lesbians and Gays, brief to the Special Joint Committee, 7 January 1992 (mimeo).
45 Ibid.
46 Ibid.
constitution can be a powerful weapon against social inequality, which may assume forms ranging from systematic violence\textsuperscript{47} to subordination by poverty.

Attempting to improve its symbolic status within the political community can also be a group's way of trying to change negative self-perceptions forged under the debilitating pressure of racism or other forms of oppression. Bids for symbolic recognition of this sort are informed by an awareness that "people can suffer real damage ... if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves."\textsuperscript{48} This understanding's corollary, then, is that appropriate symbolic recognition is vital in order to combat "the misrecognition of others."\textsuperscript{49} Thus, the Canadian Association of Visible Minorities sought to "make our Constitution more truly representative of all Canadians," in order to help

\begin{quote}
people smothering in ... cages of poverty ... who
find their tongues twisted and their speech stammering when they seek to explain to their children why they are called names, why they are denied access to opportunities.\textsuperscript{50}
\end{quote}

Marxists have long argued that "ethnicity only reveals

\textsuperscript{47} On violence as a form of oppression, see Young, Difference, 61-64.
\textsuperscript{49} Ibid, emphasis original.
\textsuperscript{50} Canadian Association of Visible Minorities, Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on a Renewed Canada, 44:25-26 (subsequent references to Committee presentations will consist of the presenting group's name, followed by the relevant volume and page number from the Committee Minutes).
its secrets once we also link discussion of it ... to the question of class consciousness."51 It is more novel to point out that working-class organizations no less than avowedly cultural ones can display a concern for symbolic status allocation. The Public Service Alliance of Canada (PSAC) and the National Union of Provincial Government Employees (NUPGE), for example, did not use their joint appearance before the Committee to protest the constitutional absence of collective bargaining rights or to inveigh against the Charter's failure to apply to the common law property regime. Their concern was instead the lack of an explicit reference to workers in the Canadian constitution, an exclusion which led PSAC/NUPGE to advocate the constitutionalization of social and economic rights: "working people ... feel disenfranchised."52

Recognizing the predominantly symbolic emphasis of PSAC/NUPGE's social charter advocacy, therefore, places the usefulness of New Politics' materialist/postmaterialist dichotomy as a tool for understanding social movement politics in further doubt. PSAC/NUPGE did not intend the social charter to "solve all the ills of the world tomorrow," but rather to "express and signal to people clearly in this country a vision ... [Workers] need a connection to the Constitution."53 For the Centre for

52 Public Service Alliance of Canada/National Union of Provincial Government Employees, 30:47.
53 Ibid, 53.
Equality Rights in Accommodation, the social charter was not just a means to "address some of the most severe issues of disadvantage in our society"54; it would also "give a voice to [poor] people ... and [help them] make a claim for equal citizenship and participation."55

Clearly, dichotomizing between symbolic lifestyle aspirations and material redistributionist politics misconstrues the aims and tactics of social change movements, both 'new' and 'old'. Groups associated by the theorists of postmaterialism with 'lifestyle' issues continue to struggle against physical oppression and material deprivation, while the supposedly hard-headed and old-fashioned organizations of workers and the poor seem as concerned with having an honourable social status and opportunities for equal participation as any other group.

Demands for a more equitable distribution of wealth show no signs of abating, either—despite Iris Young's argument that 'new left social movements' "seek less to expand the scope of the state's welfare services than to respond to the invasion of nearly every area of social life by ... public ... bureaucracies."56 Of the 24 organizations surveyed in this study, one-third advanced explicit demands for new mechanisms to redistribute more wealth,57 while

54 Centre for Equality Rights in Accommodation, 24:42.
55 Ibid, 50.
56 Young, Difference, 83.
57 Action Canada Network, National Action Committee on the Status of Women, Canadian Day Care Advocacy Association, Canadian Students Federation, National Anti-Poverty Organization, Centre for Equality Rights in Accommodation,
another third were sufficiently concerned about the welfare state to protest constitutional proposals they felt would hamper future efforts to improve the current distribution of wealth. This two-thirds majority included ample representation from such 'new' movements as feminism and anti-racism. Of the eight remaining groups, only one indicated an explicit indifference to redistribution.

Suggestions that contemporary social movements seek to "limit state ... power" also seem exaggerated. Certainly, social change organizations appearing before the Special Joint Committee were avowedly hostile to government operations that escape democratic scrutiny. And of course the elitist practice of amending the constitution by executive federalism was denounced by nearly every group in this study. But attacks on executive federalism seemed also to convey a more specific message, namely that undemocratic

Learning Disabilities Association of Canada, Native Women's Council of Canada.
58 Canadian Ethnocultural Council, B'nai Brith, Federation des francophones et acadiennes du Canada, Canadian Environmental Law Association/Pollution Probe, Council of Canadians, Canadian Jewish Congress (joint presentation with Italo-Canadian Congress and Hellenic Canadian Congress), Canadian Labour Congress, Public Service Alliance of Canada (with National Union of Provincial Government Employees).
59 The German Canadian Congress was cool to the notion of a social charter because "in our long history in Canada the German community has been doing very well." German Canadian Congress, 26:30. No explicit recommendations regarding wealth redistribution were made by the National Association of Japanese Canadians, National Black Council of Canada, Alliance Quebec, Co-operative Housing Federation of Canada, Canadian Association of Visible Minorities, Parents and Friends of Lesbians and Gays, or Equality for Lesbians and Gays Everywhere.
60 Young, Difference, 82.
government mechanisms are undesirable precisely because, by allowing governments to cut social programs in virtual secret, such undemocratic mechanisms tend to militate against state egalitarian activism. This line of argument tended to coalesce around the federal government's plan for creating a 'Council of the Federation', a new mechanism for establishing "guidelines for fiscal harmonization" and for deciding "on issues of intergovernmental coordination and collaboration."61

Recurrent among social movement objections to the Council of the Federation scheme was the complaint that, by subjecting all future federal government use of the spending power to formal approval by the Council, the proposal's passage would render the introduction of new national social programs exceedingly difficult. Thus, the alternative democratic vision invoked by the Council's critics was not one of small-scale town-hall meetings or agrarian anarchism, but simply a preference for accountable, activist government. The Action Canada Network called the Council of the Federation proposal a "recipe for stalemate" because it would subject federal decisions about managing the Canadian economic union to the approval of seven provinces representing 50% of the population.62 The National Action Committee on the Status of Women attacked the Council, "an unelected unaccountable body," for being designed to bring

61 Canada, Shaping Canada's Future, 59.
both "all power to the premiers [and] laissez faire capitalism." The Canadian Ethnocultural Council protested the creation of a new secret level of government ... when the federal government has continually declined to create small, independent agencies for such human rights purposes as multiculturalism and employment equity commissions.

Contemporary demands for increased governmental accountability have a specific emphasis when coming from social movement proponents of state activism. Amidst a climate of ascendant neo-conservatism and fiscal pressures for state retrenchment, criticisms of government secrecy and welfare state cutbacks become increasingly intertwined. Many social movement organizations in Canada, therefore, protest government bureaucracy in order to prevent the state from shedding its customary welfare responsibilities, not to give vent to some populist urge to 'get government off our backs'.

The imperative to save the welfare state was also a major impetus behind proposed new mechanisms for improving the public accountability of government spending choices. The Canadian Federation of Students (CFS) expressed this imperative well when it pressed for new constitutional arrangements to clarify federal and provincial government responsibilities for post-secondary education. Because in Canada education is largely federally funded while remaining

64 Canadian Ethnocultural Council, 14:7.
formally a provincial legislative responsibility, groups like the CFS have found themselves unsuccessful in holding either level of government responsible for ongoing and severe cuts to post-secondary education:

We talk to the federal government, which says they would like to help, that they love education but that we have to talk to the provinces. The provinces say they like education but that it's the big bad federal government that is cutting things. We wind up as the ping-pong ball.65

Thus, such demands for increased government accountability find their impetus not in an innate desire to "challenge ... the right of the powerful to exert their will,"66 but to challenge the right of the powerful to slash social spending. As the CFS explained:

we have been asking until we are blue in the face ... for accountability of those [education] funds. ... No one has actually done anything about it. ... So the question is, will both levels of government accede to what the people are saying, to actually put some teeth behind the words that say they believe in these [social] values? ... We don't quite accept the notion that, well, you know, these things cost money.67

A similar frustration with seeing government power turned against social wages led a coalition of Canadian nationalist, feminist, anti-poverty and labour groups to advocate adding a social charter to the constitution. The social charter was intended and advertised as a mechanism to constrain governments, and thus bring to federal-provincial relations the accountability necessary to help combat

65 Canadian Federation of Students, 21:55.
66 Young, Difference, 83.
67 Ibid, 63, 62.
attacks on the welfare state effectively. As the Ontario NDP, the social charter's highest profile government supporter, explained:

What is crucial is to ensure that an interprovincial or a federal-provincial agreement to cooperate in the maintenance or development of programs, cannot be changed arbitrarily or unilaterally or without accepting the political and financial consequences.68

Thus, the social charter seemed to promise a way of holding governments responsible for program cuts that, in the byzantine world of fiscal federalism, often escape public understanding and scrutiny in roughly equal measure. The Canadian Labour Congress (CLC) presentation captured appropriately the simultaneous suspicion of government and support for state activism that combined to provide much of the support for the social charter movement.

Canadians are feeling insecure and distrustful of governments. ... [T]hey have watched their jobs disappear, their entitlement to unemployment insurance reduced, and their valued social programs systematically attacked by government. ... [I]n light of the economic and social insecurity that exists across this country [we support] the inclusion of a social charter in the Canadian Constitution.69

But for most social charter supporters, the concept had little to do with any radical designs for democratization or grassroots control.70 Again, the CLC presentation expressed

69 Canadian Labour Congress, 59:4-5.
70 The only two groups directly representing poor people before the Committee, the National Anti-Poverty Organization and Centre for Equality Rights in Accommodation, are an
social movement sentiment accurately: "There's a fear in this land, a terrible fear, that what we already have is going to be lost, and ... people are saying, get it in the Constitution or my medicare is gone."71

This brief discussion should be sufficient to establish that, while there may indeed be a crisis of traditional class politics, an accurate understanding of the new progressive politics is not achieved by a simplistic and largely incorrect insistence that contemporary movements have repudiated the socialist 'past'. Cultural movements and others associated with 'postmaterialist' politics seem emphatically concerned about the concrete effects of material oppression. Indeed, oppressed groups are likely to find symbolic status goals attractive precisely because symbolic gains for their communities seem useful levers with which to gain material advancement. Furthermore, 'materialist' movements do not provide a terribly stark contrast to their ostensibly 'postmaterialist' counterparts; the self-defence organizations of workers and the poor are by no means indifferent to issues of symbolic status and community participation.

Nor can contemporary progressive politics be adequately comprehended by insisting that new social movements have somehow gone 'beyond redistribution' and now seek to shrink the behemoth welfare state that their positivist social-

interesting exception. Both envisaged the social charter as a device for amplifying the voices of the poor.

71 Ibid, 22.
democratic predecessors created. Demands for equitable wealth redistribution and state egalitarian activism are just as likely now to come from feminist organizations as they were likely to arise a century ago from the traditional male-dominated trade unions. Moreover, attempts by social movement actors to place limits on state power occur in a fiscal and ideological context where the evil to be combated is not so much a 'Big Government' bent on invading people's lives as a 'shirking state' that is increasingly indifferent to social needs.

Section 2. Types of Rights: Why and How?

The problem of understanding how today's social change movements differ from their orthodox socialist predecessors remains. I have argued that both the New Politics materialism/postmaterialism dichotomy and Iris Young's similarly dichotomous insistence that 'new left social movements' have gone 'beyond redistribution' are misleading ways of situating contemporary progressive politics. A first step to addressing this theoretical confusion about the nature of contemporary social movement politics is to concentrate on common contexts within which progressive social movements act, in order to develop an empirical understanding of what social movement actors try to accomplish and how they pursue their objectives.

The language of rights is the most common medium through which social movements define, depict and pursue
their most fundamental political aspirations. Bowles and Gintis argue that the "clash of rights" is the "central dynamic of liberal democratic capitalist societies."72 'Rights talk' is particularly prominent in Canada where the 1982 entrenchment of the Charter of Rights, which has encouraged domestic social movements to cast their aspirations in rights terms, links up with the ongoing international development of a sophisticated, counter-hegemonic discourse of rights.73 Thus, an understanding of the variety of uses to which rights can be put must be regarded as key to any discussion of current progressive politics.

