

Human Rights Policy and Social Movements: How Activists Create, Implement and Enforce State Law

Dominique Clément, University of Alberta

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Introduction

The diffusion and institutionalization of protest are defining features of the social movement society. One of the most visible manifestations of institutionalization is the way some social movements have replaced the state in developing and enforcing law. Human rights law in Canada exemplifies this phenomenon. Social movement organizations [SMOs] play multiple roles in implementing human rights law: campaigning for legislation and future reforms; drafting statutes; enforcement; educating the public; keeping the government accountable; acting as a liaison between human rights agencies and the community; and training staff and providing a pool of recruits for human rights agencies. The "human rights state" in Canada, I argue, depends on the participation of non-state actors.

British Columbia has a long history as a locus of social movement activism and human rights policy innovation. The province has been host to the country's first gay rights organizations and the first gay pride parade; Greenpeace; twelve civil liberties groups; eleven Aboriginal advocacy groups; and dramatic student protests (Clément 2005a). The women's movement, in particular, flourished in British Columbia. By the mid-1970s there were at least 76 advocacy groups, 46 women's centres, 15 transition houses, 12 rape crisis centres, 36 service oriented organizations (health centres, self-defence programs) and 20 artistic initiatives (women's music festivals, bookstores) (Clément 2008b). Except for a few advocacy groups that were active in the 1960s, none of these institutions existed before 1970.

Laws that bind the state to enforce human rights principles, as well as human rights agencies and SMOs that enforce the laws, constitute the "human rights state." The backbone of the human rights state is a series of provincial and federal human rights statutes as well as the *Charter of Rights and Freedoms*. The first anti-discrimination laws in Canada appeared in the 1940s. Between 1962 and 1977 every jurisdiction introduced expansive human rights legislation. Human rights laws prohibited discrimination in housing, employment, unions, business associations, the display of signs and accommodation. Anti-discrimination laws only included race, religion and ethnicity, whereas human rights legislation evolved to also ban discrimination on the basis of sex (sexual harassment, pregnancy), age, physical and mental disability, marital status, pardoned conviction, sexual orientation, family status, dependence on alcohol or drugs, language, social condition, source of income, seizure of pay, political belief, and (as of 2012 in Ontario and Saskatchewan) gender identity and expression. Specially trained human rights officers were hired to investigate complaints and to attempt informal conciliation. When conciliation failed, boards of inquiry could impose settlements such as requiring offenders to pay a fine, offer an apology, or reinstate an employee. Human rights commissions or tribunals were specialized government agencies that were more efficient and

accessible that courts, and bore the cost of resolving complaints. They were also given the resources to pursue vigorous human rights education programs (Clément 2008b; Howe and Johnson 2000).

The human rights state exhibits many qualities associated with the social movement society. First, if protest is broadly defined to include such SMO activism as lobbying, litigation, letter-writing, research or media, then the human rights state has facilitated the diffusion and proliferation of protest. The diffusion of protest is apparent in the way new constituencies, from sexual minorities to people with disabilities, have organized into SMOs around human rights reform. Secondly, many of these new SMOs have become integrated – institutionalized – into the human rights state. The human rights state provides people with a unique access point for influencing state policy and, in doing so, redirects protest into an institutional framework. Thirdly, institutionalization has facilitated the professionalization of SMOs. The human rights state has encouraged the formation of a host of new SMOs staffed with professional activists, and the line between civil servants and activists has become increasingly blurred. Fourthly, this process constitutes a new form of governance. Through the human rights state, SMOs have become part of the law-making and enforcement process. Finally, social movements have also been at the forefront of challenging limited conceptions of human rights. SMOs are increasingly framing a host of new grievances as human rights violations. The human rights state exemplifies Hank Johnston’s description of a social movement society as “an extension of the state’s role into areas where it had been minimal or absent. ... a society infused with state agencies, interjecting themselves more deeply into daily life” (Johnston 2011).

The first section of this paper documents social movements’ contribution to the creation of the modern human rights state. The human rights state, as we will see, evolved alongside the social movement society. The second section places the human rights state in a national and contemporary context, and documents how social movements continue to shape (and are shaped by) the human rights state. The final section addresses the central themes of the social movements society thesis in the context of the human rights state.

