Canada's Rights Revolution

Canada's Rights Revolution
Social Movements and Social Change, 1937-82

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To Derek and Vicki

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Acknowledgments

Sigh. Where to begin. As often happens, this book is a product of hard work, dedication, and, to no small degree, simple luck. I have had the good fortune of working with the right people at the right time. When I began my master's degree at the University of British Columbia in 1998, I struggled to find a topic. George Egerton was assigned as my thesis supervisor, and he quickly grasped the potential of my undergraduate thesis on the 1945-46 royal commission on espionage. He encouraged me to develop this research and to expand my ideas about the role of civil liberties associations in the debate surrounding the commission's controversial actions. Over time my interests in rights advocacy would culminate in this book. I suppose this book, then, began with an innocent suggestion by a well-placed thesis supervisor in 1998.

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Abbreviations

BCCLA	British Columbia Civil Liberties Association
CBA	Canadian Bar Association
CBC	Canadian Broadcasting Corporation
CCF	Co-operative Commonwealth Federation
CCLA	Canadian Civil Liberties Association
CCLU	Canadian Civil Liberties Union
CJC	Canadian Jewish Congress
CLAT	Civil Liberties Association of Toronto
CLAW	Civil Liberties Association of Winnipeg
CLC	Canadian Labour Congress
CLDL	Canadian Labour Defense League
CPC	Communist Party of Canada
ECCR	Emergency Committee for Civil Rights
FLQ	Front de libération du Québec
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JLC	Jewish Labour Committee
LDH	Ligue des droits de l'homme
LSBCA	Law Society of British Columbia Archives
LOOT	Lesbian Organization of Toronto
MCLA	Montreal Civil Liberties Association
MDPPQ	Mouvement pour la défense des prisonniers politiques québécois
NAC	National Action Committee on the Status of Women
NCHR	National Committee for Human Rights
NDP	New Democratic Party
NGO	non-governmental organization
NLHRA	Newfoundland-Labrador Human Rights Association
OCLA	Ottawa Civil Liberties Association
ODD	Office des droits des détenu(e)s
RCMP	Royal Canadian Mounted Police
RIN	Rassemblement pour l'indépendance nationale
SMO	Social Movement Organization
SOS	Secretary of State

SUPA	Student Union for Peace Action
TLC	Trades and Labour Council
UBC	University of British Columbia
UCHR	United Council for Human Rights
UDHR	Universal Declaration of Human Rights

Canada's Rights Revolution

1
Introduction

Two events, separated by time and geography, symbolize the central themes of this book. In 1945 a young, frightened Russian cipher clerk working in the Soviet embassy in Ottawa left one night with several top-secret documents clutched secretly beneath his coat. Igor Gouzenko carried a terrible secret with him, one he hoped would buy him asylum: evidence of a Soviet-led spy ring operating in Canada. In response, the federal government instituted a royal commission to track down the spies. In October 1970 the Front de libération du Québec (FLQ) kidnapped James Cross, the British High Commission's senior trade commissioner in Montreal, and Pierre Laporte, a Quebec cabinet minister, in an effort to promote Quebec independence. These are the only two moments in Canadian history when the War Measures Act was employed in peacetime. Habeas corpus was suspended, people were arrested and interrogated by the police for weeks without access to legal counsel, and reputations were sullied as a result of the stigma attached to being associated with an act of treason. The state's response to the Gouzenko Affair and the October Crisis was met with profound opposition from people across the nation, and it stimulated the formation of new human rights and civil liberties associations. The history of these "rights associations" is the subject of this work.

The sixties has been characterized by one of Canada's leading scholars of social movements as "the climax of a period of social movement activism in Canada."[1] Never before, nor since, has the country experienced such an explosion of activism. *Social movement organizations,* groups dedicated to realizing the goals of a particular social movement, were integral to these movements. Gay men in Vancouver and Toronto met in their homes to form the country's first gay rights groups; women came together in community centres to develop a program of action to raise awareness of such issues as abortion and equal pay; students congregated outside classrooms in universities to organize campus demonstrations to demand a say in the governance of the university; and in Vancouver, men and women concerned about the impact of nuclear testing on the environment united to form what would become one of the most recognized advocacy groups in the world. These patterns were repeated, time and time again, in the homes, offices, and street corners of cities and towns in Canada, bringing together people concerned with everything from Aboriginal issues to the treatment of prisoners. Social movement activism defined the sixties and seventies.

Many of these activists clothed their demands in the language of human rights. These activists, and the beliefs they promulgated, constituted a genuine human rights movement. Organizations dedicated to realizing the rights of homosexuals (e.g., Gay Alliance towards Equality, 1971), women (e.g., National Action Committee on the Status of Women, 1972), or African Americans (e.g., Urban Alliance on Race Relations, 1975) were among the many different kinds of social movement organizations that represented the advocacy aspect of the human rights movement. But among all of these groups was a unique collection of social movement organizations that stood out from the others: rights associations. Dedicated to realizing the dreams of the modern human rights movement, rights associations differ from, for instance, women or gay rights groups in several critical ways. Rights associations are self-identified "civil liberties" or "human rights" associations (e.g., the Alberta Human Rights Association or the Nova Scotia Civil Liberties Association). Unlike organizations dedicated to defending women or homosexuals (or children, prisoners, African-Canadians, etc.), rights associations do not claim to speak on behalf of a specific constituency but, rather, seek to defend the rights of all citizens. Each one is fervently non-partisan; the preservation of human rights, and not political power, is their only goal. Finally, one of the more curious aspects of these associations is that they are not mass-based organizations and attract only a small number of members. Prior to the sixties, there had been only a sprinkling of such organizations across Canada, barely a dozen groups active at one point in time. By the 1980s, more than forty rights associations had emerged.

Canada's Rights Revolution is a history of the sixties and seventies seen through the eyes of a generation of human rights activists. As such, it has two primary objectives. The first is to explore some of the most controversial human rights violations identified by rights associations. Given the immense impact of the October Crisis of 1970, it is surprising how little literature is available on the crisis aside from the predictable spate of speculative works arising in the wake of an event of such magnitude. The same could be said for the Gastown Riot or illegal RCMP activities in the 1970s. Human rights activists saw their communities bitterly divided on how to deal with drug addicts, police violence, censorship, abortion, the health and welfare of prisoners, and religion in public schools. Each of these controversies highlights how people struggled to apply vague human rights principles to concrete issues facing their community.