The following section will survey the major ways in which rights were invoked by social movement organizations appearing before the Beaudoin-Dobbie Committee. I will not draw any connection between the use of rights strategies and whether a given group achieved or was likely to achieve its political goals. Because formal control of the constitutional amending process was in the hands of the provincial premiers, provincial legislatures, the federal government, and Parliament, and there was no knowledge that the final amendment proposals would be put to a referendum,74 no group could be certain during the Beaudoin-

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72 Bowles and Gintis, Democracy and Capitalism, 29.
74 Ontario Premier Bob Rae, for example, has said that his government never even thought during the Canada Round
Dobbie parliamentary hearings that even the strongest presentation imaginable would secure any of its objectives. This section's purpose, then, will simply be to use the social movement arguments made before the Special Joint Committee to uncover some key ways that rights can be employed tactically, and to illustrate the nature of the sorts of goals rights invocations can be used to justify. The larger goal of this section, and indeed of this study, is to try to understand the common context of rights politics as a preliminary way of pointing to areas of commonality and dissimilarity among contemporary progressive social movements. This uncovering process must be regarded as a first step towards developing a more accurate understanding of the new politics of social change than that posited by a diversity of writers, ranging from Ronald Inglehart to Iris Young.

Joel Bakan's explanation of the nature and attraction of rights politics for contemporary social movements is a useful point of departure.

[T]he equation of rights strategies with litigation tactics has been displaced by a more complex understanding: rights are not just inert tools that can be used by social movements to advance their causes through litigation; rather, they actively structure the very nature of political struggle. Moreover, rights discourse is understood as an important, and unique, political language because of its universal form and presumptive validity in liberal democratic societies.75

75 Joel Bakan, "Accord(ing) to Rights: The Charlottetown negotiation process about the possibility of a referendum at the end. See Susan Delacourt, United We Fall (Toronto: Viking, 1993), 67.
Investigating rights strategies, then, provides a valuable entry point onto the specific terrain where social movement aspirations are contested. As Bakan argues, social movements are attracted by the remarkable flexibility of rights and by their facility for shaping political debates in terms advantageous to social movement goals. Rights are flexible instruments because nearly any objective can be plausibly brought under the rubric of 'right'. Rights invocations are not tied mechanically to the formal provisions of the constitution. Were this the case rights claims would lose much of their appeal because the political syntax of rights talk could never expand beyond the official lexicon promulgated by the regime. Thus, at least at the level of appearances, using the language of rights can serve to bring a social movement's position in one or another political debate into a fundamental harmony with dominant liberal understandings of how 'the good polity' ought to be arranged.

It is necessary to expand very briefly on this latter point about the harmony of rights claims with liberal ideology in order to underscore the peculiar discursive power rights hold in liberal polities. Political community has been widely understood at least since the time of Locke as a device for protecting its members' rights--the so-called contract doctrine.76 This is an understanding,
whatever the ontological inversions and political deficiencies involved in viewing individual rights as prior to society, that can have very radical implications.77 For example, progressive forces in the late Victorian era exploited liberal contractarianism in order to nudge the 'nightwatchman' state towards ameliorating some of capitalism's more blatant injustices. As Harold Perkin explains, it was but a small step from viewing the state as a device for protecting individual rights and freedoms to the understanding that "freedom can be positive, that the state can act to increase the freedom of the individual rather than limit it."78 Thus, the core attraction of rights discourse is that it taps "one of the formative influences on modern political consciousness"79; that political society exists to protect its members' rights. This understanding of rights protection as political community's raison d'etre pervades nearly all the examples standing rule and common judge to appeal to on earth, for the determination of controversies of right betwixt them, there they are still in the state of Nature, and under all the inconveniences of it ...." Of Civil Government, in Marvin Harris, et al., eds., Introduction to Contemporary Civilization in the West. Vol I (New York: Columbia UP, 1960), 1020.


of rights discourses offered in this section.

1) Rights as Fences

It is important to note from the outset that classical liberal rights are still found indispensable by many social movement organizations. Groups which fear majoritarian oppression are not prepared to abandon the understanding of rights as "limit[s] to the legitimate interference of collective opinion with individual independence."80 This understanding was most prominent among groups opposed to the Charter's section 33, which allows governments to promulgate expressly selected items of legislation "notwithstanding" the democratic, legal and equality rights protected by sections 2 and 7-15 of the Charter. It has been argued that s.33 provides for legislative, rather than judicial, determination of the proper scope of rights. The purpose is not to legitimate tyranny. The purpose is simply to ensure that the political process will not be subject to unreasonable or perverse judicial interpretations.81

Native women's groups, gay and lesbian organizations and ethnic and visible minority groups all rejected such "communitarian" arguments, preferring instead to establish an unbreachable fence against the reach of collective power. Equality for Lesbians and Gays Everywhere held that "the notwithstanding clause allows and excuses tyranny by the majority."82 The Canadian Ethnocultural Council invoked the

82 Equality for Gays and Lesbians Everywhere, "Submission
Canadian government's World War II internment of Japanese Canadians to argue against keeping section 33, warning of "those times ... when the people ... are practically solidified against somebody."83 The Native Women's Council of Canada argued persuasively for the importance of individual rights by calling the Committee's attention to the colonially induced patriarchy plaguing many native communities: "individual rights ... are so fundamental that once they are removed, you no longer have a human being."84

ii) Rights as Foundations

Many social movements, however, clearly view rights as attaching to communities as well as individuals.85 Indeed, the classical liberal understanding of political community as a bargain struck to protect rights was useful for buttressing visions far more collectivist than the typical individualist understanding of rights would seem to allow. This was the logic animating the Council of Canadians' invocation of self-determination rights as the formative

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83 Canadian Ethnocultural Council, 14:12.
84 Native Women's Council of Canada, 61:53.
85 This is not "to put the cart before the horse" and argue that rights must by necessity be either individual or collective in nature. Avigail Eisenberg, "The Politics of Group and Individual Difference in Canadian Jurisprudence," Canadian Journal of Political Science 27:1 (March 1994), 16. Nor is to suggest that any of the individual-rights supporters who wanted to abolish s.33 were necessarily hostile to collective rights. Indeed, the Native Women's Association of Canada's testimony suggested that groups can, qua groups, identify very strongly with rights that they nevertheless believe to be individual in nature. See their presentation, esp. 61:47.
principle for an asymmetrically reconstituted Canadian federation:

En français, nation means the right of belonging. It means the right to be recognized as having a distinct culture and distinct society ... [This] right to belong ... include[s] the native peoples, the first peoples of this country, and a renewed vision of Quebec.  

Rights considerations led the National Action Committee on the Status of Women (NAC) to a very similar, and even more detailed, position.

Canada is composed of nations, or national communities ... people in Quebec and aboriginal people, because of their identification as national communities ... see things differently from people in the rest of Canada. ... [W]omen in Quebec [feel] that the best protection of their ... equality rights [is] in their own provincial charter. ... Women in the rest of Canada ... want a strong federal government to ... defend our Charter rights. ... [NAC, therefore] supports a framework that says there are different national communities in Canada ... a voluntary association in which everyone respects each other's right [sic].

Rights, therefore, can be invoked to rebuild the imaginative foundation on which political community is constructed. Whether depicted as a communal 'right to belong' to the Canadian polity differently, or as a group's vision of how best to protect its culture, the fundamental role played by rights in NAC's and Action Canada's asymmetrical federalism justifications was the same. Because 'national communities', no less than Lockean individuals, belong to Canada in order to protect 'their rights', the polity must be organized according to how these

86 Council of Canadians, 33:25.
87 National Action Committee on the Status of Women, 10:18.
different communities believe such protection is best secured.

iii) Rights as Catapults for Democratic Barriers

Rights are also viewed as devices of democratization. The potential of rights to make government more responsive to citizen pressure led the Canadian Environmental Law Association and Pollution Probe to argue that "entrenching environmental rights in the Constitution [will give] Canadians a meaningful role in the protection of the environment."88 Allowing citizens to litigate environmental rights "would force not only the development of new decision-making mechanisms, but a new bureaucratic mentality."89

This democratic understanding of rights was also advanced by anti-poverty groups, who saw justiciable social rights as a potential mechanism for bringing previously stifled voices into the civic realm. The National Anti-Poverty Organization (NAPO) felt a social charter would "entrench ... the rights of those who have been marginalized by the Canadian political process."90 For the Centre for Equality Rights in Accommodation, justiciable social rights would amplify "the voice of the people who tend to be marginalized or disadvantaged within society."91

The Native Women's Association of Canada (NWAC) also

88 Canadian Environmental Law Association/Pollution Probe, 32:60.
89 Ibid, 68.
91 Centre for Equality Rights in Accommodation, 24:50.
shared this vision of rights as points of entry into
democratic politics. NWAC explained how "aboriginal women
have historically been legally, politically, and socially
subordinated by the federal government and by aboriginal
governments."92 This historical background meant that
guaranteeing the sexual equality rights of First Nations
women would be vital to facilitate aboriginal women's equal
participation in their future self-governing communities:
"What we want to get across to Canadians is our rights as
women to have a voice in deciding upon the definition of
aboriginal government powers. ... We want community
decision-making."93

Thus, sexual equality rights, environmental rights and
social rights were all favoured for their putative capacity
to catapult citizen opinion over such undemocratic barriers
as entrenched patriarchy, inaccessible bureaucracy, and the
intransigently held power of the comfortable classes.

iv) Rights as Shields for Identity-Related Values

Rights are also understood as devices for protecting
"identity-related values."94 This understanding offers
considerable political utility for social movement strategy.
Identity-related values are of crucial concern to nearly all
individuals and groups; to threaten a value around which
someone’s identity is built is a very serious business
indeed. Moreover, because rights protection is itself

92 Native Women's Council of Canada, 61:47.
93 Ibid, 52.
94 Eisenberg, "Individual and Group Difference," 16.
widely understood as constituting the polity's raison d'être, invoking the language of rights to advance a value accepted as important for group identity can carry considerable persuasive force. Thus, the regime's unwillingness to treat a widely-held value as a right can constitute both a serious violation of the 'social contract' upon which the polity is founded and, perhaps even worse, a fundamental threat to community identity.

As the Action Canada Network argued:

The Spicer Commission confirmed that for Canadians core values find concrete expression in the right to medical care, education and social security, all of which define us and bind us together as a national community. ... [But in these federal government proposals] there is no assurance about the rights of Canadians to programs that enhance their opportunities for well-being. ... [The proposals] uphold the values of the present federal government, not Canadians. 95

The Canadian Federation of Students (CFS) also supported vigourously "the social rights all Canadians enjoy as important ties." 96 The social charter, the CFS argued, is "inexpendable [and] has to be discussed in the context of the social values and their centrality to the Canadian identity." 97 Continuing this prominent theme, the Canadian Labour Congress (CLC) noted that Canadians "have defined ourselves in terms of common values that crystallize the essence of what it is to be Canadian." 98 Yet, the CLC argued pointedly,

95 Action Canada Network, 6:27.
96 Canadian Federation of Students, 21:52.
97 Ibid, 54.
98 Canadian Labour Congress, 59:7
Over the past decade, social and economic rights have been systematically eroded by governments ... [and] there is not one proposal in the government's package ... that even hints at any commitment to our social programs."

Making a value deemed central to national identity into a rights claim depicts that claim's rejection as a threat to the nation's very existence. To argue, for example, that Canadian values find concrete expression in social welfare rights is not just to invoke a dissident discourse aimed at delegitimizing neo-conservative constitutional proposals; it is also to advance in authoritative terms a powerful—and partisan—understanding of what being Canadian entails. Thus, identity-related rights claims serve to construct a popular point of unity around which to rally (e.g. 'national values'), thus casting loose from the figurative ties of communal belonging those unwilling to support the claim.

v) Conclusion to Section 2

The goals rights can be used to pursue are as diverse as the angles from which rights can be looked at. Rights are valued by social movement organizations as weapons against gay-bashing, state sexism, or majority-group racism. Rights can also be invoked to justify a community's demands for more power from the larger federation to which it conditionally belongs. And rights seem useful mechanisms for stopping the degradation of certain means of human subsistence, ranging from physical to social policy environments.

This diversity of goals requires a matching diversity of ways in which rights can be deployed. A host of social movement organizations, this survey shows, are certainly up to the task. In addition to the traditional understanding of rights as individual tools of litigation against tyrannous majorities, rights can also be metaphoric avenues of appeal to the collective imagination. Invocations of various nations' self-determination rights as foundations for a new federative superstructure are likely to increase as Canada's "great unsettling" continues. By exploiting widely-shared sentiments about the purpose of political community, rights provide a powerful kaleidoscopic lens through which to envision political community in new ways.