Social Movements and the Creation of the Human Rights State

The first human rights law in Canada was Ontario’s 1944 *Racial Discrimination Act*, which prohibited the display of discriminatory signs and advertisements. Three years later Saskatchewan passed the *Bill of Rights*. These initiatives, however, were largely ineffective. Even the Premier of Saskatchewan acknowledged that the law was primarily educational (Patrias 2006). Ontario led the way again when it passed the country’s first *Fair Employment Practices Act* in 1951, followed soon after by a *Fair Accommodation Practices Act* and the *Female Employees Fair Remuneration Act* in 1953. These laws required equal pay for women and banned racial, ethnic and religious discrimination in employment and accommodation. Most other jurisdictions introduced similar legislation. British Columbia’s *Equal Pay Act* was passed in 1953, followed by the *Fair Employment Practices Act* (1956) and the *Fair Accommodations Practices Act* (1961).

Social movements were at the forefront of these initiatives. By the 1950s organizations as diverse as the United Nations Association, Canadian Association of Social Workers, YMCA/YWCA, Toronto Social Planning Council, University of Toronto Faculty of Social Work, Fellowship of Reconciliation, Canadian Council of Christians and Jews, Japanese Canadian Citizens' Association, and the Canadian Association for Adult Education were engaging in public education campaigns and lobbying for fair practices legislation (Sohn 1975). The most prominent SMOs were the Association for Civil Liberties and the Jewish Labour Committee (JLC) (Lambertson 2001). Both SMOs led large delegations of unions, ethnic and racial minorities, students and religious organizations before Ontario Premier Leslie Frost. These delegations, which also helped draft the law, were a critical factor in convincing the Premier to introduce the *Fair Employment Practices Act* (Lambertson 2001). Meanwhile, the labour movement led campaigns to extend the human rights state throughout Canada. As the federal Department of Labour acknowledged in 1964, "it can be stated without qualification that the history of fair employment practices legislation in Canada testifies to the effectiveness of the fundamental educational groundwork carried on by labour" (Canada 1960).

Securing the legislation was only the beginning. SMOs became essentially to enforcing the law. Vancouver's JLC committee was typical: it produced educational programs (films, public lectures, literature, an annual race relations institute seminar); wrote briefs to the provincial government; prepared test cases to investigate allegations of discrimination; issued press releases and spoke on local radio; and investigated complaints (VLCHR 1952; 1960-1971; n.d.a). One of the committee's earliest successes was to convince the Downtown Hotel in 1959 to stop refusing service to blacks. Initially the hotel owner refused, but later conceded when the committee secured a promise from the British Columbia Automobile Association to remove the hotel from their "approved" ranking (VLCHR 1959).

The government did nothing to publicize its anti-discrimination legislation. Instead, it was the British Columbia Federation of Labour that produced a "Guide to Employers" and distribute it across the province. The federation also hired William Giesbrecht as a Human Rights Worker. One of his first projects was a survey of job advertisements and applications. Employers routinely asked prospective employees about religious preference, nationality, race, or place of origin. Giesbrecht identified cases of discrimination and forwarded the results to the Director responsible for the legislation (VLCHR 1960-1971; n.d.b). Or, in cases when the Director delayed responding to an individual complaint, Giesbrecht lobbied to have the complaint pursued (British Columbia Federation of Labour 1964, 1969). In several cases he convinced large companies to revise their application forms, and it was not uncommon for Giesbrecht to meet with a landlord or a cemetery manager and convince them to stop discriminating against blacks or Jews (VLCHR 1960-1971; British Columbia Federation of Labour Human Rights Committee 1961). In this way non-state actors were integral to the human rights state.

Unfortunately, anti-discrimination legislation was largely ineffective. There were only six complaints filed under British Columbia's *Fair Employment Practices Act* (1953-1969), and only three under the *Public Accommodation Practices Act* (1961-1969). Equal pay legislation was equally ineffective. Only 33 women

successfully applied for restitution under the *Equal Pay Act* (British Columbia). Across Canada, the impact of anti-discrimination legislation was similarly dismal: the law was not adequately enforced, individuals had to take the initiative themselves to pursue a complaint, and the remedies were weak (Eberlee and Hill 1964; Editorial 1961; Langer 2007). The human rights state remained an unfulfilled promise.