The second objective is to study a unique phenomenon emerging during this period: professional social movement organizations. Although not constitutive of the human rights movement, social movement organizations were important vehicles for promoting social change. But how did they conceive of social change? In an era made famous by activism and social ferment, what challenges faced social movement organizations? To answer these questions, this book examines the evolution of four case studies: the British Columbia Civil Liberties Association, the

Ligue des droits de l'homme, the Canadian Civil Liberties Association, and the Newfoundland-Labrador Human Rights Association. Six key themes are explored in detail: the impact of state funding on social movement activism; the differences between the first generation (1930s-50s) and second generation (1960s-80s) of rights associations; the strategies for change deployed by activists; the obstacles involved in forming a national social movement organization in Canada; the ideological divisions between activists dedicated to the same cause; and the relationship between social movement organizations representing different movements. Microstudies of social movement organizations are rare in Canada – an unfortunate oversight considering their significant influence during this period.

Ultimately, though, *Canada's Rights Revolution* is about asking a more fundamental question: To what degree can rights discourse promote social change? Part of the answer lies in studying how activists used human rights principles to identify problems in their community and guide their ideas and strategies for change. For this reason, rights associations are the ideal case study, even though many of the people who led these organizations were not themselves targets of human rights abuses. Social movement organizations serving a particular constituency are informed by a host of other ideologies, from feminism to gay liberation. Rights associations espoused human rights as a universal idiom, and, as Evelyn Kallen notes, "rights predicated on any other attribute, such as race, class, or gender, are not human rights."[2]

Rights associations offer us a window into how people have sought to define and apply ideas about human rights. Movements are defined by the beliefs they propagate, but they are composed of the people who articulate and shape, sometimes imperfectly, those beliefs. Rights associations were sites of contestation in which individuals from an array of social backgrounds struggled to apply vague principles to concrete issues that were affecting people's everyday lives. A history of rights associations is a history of a small but integral manifestation of the human rights movement.

Before we proceed, some conceptual issues should be addressed. The international human rights system, and the organizations that form the basis of this work, are guided by the principles of freedom, equality, and dignity. As philosopher Jack Donnelly notes, human rights, which are the rights one has simply by virtue of being human, are the "highest moral rights, they regulate the fundamental structures and practices of political life, and in ordinary circumstances they take priority over other moral, legal, and political claims."[3] Human rights are grounded on the presumption of the equal worth and dignity of all human beings. Ronald Dworkin posits that states must treat all persons as moral and political equals, and not distribute goods on the basis that some citizens are entitled to greater resources because they are more worthy, or constrain liberty because one's conception of the good life is superior to another's.[4] Canadian sociologist Evelyn Kallen views

the underlying principles of the international human rights system in terms of social equality and social justice. In addition to the right to life and human dignity, freedom to decide and determine one's own destiny as well as equality of opportunity are elemental human rights principles. These principles are not absolute, but they are universal, inalienable, and exist prior to law.[5]

These principles are enshrined in every international human rights treaty and can be found in the constitutions of every rights association in Canadian history. But principles are not easily translated into practice. One of the first explorations into the history of human rights in Canada was penned in 1966 by Walter Tarnopolsky in a work entitled *The Canadian Bill of Rights*. From the outset he made it clear that he used the terms "civil liberties" and "human rights" interchangeably.[6] Rights associations of the sixties and seventies, however, considered the differences between human rights and civil liberties to be quite serious. In the early 1970s, when a federation of rights associations was formed, the members believed that the distinction was significant enough that they felt the need to burden the organization with a painfully cumbersome title: the Canadian Federation of Civil Liberties and Human Rights Associations. Clearly, rights activists identified themselves in ideological terms, and, as we shall see, these distinctions also reflected differences in the nature of their activism.

Any attempt to define separate categories of rights is a risky endeavour. A great deal of the literature dealing with human rights depends on the Universal Declaration of Human Rights (UDHR) and the two covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as reference points for distinguishing between differing categories of rights. Yet, the right to self-determination in the ICCPR (1.1) requires some recognition of the economic, social, and cultural rights in the ICESCR; the right to family is enshrined in both the ICCPR (23.2) and the ICESCR (23.2); and the right to join a union in the ICCPR (10.1) is also entrenched in the ICESCR (8.1). Categorizing rights is therefore an artificial exercise at best, and we should appreciate that these boundaries "can obviously be blurred and quite arbitrary."[7]

Civil rights were among the first rights to emerge historically, a product of bloody revolutions and challenges to monarchical power. Civil rights are herein understood as property rights and the rule of law. These rights include freedom of contract and the right to property (and to not be deprived of property without compensation), to withhold one's labour, and to join a trade union. Civil rights also encompass basic legal rights such as a fair trial, an independent judiciary, access to counsel, the presumption of innocence, habeas corpus, double jeopardy, and, most important, equality before the law. In contrast, *political rights* are defined as those rights that are required for the operation of a modern liberal-democratic

state, including the right to free speech, free press, assembly, association, and religion. Lyman Duff, speaking from the bench of the Supreme Court of Canada in 1937, proclaimed that it "is axiomatic that the practice of this right to free public discussion of public affairs, notwithstanding its incidental mischiefs, is the breath of life for parliamentary institutions."[8] Political rights provide citizens with control over the state. For example, individuals have the right to vote, to be elected, and to petition the government. Political rights serve to mediate relations between civil society and the state.

Social, economic, and cultural rights have primarily been associated with the welfare state, including health services, social security mechanisms (e.g., old age pensions, employment insurance), and state-subsidized education. Other social and economic rights include the right to work, a decent standard of living, food, housing, and favourable working conditions. Cultural rights have manifested themselves in a variety of forms in Canada, from multiculturalism to language rights.