Social movement organizations also see making rights claims or developing new rights as ways to achieve goals often stymied by a political system in which dominant groups "can normally count on the active good-will and support of those in whose hands state power lies." Environmental rights and social rights were both sought during the Canada Round for their putative ability to "force a new bureaucratic mentality." This capacity, it was hoped, would arise from the potential of rights to act as mechanisms for providing effective citizen input into political decisions that, for a host of reasons, might

100 Alan Cairns, "Introduction: Whose Side is the Past On" (forthcoming, mimeo), 22.
102 Supra, n.53.
otherwise defy or escape public scrutiny.

Rights, linked with the language of fundamental values, were also depicted as devices for protecting aspects of group identity threatened by forces of corrosion. This function of rights has been shown to characterize the relevant Canadian jurisprudence. In the more explicitly political realm, the understanding of rights as protectors of identity-related values seems an important device for increasing the rhetorical and symbolic power of social movement demands. In particular, rights' capacity to act as shields for protecting one or another prized element of a threatened Canadian identity promises to make this usage increasingly prominent in Canadian social movement politics in the future. In Gramsci's language, rights as devices for protecting identity-related values are a crucial weapon in the 'war of position'; "the battle for winning political hegemony, the securing of consent, the struggle for the 'hearts and minds' of the people...".

Section 3. The Context of the Charter.

Rights, however, are not the same everywhere. The previous section, although rooted empirically in the contemporary Canadian context, avoided addressing squarely that context's specificity. Patrick Monahan warns that

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103 Eisenberg, "Individual and Group Difference."
"judicial review in Canada must be more than another branch-plant operation of an American head office."105 This admonition, addressed to students of Charter jurisprudence, also applies to students of Canadian social movement activism; we must investigate how progressive political struggles in Canada are structured in crucial ways by the specific provisions and history of the Canadian Charter. Thus, the following section takes up this remaining task.

i) Substantive Equality and the Charter

Perhaps the Charter's most crucial extra-legal function is its introduction of a new kind of political instrument that can be used to advantage in the political arena. This new political instrument is the ability to claim that the interests of the group are constitutionally protected and therefore are deserving of political recognition, status, or advancement. The important point to notice about this kind of Charter-claiming behavior is that it is as likely to be advanced outside a courtroom as within one.106

For progressive social movements, such Charter-claiming behavior can also involve exploiting the broader discursive opportunities offered by the norms enshrined in the Charter, not just the document's specific rights protections. Most important among these new discursive opportunities has been the Charter's authoritative contribution to ongoing and far-reaching changes to how Canadians conceive the concept, 'equality'.

The largest single contribution to these changes was

105 Monahan, Politics and the Constitution, 96.
106 Monahan, "The Charter Then and Now," 120.
made at the time of entrenchment, when citizen pressure forced the Charter's drafters to go beyond enshrining a merely 'formal' understanding of equality. At the most general level, formal equality is an approach to social relations which refuses to engage with questions of social or material disadvantage in determining whether a given individual or group is discriminated against. The historic organizing principle for equality jurisprudence in the capitalist states, formal equality theory has often been for dominant groups a useful means of justifying class privilege and exploitative social relations. As Isaac Balbus argues, formal equality involves the

systematic application of an equal scale to systematically unequal individuals ... this, of course, was the force of Anatole France's famous, ironic praise of 'the majestic equality of the French law, which forbids both rich and poor from sleeping under the bridges of the Seine.107

Formal equality is still the reigning paradigm for a myriad of Canadian jurisprudential situations.108 But the Charter's section 15 equality rights provide for more than simply equality 'before the law'; they also refer to equality "under the law" and to the "equal protection and equal benefit of the law." This 'substantive' understanding of equality is buttressed further by section 15(2), which

guarantees that affirmative action programs aimed at the "amelioration of conditions of disadvantaged individuals or groups" are not thereby viewed as infringing on equality. These particular Charter provisions were adopted after intensive lobbying by women's and other equality-seeking groups, which sought to guarantee that Charter jurisprudence would not merely perpetuate the formal interpretation of equality that had been so frustrating for disadvantaged litigants under the old Bill of Rights.109

Thus, as Lynn Smith argues, the Charter is the most important and visible site in Canada of an ongoing "serious reconceptualization of equality."110 Because the Charter offers an authoritative statement that equality must be substantively, not formalistically and mechanically, understood it provides equality-seeking groups with a powerful legitimacy-conferring political tool. In the courts, of course, a range of factors may conspire to ensure that social change movements "can't always get what they want (nor what they need)."111 But, outside the courts, 'Charter-claiming behavior' provides social movements with a

109 Lynn Smith, "A New Paradigm for Equality Rights," in Righting the Balance (Saskatoon: The Canadian Human Rights Reporter Inc., 1986), 355. The most notorious Bill of Rights case was Bliss, in which formal equality theory helped the judges to decide that disentitling a pregnant women of Unemployment Insurance benefits was not sex discrimination because "any discrimination was created by 'nature', not the statute." Ibid, 65.
111 Bakan, "Constitutional Interpretation."
powerful tool for legitimating substantive equality aspirations.

The Committee hearings provide good evidence that social movement organizations are indeed using the Charter as a discursive means of promoting a substantive, or 'asymmetrical'\textsuperscript{112}, understanding of equality. Certainly, it was this asymmetrical understanding of equality that allowed the Action Canada Network to argue that, "by recognizing the distinctiveness of Quebec, the new distinct society clause significantly strengthens equality rights in the Canadian federation."\textsuperscript{113}

The National Action Committee on the Status of Women (NAC), too, made frequent and prominent use of substantive equality arguments that depended for much of their underlying force on the presence of the Charter. NAC sought guaranteed representation for women in the planned reformed Senate, arguing that equal opportunity is not enough. You need equality of results. The fact that an employer doesn't openly discriminate against women doesn't mean that women have equality. ... What we are saying is that the same goes, even more so, for political representation.\textsuperscript{114}

"Special powers" for Quebec were also supported by NAC, on the ground that "we understand in the women's movement ... that equality doesn't mean treating everyone the same way. Equality often means special measures ... to correct

\textsuperscript{112} Smith, "Equality Rights," 63.
\textsuperscript{113} Action Canada Network, 6:28.
\textsuperscript{114} National Action Committee on the Status of Women, 10:29.
historical inequalities."115

NAC might just as easily in these instances have quoted the landmark Andrews decision, in which Justice McIntyre held:

the fact that identical treatment may frequently produce serious inequality is recognized in s. 15(2), which states that the equality rights in s. 15(1) do not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups...116

The similarity of NAC's argument, that 'equality doesn't mean treating everyone the same way', with the logic of the Andrews decision ('identical treatment may frequently produce serious inequality'), serves to emphasize the Charter's radical discursive potential. The Charter's presence enhances greatly the political viability of a progressive understanding of equality that is crucial to many social movement aspirations.117 A substantive vision of equality, therefore, now has a far wider potential currency than 'something that we understand in the women's movement'. The Charter's section 15(2) affirmative action provision and the Andrews jurisprudence facilitate the

115 Ibid, 10:19.
117 This radical potential of the Charter is underscored by the vehemence with which 'Charter politics' is denounced by Canada's academic right: "the Charter ... is neither democratic nor liberal/constitutional ... its most ardent partisans are imbued with [a] ... vision of politics that is antithetical to the respect for the private sphere and limited government that informs the practice of constitutionalism." Morton and Knopff, "The Charter Movement," 58.
positioning of feminist and other egalitarian objectives as positively mandated by the Canadian polity's most authoritative and popular document.

This understanding was exploited directly in the Centre for Equality Rights in Accommodation's (CERA) persuasive attack on the federal government's economic union proposals. The form taken by CERA's objections to the economic union scheme was predicated explicitly on the availability of the Charter's substantive equality precedent. Because the envisioned economic union would put all provinces on a 'level playing field', prohibiting interprovincial barriers to the free movement of goods, services, persons or capital, many groups feared that it would also 'catch' provincial legislation aimed at promoting substantive equality.118 CERA contrasted effectively the formal and repressive 'free trade' understanding of equality with a more substantive view, one underlying the social charter notion--and upheld officially by the Charter.

We are going to need more sophisticated notions of equal treatment other than the ones contained in the economic union proposals. I don't think you can go with something as simple as no differential treatment based on the province you come from or region. That's the same kind of model we had in equality rights ten years ago, and we realized it didn't work.119

118 The economic union proposals are found in Canada, Shaping Canada's Future, 28-31. For a criticism of them as threats to pay equity, provincial crown corporations and agricultural marketing boards see Andrew Jackson, "The Economic Union," in Duncan Cameron and Miriam Smith, eds., Constitutional Politics (Toronto: Lorimer, 1992).
119 Centre for Equality Rights in Accommodation, 24:54.
The debate about whether or not the Charter helps or hinders progressive struggles will no doubt continue. There can be no dispute, however, that the Charter has brought a substantive, affirmative understanding of equality into the very heart of the Canadian constitution. By doing so, entrenchment of the Charter has shifted significantly the discursive context within which notions of equality are contested, to the benefit of progressive social movements.

**ii) The Political Attraction of Charter Recognition**

Social movement organizations also used their appearances before the Committee to pursue specific and explicit Charter goals. From the standpoint of social movement strategy outside the courtroom, most prominent among these Charter goals were the efforts of various groups to either strengthen their position, or to secure new recognitions, within the Charter. As Cairns has written, "the constitution is now the central arena within which the groups of an increasingly plural society ... vie with each other for recognition and acceptance."120 And, as argued earlier in this chapter, such recognition and acceptance are viewed, by a wide range of social movement actors, 'new' and 'old, as crucial levers with which to advance their material status.

In the following paragraphs I aim to explore the political understandings and strategies which informed the

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120 Cairns, "Citizens and Governments," 131. On inter-group competition for constitutional status, generally, see *ibid*, 125-132.
attempts made by various groups during the Canada Round to achieve a favourable place in the Charter. Following a discussion of these various attempts, the section will conclude with a tentative exploration of what ramifications the inter-group struggle for constitutional recognition may hold for social movement politics.

The Charter can offer impressive political benefits to groups which have acquired a specific institutional presence via one or another of the document's particularistic recognitions. These groups include women, official language minorities and the disabled (aboriginal peoples are recognized in section 35 of the Constitution Act, 1982). As Samuel LaSelva argues, the Charter lends authoritative civic affirmation to citizen identities which, in a constitutional order previously defined solely by federalism and parliamentary government, had only a truncated political expression. Charter enumeration is, therefore, an attractive political good because it allows the aspirations of otherwise marginalized groups to "directly confront establishment thought, rather than being isolated in private realms, or confined to an underground existence from which they rarely surface."122

122 Cairns, ibid, 77.
In addition to securing the opportunity to confront establishment thought directly, any disadvantaged group fortunate enough to gain Charter recognition can win both an expanded organizational expression and a more forceful presence in the public consciousness. The Charter's particularistic recognitions provide a "constitutional base for a counter-elite of group leaders."123 Indeed, the array of interest groups "that have sprung up around the Charter,"124 which includes the Women's Legal Education and Action Fund and the Equality Rights Committee of the Canadian Ethnocultural Council, is only the most visible manifestation of how winning recognition within the Charter can help social movements so favoured gain an enhanced civic presence. Charter recognition can provide a social movement and its organizations with a wide variety of political benefits which may range from an increased flow of members and donations to the extra authority an enumerated movement can claim in political debates as an 'official' Charter group.125

Unsurprisingly, therefore, movements not enumerated explicitly in the Charter's provisions used the Canada Round parliamentary hearings to lobby for inclusion within the Charter. For example, many groups viewed gaining a social charter as a crucial chance to rectify an egregious

123 Cairns, "Citizens and Governments," 125.
125 On this latter point, see Monahan, "The Charter Then and Now," 123.
exclusion left over from entrenchment in 1982. Thus, the demands of working-class and anti-poverty organizations for a social charter were tinged heavily with envy for the mobilizational gains groups explicitly recognized by the Charter have made since 1982.

The Public Service Alliance of Canada (PSAC) and National Union of Provincial Government Employees (NUPGE) depicted the explicit absence of workers from the constitution as a situation of serious political and symbolic disadvantage requiring immediate rectification. PSAC/NUPGE informed the Committee in their joint presentation that

Labour did not participate in the repatriation [sic] of the Constitution in 1981. Many of us have felt very strongly about that and indeed very bitter about that, that labour did not involve itself in the debate in those early years.126

This lack of involvement led workers to envy the heightened constitutional status that women's and other groups had been successful in gaining at the time of entrenchment. For NUPGE/PSAC, therefore, "working people ... feel disenfranchised ... and they see the social charter as their connection with this round of constitutional change."127

For the National Anti-Poverty Organization, the inability of poor people, qua poor people, to litigate Charter rights constitutes their flagrant and unfair exclusion from an exciting new liberatory strategy.