It was the Vancouver Civic Unity Association that likely convinced the government to introduce its first *Human Rights Act* in 1969 (Anderson 1986). However, the legislation did little more than consolidate existing laws into a single statute. The British Columbia Federation of Labour insisted that the “legislation is not a human rights bill and is only designed to catch votes rather than protect the human rights of the citizens of the province” (No author 1969). Newly emerging social movements, rather than organized labour, were by the 1970s at the forefront of mobilizing for reform. One of the leading SMOs was the Vancouver Status of Women (VSW). Established in 1971, the VSW “dealt only in women’s rights,” and its key objective was to “foster public knowledge of the rights and status of women in Canada.” By 1978 the VSW had over 800 members, a half dozen full-time staff and a budget of over \$90 000 (Brown 1989). The VSW prepared briefs and lobbied the government, assigned volunteers to attend all-candidates meetings during elections, and flooded the media with press releases (VSW 1978; VSW 1973). Status of Women Action Group (SWAG), British Columbia Federation of Women, Young Women’s Christian Association, Vancouver Women’s Caucus and the NDP Women’s Rights Committee also lobbied for human rights legal reform (Anderson 1986; Rosemary Brown 1979; VSW 1969). After the New Democratic Party defeated the Social Credit Party in 1972, the government introduced a new human rights statute. Rosemary Brown, the VSW’s first ombudswoman and a key figure in organization, helped draft the 1974 *Human Rights Code* (Brown 1989). Fourteen SMOs attended a workshop hosted by the British Columbia Civil Liberties Association (BCCLA) and produced several recommendations that provided the foundation for the new legislation.

The NDP’s *Human Rights Code* embodied the best aspects of the Canadian human rights state: professional human rights investigators; public education; a commission promoting legal reform and representing complainants before formal inquiries; jurisdiction over public and private sector; a focus on conciliation over litigation; independence from the government; and an adjudication process as an alternative to the courts. British Columbia had gone even further than the already expansive Canadian standard. Instead of restricting the legislation to a set of enumerated grounds, discrimination was prohibited unless the accused could demonstrate *reasonable grounds*. As a result, the province set precedents in areas such as a sexual orientation, pregnancy, physical appearance, and sexual harassment. It was, without a doubt, the most progressive human rights law in Canada (Clément 2008b).

Social movements were soon involved in every aspect of the human rights state in British Columbia. The *Human Rights Code* facilitated SMOs’ expanding role in developing and enforcing state policy. In this way, the central features of the social movement society increasingly became manifest: the proliferation and diffusion of protest, institutionalization, professionalization of social movements, and new

forms of governance. For instance, there was no such thing as a human rights investigator in British Columbia in 1974. The Social Credit government had used overworked Industrial Relations Officers (labour mediators) to investigate human rights complaints. In contrast, the new Human Rights Branch hired and trained dozens of human rights officers. SMOs were a fruitful source for recruiting staff: all three Directors of the Human Rights Branch between 1974 and 1984 had been involved with women's rights organizations, and the investigators had been active in women's groups, the BCCLA, Indian Friendship Centres, disability rights organizations, and Indo-Canadian community groups. Fourteen staff were asked in 1981 about their ties to community groups: at least 52 SMOs were mentioned, including associations as diverse as the National Black Women's Congress, Greenpeace and the Elizabeth Fry Society (AG HRB 1981a). The distinction between human rights investigators and activists became increasingly blurred (AG HRB 1981b). It was not uncommon for human rights investigators working for the government, for instance, to participate in symposiums organized by the BCCLA or VSW that led to resolutions calling for legislative reform. Or they might organize public seminars on topics such as the resurgence of the Klu Klux Klan.

The integration of social movements was also apparent in the way they often supplanted the state in enforcing the law. SWAG initiated at least two equal pay cases that had widespread ramifications. At times the VSW was more effective than the government's own staff. Its full-time ombudswoman prepared numerous human rights complaints, and was responsible for initiating the largest equal pay case in the province's history. The ombudswoman often adopted the role of a government official. For example, in 1972, the ombudswomen met with managers of the Hudson's Bay Company and convinced them to voluntarily raise the salaries of female sales clerks to comply with the legislation (VSW 1972). The ombudswoman also provided free legal counsel to complainants at hearings.