An interesting theme in the history of rights associations in Canada has been the decision by *human rights* associations to embrace economic, social, and cultural rights, while *civil liberties* associations have generally avoided this type of advocacy. One way of explaining this divergence is to distinguish between negative rights and positive rights.[9] When civil liberties activists argue that people must be free from restraint to carry out their desires (e.g., freedom from restrictions on personal behaviour), these activists are articulating a conception of liberty based on *negative* rights. Civil libertarians abhor unnecessary restrictions on individuals in their pursuit of the good life, such as imposing the same religion on individuals. This does not mean that civil libertarians oppose, for instance, progressive income taxes, but they oppose restrictions on our ability to formulate our own conception of the good life, such as limits on the press, religion, association, assembly, or speech. In contrast, Canadian human rights associations have historically forwarded a more robust definition of freedom that includes both negative and positive freedom. An advocate for *positive* freedom seeks to ensure individuals' capacity to formulate their desires, values, and goals. In this sense, liberty is defined as the freedom to act and to make claims against the state – the right to provisions of basic goods or the right to equal access to employment. Whereas negative freedom is rooted in equality of opportunity, positive freedom assumes the individual's right to bring about what she or he desires. Lack of training is thus a restriction on one's positive freedom. As Jerome Bickenback suggests, the "value of negative freedom must be derivative from positive freedom."[10] Social, economic, and cultural rights (positive rights) are critical in ensuring individual freedom.

Maurice Cranston, among others, has argued that positive freedoms are not true human rights because they require support from the state, and it is unreasonable and costly to characterize the provision of aid as a right. Such a formulation is

problematic. Civil and political rights are principally defended through expensive legal systems and often require the state to act in a positive manner to ensure their protection. Social and economic rights are no less enforceable. We have the ability to provide all Canadians with a minimum of food and housing, but we choose not to because of resistance to extensive redistribution and structural change. Even Isaiah Berlin, one of the most well-known philosophers on the question of negative-positive rights and a staunch opponent of the idea of positive freedom, acknowledged that "to offer political rights, or safeguards against intervention by the state, to men who are half-naked, illiterate, underfed, and diseased is to mock their condition; they need medical help or education before they can understand, or make use of, an increase in their freedom."[11]

Another way of explaining the ideological differences among rights activists is to characterize some as libertarians and others as egalitarians.[12] In theory, libertarians believe in liberty and egalitarians believe in equality. A libertarian embraces negative freedom: freedom exists in the absence of coercion. In contrast, an egalitarian believes in positive freedom: freedom is derived not only from the lack of an intentionally created obstacle, but it is also violated by unintended obstacles, such as being born into a poor family. Therefore, egalitarians claim that the poor in capitalist societies are unfree, or less free than the rich, and libertarians claim that the poor are equally as free as the rich.

Both terms can be highly misleading. For instance, right-wing libertarians embrace extreme notions of self-ownership and reject any kind of redistribution of wealth; in contrast, left-wing libertarians support the division of resources equally among all individuals and, in some cases, oppose inherited wealth. No rights association in Canada could be honestly characterized as libertarian in either sense. However, as *descriptive* terms they can be useful in explaining the emergence of contrasting objectives between civil liberties (libertarian) and human rights (egalitarian) associations. Egalitarian activists favour positive rights and advocate for economic, social, and cultural rights (but not to the detriment of other rights). A libertarian approach, by contrast, is characterized by a concern for equality of opportunity and protecting individuals' negative rights. In practice, these divisions are constantly blurred, but the dichotomy between negative and positive rights partially explains why human rights associations have, unlike civil liberties associations, considered the elderly's need for inexpensive drugs or access to low-income housing for the poor as human rights.

Human rights advocates thus do not reject civil liberties but, rather, embrace a broader conception of rights, which is more inclusive. Still, at times, the two ideological camps come into conflict. For instance, it is not uncommon for civil liberties groups to tolerate hate speech as an exercise of free speech, whereas human rights associations demand that hate speech be censored. A libertarian approach

would lead someone to oppose any abuse of an individual liberty; hate speech would be tolerable only because the alternative would be a violation of the individual's liberty to speak freely. The same approach informs opposition to laws that restrict drug use or consensual and private sexual relationships (including gay sex). Egalitarians also oppose state regulation of private sexual relationships, but they argue that equality can only be achieved through positive state action. In theory, minorities cannot participate equally in society if they are victims of hate propaganda or live in fear of becoming targets of violence promoted by hate-mongers. The difference between libertarian and egalitarian approaches to rights advocacy represents an important ideological dispute over the nature and function of human rights.

In the following work, the term "civil liberties" is associated with negative freedom and "human rights" with positive freedom; and, by extension, civil liberties are associated with civil and political rights while human rights are associated with economic, social, and cultural rights.[13] Human rights, however, are not *separate* from civil liberties. As Supreme Court of Canada justice Rosalie Abella once noted, "human rights start where civil liberties end ... Human rights are not only about civil liberties' emphasis on individuals in their relationship with the State, they are more emphatically about individuals in their relationship to one another, relationships that invoke the State's intervention and assistance, and request different treatment to narrow the gap."[14] In the following study, "human rights" is used broadly to refer to all forms of rights advocacy, whereas "civil liberties" is narrowly applied.

Human rights is a highly malleable term. Such ideological distinctions are a useful tool for explaining the nature of rights advocacy, but they should not be mistaken for an unbending ideological predisposition among activists. Ideology did not predetermine the activities of rights associations. There have always been individuals within human rights organizations who opposed censorship of pornography and individuals among civil liberties groups who support legislation banning hate speech. Attempting to sort out this conceptual minefield through a study of the practices of social movement organizations is an important goal of this work.

The vast majority of Canadians instinctively see human rights as an inherent good. We applaud national leaders when they raise concerns over human rights violations in China, and we accept the need to go to war to defend these principles, as was the case with the NATO intervention in Kosovo. But how are human rights enforced? By what mechanism do we articulate and understand such a vague concept? And what are the implications of these methods? Speaking before crowds of people in New York's Central Park in 1945, American jurist Learned Hand reminded Americans about the true source of liberty in the modern age: "I often wonder whether we do not rest our hopes too much upon constitutions, upon

laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies, no constitution, no law, no court can save it."[15]

The history of the human rights movement is closely tied to the evolution of the modern state, but scholars have too often adopted a top-down approach, examining the evolution of human rights from the point of view of state actors and the courts.[16] Only recently has work emerged on the role of non-state actors in framing rights discourse, but, even outside Canada, scholars have yet to vigorously pursue studies linking human rights to social movement activism. This is unfortunate. As Todd Landman and Joe Foweraker assert, the "discourse of rights has no independent capacity for action, and cannot simply 'shower meanings on the society below' ... this discourse can only be effective when attached to social actors and organizations. Social movements, for their part, do not merely perceive or receive rights as symbols, but are active in discovering, shaping, and disseminating these rights."[17]

Canada's Rights Revolution is based on two fundamental assumptions about the nature of human rights activism. First, the idea of human rights as it has evolved in the twentieth century is intimately linked with the state. Human rights activism is primarily, but not exclusively, focused on the state; activists seek to protect individuals against state abuse of human rights or to mobilize the state to protect human rights. As Miriam Smith has suggested, the link between rights and the state is inherent in the nature of rights discourse: "Rights talk assumes that changing or strengthening the law is in itself a means to [achieve] social change and that legal changes are thus the proper goal of political struggle and organizing. Rights talk thus defines social and political change as legal change."[18] When four black freshmen from the North Carolina Agricultural and Technical College in Greensboro sat down at a whites-only lunch counter at Woolworths demanding to be served, their goal was to pressure a private business to change its policies. Obviously, such activism was not state-oriented. Yet, when merchants agree to serve blacks or when neighbourhoods remove restrictive covenants, they are not conferring *rights* upon others. A voluntary act by private individuals is not a recognition of a right.