126 NUPGE/PSAC, 30:47.
Poor people are not expressly protected from discrimination by the Canadian Charter of Rights and Freedoms. ... They should ... have the right of using the courts to fight for their rights ... just as women are doing right now, and disabled people.128

Informing all such comments was an obvious envy of the status and mobilizational gains enjoyed by such enumerated groups as women and the disabled and, consequently, an enthusiasm for the social charter's potential ability to provide the unrecognized movements of workers and the poor with similar advantages.

Charter enumeration is not just valuable for groups struggling to transform large-scale aspects of the politico-economic regime (e.g. social and labour market policy). It is also seen as a helpful aid for micro-level political strategies engaged more in trying to change immediate and particular aspects of their civil society environment. The Learning Disabilities Association of Canada (LDAC), for example, sought Charter recognition in order to lend authority to an identity society seems slow to recognize.

The LDAC was remarkably clear about the reasons it wanted the word "learning" added to the phrase "mental and physical disability" in the Charter's section 15 equality rights provision. "There are," the LDAC complained, "teachers, principals and psychologists--doctors, even--who don't believe [learning disabilities] exist."129

Enumeration for the learning disabled would convince such

128 National Anti-Poverty Organization, 24:17, 19.
129 Learning Disabilities Association of Canada, 52:49.
skeptical professionals that learning disabled individuals need specific and appropriate help. Without such official recognition, parents of learning disabled children have "to lobby very extensively to ensure ... that [their] children will not be recognized as ... emotionally disturbed."130 Charter recognition was therefore sought by the LDAC as a means of telling Canadian society exactly 'who' the learning disabled are:

If we have learning disabilities as part of the Charter and the Constitution, then it would have to be a part of every document flowing therefrom. All territorial and provincial legislation would also have to recognize this condition. ... To use the terminology that's presently in the Charter to try to include people who are learning disabled does them an injustice and perhaps prevents the rest of the population from realizing the significance of the problem under which these people labour.131

iii) Unifying Political Effects of Charter Enumeration

The Charter's particularistic recognitions have a contradictory character. Much like the section 15(2) affirmative action provision which de facto enshrines substantive equality as a Canadian norm, they provide authoritative acknowledgment that imposing a single uniform constitutional identity on everyone, no less than a formalistically 'equal' treatment, can have oppressive

130 Ibid.
131 Ibid, 50-51. There was also a very decidedly materialist slant to the LDAC's search for Charter recognition. As the group pointed out in its advocacy of social rights, "When economic conditions are difficult for the general population, they are even worse for the disabled, a situation that results from lack of educational opportunities, discrimination in the workplace, and the unfair costs directly attributed to the disability." Ibid, 48.
consequences. Indeed, such institutional recognition of group difference has a unifying intent: if "issues of identity and group rights ... do not elicit positive responses, the citizen base of political authority will be fragmented and unstable."132

A similar spirit, of recognizing difference in order to unify, can be found by examining the interwar communist practice of "enumerating" explicitly the identities of the different groups belonging to communist-led anti-fascist coalitions. Communist enumeration was initiated in order to build a unified anti-fascist movement under socialist leadership. Progressive elements could join the coalition but retain their own political identity; the label, 'socialist worker', was not forced on anti-fascists who did not want it.

Thus, communist enumeration was not only a key tool for facilitating political coalition-building, it had the effect of positively transforming social relations among coalition members. This transformative effect created a much greater degree of egalitarianism within the coalition than would have otherwise been possible. "Enumeration," argue Laclau and Mouffe, "is not the confirmation of a de facto situation, but has a performative character."133 Because enumeration provides a way of maintaining discrete identities under a common rubric, thus affirming

133 Laclau and Mouffe, Hegemony and Socialist Strategy, 64.
simultaneously difference and commonality, it is a "real force which contributes to the moulding and constitution of social relations." 134

Constitutional enumeration can perform similar egalitarian unifying effects for the Canadian polity. Such was the expectation underlying B'nai Brith's support for constitutional recognition of multiculturalism, as well as its advocacy of the proposed 'distinct society' recognition for Quebec. "Multiculturalism," B'nai Brith argued, does not lead to fragmentation any more than we believe the distinct society leads to fragmentation. We support the notion of a distinct society. We believe it's a unifying notion rather than a fragmenting notion. We accept that of multiculturalism as well. The reason why [distinct society and multiculturalism are] unifying is that [they] allow for people to communicate, be in contact with each other on the basis of what they are. 135

Other presenters also appealed to the precedent and logic of the Charter's enumerative character to support Quebec's distinct society aspirations. 136

New demands for Charter enumeration are likely to arise anytime constitutional amendments are discussed. As the PSAC/NUPGE, NAPO and LDAC presentations made clear, unrecognized groups envy the organizational and status gains which inclusion within the Charter seems to provide for recognized social movements. Social movements seeking a foothold within the Charter can also find valuable political

134 Ibid, 110.
135 B'nai Brith, 16:33.
136 e.g. Action Canada Network, 6:28, National Action Committee on the Status of Women, 10:20.
 ammunition in the precedent of the prior enumeration of other groups, while appealing simultaneously to the logical argument that enumeration can help unify the polity. However, the performative aspect of constitutional enumeration has in fact a more complex and ambivalent character than the previous passages have suggested.

iv) Disunifying Effects of Constitutional Enumeration

Constitutional enumeration can contribute to moulding competitive and fractious political relations among different social movement organizations. This was an effect demonstrated prominently in the Canada Round debates; particularistic Charter recognitions promoted an unhelpful political conflict between ethnic- and visible-minority groups which inhibited their ability to cooperate on a crucial matter of common interest.

It must first be admitted that the Charter's particularistic recognitions are not wholly 'performative' in character. At a certain level, they do provide a 'de facto confirmation of a situation'137 which predated entrenchment of the Charter. As Cairns has shown, visible and ethnic minorities' respective preferences for the Charter's sections 15 and 27 build on these groups' prior differential political locations: "traditional European groups outside of the French-English duality" identify with section 27, "with its reference to the preservation and

137 Laclau and Mouffe, Hegemony and Socialist Strategy, supra, n.93.
enhancement of the multicultural heritage of Canadians."138 For visible minorities, on the other hand, section 15 "is of more significance and their goals are less those of cultural protection than of equal treatment or positive discrimination."139

But during the Canada Round, all the visible-minority and ethnic-minority organizations presenting had a crucial common goal; to eliminate the notwithstanding clause. All the ethnic- and visible-minority presenters would have agreed readily that section 33 gives "governments the legal right to treat racial and ethnic minorities as second-class citizens,"140 and that the clause is the Charter's "most serious flaw."141

The political context of the Canada Round, however, dictated the infeasibility of advocating elimination of the notwithstanding clause. Because the legislative override is seen as absolutely vital for keeping Quebec in Canada, no federal administration seeking to prevent separation would contemplate section 33's removal. As David Schneiderman explains,

Quebec elites [are] aware that the Canadian Charter severely curtailed the sovereignty of the government of Quebec ... permitting judicial interpretations to bind the Quebec government, subject to the

139 Ibid.
140 National Black Coalition, 16:51.
141 Canadian Ethnocultural Council, 14:5.
availability of the notwithstanding clause.\textsuperscript{142}

The political realities facing opponents of the notwithstanding clause were acknowledged succinctly in the Council of Canadians' presentation to the Committee:

section 33 "does cause difficulties in the area of rights ... [but] whether we should attempt to remove it at this point is another question."\textsuperscript{143} The best hope for the notwithstanding clause's enemies during the Canada Round, therefore, would have been to agree on a 'fallback option' to present to the Committee as a consensus choice, such as making the override more difficult to invoke, or removing the Charter's anti-discrimination provisions from section 33's purview.

Yet ethnic and visible minorities were unable to do this, and the performative character of constitutional enumeration was largely the cause of this inability to agree. Political stimuli flowing from constitutional enumeration spurred a pronounced divergence of interest between ethnic and visible minority organizations, which centred around each camp's desire to aggrandize the status of 'its' Charter clause. Ethnic and visible minority groups could not agree on a 'second-best' position on the override, because each group favoured means of exemption that offered new status gains to their group but not to the other. Thus, political aspirations acquiring their logic from


\textsuperscript{143} Council of Canadians, 33:32.
enumeration's performative character served to bring ethnic and visible minorities into a conflict that was sometimes overt.

The Canadian Association of Visible Minorities (CAVM) launched its attack on the override by explaining the significance for its membership of the racial equality rights described in section 15. Section 15, the CAVM began, is the most profound constitutional guarantee any minority Canadian has ever received in the political history of this country. To us, it is a sacred provision. Unfortunately as the Constitution stands now, and as a result of the notwithstanding clause, section 33, the Parliament of Canada, and indeed any of the legislatures of the provinces, can trample upon section 15, our much-valued equality provision, and by manipulation of section 33 override the only anti-discrimination, anti-racism provision we have in the Constitution.

The Association then introduced its recommendation for addressing this situation, by reading from section 28 which exempts gender equality from the override's purview: "Racial and ethnic minorities now seek the same positive equal rights ... under a separate section of the Charter." Thus, visible-minority groups viewed the fact that the notwithstanding clause applies to their section 15 equality rights, but not to those of women or to the multicultural heritage reference in section 27, as a symbol that their constitutional status is inferior. "Bear in mind," the National Black Coalition of Canada (NBCC) warned, "the multiculturalism recognition clause, section 27, is first [sic] unless and if [section 15] equality rights are

144 Canadian Association of Visible Minorities, 44:26.
not guaranteed."145

The elevated status of women's sexual equality rights was a similar symbolic affront:

In 1981 women saw the threat that section 33 posed to their rights as presented in section 15 and they organized effectively to secure ... section 28 to protect their rights from the override provision.146

Thus, the preferred means of the NBCC and the CAVM to address the 'notwithstanding issue' was to replicate the symbolic successes women and multiculturalism-identified groups achieved by having 'their clauses' exempted from section 33: "Racial and ethnic minorities must organize, and we are asking ... that the same thing apply."147

But ethnic minorities, the Coalition's assertion notwithstanding, did not actually want 'the same thing' as visible minority groups. Ethnic minority presenters did not seek to exempt section 15, nor did they try to build a new exemption clause, as had their visible minority counterparts. Instead, the Canadian Jewish Congress, Italo-Canadian Congress and Hellenic Canadian Congress preferred to "modify and expand," and thus to enhance the status of, the multicultural heritage reference in section 27.148

Specifically, their proposal was to expand section 27 to include a "commitment to fairness, openness, and full participation in Canada's citizenship by all people without

145 National Black Coalition of Canada, 16:52.
146 Ibid.
147 Ibid.
148 Canadian Jewish Congress, Italo-Canadian Congress and Hellenic Canadian Congress, 58:35.
regard to race, colour, creed, physical or mental disability or cultural background."149 Ethnic minorities could thus gain, besides a shield against the override, an authoritative affirmation that "multiculturalism is a living thing ... one of the fundamental characteristics of Canadian society."150

Ethnic- and visible-minority organizations were unable to agree on a unified section 33 position because their respective proposals for diluting the override's power were, simultaneously, attempts to aggrandize the status of their own specific Charter clauses. Thus, the political attraction of securing new constitutional status gains overwhelmed the will of ethnic- and visible-minority groups to cooperate on a status-neutral approach to diluting section 33, such as raising the legislative ceiling for invoking the override to 75%. This explanation is supported by referring to an unrecognized group's opposition to section 33. Equality for Lesbians and Gays Everywhere (EGALE) simply advocated increasing the minimum vote for engaging the override to 75%.151 EGALE could offer this status-neutral means of diluting section 33 because, as 'read in' rather than explicitly enumerated in section 15, gays and lesbians would receive no extra constitutional recognition from a special section 15 exemption clause.152

149 Ibid, 41.
150 Ibid.
152 Regarding the 'read-in' status of gays and lesbians,
Accordingly, EGALE's concerns regarding the override were solely jurisprudential and unaffected by status aspirations. Ethnic and visible minorities, the bearers of particular and different constitutional identities, seemed to inhabit a different political universe entirely.