SMOs like the VSW engaged in a wide array of activities to enforce the legislation: documenting cases of discrimination; producing surveys or conducting research on issues such as equal pay (e.g., documenting employers pay scales) to initiate inquiries; identifying large employers who were violating the legislation and mailing letters with a copy of the statute; sending volunteers to individual employers to discuss hiring and management practices (e.g., department stores that rarely hired women); drawing the media's attention to deficiencies in the legislation, including delays and poorly-trained investigators; organizing and inviting investigators to conferences on human rights; lobbying government departments on policy issues (e.g., gender stereotyping in textbooks); promoting awareness of board of inquiry decisions through press releases and newsletters; securing federal government funding to promote human rights in the province; and writing to the Branch to support specific cases and to prod investigators to advance an inquiry (SWAG 1972; Labour 1981; VSW 1976a; BCFW n.d.; VHRC 1979).

Occasionally the government sought out SMOs to participate on boards of inquiry. After the passage of the *Human Rights Code*, the Minister of Labour contacted the VSW and BCCLA asking for a list of names. Over the years some of the chairpersons included Carol Lecky (Williams Lake Civil Liberties Association),

William Giesbrecht (British Columbia Federation of Labour), William Black (BCCLA), and Danny Smith (Association of Non-Status Indians).

The Human Rights Commission, which was responsible for human rights education, depended heavily on SMOs. The commission provided grants to SMOs to host conferences, conduct research on issues such as mandatory retirement, or to produce educational materials (AG HRB n.d.). Some of the SMOs responsible for human rights education included the Vancouver Island Multicultural Association, Women Against Violence Against Women, Canadian Council of Christians and Jews, Associated Disabled Persons of B.C., Survey Delta Immigrant Services Society, Committee for Racial Justice, Vancouver Native Police Liaison Program, and the Vancouver Gay Community Centre Society (Renate Shearer 1979-1983). By the early 1980s, SMOs were essentially carrying out the commission's mandate.

SMOs were especially important in rural British Columbia. Human rights investigators actively courted their support. Investigators drove throughout the region meeting with women's groups, Aboriginal Friendship Centers, and church groups among others. Given the difficulty of patrolling large swaths of territory, they often relied on SMOs to spread awareness of the law. In Prince Rupert, for instance, the security guard at the local Hudson's Bay Company routinely followed Aboriginal men when they visited the store, often little more than a few feet behind. The leaders of the local Aboriginal Friendship Centre, furious at the company's policy, asked a human rights investigator from Prince George to visit in the summer of 1978. Within a day he convinced the store manager to change the policy (Andison 2010). By the early 1980s, the Branch was insisting that all officers spend at least 10 per cent of their time working with community groups.

Social movements became essential to the human rights state in almost every aspect: recruiting staff, drafting legislation, enforcement, education, chairing inquiries and reaching out to rural areas. The focus on administering human rights legislation invariably facilitated the professionalization and institutionalization of social movement organizations. The human rights state also constituted a new form of governance in the way non-state actors played a role in creating and enforcing state law. However, because the NDP government lasted for a only few short years (1972-1975), it fell to the Social Credit party (Socreds) to enforce then NDP's *Human Rights Code*. The Socreds, though, were a right-wing political party with close ties to business. They were opposed the NDP's expansive legislation that restricted employers' right to hire or fire employees (Clément 2008b). The Socreds' administration of the *Human Rights Code* is an ideal case study of how social movements adopt the role of state actors when governments inhibit the application of law.

The Socreds eliminated the *Human Rights Code* in 1984, and between 1975 and 1984 they did everything in their power to undermine the human rights state. Ministers obfuscated or lied outright; delayed appointments; were recalcitrant in approving boards of inquiry; replaced human rights investigators with untrained Industrial Relations Officers; cut funding; reduced regional offices; and appointed inexperienced people to the commission (Legislature of British Columbia 1977). *Vancouver Sun* columnist Alan Fotheringham suggested that "the whole range of names on the commission demonstrates Williams' desire to make the commission

so bland as to be ineffectual” (Fotheringham 1978). One member, Jock Smith, had previously been the target of two complaints for violating the Code! (Hume 1979a; Hume 1979b). Meanwhile, the backlog of complaints was growing. The Director of the Human Rights Branch estimated in 1982 that they were receiving 42 per cent more cases than they were capable of handling (Labour 1982).