The second assumption, which derives from the former, is that human rights are only tangibly realized through laws or regulations. Individuals and groups can make rights-claims and such claims have a powerful moral force, but they are not *rights* until recognized as such by the state. As James Walker posits in his seminal book on human rights and the Supreme Court of Canada, "rights are what the law says they are."[19] Human rights activists will eventually seek out the state to have their rights-claims recognized. Thomas Hobbes once suggested that covenants without the sword are but mere words. One could say much the same about human rights.

Human rights thus encourage social activists to think of social change as legal change. The danger of such an approach is that it may be self-defeating. Martha Minow raises serious concerns about the rhetoric of rights in her study of the disabled and the law in the United States. She claims that inequality is rooted in knowledge-constructed differences based on "labels" and ideas of the "norm" that are accepted as natural and immutable. Rights discourse obscure these knowledge-power relationships by offering the veneer of formal equality when, in reality, treating everyone equally blinds us to the social handicaps caused by labelling. She found that rights rhetoric underscores the power of the established order to withhold recognition of the claims of disabled individuals.[20]

Human rights activism can also be highly elitist. Rainer Knopff and F.L. Morton have accused Charter-enthusiasts of hijacking the democratic process by using the Charter and the Supreme Court to adjudicate important social issues through an unelected judiciary. Such a process, according to Knopff and Morton, is profoundly anti-democratic. It favours a cadre of educated middle-class elites who seek to impose their ideas on public policy without having to lobby governments and mobilize public opinion.[21] Knopff and Morton, of course, blame the political left for this travesty, but critics of human rights activism can be found across the political spectrum. Miriam Smith has pointed out that, in the case of the gay rights movement, activists initially used litigation and advocacy to mobilize grassroots support, whereas Charter litigation made legal reform, not mobilization, the central goal of the movement. Tom Warner, an accomplished gay rights activist from Ontario, has argued that pre-Charter campaigns to have sexual orientation included in human rights codes had a dampening effect on the movement by redirected resources towards litigation and away from grassroots mobilizing.[22]

It is also questionable whether human rights activism is capable of confronting systemic inequalities. Using Amnesty International and Human Rights Watch as case studies, Gary Teeple concludes that they "absorb ... the energies of individuals, groups, sectors, and classes that might otherwise have presented a challenge to state policies; and they dampen a possible critical awareness about the link between the problems they are supposedly addressing and the nature of the economic and political system itself."[23] Nelson Lichtenstein is one of the few historians to have grappled with the implications of human rights discourse on social activism. In the context of the American labour movement, Lichtenstein has suggested that certain aspects of union activity have been displaced by a state-run human rights apparatus in the form of agencies, such as the Occupational Safety and Health Administration, that encourage workers to seek out individual, as opposed to collective, solutions. Rights discourse has proven incapable of dealing with the structural crisis facing the United States because a "rights-based approach to the democratization of the workplace fails to confront capital with demands that cannot be defined as a judicially protected mandate."[24]

Clearly, there is a basis for raising concerns about the implications of human rights activism. But recognizing the drawbacks of human rights activism does not vitiate its potential to promote social change. Canadian historians such as James Walker have argued that the courts can, at times, be a forum for systemic social change through the construction of new cultural codes.[25] Even a negative decision by a court is fruitful if the court becomes a forum for challenging, or at least questioning, common sense notions of, for instance, racial hierarchies.

Many of those who have mounted sustained criticisms of human rights activism are not prepared to reject it outright. Minow, for instance, rescues rights discourse from the very critique she has proffered. According to Minow, rights discourse has the potential to constrain those with power by exposing and challenging hierarchies of power.[26] Miriam Smith also believes in the potential of rights discourse to empower oppressed minorities. People outside the hegemonic classes can politicize their grievances and gain recognition from mainstream members of society by making their demands in the language of rights. Similarly, Lichtenstein, who fears the continued dominance of rights consciousness in its current form, has faith in the potential for human rights activism to challenge inequality and exploitation, but rights discourse should not be employed to the detriment of other, complementary, forms of collective action. Even Teeple, who derides the work of Amnesty International and Human Rights Watch, accepts that if human rights associations defended social rights with as much vigour as they do civil and political rights, they would invariably raise questions about social and economic inequalities.[27]

The primary obstacle to effective human rights activism may therefore be the adoption of a minimalist approach to human rights. Human rights defined as civil and political rights offer, at best, only formal equality and, at worst, the illusion of freedom and equality. The history of rights associations in Canada is a history of a rights culture struggling over competing ideas of human rights, and this has, more often than not, resulted in the adoption of a minimalist approach to human rights. In other words, human rights has often been interpreted by state actors and social activists as simply political and civil rights. Not all rights associations fit this mould. Some groups insisted that human rights had to include social, economic, and cultural rights. In doing so, these activists soundly rejected a minimalist approach to human rights. And yet, as the case studies demonstrate, even those who embraced social rights conceived of social change as legal change and, therefore, employed strategies capable of achieving only limited reform.

The history of rights associations in Canada is not that of a linear, clearly evolving movement. There have been two identifiable generations of civil liberties and human rights associations in Canadian history. The first generation had its roots in the 1930s and peaked in the 1940s; the second generation emerged in the 1960s and peaked in the 1970s. Within the international literature on human rights, the term

"generations" is often used to explain changing ideas about rights, such as references to a generation of civil and political rights followed by a generation of social and economic rights. Generations, in the context of this book, however, is a reference to the activists themselves and to the historical context in which they lived.