Particularistic constitutional recognitions can reify group political differences almost to the extent of mutual incomprehension. The German Canadian Congress (GCC), for instance, was unable to appreciate section 15's significance for visible minorities because of a seeming ignorance of section 15's existence. The GCC's exclusive identification with the multicultural heritage clause led it to argue incorrectly that section 27 was the equality clause threatened by the availability of the legislative override. "We feel," the GCC protested,

"a multicultural Canada is not a multicultural Canada if you can opt out of it. ... In section 27 of our Charter, we already state that everything is there to be interpreted and promoted in the spirit of multiculturalism. To me you can't opt out of that."

Section 15 was never mentioned in the GCC presentation. The group simply insisted that recognizing Quebec as a distinct society would remove the rationale for the override: "If multiculturalism is a policy under section 27, then we feel the distinct society clause should not be used in

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153 German Canadian Congress, 26:22.
conjunction with the notwithstanding clause to get out of it."154

This apparent indifference to the needs of other groups was, unfortunately, matched by a visible-minority organization as well. The National Black Coalition refused to take into account a Committee member's objection that the Coalition's proposed exemption clause failed to include other section 15 groups, such as the disabled. The NBCC's reply was blunt: "All I am trying to say ... is that there should be the same equality accorded to all Canadian citizens regardless of race, national or ethnic origin or colour."155

It remains to be seen whether the practice of constitutional enumeration will serve to bind enumerated groups more closely to the Canadian polity by communicating authoritatively the message that maintaining a particular group identity should be perfectly compatible with full membership in the Canadian political community. However, the preceding discussion has shown that constitutional enumeration has a disunifying effect on social movement struggles; inhabiting different constitutional clauses

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154 Ibid, 27.
155 Ibid, 55. The other remaining ethnic minority groups, the Canadian Ethnocultural Council and B'nai Brith, did understand that section 27 was indeed exempt from section 33, but simply failed to advance alternative options for making the override more difficult to invoke. Alliance Quebec, likely more concerned because of various court battles with the Charter's section 2 "free expression" guarantee, proposed as their fallback option increasing the minimum vote for section 33's invocation to 75%.
seems to reduce incentives for cooperation among recognized groups. The political dispute between the visible-minority occupants of section 15 and their ethnic-minority section 27 counterparts was a sort of reverse twist on the well-known NIMBY (Not in My Backyard) syndrome. Instead of fighting to keep new development out of one's neighbourhood, visible and ethnic minorities each struggled to locate a desired new section 33 exemption clause in their respective constitutional vicinity.

v) Constitutional Enumeration's Performative Character: Anti-Racism versus Multiculturalism

In the following discussion, I seek to generalize beyond the realm of constitutional politics the argument that the Charter's particularistic recognitions promote conflict between different social movements. I will illustrate this generalization by showing how enumeration's performative character exacerbates a larger conflict between ethnic and visible minorities over how different communities' belonging to the Canadian polity ought to be mediated.

Constitutional enumeration, besides promoting constitutional conflicts between the inhabitants of sections 15 and 27, seems to encourage an artificially discrete development of the multiculturalism and anti-racism discourses more generally. Finding evidence of this discrete development is surprising; there seems much common ground between the emphasis of the contemporary anti-racism
movement on recognizing difference and the multiculturalism policy's ostensible rejection of the American 'melting pot' ideology. It seems, however, that the potential affinities of the multiculturalism and anti-racism discourses are confounded by the distinct and separate constitutional status interests of the visible- and ethnic-minority inhabitants of sections 15 and 27. Thus, the two different constitutional sections can become competing political symbols that do not respect the similar logics informing the anti-racist and pro-multicultural platforms. This competition seems certain to overflow the boundaries of constitutional amendment negotiations.

Many Committee debates about the constitutionally-enshrined value, 'multiculturalism', did not focus on the need to recognize difference, nor to fight racism or advocate substantive equality. These exchanges were instead the sites of different actors' struggles to further particular constitutional goals, which ranged from delegitimizing multiculturalism in order to enhance the constitutional status of section 15, to expanding multiculturalism's conceptual reach in order to combat the visions extolled by the adherents of the 'dualist' and 'Three Nations' visions of Canada.

Consider, for example, Black New Democratic Party MP Howard McCurdy's repeated attempts to convince ethnic-minority organizations to support his preferred notwithstanding clause option, the somewhat imperialistic
idea of a "substitution for section 27." With ethnic-minority groups hostile to a substitution for their favoured Charter clause, McCurdy's attempts to foster a unified approach to the section 33 issue increasingly assumed the character of a sustained attack on multiculturalism.

McCurdy compared B'nai Brith's attempt to enshrine multiculturalism in the Canada Clause unfavourably with his scheme for a section 15-type replacement for section 27:

is it unreasonable [that your proposal] could conjure up in the minds of Canadians the potential for a fragmentation of the country along a whole host of cultural lines? Compare this to an equality clause that accepts multiculturalism but instead emphasizes the significance of ensuring equality and non-discrimination for all the peoples within those groups, irrespective of their culture, colour or national origins.

Similarly, McCurdy condemned the Canadian Jewish, Italian and Hellenic Congresses for their joint proposal to expand section 27: "are we talking about a segmented Canada guaranteed by government action?" The National Black Coalition would probably have agreed; it, too, attacked multiculturalism for demanding "the cultural and linguistic fragmentation of Canada rather than the recognition of its diversity."

Yet the supposedly fragmentary notion of

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156 Howard McCurdy, Canadian Ethnocultural Council presentation, 14:13.
159 National Black Coalition of Canada, 16:52.
multiculturalism could also be stretched sufficiently far so as to itself become inhospitable to difference. The National Association of Japanese Canadians (NAJC), for example, advanced not a 'politics of difference' understanding of multiculturalism, but one that Quebecois and First Nations groups would undoubtedly have considered assimilationist and historically insensitive. Advocating the inclusion of a reference to multiculturalism in the Canada Clause, the NAJC held that:

we feel people of French background would be part of multiculturalism. People of aboriginal background would be part of multiculturalism. I think what we are trying to do is broaden the term multiculturalism to include all peoples rather than continue the restricted notion that seems to come out, mainly because of government policy, etc. So our view is that multiculturalism should apply to all people.160

And a group identifying with section 15 rather than with section 27 might have seen B'nai Brith's vision of multiculturalism as a veiled attempt to 'trump' section 15: "Multiculturalism has many values within it, but we believe ... the responsibility to preserve and promote racial and ethnic equality ... is the core or most important value."161

The similarities between anti-racism and multiculturalism are emphasized in the insistence of B'nai Brith that 'promoting ethnic and racial equality' is the 'core value' of multiculturalism. Yet, constitutional interventions by both ethnic and visible minorities

161 B'nai Brith, 16:27.
demonstrated repeatedly how the centrifugal force exerted by particularistic constitutional recognitions renders making multiculturalism a vehicle for anti-racism (or vice versa) exceedingly difficult. The most general conclusion to be drawn from the preceding discussion is that 'owning' discrete constitutional clauses creates an artificial opposition of interest among social movement actors which militates against coalition-building. The enumerative disincentive to coalition-building is ironic because the enumerative principle, as demonstrated by the interwar communist experience, aims to facilitate the construction of unities more egalitarian than an assimilationist politics of 'no special status' can provide.

Thus, the constitutional separation of the discourses of anti-racism and of multiculturalism serves to occlude linkages between these two discourses. This constitutionally stimulated separation of the anti-racism and pro-multiculturalism discourses is highly significant for social movement politics. Its immediate significance is that ethnic and visible minorities are handicapped severely in their struggles to define a way of belonging to the Canadian polity which is neither a 'melting pot' assimilationism nor a marginalizing French-English dualism.

Its larger significance is that the political identities shaped by particularistic Charter recognitions acquire a peculiar discreteness. Particularistic Charter identities are linked specifically to separate
constitutional clauses, from which political controversies appear differently. This is true for groups identifying with different Charter clauses, for instance visible and ethnic minorities, as well as for enumerated and unenumerated groups. There is, then, considerable potential for both the lessons of past constitutional controversies, and the particular group solidarities engendered by Charter enumeration, to create among various social movements cleavages more serious than may have otherwise existed. For example, because the Charter divorces the norms of racial equality and multiculturalism, the future allegiance of visible minorities to the multiculturalism policy and to the vision of Canada which it embodies may be considerably reduced. At the most general level, then, this sort of constitutionally induced separation of interests may affect the future ability of social movements bearing different constitutional identities to cooperate. The placement of social movements in differential constitutional locations stimulates a separation of political vantage points additional to those which may have existed independently of the Charter.

vi) Conclusion to Section 3

This section has analyzed two aspects of the extra-legal attraction progressive social movements find in the Charter. First, the Charter can be invoked as a tool of legitimation for social movement objectives. 'Charter-claiming behavior' can involve either "claiming the
interests of the group are constitutionally protected and therefore are deserving of political recognition, status, or advancement,"162 or exploiting in a more general fashion the discursive opportunities afforded by the norms established by the Charter. Second, a range of social movement actors view Charter recognition as an important tool for improving their particular movement's organizational presence and political legitimacy.

The implications of these two types of engagement with the Charter for the future development of social movement politics in Canada are contradictory. On the positive side, the substantive equality norms established by sections 15(1) and (2) of the Charter help both to legitimize the equality claims of oppressed groups and to promote among different social movements a respect for the aspirations of other groups. Thus, the Centre for Equality Rights in Accommodation could demonstrate the incompatibility of the market-driven 'no special treatment' understanding of equality expressed in the federal government's economic union proposals with the Charter's emphasis on considering equality through the lens of individual and group disadvantage. The 'asymmetrical' understanding of equality enshrined in section 15(2) also facilitated a respect among groups such as NAC and Action Canada for Quebec's goal of seeking special federal arrangements to protect its distinct society.

162 Monahan, "The Charter Then and Now," supra, n.121.
Therefore, the Charter's ostensible commitment of the Canadian polity to fighting individual and group disadvantage provides social movements seeking substantive equality with an important source of discursive leverage. At the same time, insofar as this source of discursive leverage promotes an asymmetrical understanding of equality, the Charter can be said to encourage social movements to support affirmative measures favouring groups other than one's own.

Yet whatever impetus for cooperation the Charter's asymmetrical understanding of equality may provide seems likely to be overwhelmed by inter-group competition. This competition is an inevitable by-product of the centrifugal effect of the Charter's particularistic recognitions. For example, the extreme separation of ethnic- and visible-minority interests fostered by the separate locations of the Charter's anti-racism and pro-multiculturalism references contributed heavily to preventing the opponents of section 33 from achieving a common front. The envy evinced by many of the social charter's supporters for the political advantages enjoyed by movements recognized in the Charter suggests further that the practice of Charter enumeration may also promote 'us and them' divisions between enumerated and unenumerated social movements.

These centrifugal effects of Charter enumeration are unlikely to remain confined to constitutional amendment debates. This is a prediction buttressed by noting the
tendency of battles over alternative futures for the notwithstanding clause to degenerate into attacks on the 'other group's' preferred vision of Canadian citizenship. Simply put, the occupation of discrete constitutional locations promotes an excessive inward focus among enumerated social movements. The centrifugal nature of the Charter's particularistic recognitions is thus likely to create a greater level of balkanization among Canadian social movements than would otherwise have been the case. And because effective social movement politics requires effective coalition-building, this development augurs poorly for the future of the Canadian left.


The previous pages, because of their preoccupation with how the Charter helps to determine social movement strategy, have perhaps neglected unduly the exercise of agency on the part of social movement organizations. Social movements are not passive entities upon which external forces impact untrammeled. Social movements of even minimal sophistication must, and do, assess the environment in which they act with the intention of changing or retaining their strategy as that assessment may dictate. This is why Marx, whose theory of social change is often derided as mechanical and deterministic, was in fact keen to emphasize the centrality of learning to socialist strategy:

Proletarian revolutions ... criticise themselves
constantly, interrupt themselves continually in
their own course ... deride with unmerciful
thoroughness the inadequacies, weaknesses and
paltriness of their first attempts...163

Thus, it is important to try to understand what sort of
lessons having a Charter has taught social movement
organizations, and how they may consciously and purposefully
react to these lessons. I will now outline some of the ways
in which social movement organizations may change
purposefully their political stance as a result of their
experience with the Charter.

i) Laggards?