SWAG expressed a common grievance with the Socreds’ management when they insisted that the “B.C. Human Rights Commission is an embarrassment and a bad joke. They have done nothing except show their appalling ignorance and insensitivity to human rights” (SWAG 1979). Social movements protested the government’s inaction, interference and cutbacks. Throughout the late 1970s the VSW campaigned against the Social Credit government’s obstinacy in appointing new human rights officers, going so far as to organize a province-wide “day of mourning” on December 10, 1976 (International Human Rights Day) (VSW 1976b). After the Human Rights Commission embarrassed itself in a public meeting where its members made lewd comments about women and homosexuals, several SMOs organized a petition campaign to have them dismissed (AG HRB 1979). Two hundred women mobilized in 1975 for a protest in downtown Vancouver on Mother’s Day, with participation as diverse as the British Columbia Federation of Women, Women’s Bookstore, SORWUC (a female labour union), Women’s Health Collective, Child Care Federation and Rape Relief (British Columbia Federation of Labour 1975). The largest mass rally of the Legislative Assembly in the province’s history by 1976 was a host of women from across the province protesting, among other issues, deficiencies in the administration of human rights law (No author 1976). A year later, SMOs successfully lobbied the Minister of Labour to appoint outstanding boards of inquiry (Anderson 1986). They also answered the Human Rights Commission’s call in 1981 for briefs on amending the *Human Rights Code*. The commission’s hearings attracted dozens of SMOs that provided documentation of government mismanagement (British Columbia Human Rights Commission 1983a; 1983b). Among the diverse array of SMOs participating in the hearings were the Okanagan Women’s Coalition, B.C. Coalition of the Disabled, B.C. School Trustees Association, Social Planning and Review Council of B.C., B.C. Association for Mentally Retarded, and Vancouver Labour Council.

The Socreds began preparing in 1982 to replace the *Human Rights Code*. A secret memorandum to cabinet outlining the proposed changes noted that “there may be a lobby of resistance to substantive changes to legislation” (Labour 1982). It was a profound understatement. The first attempt, in 1983 (Bill 27), was so widely condemned in the press and from a coalition of SMOs that the government retracted the bill. A year later the Socreds inserted the same bill into a large omnibus bill that contained thirty statutes implementing widespread budget cuts. Once again, dozens of SMOs were critical of the amendments (British Columbia Legislature 1984; Sisterhood 1983; Solidarity Coalition 1984).ⁱ Criticism of the reforms came from organized labour, civil libertarians, feminists, racial and ethnic minorities, religious organizations, and seniors’ groups (Clément 2005b). The Canadian Association of Statutory Human Rights Agencies described the Act as a “tragic mistake” and insisted that it be reversed (No author 1983; Palmer 1984). Opposition to the reforms also became a prominent component of the Solidarity Coalition’s platform, a

diverse coalitions of SMOs campaigning against the Socreds' fiscal restraint package (Palmer 1987).

Despite the Solidarity's Coalition's mass mobilization on a scale rarely seen in the province's history, activists were unable to prevent the Socreds from gutting the human rights state. The "reasonable cause" section was removed, the maximum possible fine was reduced from \$5000 to \$2000, the Human Rights Commission was eliminated and the process for submitting complaints was streamlined to allow bureaucrats to dismiss complaints without an investigation. Human rights investigators were dismissed and replaced with overworked Industrial Relations Officers with no human rights training (Black 1994). Not a single member of the government defended the legislation in the legislature (British Columbia Legislature 1983). As R. Brian Howe and David Johnson suggest, "this was the furthest any Canadian government has ever gone in restructuring its human rights policy" (Howe and Johnson 2000).

Transforming the Human Rights State

The human rights state remained contested in British Columbia throughout the 1990s and 2000s. The NDP returned to power and reintroduced expansive human rights legislation in 1992, only to have the Liberal Party defeat them and change the law again in 2002. But British Columbia was the exception. Throughout most of this period the human rights state had widespread support across Canada, and social movements became an integral component of the human rights regime. As R. Brian Howe insists, their views have "considerable policy influence either because of the substantial political pressure they represent or because they provide legitimacy for what commissions themselves want to do" (Howe and Andrade 1994). Roseanna Langer argues that SMOs "provide human rights expertise and play a collaborative role in advancing rights discourse in the community at large" (Langer 2007). SMOs are especially important in developing policy: "As an example, the OHRC Strategic Plan 2001-2004 Backgrounder details policy development in the area of gender identity, synthesizing research, consultation with the transgendered community, meetings with selected officials and health professionals, development of a discussion paper, and incorporation of feedback in the discussion paper, culminating in Commission approval of its Policy on Gender Identity" (Langer 2007). SMOs' participation has evolved into a cooperative process that involves developing values, administrative frameworks and patterns of communication with the state.