Karl Manheim, one of the original thinkers on the question of "generation" as a historical concept, suggests that belonging to a generation is analogous to belonging to a class: "both endow the individuals sharing in them with a common location in the social and historical process, and thereby limit them to a specific range of potential experience, predisposing them for a certain characteristic mode of thought and experience, and a characteristic type of historically relevant action."[28] Manheim was careful to qualify his comments. A generation should not be seen as a social group that acts in unison or, necessarily, as a progressive outgrowth of previous generations; instead, to use generation as an analytical concept is to recognize that a community of people who are all born within the same short span of years share a common historical and cultural experience that collectively shapes their lives (e.g., similar schools, common family structures, comparable economic opportunities, exposure to ideas about patriotism and politics). In essence, to quote Anthony Esler, they are "products of a common cultural environment."[29]

A generation is also partly defined by biology and demographics. For Doug Owram, the baby boom encompassed people born in Canada in the late forties and coming to maturity in the sixties. Rights associations of the 1960s and 1970s were dominated by the baby boomers. Walter Thompson was fresh out of law school in 1972 when he joined the Nova Scotia Civil Liberties Association (and became president a few years later), and Norman Whalen, a founding member and future president of the Newfoundland-Labrador Human Rights Association, was on the cusp of finishing his articling position in St. John's when he became involved in the association. None of the individuals who attempted to form a national rights association in 1946 were present in 1971, when a national federation of rights associations was born in Montreal.

The activists who form the backbone of this story believed that they represented a new generation, a break with the past. By challenging the perceived values and beliefs of the previous generation, the baby boomers constituted themselves as a historically specific generation. Baby boomers also shared a common historical experience. Among other things, the boomers witnessed the expansion of the welfare state, the Quiet Revolution, and rising concerns over the use of illegal narcotics among middle-class youths. These and other crucial experiences shaped the boomers' activism. In Montreal, a group of people politicized by the Quiet Revolution and new ideas about human rights purged the organization of the old guard, which was tied to traditional notions of civil liberties. When Irving Himel was quietly encouraged to leave the newly formed Canadian Civil Liberties Association, it was a signal that a fresh cohort of activists with a new agenda had taken over.

The concept of a movement, not generations, is the primary category of organization for this book, but it is important to acknowledge that not everyone has a voice in this account. As a universal idiom, human rights is inclusive; it does not recognize racial, ethnic, gender, and other barriers. In practice, however, rights associations rarely represented the diverse communities they claimed to speak for. Rights associations have historically been led by middle-class activists and often white men (with some significant exceptions). Still, through them we hear the stories of blacks abused by police in Toronto, religious minorities marginalized in Newfoundland, political radicals repressed in Montreal, and poor drug addicts in Vancouver. As non-partisan organizations that did not represent a specific constituency, rights associations were drawn to issues that affected everyone in the community, from abusive police practices to limits on free speech. At times, these organizations were alone in speaking out on these issues.

Given the proliferation of rights associations in the sixties and seventies, it would be impossible to examine every organization in detail. Four rights associations have been carefully selected as case studies. The case study approach allows for an in-depth discussion of the inner workings of social movement organizations.[30] Sociologists often use case studies in the study of social movements. Unfortunately, sociologists depend primarily on interviews and published materials, whereas historians have been more successful at employing archival materials in examining social movements. People who have historically been marginalized in Canadian society have often used rights associations as vehicles to give voice to their demands. The case study approach provides an avenue for historians to gain access to the voices (albeit, mediated through middle-class activists) of individuals who rarely appear in state records. Single mothers on welfare in Toronto, for instance, used the Canadian Civil Liberties Association to challenge degrading welfare policies. Case studies can help us understand how individuals struggled to understand and articulate the ideals of a particular movement, without falling into the trap of depending on abstract reasoning common to studies that lack a microscopic approach. To be sure, the case study approach raises the spectre of making broad generalizations from a narrow sample, and *Canada's Rights Revolution* makes no claims to being exhaustive. Yet, by placing the experiences of these activists within their historical context and choosing a broad sample of case studies, we can catch a glimpse of the human rights movement as a whole. These case studies were specifically chosen not only because of their longevity but also because they represent the same goals and objectives embraced by other rights associations. The four case studies are diverse in size and origins, represent different regions and ideologies of rights, and include francophone and anglophone organizations.

Chapter 2 examines the intellectual foundations of the rights revolution, although such a monumental task can only receive a cursory examination in this

context. Chapter 3 offers a brief survey of the first generation of rights associations in Canada, from the 1930s to the 1950s, while Chapter 4 offers a short introduction to the phenomenon of "professional social movement organizations" in order to set the stage for analyzing the case studies as social movement organizations. Chapters 5 through 8 are the case studies. Each chapter presents the early history of the four oldest and most active rights associations in Canada, and the chapters are organized chronologically from the point of each group's inception: the British Columbia Civil Liberties Association (Vancouver, 1962), Ligue des droits de l'homme (Montreal, 1963), the Canadian Civil Liberties Association (Toronto, 1964), and the Newfoundland-Labrador Human Rights Association (St. John's, 1968). All four associations are still active today, but this study ends in the early 1980s. Cuts to government funding and a lack of volunteers forced most rights associations to fold by the early 1980s. Moreover, the 1982 Charter of Rights and Freedoms fundamentally altered the strategies and orientation of many social movement organizations. Rights associations, for instance, energetically embraced the Charter and shifted most of their resources to instigating court challenges. I leave it to future historians to consider the impact of Charter litigation and constitutional rights on social movement dynamics in Canada.

Several of the issues dealt with in this work are specific to the history of rights associations, but they are also a manifestation of other developments in Canada. In the latter half of the twentieth century, new human rights issues caught the imagination of Canadians, and the positions adopted by rights associations, as well as the ideological divisions among them, were partly an expression of these new developments. In addition, the organizational concerns facing rights associations were consistent with the experience of many professional social movement organizations. For instance, the history of these associations challenges the assumption that state funding, at a time when government funding for social movement organizations reached unprecedented levels, necessarily limits or constrains social activism. Similarly, new communications technology, cheaper air travel, and an expanding pool of individuals interested in participating in social movement organizations created new opportunities for organizing at the national level. One of the key issues dealt with in *Canada's Rights Revolution* is the inability of rights associations to form an inclusive national association. Their failure is, among other things, a testament to the obstacles facing all social movement organizations seeking to form a national association in a physically immense, regionally divided, and culturally diverse nation. Some of these topics are addressed in the theoretical literature on social movements and human rights, particularly by sociologists in the United States and Europe, but what is lacking is an intensive, long-term empirical study of the activities of social movement organizations that only a historical study can offer.