One interesting finding of this study is that, when
participating in constitutional politics at least, groups
which are formed around a single policy issue seem to ignore
the Charter. The two policy lobbies examined, the Canadian
Day Care Advocacy Association and the Co-operative Housing
Federation of Canada, failed to invoke the Charter or to
pursue any goals that could be even nominally related to the
Charter--the only groups in the study about which this can
be said. Indeed, many organizations appearing before the
Committee failed to pursue any constitutional goals not
explicitly linked to the Charter.164

Of course, any judgment drawn from noting the apparent

163 Karl Marx, The Eighteenth Brumaire of Louis Bonaparte,
in Robert C. Tucker, ed., The Marx-Engels Reader (New York:
164 These were: B'nai Brith, Centre for Equality Rights in
Accommodation, Alliance Quebec, Canadian Association of
Visible Minorities, Parents and Friends of Lesbians and Gays
(PFLAG). These groups (except PFLAG, which did not present)
may have pursued non-Charter issues in their written briefs.
indifference to the Charter on the part of only two groups can only be tentative and primarily illustrative in nature. But it can be surmised that, given Monahan and Finkelstein's finding that the Charter has "permanently changed the way in which policy proposals make their way to the Cabinet table," policy-focused lobby groups would be well-advised to do some 'Charter learning'.

The "embrace of the Charter by government decision makers," reflected most particularly in the new bureaucratic practice of involving Charter specialists directly in the policymaking process, suggests that less 'Charter-smart' groups may find that astute governments can use the Charter against them. One way governments can employ the Charter to frustrate citizen groups is to practise what Knopff and Morton call "issue avoidance"; a government tries to "delegitimate a policy it opposes by referring it to the relevant court and hoping for a negative answer." The Conservative Saskatchewan government, for instance, practised issue avoidance when it referred proposed restrictive abortion legislation, which had been forced on the party by its aggressive 'family values' lobby, to the courts in the hope that the legislation would be found contrary to the Charter. Citizen groups may, then,

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166 Ibid.
167 Ibid, esp. 517-518.
169 Ibid.
be wise to 'Charter-proof' their own policy proposals as a preemptive strike against governments likely to use the Charter to practice issue avoidance. Those interested in reintroducing third-party election advertising restrictions in order to counter corporate manipulation of the democratic process, for instance, would do well to show how this goal could be accomplished without violating the Charter. Such a manner of presentation might at least help to move the discussion beyond legal quibbling, and towards more substantive concerns.

ii) Charter Recognition as a Political Learning Advantage

In terms of the vast majority of social movement groups that did pursue Charter-related goals during the Canada Round, the most general observation to be made is that groups with Charter experience, generally ones with an explicit institutional presence within the Charter, now possess an impressive array of knowledge about how courts and jurisprudence work. This, admittedly, is not exactly an earth-shattering finding. It is nonetheless important to note that experience with the Charter has led many Canadian social movements to develop a legal expertise that increases their political sophistication, and perhaps even their ability to work the overall government system.

170 Some social movement organizations, while lacking an explicit and particularistic Charter identity, have Charter litigation as their main activity. These groups, in this study the Centre for Equality Rights in Accommodation and the Canadian Environmental Law Association, exhibit much in common with recognized Charter groups.
Thus, NAC could denounce cogently and succinctly the federal government's proposal to enshrine property rights in the constitution as a threat to the precarious balance existing among the Charter's social values, the common law and legislative statutes. This understanding resulted in a much more persuasive argument against property rights than might otherwise have been the case.

When you enshrine property rights in the Charter, the court is required to balance the rights of big property owners to use their property the way they see fit against the rights of equality-seekers ... Unfortunately, equality seekers don't have the kind of money the big property owners have, so we are at a disadvantage right away... On top of that, the Charter takes precedence over provincial legislation, human rights laws, and labour laws. What could happen if property rights were enshrined in the Constitution is really frightening to us.171

Similarly, B'nai Brith's experience with Charter litigation had taught it that the balance existing among enshrined values can bear crucially on the goals of social movements. Thus, the Jewish human rights organization used its presentation to read into the parliamentary record detailed proposals for protecting war crimes and hate-incitement prosecutions from being derailed by Charter equality rights challenges. As B'nai Brith's Senior Legal Counsel explained:

right now the international human rights instruments have both positive obligations and negative prohibitions. By and large, the negative prohibitions are in our Charter but the positive obligations are not. The result is we get this anomalous situation where the negative prohibitions

171 National Action Committee on the Status of Women, 10:23.
sit in judgment on the positive obligations and only if the obligations meet the tests of the negative prohibitions do they survive as legislation.172

Probably the best example of Charter-induced legal expertise was provided by the Federation des communautés francophones et acadienne du Canada (FCFAC), a francophone-minority lobby group that has, in its own words, become a "courtroom specialist."173 Like NAC, FCFAC was quick to spot constitutional changes that could threaten its interests, and was also able to explain in precise language, legally, the potential impact of those changes. Here is FCFAC's explanation of the dangers for francophone minorities of the proposed new section 25 distinct society clause, which spoke only of "preserving" official language minorities while offering simultaneously a more generous commitment to "promoting" Quebec's distinctiveness:

Today interpretive clauses are going to be used to interpret section 23 [minority language educational rights] in either a broad or a narrow manner. As it now stands, judges will read the word 'promotion' in section 27, which pertains to multiculturalism. When they get to section 25, which concerns Quebec, they will see the word 'promotion'. They will then see the term 'preservation' [re: official language minorities]... There is no doubt that this constitutes an erosion. Judges at this point will no longer be able to use the power of the interpretive clauses to give us ... what we are used to having upheld by the courts...174

Unrecognized and inexperienced groups, by contrast, simply lack this expertise. The German Canadian Congress, the organizational representative of a group not generally

172 B'nai Brith, 16:25.
174 Ibid.
compelled to seek social change through litigation, mistakenly defended section 27 against the notwithstanding clause, unaware that the override's applicability stops at section 15.175 Similarly, PSAC and NUPGE, union groups not recognized explicitly in the Charter and certainly less experienced at litigation than either NAC, B'nai Brith or FCFAC, believed erroneously that "a few court cases that have ... benefited the labour movement [have] stood up on the basis of the notwithstanding clause."176 This supposed assistance to labour of section 33, of course, is a technical impossibility. Court cases benefiting unions would not 'stand up' on the basis of section 33, the only legal use of which is to help governments to either defy adverse court rulings or to frustrate an anticipated challenge to one or another piece of legislation.

At a minimum, then, Charter experience has increased the constitutional knowledge of those social movement organizations having a special interest in litigation. Such experienced groups are, for the most part, ones recognized by one or another of the Charter's enumerative provisions. Such 'Charter groups' as francophone minority groups, women's groups, and Jewish organizations have been stimulated by the Charter to develop the sort of expertise required for effective participation, not only in "mega

175 Supra, 25-26.
176 Public Service Alliance of Canada/National Union of Provincial Government Employees, 30:52.
constitutional politics,"177 but also, to think of just one other potential political context, in the technically-oriented world of bureaucratic lobbying.

### iii) The Insecurity of Charter Occupancy

Yet there does not seem to be much rejoicing in all of this. The most common attitude among the groups evincing substantial legal expertise was a defensive awareness that the Charter is a perilous realm, that what may today be a reasonably favourable constitutional scene could easily become threatening tomorrow. The most consistent displays of legal knowledge and learning from the Charter occurred in situations where a given group's Charter expertise allowed it to predict the negative impact of one or another government proposal. NAC's and FCFAC's frightened and angry testimony concerning the federal government's property rights and distinct society proposals were thus quite typical examples of social movement Charter expertise from the Committee hearings.

The explicit Charter interests of enumerated or experienced groups, therefore, induce among them a protective fear for the Charter's evolution that is foreign to groups which lack explicit Charter interests to protect. The defensiveness of enumerated groups is exacerbated by their knowledge of the highly contingent nature of legal

politics, in which seemingly innocuous constitutional phrases can have disastrous effects on a group's Charter strategy. To give just one example, because the Charter's section 15 prohibits "sex" discrimination, rather than discrimination against women, the Canadian feminist movement has often found itself forced to expend energy, time and resources trying to protect women from men's Charter challenges.178 This is the type of scenario that an unrecognized group without explicit Charter interests is unlikely to consider.

Non-enumerated groups thus have little incentive to consider any potential negative impact their constitutional aspirations may have on the Charter. Noting this lack of incentive helps to explain the National Anti-Poverty Organization's (NAPO) remarkable optimism about the good that could flow from entrenching justiciable social rights in the Charter. When a skeptical NDP parliamentarian warned about "conservative [judicial] interpretations," NAPO countered: We will "work at making the courts more aware of poverty issues, just as women have been making the courts more aware of women's issues."179

By contrast, the Centre for Equality Rights in Accommodation (CERA), an old hand at "attempting to use human rights and Charter remedies,"180 began its social

180 Centre for Equality Rights in Accommodation, 24:42.
charter advocacy from a position of marked caution. After announcing that its presentation would address solely the social charter proposal, CERA's first recommendation was: "an interpretive clause should be inserted into the [social] charter which states that these [social] rights are interdependent with the rights that are currently contained in the Charter."181 This recommendation was a concrete demonstration of CERA's jurisprudential expertise, and of its understanding of the dangerous and ever-shifting nature of legal terrain. CERA's courtroom experience led the group to fear the disruptive legal impact that a social charter--without an interpretive clause directing judges to maintain the social content of existing Charter rights--could have. CERA's concern was that if we designate social or economic rights related to poverty ... a number of cases in which security of the person and equality already are argued to be dependent on housing or income adequacy, might be seen by the courts to be ... outside the Charter...182

This is not to say that groups with particular, established Charter interests are threatened in some essential way that unrecognized groups are not.183 But the Charter, much like a life raft during a shipwreck, looks

181 Ibid.
182 Ibid.
183 Except perhaps to the degree that recognized groups might prove scholars like Michael Mandel correct in the argument that the Charter induces social movement actors to pursue unproductive goals that fritter away their energies and strengthen the bourgeois order. See Michael Mandel, The Charter of Rights and the Legalization of Politics in Canada (Toronto: Wall and Thompson, 1989).
very different from within than from without. Groups with particular Charter interests to defend are particularly suspicious of constitutional change because they understand the fundamental interdependence of the constitutional order and the fragility of their place within it. Unrecognized groups, by contrast, generally lack both the requisite experience and the reasons to fear the impact of constitutional change on the Charter.

The Canadian Federation of Students (CFS) presents a relatively typical case of the unproblematized view unrecognized groups seem to have of the Charter. The CFS sought constitutional protection for post-secondary education funding, either via the social charter, or by constitutionalizing a federal-provincial education agreement. The CFS did not favour one proposal over the other, but was certainly firm in insisting that "students are tired of being the ping pong ball in a game between the federal and provincial governments."

The CFS's agnosticism as to how precisely its

184 Cairns, "Citizens and Governments," 134.
186 Canadian Federation of Students, 24:50.
educational goals ought to be achieved finds an instructive contrast in B'nai Brith's firm opposition to the idea of constitutionalizing intergovernmental agreements. For, much like the nervous occupants of the life raft watching eager hordes yet to come on board, B'nai Brith feared that the aspirations of groups like the CFS threaten to overwhelm the constitution. The Jewish group's position, therefore, was that constitutionalizing intergovernmental agreements "abuses" the constitution, and thus (although this latter position was only implicit), endangers the Charter's ability to provide legal and political goods.

We welcome the [intergovernmental] agreements. We think they are useful. But we see the Constitution as being of symbolic importance stating what Canada is. When we start putting in the Constitution detailed federal-provincial agreements, we are, we believe, abusing the Constitution and using it for a non-constitutional purpose.187

This concern about the "symbolic purpose" of the constitution reflects far more than simple patriotism; groups, such as B'nai Brith, which practice Charter litigation know that a delegitimized constitution brings few political benefits. Indeed, this argument can be buttressed by noting the emergence among recognized groups of a parallel concern for maintaining the legitimacy of the judiciary. B'nai Brith and Alliance Quebec both argued against the federal government's proposals for allowing the provinces to nominate Supreme Court candidates. B'nai Brith felt an institutionalized provincial role would "politicize

187 B'nai Brith, 16:27.
the court,"188 while Alliance Quebec was concerned that "the federal proposal risks giving rise to trials of strength between levels of government."189 Both groups, of course, are among the most likely to use Charter litigation in the future.

iv) The Charter and Institutional Identifications

Our discussion of 'Charter learning' will conclude by focusing on an emerging split among Canadian social movements concerning which institutional pillar of Canadian federalism receives their primary loyalty. Groups whose primary interest in the Charter is as a bulwark against unjust majoritarianism seem to comprise a discrete group holding the Charter as the locus of their primary institutional allegiance. By contrast, groups whose major concern is spurring federal government activism do not seem to identify with the Charter to the same degree.