Moreover, social movements have contributed to expanding the scope of human rights. Debates surrounding the proposed *Charter of Rights and Freedoms* in 1980-1982, for instance, reveal how social movements transformed rights talk in Canada (Clément 2008a; Fudge 1989; James 2006; Kelly 2005). Hundreds of SMOs participated in public hearings on the Charter. Women's groups raised the possibility of a human right to learning and training, an annual income, parental leave, and day care. Ethnic minorities demanded recognition of a right to culture and identity. SMOs representing disabled peoples spoke of a human right to employment, protection against unemployment, healthy working conditions, and an

adequate standard of living, health care, education, social insurance, and privacy. Sexual minorities sought a human right to full and equal participation in public and private life. Aboriginals insisted on the right to self-determination and to control natural resources, economic development and education.ⁱⁱ It was not the nature of the grievances that was significant – Aboriginals had been campaigning on these issues for generations – but that activists were now articulating these grievances using the language of human rights.

Human rights has evolved into the dominant discourse most social movements use to articulate grievances. EGALE, for instance, believes that there is a human right to “a safe learning environment.” EGALE also insists on the inclusion of gendered identity in human rights legislation, as well as equal marriage rights and benefits for sexual minorities.ⁱⁱⁱ The Assembly of First Nations (AFN) and the Ontario Coalition Against Poverty are continually mobilizing around socio-economic rights. While the latter wants recognition for the rights of disabled poor to improved public and private services, the AFN is insisting on Aboriginals’ human rights to clean water, natural resources, self-determination, culture, language, education, land and the environment.^{iv} Vancouver Rape Relief has adopted the position that a man’s ability to pay for sexual access to other humans often supersedes the right for a woman to not be involved in prostitution.^v From this perspective, prostitution is a violation of human rights, and women are uniquely vulnerable to this rights violation. By framing these grievances as human rights issues, social movements invite state agencies into the private sphere. Human rights commissions are increasingly having to mediate a broad range of social issues, from sexual reassignment surgery to the provision of adequate food and housing for Aboriginals.

Conclusion: Social Movement Society and the Human Rights State

The emergence and evolution of the human rights state has run parallel to the development of the social movement society. Consider, for instance, the proliferation of SMOs and the diffusion of social movement activism. The first Parliamentary hearings on a bill of rights included only a few civil liberties and labour groups in the 1940s. A small number of SMOs representing churches, women, students and Jews joined campaigns for human rights legislation and a bill of rights in the 1950s and early 1960s. Little had changed by 1971 when a Parliamentary committee again held hearings on a bill of rights. The only difference was a handful of SMOs representing the disabled and ethnic minorities. Even hearings for the federal *Human Rights Act* in 1977 only drew six SMOs representing women, workers and lawyers (House of Commons 1976/7a; 1976/7b). In 1981, however, and certainly by the 1990s, the number of SMOs participating in public debates surrounding human rights law had grown exponentially. They were also more diverse: people with disabilities, Aboriginal peoples, women, children, racial minorities, ethnic minorities, prisoners, religions, poor, sexual minorities, workers and others formed an expanding policy network of SMOs (James 2006; Kelly 2005). As Sally Chivers suggests, “constitutional politics provided an unparalleled political opportunity to assert the political and social rights of those who had traditionally been marginalized in Canadian society” (Chivers 2007; Smith 2007). The human

rights state is, in this way, a useful case study of the proliferation and diffusion of social movements.

The proliferation of SMOs has blurred the lines between the state and social movements. The result has been the development of new forms of governance. Human rights commissions are akin to the array of state agencies created in recent decades that provide “new institutional arrangements for social movement influence,” which as Johnston points out in the case of the United States Department of Labour or Environmental Protection Agency, “recruit movement leaders as administrators or consultants and engage movement organizations on policy issues, sometimes contracting SMOs to provide services or gather information” (Johnston 2011). The British Columbia Human Rights Commission, for instance, used public funds to have SMOs fulfill its statutory education mandate. And it is apparent that SMOs have been integral to the enforcement and reform of human rights law. Another example is the way the human rights state allows SMOs to make new law. The NDP concluded in 1973 that it was politically impossible to include sexual orientation in the *Human Rights Code*. However, the reasonable cause section allowed the Gay Alliance Towards Equality to bring a complaint before a board of inquiry in 1975. The complaint had the full support of the Human Rights Branch, which acted as an advocate for the SMO (Ruff 2010). As a result, for the first time in Canadian history, a tribunal ruled that it was illegal to discriminate on the basis of sexual orientation (Gay Alliance 1979). In essence, an SMO and a state agency cooperated to create new law. This was not uncommon: women’s rights groups, for instance, often used boards of inquiry to expand the scope of the law to apply to sexual harassment or pregnancy (Clément 2010; Clément 2012; Howe 1991; Knopff 1989). This extra-legislative process for creating law constitutes a new form of governance.