Each case study exemplifies one theme in particular. The ideological differences between civil liberties and human rights are embodied in the extensive array of position papers developed by the British Columbia Civil Liberties Association and the philosophy articulated by the new cadre of leaders who took over the Ligue des droits de l'homme in the early 1970s. The Canadian Civil Liberties Association's claims to national status offer a rare opportunity to discuss national social movement organizing. The Newfoundland-Labrador Human Rights Association's dependence on state funding sets the stage for a broader discussion of the role of state funding for social movement organizations in Canada in the seventies.

Historians have paid little attention to the history of social movement organizations in Canada except for political associations, and few scholars have attempted to chart an entire network of organizations dedicated to the same cause. Historical work on the human rights movement often focuses on the state and the role of state actors in promoting and defending human rights. This is certainly the case with early scholars of human rights in Canada, particularly legal scholars and political scientists. Almost as if the state alone were responsible for human rights innovations.[31] The history of these four organizations offers an opportunity to witness how non-state actors have struggled with varying notions of rights and have played a key role in pressing the state to recognize human rights claims. A study of human rights at this particular juncture is propitious in the context of the global war on terror and constant attempts by the state to constrain individual rights. The history of rights associations is a history of lessons already learned.

2
Canada's Rights Revolution

In the 1950s the small town of Dresden, Ontario, was one of the most racially segregated communities in Canada. Blacks, who constituted about 20 percent of the population in Dresden, were banned from most white churches and were refused service by white merchants. One of the more notorious violators of Ontario's weak anti-discrimination legislation in the 1950s was Morley McKay, a restaurant owner who refused to serve blacks. When the Jewish Labour Committee sent black volunteers to test the law, McKay would either openly refuse them service or quickly close the restaurant when they approached from down the street. At one point, one of the volunteers was "seriously concerned that he might be attacked by the restaurant owner, who was wielding a large meat cleaver and appeared to be having trouble controlling his notorious temper."[1]

Dresden was symbolic of a broader phenomenon at this time. The deportation of Japanese Canadians in 1946 was the ultimate example of the limits of Canada's rights culture. Immigration policies were explicitly racist until 1962, and restrictive covenants (restrictions on the ethnic, racial, or religious mix in a neighbourhood) were common in the first half of the twentieth century. During the Second World War, Canada was among the world's least hospitable destinations for Jewish refugees, allowing barely five thousand Jews to enter the country during the course of the war. Blacks and many other minorities who sought to enlist were rejected by recruiting centres. Women did not get the vote in Quebec until 1940, and several minority groups, including Aboriginals, were denied the provincial and federal franchise until well after the war. Without the franchise, individuals could not hold public office or serve on a jury. Minorities were regularly denied licences to operate businesses. Anti-Semitism, segregation among blacks and whites in Nova Scotia and southern Ontario schools, limited economic opportunities for women, and widespread discrimination among Native peoples was a basic reality of life in Canada.

Many scholars have identified a "paradigm shift" in human rights taking shape in the aftermath of the Second World War.[2] Horrified by the implications of the Holocaust and the abuses committed by a state on its own citizens, it became increasingly difficult to claim that discrimination was simply a manifestation of aberrant individual behaviour. People began to seek broader solutions. Within a

generation the relationship between individuals and the state had fundamentally altered, and the role of the state with regard to private relationships within civil society had also evolved. Canadians, irrespective of their ideas or physical characteristics, became assertive rights-bearing citizens. In 1947, Parliament repealed the Chinese Immigration Act, which had virtually banned Chinese immigration, and enfranchised people of East Indian and Chinese descent. By 1949, all legal restrictions on Japanese Canadians had been removed. And this was just the beginning. The postwar welfare state established certain basic social rights for all Canadians, from free health care to accessible education. Privacy acts were passed in most jurisdictions to protect citizens against spurious wiretaps or limiting disclosure of their personal information. Children, prisoners, mental patients, welfare recipients, the disabled, and a host of others asserted their rights as never before. Linguistic rights were given added protection with the passage of the Official Languages Act in 1969. Restrictions on women serving on juries were removed by the 1980s, as were requirements for women to leave the civil service after they were married (this requirement remained on the statute books in Newfoundland until the 1980s). Prisoners were granted the vote in Quebec in 1979.[3]

Developments in Canada reflected similar international phenomena. The Charter of the United Nations stated the organization's intention "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." Canada's human rights movement predated international developments, but the international community provided domestic activists with greater ammunition for making human rights claims.[4] The UDHR, ICCPR, and ICESCR, for example, went further than the Charter. The first two documents not only asserted basic civil and political rights but the UDHR and the ICESCR also characterized leisure time, education, fair wages, and working hours as basic rights. Individuals, and not just states, were now the subject of international law. As Marc Bossuyt notes, it is "fair to state that nothing came even close to an international system of protection of human rights before the founding of the United Nations."[5]

The rights revolution in Canada has had profound political, legal, social, and cultural ramifications. Four developments in particular symbolize the central themes of Canada's rights revolution: (1) challenges to parliamentary supremacy, (2) the expanding role of the state and innovations in public policy, (3) the explosion of social movement activity in the sixties, and (4) changing attitudes towards freedom and equality. Each of these developments was part of a human rights movement sweeping across the country by the 1960s. This "rights revolution" represented an important shift not only in the relationship between citizens and the state but also within civil society.

The Politics of Rights: Parliamentary Supremacy and the Bill of Rights Movement

As with any revolution, the rights revolution deeply affected political discourse in Canada. In 1922, Prime Minister Mackenzie King expressed concern about Anglo-Saxons becoming "debased" if lower races were allowed to mingle freely in Canada. Twenty-five years later, King suggested that "the people of Canada do not wish, as a result of mass immigration, to make a fundamental alteration in the character of our population."[6] Within a couple of generations after the Second World War, however, such views were marginalized in political debate.

The rights revolution entailed an important change in the role of the state in Canada; governments became active agents in protecting and enforcing a new rights regime. In 1867, the newly formed Dominion of Canada had virtually no rights built into the Constitution except for a few references to language and denominational education. The fathers of Confederation had little stomach for the constitutional rights favoured by their southern neighbours, and the decision to avoid entrenching a bill of rights was perfectly consistent with the British tradition of parliamentary supremacy.[7] In a way, the movement for a bill of rights and its challenge to parliamentary supremacy represented the ultimate triumph of the rights revolution in Canada.