This latter camp, of feminist organizations, unions, anti-poverty and student groups, continues to regard a powerful federal government as both a primary vehicle for social movement objectives and as the proper guardian of the national community. As NAC affirmed, "we don't think the courts can substitute for the responsibility of our elected politicians in providing universality in social programs."190 These feminist, union, anti-poverty and

188 B'nai Brith, 16:27.
189 Alliance Quebec, 29:32.
190 National Action Committee on the Status of Women, 10:21.
student groups were all prominent opponents of decentralization of federal legislative powers. Furthermore, they sought to maintain an activist federal government by advocating various proposals for a social charter. None demanded the elimination of section 33.

By contrast, lesbian and gay organizations, ethnic- and visible-minority groups, and Quebec anglophones displayed a markedly different political disposition. Their fundamental objective during the Canada Round was not strengthening the federal government, nor maintaining federal government power, nor even saving social programs from Ottawa's axe. It was the elimination of section 33.

These latter groups all have good reasons to fear the 'tyranny of the majority', whether this is from hostile provincial electorates, from a still predominantly homophobic society, or from the sort of racist hysteria that prompted the internment during both this century's world wars of 'enemy aliens' (many actually Canadian citizens). As the presentation of the Canadian Ethnocultural Council (CEC) made clear, ethnic minorities and other groups with a particular fear of unjust majoritarianism now celebrate the entrenchment of the Charter as the inauguration of a new institutional power balance within the Canadian polity. The CEC held that

The ... justification [for section 33] is absolutely wrong. ... The history of our country is such that the protection of civil liberties has been in the hands of the Parliament and the legislature [sic]. If there is any meaning to the Charter, it is the
fact that we transferred the protection to the courts.191

The understanding that entrenchment has 'transferred' the protection of civil liberties away from the federal government suggests that groups evincing such a disposition are now less concerned with maintaining federal government activism than during earlier constitutional debates. None, for example, among the ethnic- and visible-minority, lesbian and gay, and official language-minority coalition that opposed section 33 argued against the official plans for decentralizing federal legislative powers to interested provinces.192 The "distrust of provincial governments"193 so prominent during the Meech Lake fiasco was thus considerably muted among a key group of Charter supporters during the Canada Round.

The Charter's strongest adherents--the notwithstanding clause's enemies--were able to reconcile themselves to a shrinking federal role with little or no difficulty. Although the Canadian Ethnocultural Council (CEC) argued that "the national government must have certain basic powers," the group's bottom-line position was simply,

If there is devolution to the provinces, the transfer of power agreements must include certain guarantees that have been attained federally[;] ... multiculturalism, employment equity and equity in

191 Canadian Ethnocultural Council, 14:9.
192 Some of these groups failed in their presentations to address the division of powers proposals at all. These were: National Association of Japanese Canadians, B'nai Brith Canada, German-Canadian Congress, and Parents and Friends of Lesbians and Gays. The proposals are found in Canada, Shaping Canada's Future, 33-47.
193 Cairns, "Citizens and Governments," 133.
Another organization which made no attempt to block the proposals to devolve areas of federal jurisdiction to interested provinces was Equality for Lesbians and Gays Everywhere (EGALE). EGALE did raise general-level concerns about decentralization that suggested a basic preference for federal regulation. New discriminatory practices, EGALE feared, might accompany the proposed devolution of immigration powers to individual provinces; decentralization more generally was seen as undesirable insofar as affected areas would thereby escape the scrutiny of federal human rights legislation. However, despite its fear that provincial control over immigration could lead to "rules restricting immigration on the basis of sexual orientation or practices," EGALE simply asked that "the grounds in which [sic] provinces could restrict immigration [be] clearly worded." EGALE was similarly prepared to support the federal government's other decentralization proposals, providing "that the prohibited grounds of discrimination as stated in the Canadian Human Rights Act [would be] maintained in a transfer of powers."
presentation: "We are not amongst those ideologists who say: The federal government must at all costs hang on to all its powers and obtain others." The Quebec anglophone group did fear, however, that the bilingualism guarantees of the Official Languages Act might be lost in a transfer of powers from the federal government to the provinces. Thus, Alliance Quebec's position on decentralization was: "we would never agree to a devolution of powers if it entailed taking away linguistic duality obligations from one level of government." 

Particularly interesting is what Alliance Quebec, EGALE, the CEC and other minority organizations tried to save from the expected wave of decentralization. For all these groups, the most important federal government areas of activity to salvage were those whose main purpose is protecting egalitarian social values, often through quasi-judicial means. Alliance Quebec wanted to ensure that any transfer of jurisdiction from the federal to the provincial level would bring with it the bilingualism obligations of the Official Languages Act. EGALE worried about the future of federally-established human rights tribunals; the CEC feared for the affirmative requirements of the federal multiculturalism policy.

These specific areas of federal government activity with which the anti-section 33 coalition identified most

198 Alliance Quebec, 29:35.
199 Ibid, 29:34.
strongly bear a remarkable similarity to one of the most crucial roles fulfilled by the Charter. The federal government functions which these groups value and the Charter both have a common purpose of establishing formally the elevated status of certain equality norms. Both the Charter and such federal government instruments as human rights tribunals and the multiculturalism and bilingualism policies (albeit in a more de facto fashion), act to insulate egalitarian social values from the ephemeral enthusiasms of legislative majorities.

Therefore, noting the specific conditions under which the anti-majoritarian opponents of section 33 could accept decentralization serves to emphasize a crucial concomitant of the Charter's profound appeal for its strongest adherents. The Charter's ability to protect social values on a country-wide basis makes decentralization seem far less threatening than it would without a Charter. This is why the only aspects of federal government power that section 33's opponents seemed concerned about preserving were statutorily established equality protection mechanisms which, despite their affinity with the antimajoritarian spirit of the Charter, require federal government action in order to work.

Indeed, there is an undeniable logic underlying the Charter's inadvertent function of helping to partially disencumber the primary institutional loyalty of some minority groups from the federal government. Because they
find identifying with majoritarian instruments difficult, such groups almost necessarily come to view the Charter as the major institution through which their belonging to the Canadian polity is mediated. For visible- and ethnic-minority, lesbian and gay, and anglophone minority groups, the federal government is little help in their basic objective of seeking protection against majority tyranny. For anglophone Quebecers, the federal government lacks sufficient leverage over the Quebec government to be of much use. For lesbian and gay organizations, as well as for those of visible and ethnic minorities, the federal government is itself a potential source of majoritarian oppression. This latter fear was captured well in the CEC's criticism of the proposals to loosen party discipline in the House of Commons: "Minority rights invariably come under attack in tough times ... recall of MPs and excessive referenda can make tyranny of the majority an everyday feature of life."

Moreover, because state retrenchment continues to reduce federal government fiscal leverage over the provinces, the Charter now seems a far more promising means of checking unjust provincial majoritarianism than does federal action. The Canadian Federation of Students (CFS) probably spoke for many when it despaired: "In order to have federal spending power [sic] to get across national standards, you have to spend something. Right now the

200 CEC, 14:10.
federal government isn't doing that the way they used to."201

It can be predicted, therefore, given the federal government's fiscal crisis and apparent inability to provide an adequate bulwark against unjust majoritarianism, that groups fearing majority tyranny will increasingly come to identify more strongly with the Charter than with a strong central government. Moreover, this shift in institutional identification suggests that more avowedly antimajoritarian social movements are increasingly likely to place a higher priority on pursuing citizenship objectives than advocating the adoption of specific public policies. Expanding the contours of Canadian citizenship seems a far more promising method of protecting the norms of racial, ethnic, linguistic and sexual orientation equality than looking to a shrinking federal government that is regarded as impotent and threatening in almost equal measure.

A harbinger of this emergent orientation can be found in the striking divergence of attitudes exhibited towards the Canada Round economic union proposals by the anti-section 33 camp and the proponents of federal activism. Attacked vehemently by the 'strong central government' camp as a blatant right-wing attack on the disadvantaged, the economic union scheme was regarded by the vast majority of

201 Canadian Federation of Students, 21:58. Nevertheless, the CFS's interest in increased funds for post-secondary education leads it to continue focusing on advocating increased federal involvement in the field.
the override's enemies as a welcome enhancement of the national dimension of Canadian citizenship.202 For Alliance Quebec, "the free movement of persons, goods, services and capital is an essential element of common citizenship."203 The Canadian Ethnocultural Council also supported the economic union: "It is time to recognize that we are one country."204 Clearly, these are the words of organizations looking to means alternative to federal government activism for protecting their place in the pan-Canadian community.

Because the Charter has "made citizenship a constitutional category that now stands beside parliamentary government, federalism and the Charter as a central component of the working constitution,"205 a new means of achieving national goals, an alternative to federal government action, appears. Some groups are now convinced that their place in the polity can be made more secure by expanding the role citizenship plays in the constitutional order. Ethnic-minority and anglophone-Quebecer support for the economic union scheme demonstrates clearly the conviction that it is not only through direct federal

202 These were the Canadian Ethnocultural Council, the German-Canadian Congress, Alliance Quebec, and the joint Canadian Jewish Congress/Italo-Canadian Congress/Hellenic Canadian Congress group. The other groups in the anti-section 33 camp simply did not mention the proposals.
203 Alliance Quebec, 29:32.
204 Canadian Ethnocultural Council, 14:12.
government action that the pan-Canadian community can be bound together.

This split, between groups which view protection against majority tyranny as their foremost political objective, and others whose politics continue to demand above all an activist central government, has crucial ramifications for any attempt to understand contemporary Canadian social movements. The difference between the strong central government and antimajoritarian camps not only explains various political alignments assumed by social movement organizations during the Canada Round. It can also help us to predict how different social movement organizations may approach future episodes of constitutional politics, or perhaps even an all-important 'Thinking English Canada' situation. Under such circumstances, in which various alliances are formed and crucial trade-offs must be made, the antimajoritarian/strong central government divide may pit directly movements favouring centrally concentrated political power against those more concerned with securing fundamental equality protections. This cleavage would allow, in turn, the governmental proponents of centralization and decentralization to pitch their respective proposals in such a manner as to maximize social movement support for their particular approach to reconstituting the Canadian polity.

206 Philip Resnick, Thinking English Canada (Toronto: Stoddart, 1994).
This potential split would not be analyzed usefully by employing the New Politics materialism/postmaterialism dichotomy. Political differences between social movements most fundamentally concerned with Charter equality protections and those insisting on retaining a strong central government would be caricatured ridiculously by positing a conflict between "life-style issues" and the desire for "economic redistribution which lies at the core of the old, working-class left." 207 The social movement advocates of federal government egalitarian activism might conduct a campaign overflowing with symbolic references to identity protection and belonging, and the more Charter-identified groups could be equally likely to exhibit an unrelenting focus on material fears relating to safety and personal security. The difference would not only confound Morton and Knopff's equation of Charter support with postmaterialist dispositions--it would also have remarkably little to do with material or postmaterial values, and everything to do with political identities and institutional loyalties. Crucial to analyzing such a split, therefore, would be understanding how the differential ordering of political priorities among various social movement protagonists' interacts with their common institutional milieu. It has been this section's conclusion that this interaction is serving to construct two separate and distinctive social movement orientations toward the Canadian

constitutional order, antimajoritarian and pro-centralized power.
Chapter 3: Conclusion

This study began by accepting the obvious—the days when social movement activism was defined by the pronouncements of the Socialist International are gone. However, I have argued, the commonly-held position that 'new social movements' have made a decisive break with the radical politics of previous eras is incorrect. The aspirations of those movements commonly referred to as 'new', for instance feminism and movements of cultural identity, are often profoundly material and redistributive. The concrete examples of social movement politics discussed in the previous pages support my argument that neat dividing lines between 'new' and 'old' movements simply cannot be drawn.

Indeed, the very practice of dichotomizing between the 'material' and the 'symbolic' caricatures social movement politics grossly. The close political relationships this study has traced between material and symbolic aspirations and tactics demand an approach far more supple than the materialist/postmaterialist dichotomy allows. In the case of the 'symbolic' politics engaged in by unions and anti-poverty organizations during the Canada Round, it was never possible to distinguish between demands for an honourable place in the polity and for material security. For the working-class, the poor and the unemployed proponents of the social charter, these two goals were inseparable.
Nor is it accurate to identify anti-statism as the hallmark of 'new' social movement politics. The groups most suspicious of government in this study, the enemies of the legislative override, never sought to shrink the state. Majoritarian oppression was instead their consistent concern. Indeed, the anti-government rhetoric examined in this study was never directed at the size of government, but, more specifically, at the ability of dominant groups to use their political power to slash social wages.