The professionalization of SMOs and their integration into the human rights state has serious implications for social movements. The availability of state funding for SMOs beginning in the 1970s resulted in the proliferation of SMOs with paid staff, boards of directors, offices, legal advisors and hierarchal structures. Federal and provincial governments established funding programs for women’s rights and human rights SMOs, which hired staff to manage and apply for grants (Clément 2008a; Moore 1980; Pal 1993). As Miriam Smith argues, although state agencies such as human rights commissions may offer institutional recognition, “they may divert SMOs from other types of organizing and other forms of political mobilization ... These strategies of participation are thought to divert the movement from more radical strategies and tactics” (Smith 2005).

The need for trained staff has increased because human rights legislation and the *Charter of Rights and Freedoms* has created opportunities for social movements to use the courts to address an array of grievances. The judicialization of issues such as equal pay requires SMOs with expert knowledge and training, as well as the resources to pursue costly legal battles. The focus on litigation is emblematic of the way SMOs have shifted their focus in the recent years towards the state to achieve social change (Clément 2008a; Manfredi 2004; Smith 2005). At least in the latter case, many activists are concerned that this focus on the law marks “the conservatization of the movement” (Smith 2007). In this way, social movements

have moved away from disruptive tactics and, as Meyer and Tarrow suggest, limited their ability “to surprise, disrupt and mobilize” (Meyer and Tarrow 1998). If, as Hank Johnston claims, “the social movement society may be but the latest stage in the fitful but long-term expansion of how to do politics less violently and with less destabilizing effects on state structures,” then the human rights state certainly facilitates that process (Johnston 2011).

The human rights state is in many ways consistent with Meyer and Tarrow’s definition of institutionalization: routinization of collective action (challengers and authorities adhere to a common script), inclusion and marginalization (granting access to those who adhere to the script, and excluding others), and co-optation (Meyer and Tarrow 1998). For example, the largest and most influential women’s rights organization in British Columbia, the VSW, dedicated extensive resources to working within the confines of the human rights state. SMOs that employed the language of human rights focused their energies on the state and embraced state-oriented strategies for social change. SMOs that rejected human rights, such as the Vancouver Women’s Caucus or Women Against Pornography, tended to be more decentralized and willing to engage in disruptive tactics (e.g. marches, civil disobedience) (Clément 2008b; Clément 2010).^{vi} The policy networks that have emerged surrounding the human rights state act as a process of inclusion/exclusion that favour SMOs such as the VSW. Activists who “might wish to represent their views to the state through regularized participation in networks of influence in the policy community are simply excluded from doing so because they lack the organizational and financial resources and the experience to deal with government bureaucrats” (Smith 2005).

Finally, the human rights state helps explain the *process* of institutionalization associated with the social movement society. Patrick G. Coy and Timothy Hedeem, using the mediation movement in the United States as a case study, document four steps that lead to co-optation (Coy and Hedeem 2005). First, social movements “partly arise in response to a set of grievances or unfulfilled needs that a segment of the population experiences in a shared way” (410). Activists demand access to avenues outside the court system dominated by legal professionals, begin to develop parallel institutions, and elements within the state perceive the need for policy adjustment. Second, “the language and methods of the challenging movement are appropriated, while in the second step the work of movement actors may be appropriated through invitations to participate in policy making” (413). As this process evolves, the dominant norms and values of the state infiltrate the parallel institutions, and movement leaders are brought into the policy making process. A new state apparatus replaces or infiltrates the parallel institutions, and the state provides funding to SMOs, which leads to dependence. In the third stage, “the state and vested interests assimilate both the individuals and goals of the challenging movement, making it hard for the movement to sustain its efforts” (420). Within time, movement actors become integrated and committed to the new state apparatus. In the final stage, state agencies transform the original goals of the movement. Bureaucratic interests such as settling large numbers of cases become positive outcomes.