At the close of the war in 1945, Alistair Stewart, recently elected member of the Co-operative Commonwealth Federation (CCF), presented before Parliament the first resolution to create a Canadian bill of rights.[8] In the Regina Manifesto, the CCF's founding document in 1933, the organization had called for amendments to the Constitution to protect racial and religious minorities, and to offer greater protection for freedom of speech and of association. Only a year before Stewart introduced his motion, the civil liberties subcommittee of the Canadian Bar Association had recommended entrenching certain rights in the Constitution.[9]

Stewart's motion, with no support from the ruling Liberals, was little more than symbolic and was destined to fail, as was a similar attempt by John Diefenbaker to introduce a bill of rights into the proposed Citizenship Act in 1946. Diefenbaker, a leading figure within the Conservative Party and prime minister-elect in 1957, would lead the passage of a statutory bill of rights in 1960 (unlike a constitutional amendment, a statute can be revoked by Parliament).

Opponents of a bill of rights appealed to notions of parliamentary supremacy. Parliament was held to be the defender of personal freedoms, as enshrined in the 1689 Bill of Rights. A.V. Dicey, possibly the most important thinker in British legal history and a mainstay of law school curriculum in Canada for most of the twentieth century, held that the "principle of parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English

constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament."[10]

Appeals to parliamentary supremacy were often invoked by power-holders concerned with any proposed limits on their ability to legislate. The Liberals had ruled almost continually since 1921, with brief interludes of Conservative rule under Arthur Meighan (1926) and R.B. Bennett (1930-35). During the Second World War, the executive governed by orders-in-council passed by the federal cabinet; in essence, an enormous amount of power was concentrated within the cabinet, and there were few checks on its authority. For the CCF and Conservatives like Diefenbaker, a bill of rights was an attractive solution to the potential abuses arising from the exercise of virtually unfettered executive power. During the debates over the espionage commission (discussed in the following chapter), the Liberals defended their unilateral suspension of civil liberties in Canada in 1945-46 by appealing to the principle of parliamentary supremacy. Minister of Justice J.L. Ilsley claimed that "those principles resulting from Magna Carta, from the Petition of Rights, the Bill of Settlement and Habeas Corpus Act, are great and glorious privileges; but they are privileges which can be and which unfortunately sometimes have to be interfered with by the actions of Parliament or actions under the authority of Parliament."[11] A bill of rights, in Ilsley's view, threatened to Americanize the Canadian political system.[12]

Support for legislating human rights was growing by the 1940s. Alberta attempted to pass a bill of rights in 1946, but it was struck down by the Supreme Court of Canada. In order to enforce new laws relating to pensions and labour, the Social Credit government of Alberta had attempted to take control of banks and credit institutions within the province through its abortive Bill of Rights, a blatant violation of federal jurisdiction over banking.[13] A breakthrough occurred in Saskatchewan in 1947 when the CCF, led by Tommy Douglas, introduced the country's first Bill of Rights.[14] As Carmela Patrias notes in her recent article on the origins of the Saskatchewan Bill of Rights, it was a product of the CCF's long-standing commitment to minority rights and the efforts of minorities suffering from discrimination. Written by Morris Shumiatcher, a Jewish lawyer with strong ties to the CCF, the legislation purported to protect such rights as due process, speech, religion, association, assembly, and press while prohibiting discrimination. Since the statute did not provide for an enforcement mechanism, and it was unclear at the time which level of government had jurisdiction over civil liberties, the bill was more a symbol than an instrument for defending human rights. Nonetheless, it was a landmark achievement. As Patrias notes, "at a time when denial of employment, refusal to sell or rent housing and provide service in restaurants and hotel accommodation, on religious or racial grounds, were all legal elsewhere in Canada, the

significance of Saskatchewan's enactment of a bill with such a comprehensive list of rights appears undisputable."[15]

The movement for a national bill of rights continued to grow in the wake of the initiative in Saskatchewan. Tommy Douglas had already expressed, at a Dominion-provincial conference in 1945, his support for adding anti-discrimination provisions and basic civil liberties to the Constitution.[16] The Canadian Congress of Labour began advocating for a national bill of rights as early as 1947, and the Trades and Labour Congress followed suit in 1948.[17] Among the few active civil liberties associations in Canada, support for a bill of rights was virtually unanimous. At a December 1946 conference in Toronto to discuss common strategies, civil liberties groups from Ottawa, Montreal, and Toronto all expressed their support for a constitutionally entrenched bill of rights.[18]

Yet, when the Universal Declaration of Human Rights was being negotiated in 1948, Canada was one of the few countries initially opposed to the Declaration. Prime Minister Mackenzie King was concerned, among other things, that the Declaration could be used to pressure the federal government into acceding to unwanted reforms. In the end, it was a combination of American influence and the distasteful prospect of voting alongside the Soviet block, South Africa, and Saudi Arabia that led Canada to support the initiative during the final vote before the General Assembly.[19]

Both domestic and international developments contributed to the government's decision to institute a series of parliamentary committees to consider the possibility of creating a bill of rights. In 1947, 1948, and 1950, joint committees of the House of Commons and Senate conducted investigations into the feasibility of a national bill of rights. But after more than twenty years of continuous rule and the imposition of extensive economic and social controls during the war, the Liberals had little reason to welcome a bill of rights. Neither the 1947 nor the 1948 committee led to any substantial action on the part of the federal government. The provinces were even less enthusiastic about the prospect of a constitutional rights regime. Except for the attorney general from Saskatchewan, provincial leaders warned the committees that they were treading on dangerous ground. Any bill of rights would violate provincial jurisdiction and would be vigorously resisted by the provinces.[20]

Only the 1950 House and Senate committee, led by Liberal senator Arthur Roebuck (who held the unenviable distinction of being the most outspoken Liberal in favour of a bill of rights), held public hearings and considered the issue in-depth. The presentations before the Roebuck committee offer some insight into how state and non-state actors viewed a potential bill of rights. In describing the types of rights appropriate for adding to the Constitution, there was an unspoken consensus in favour of civil and political rights. Irving Himel of the Association for Civil Liberties and representatives from the Department of External Affairs were

sceptical of placing economic and social rights in the Constitution. Even organized labour was divided on the question of economic and social rights. Eugene Forsey, speaking for the 350,000 workers of the Canadian Congress of Labour, believed that a bill of rights was only capable of defending negative rights and that the rights to work or education required positive action by the state, best left to federal and provincial governments.[21] In contrast, the Trades and Labour Congress called for the entrenchment of economic rights in the Constitution. For instance, it argued that employment should be a recognized constitutional right, although the Congress was vague on precisely which level of government was responsible for creating employment.[22]