It is impossible to comprehend the new progressive political scene adequately by reconstructing it dichotomously against the old. We must try instead to understand on their own terms the various elements which constitute contemporary social movement politics. Therefore, following Bowles and Gintis' insistence that "social actors are transformed by their very acts," I have studied a range of contemporary social movements in a common institutional context of action. The principle behind this approach has been that focusing on a common political context within which contemporary social movements operate--the new extra-legal arena of discursive contestation created by the Charter--can help us to predict future patterns of development in progressive social movement politics. What, then, has this study told us about social movements and the Charter?

The profound political attraction of rights discourse

208 Bowles and Gintis, Democracy and Capitalism, 118.
will create an increasing tactical convergence among progressive social movements. The flexibility of rights, as seen in their capacity to be figured as individual fences, community foundations, catapults for democratic participation and protectors of identity-related values, underscores their attraction. Rights are not just for property anymore.

Rights invocations derive their most elemental political force from the imaginative power they can summon. Rights are widely understood in liberal democracies as constructing the polity's very foundation. Thus, framing successfully a political claim as a right posits that claim's denial as a violation of the 'contract' upon which the polity is founded. Because disrupting production no longer seems a sufficient means for achieving human liberation in our postindustrial age, the ability of astutely-pitched rights claims to exploit the accepted rationale for the political community's existence explains the increasing proliferation of rights talk.

The full range of contemporary social movements--lesbian and gay liberation, environmentalism, feminism, movements of cultural identity, the union and antipoverty movement--framed their most important Canada Round political objectives in rights terms. NAC justified asymmetrical federalism on the ground that different national communities want their rights protected differently. The Canadian Ethnocultural Council depicted the entrenchment of
justiciable citizen rights as the creation of a popular sovereignty now offended by the legislative override's presence. The social charter movement argued that national social programs are so central to the Canadian identity that these programs must be given the status of rights. These formulations all derived their force by exploiting the foundational character and imaginative power of rights discourse.

The next conclusion to which my analysis of social movement participation at the Canada Round hearings leads flows from these preceding reflections about the apparent flexibility and discursive power of rights: students of social movement politics must develop new ways of theorizing rights. Perhaps most importantly, the orthodox Marxist claim that rights necessarily contribute to decontextualizing and desocializing politics must be reconsidered. The argument that the individuality protected by rights "is illusory insofar as it is established in and through an abstraction from the concrete, social bases of individuality,"209 is directly contradicted by the Canadian experience with the Charter. This is not to say that such abstractions do not occur under the Charter. But the Charter's section 15 does encourage people to look beyond the formal legal equivalence of individuals and groups, towards an appreciation of and a reflection upon the concrete existence of particular group identities and of

209 Balbus, "Commodity Form and Legal Form," 578.
conditions of substantive disadvantage. The social charter movement, for example, condemned powerfully the formal, free market understanding of equality captured in the economic union proposal by pointing to the substantive, situated and official understanding of equality set out in sections 15(1) and (2) of the Charter. Thus, to the extent that the Charter's actual text promotes a reconceptualization of equality in a more substantive direction, arguments that rights are hopelessly abstract and individualistic will require considerable nuancing and reworking in order to be persuasive.

The Charter will play a crucial role in the future development of social movement politics in Canada. An interesting finding of this investigation is that the Charter leads groups whose major political priority is seeking protection from unjust majoritarianism to accept reduced federal government powers. This phenomenon can be explained by noting that the Charter's ability to protect values on a pan-Canadian scale reduces the potential oppressive power of the provinces. Thus, ethnic and visible minorities, lesbian and gay groups and Quebec anglophones were open to decentralization of federal legislative powers. By contrast, groups whose political identity is more centrally bound up with seeking expanded state services, for instance feminist, nationalist and union and antipoverty groups, were very concerned about maintaining federal government power. Thus, the introduction of justiciable
citizen rights in Canada has given rise to a new and distinct political orientation associated with lesbians and gays, ethnic and visible minorities, and anglophone Quebecers. If the institutional arrangements of the Canadian polity are revisited in future constitutional negotiations, perhaps in a 'Thinking English Canada' situation, this Charter-derived distinction between antimajoritarian and state-expanding groups will be crucial.

A further conclusion this study draws is that ethnic- and visible-minority groups are likely to suffer a decreased ability to cooperate in matters concerning either the Charter or symbols of Canadian belonging. The constitutional separation of ethnic- and visible-minority interests created by sections 15 and 27 has served to exacerbate political differences between ethnic- and visible-minority organizations. During the Canada Round, the separate Charter locations of the visible-minority occupants of section 15 and the ethnic-minority section 27 groups made coalition-building between the two camps impossible. Ethnic- and visible-minority organizations were both equally firm in their insistence on diluting the override in a manner calculated to aggrandize only the status of their own particular clause. Thus, visible and ethnic-minority groups became caught in a counterproductive battle which prevented the section 33 issue from acquiring

210 Philip Resnick, Thinking English Canada (Toronto: Stoddart, 1994).
the urgency a united front may have given it.

This disagreement carries crucial ramifications for movements of cultural identity and of anti-racism. The issues raised by the section 15/27 chasm, because these two Charter clauses enshrine different symbols of Canadian belonging, are powerful symbolic ones of group identity and community membership. Section 15 emphasizes for visible minorities the norms of anti-racism and of substantive equality. Section 27, the multicultural heritage clause, offers to 'third force' 'ethnic' Canadians a counterbalance against French-English dualism and a symbolic affirmation of Canada's multiculturalism policy. The constitutional separation of these two clauses means that constitutional change affects their respective adherents differently; particularly since section 27 is not subject to the legislative override, while section 15 is. Awareness of these differential effects on the part of ethnic- and visible-minority organizations drew leaders of both groups into making constitutional proposals that were anathema to the 'other side'.

Therefore, the separation of sections 15 and 27 isolates the norms of racial and ethnic equality from each other, increases the propensity of ethnic- and visible-minority organizations to view their constitutional interests as conflicting, and embroils symbols of Canadian belonging (e.g. anti-racism and multiculturalism) in divisive and counterproductive political battles. The major
consequence of this constitutionally induced cleavage is likely to be increased conflict between visible- and ethnic-minorities over the relative weight to be attached to anti-racism and multiculturalism, and thus a decreased likelihood of cooperation and coalition among the partisans of sections 15 and 27.

In addition to the micro-level boundaries between the occupants of different clauses drawn by the Charter, the document establishes macro-level borders of 'inside' and 'outside' groups. A key finding derived from this study of social movement politics is that some of the most crucial differences likely to emerge between different social movements follow from the Charter's distinction between enumerated and unenumerated groups. I will finish by outlining some of the more important of these differences and their probable consequences for Canadian social movement politics.

The cleavage between enumerated and unenumerated groups will be central to the future development of social change politics in Canada. Enumerated groups are protective of their status within the Charter and anxious about preventing any dilution of that status. This concern, for instance, was manifested in B'nai Brith's desire to keep intergovernmental agreements out of the constitution in order to maintain the Charter's symbolic integrity. Unenumerated social movements, by contrast, regard the position of recognized groups with envy and are likely to
seek entry into the Charter by any means which seems likely to bear fruit. As groups without explicit Charter interests to defend, they have much less incentive to worry about the document's legitimacy than do their enumerated counterparts. Thus, the political objectives of enumerated and unenumerated groups are likely to conflict openly in the future.

The different positions taken on the desirability of justiciable social rights by the unenumerated NAPO and the enumerated NAC are an excellent case in point. NAPO insisted on justiciable social rights because "poor people should have access to the courts when trying to claim their rights ... just as women are doing right now, and disabled people."211 NAC, however, demurred: "while we certainly support a social charter we don't think the courts can substitute for the responsibility of our elected politicians in providing ... social programs."212 The difference between these two stands only makes sense in light of the different Charter status of their respective proponents. NAPO's overriding concern was to gain direct entry for the poor into the Charter, a goal which demanded justiciability; NAC's position as an already recognized group meant that, for it, seeking justiciability by placing social rights directly in the Charter was not a relevant objective.

Charter enumeration also serves to increase the legal

212 National Action Committee on the Status of Women, 10:29.
and political sophistication of recognized groups. The legal, political and constitutional experience that enumerated groups such as NAC, B'nai Brith and Alliance Quebec have accumulated by defending and exploiting their established Charter interests made them by far the most skilled social movement participants in the Canada Round. The presentations of such unenumerated groups as PSAC/NUPGE, the CLC, the Canadian Federation of Students and NAPO were 'bush league' by comparison. A rough measure of the effectiveness of the different social movement presentations is provided by looking at their reception by the Committee. Joint Committee Chairman Dorothy Dobbie called NAC's testimony "illuminating,"213 and Alliance Canada's presentation "a very important and learned paper."214 By contrast, Dobbie merely thanked the unenumerated NAPO for "its interest in keeping this country together,"215 while no compliments from the Chair were handed out to the other unenumerated groups at all.

Charter enumeration will be central in determining which social movements succeed in achieving political prominence and which ones do not. Enumeration increases a group's organizational profile, political legitimacy and presence in the public consciousness. It also promotes an increased legal and political sophistication which is

213 Dobbie quoted in National Action Committee on the Status of Women, 10:33.
214 Ibid, Alliance Quebec, 29:41.
transportable to a variety of non-constitutional arenas; to name just a few, courtrooms, parliamentary committee hearings and Parliament Hill lobbies. Thus, a remarkable collection of political advantages will accrue to groups recognized in the Charter, advantages which are likely to bring in their train an ever-widening chasm of political effectiveness separating recognized and unrecognized movements. At the same time, the concerns of enumerated groups about not diluting the Charter with new recognitions give them a powerful incentive to defend the enumerative status quo.

* * *

Most interesting about this study is that its findings are so counter-orthodox. Contrary to prevailing academic opinion, the aims and aspirations of contemporary social movements tend to show a remarkable continuity with the material aspirations subordinated groups have consistently nourished. We are not living in a postmaterialist age. Furthermore, at a time when the political fragmentation on the left into an array of smaller movements is so obvious, it is remarkable to note the almost totally uniform propensity of these movements to frame their objectives in rights terms.

When viewed against this commonality among social movements, the inter-group competition this study has found seems even more acute. It is ironic that conflicts among Canadian progressive social movements will be increasingly
related to the enumerative character of the Charter, because Charter enumeration was intended as a unifying measure. However, enumeration has created a range of institutional incentives which stimulate inter-group conflict in much the same way as the jurisdictional divisions of Canadian federalism have served to promote regional conflict.216 Recognized groups have incentives to oppose the constitutional aspirations of unrecognized groups, yet groups outside the Charter have powerful political reasons to seek inclusion within it. And the different constitutional locations of the norms of multiculturalism and anti-racism seem to render ethnic- and visible-minority political relations exceedingly problematic.

How the pressures, limits and stimuli effected by the Charter's presence interact with the politics of social change now constitutes a central area of inquiry for students of Canadian social movements. This study has argued that the tactical convergence of progressive social movements around the Charter and rights discourse makes studying the politics of rights a useful way of comparing, contrasting and generalizing about social change politics. Moreover, I have stressed that the flexibility and the imaginative power of rights combine with the substantive thrust of the Charter's reconceptualization of equality to dictate the importance of retheorizing rights.

Finally, my analysis of social movements, rights and the Charter points to three important cleavages that will bear crucially on the evolution of social change politics in Canada. These are: 1) the contrasting institutional identifications of antimajoritarian and state-expansionist groups; 2) the divergent attitudes evinced by ethnic and visible minorities towards the norms established by sections 15 and 27; 3) the considerable difference in political advantage that Charter enumeration gives recognized over unrecognized movements.
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Appendix 1

Groups in the Study

Action Canada Network
Alliance Quebec
B'nai Brith Canada
Canadian Association of Visible Minorities
Canadian Ethnocultural Council
Canadian Day Care Advocacy Association
Canadian Environmental Law Association/Pollution Probe
Canadian Federation of Students
Canadian Jewish Congress/Italo-Canadian Congress/Hellenic Canadian Congress
Canadian Labour Congress (incl. Canadian Union of Public Employees, Canadian Auto Workers)
Centre for Equality Rights in Accommodation
Co-operative Housing Federation of Canada
Council of Canadians
Equality for Gays and Lesbians Everywhere (written submission)
Federation des communautés francophones et acadienne du Canada
German-Canadian Congress
Learning Disabilities Association of Canada
National Action Committee on the Status of Women
National Anti-Poverty Organization
National Association of Japanese Canadians
National Black Coalition

Native Women's Council of Canada

Parents and Friends of Lesbians and Gays (written submission)

Public Service Alliance of Canada/National Union of Provincial Government Employees