There are striking parallels between the human rights state in Canada and the mediation movement. The first anti-discrimination laws were woefully inadequate because they relied on the courts to enforce poorly drafted legislation. SMOs developed strategies for discouraging discrimination, and were largely responsible for enforcing the first anti-discrimination laws. SMOs lobbied for the creation of new institutions that operated outside the courts and focused on conciliation rather than confrontation or punishment. By the 1970s the work of SMOs had been replaced by state agencies. Human rights commissions mimicked many of the habits of SMOs such as the JLC. In some circumstances a commission might even employ test cases, such as hiring a black couple and a white couple to test a service provider for discrimination (AG HRB 1977-1979). British Columbia's Human Rights Branch integrated organizations such as the VSW or SWAG into its practices and hired activists as human rights officers. Although there were clearly inadequacies with the *Human Rights Code* - as evident in the way it allowed for the Socreds' mismanagement - SMOs fiercely defended the human rights state in 1984. But they failed. The *Human Rights Act* (1984) created a rigid system with a focus on legal punishment rather than conciliation, which was far from the original goals of the movement that had produced the human rights state. In addition, many activists became concerned with how human rights law reduced discrimination to one factor, such as sex, and failed to account for how individuals experienced discrimination (Duclos 1993; Iyer 1993; Pothier 2001; Réaume 2002). Someone might be discriminated against, not because she was a woman or a person with a disability, but because she was a woman with a disability. In this way, the human rights state diverged from the movement's original goals: it became constrained by the function and content of statutory law rather than addressing the cause of racial or gender equality. The human rights state became rigid and bureaucratic.

The human rights state in Canada is, in these and other ways, a useful case study of the social movement society: the diffusion and growth of social movement activity; the proliferation of professional SMOs; institutionalization (or co-optation); the engagement of the state and social movements in new spheres of daily life; and social movement activism as a standard repertoire of political participation or policy-making. Social movements have, as Meyer and Tarrow suggest, become a "perpetual element of modern life" (Meyer and Tarrow 1998).

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Notes

ⁱ In addition, refer to media coverage on the following dates in the *Vancouver Sun*: 24 November 1984; 27 November 1984; 29 November 1984; 12 December 1984.

ⁱⁱ A complete list of all the briefs submitted to the Special Joint Committee on the Constitution in 1981 area available at: http://www.historyofrights.com/docs_committee.html

ⁱⁱⁱ On EGALE, see "EGALE and GALE BC celebrate safe schools victory: Final victory for bullied student sends message to schools across Canada." 2005. EGALE Canada. Retrieved 3 January 2012, from <http://www.egale.ca/index.asp?lang=E&menu=1&item=1179>. "[A]dding gender identity and gender expression to the *Human Rights Act* tells trans people that they can accept themselves and live in dignity free from discrimination and harassment." "About EGALE." 2011. EGALE Canada. Retrieved 3 January 2012, from <http://www.egale.ca/index.asp?lang=E&menu=1&item=1152>

^{iv} On the AFN and OCAP, see "Victory at Everest! Disabled Activist Receives Public Apology for Discrimination." 2008. Ontario Coalition Against Poverty. Retrieved 3 January 2012, from <http://ocap.ca/node/1259>; "The United Nations Declaration on the Rights of Indigenous Peoples: What It Says and What It Means for First Nations in Canada." 2007. Assembly of First Nations. Retrieved 3 January 2012, from http://www.afn.ca/uploads/files/07-12-4_un_declaration_flyer_fe.pdf.

^v On Vancouver Rape Relief, see "Anniversary of the Universal Declaration of Human Rights." 2002. Vancouver Rape Relief & Women's Shelter. Retrieved 3 January 2012, from <http://rapereliefshelter.bc.ca/learn/news/anniversary-universal-declaration-human-rights>

^{vi} There was a correlation between the use of rights discourse to frame an SMOs' grievances and its overall strategies for change. While the Status of Women Action Group, VSW, the NDP Women's Rights Committee and others prepared briefs and press releases on everything from day care to pornography, Women Against Pornography picketed adult video stores and harassed customers as they entered the store (in one incident, a group of activists fire-bombed one of the stores). Canadian feminists have always been cautious human rights advocates.