Roebuck must have been disappointed with the results of his own committee.[23] The committee recommended passing a declaration of human rights but only after the federal and provincial governments had agreed on an amending formula for the Constitution (a highly unlikely prospect in the near future). In a letter to Irving Himel in June 1950, Roebuck spoke of the divisions between the English- and French-speaking members of the committee; the latter were hesitant to support a bill of rights that could result in a derogation of provincial powers.[24] French-Canadian MPs' opposition had denied Roebuck the opportunity to present to the Senate a confident recommendation for a constitutionally entrenched bill of rights. Mackenzie King's earlier hesitancy to support the UDHR out of concern for offending provincial rights clearly had some basis in fact. Any attempt by the federal government to claim jurisdiction over fundamental freedoms could be seen as an attempt to steal powers from the provinces.

Despite entrenched opposition, there was growing support for some kind of bill of rights. The movement for a bill of rights was an important step in acknowledging the compatibility of constitutional rights with the Canadian political system. It represented a meaningful alteration in political debate in the context of an evolving welfare state in which governments were increasingly responsible for ensuring social and economic security. By 1960, as the Conservative government prepared to enact its own bill of rights, the notion of parliamentary supremacy was waning. Davie Fulton, Diefenbaker's minister of justice, was not opposed to a constitutional amendment and, in fact, favoured a bill of rights binding on the provinces. In his presentation to the parliamentary committee considering the government's proposed legislation, Fulton did not resort to appeals to parliamentary supremacy to explain his government's decision to introduce a statute instead of a proposed constitutional amendment; rather, he discussed the legal and political obstacles to amending the British North America Act. Specifically, Fulton was concerned with the lack of an amending formula and the implications of having Britain amend the Constitution for Canada, which was moving itself out from the shadow of the British Empire.[25]

At the same time, the position of the Liberal Party had begun to change. During the debate over Diefenbaker's proposed bill of rights in 1960, Lester B. Pearson, leading the Liberals, was quick to distance the party from the actions of the King government in 1946: "I wish to say for myself and for those associated with me in this House that we do not believe that certain of those actions were really necessary, or that they should be repeated in any similar situation in the future."[26] Instead of opposing a bill of rights in principle, as the Liberal government had done in the 1940s, Pearson criticized Diefenbaker for not consulting the provinces. Parliamentary supremacy was slowly losing its influence among the ranks of the Liberal elite, a fact Pearson acknowledged when he pointed out that "new circumstances, new difficulties and new pressures may justify some such departure [from parliamentary supremacy]."[27]

Still, these were baby steps. Early political debates clearly reflected a minimalist view of human rights. The Saskatchewan and federal bills of rights did not go far beyond freedoms of press, assembly, speech, association, and religion as well as due process and anti-discrimination provisions.[28] Classical liberal values dominated the politico-legal order of the country. Statesmen favoured trial by jury, rule of law, freedom of contract, and minimal government interference in their basic freedoms. Even the socialist CCF approached rights from a minimalist perspective. Tommy Douglas and the CCF created the first public health care program in the country, but their 1947 Bill of Rights did not suggest that health care was a human right. In 1955, the federal CCF, led by M.J. Coldwell, proposed a motion in Parliament to work with the provinces to entrench human rights in the Constitution. His motion referred to free speech, assembly, association, free press, religion, equality under the law, privacy, and prohibiting excessive bail and the suspension of habeas corpus.[29] The CCF was unique in its unwavering dedication to a constitutionally entrenched bill of rights. And yet, at a time when the Universal Declaration of Human Rights spoke of employment and social security as human rights, the CCF limited its vision of a national bill of rights to basic civil and political rights.

By the late 1960s, the Liberal Party no longer represented a serious obstacle to the bill of rights movement. Pierre Elliott Trudeau became the leader of the Liberal Party in 1969 and used his position to promote his vision of a bill of rights. In a speech before a conference of federal and provincial first ministers on the anniversary of the UDHR, Trudeau called for a constitutionally entrenched bill of rights to "identify clearly the various rights to be protected, and remove them henceforth from governmental interference."[30]

A special joint committee on the Constitution, established by the federal government in 1970, recommended adding a bill of rights to the Constitution. In terms of which rights should be included, little had changed in twenty years. With the

exception of adding protections for language rights, the committee envisioned doing little more than entrenching those rights found in the 1960 Bill of Rights. But a look at the reasoning offered by the committee reveals the fundamental shift that had been emerging in recent years. In sum, the committee rejected parliamentary supremacy as an obstacle to entrenching rights in the Constitution:

> Parliamentary sovereignty is no more sacrosanct a principle than is the respect for human liberty which is reflected in a Bill of Rights. Legislative sovereignty is already limited legally by the distribution of powers under a federal system and, some would say, by natural law or by the common law Bill of Rights. The kind of additional limit on it which would be imposed by a constitutional Bill of Rights is not an absolute one, for a Bill of Rights constitutes rather a healthy tension point between two principles of fundamental value, establishing the kind of equilibrium among the competing interests of majority rule and minority rights which is in our view of the essence of democracy.[31]

Why did the committee reject a core precept of British political tradition? The committee's position reflected a much broader trend emerging throughout the country as a whole. Some have argued that the movement away from parliamentary supremacy represented the influence of American political culture in Canada. Others credit Trudeau's own political philosophy or the influence of the political left in Canada, which had long advocated for constitutional rights. James Kelly credits the 1980-81 Special Joint Committee on the Constitution with helping undermine support for parliamentary supremacy: "The new constitutional politics of citizen participation rejected the intention of the premiers to preserve significant aspects of parliamentary supremacy, and this had a direct impact on the textual evolution of the Charter."[32] Certainly one of the most potent forces in Canada at this time was found in the increasing assertiveness of French Canadians. Terrified at the implications of the Parti Québécois victory in 1976 and stunned at the growing support for the Yes side in the 1980 referendum, federalists pledged constitutional reform during the referendum campaign. Two years later, the Constitution was patriated, with an entrenched Charter of Rights and Freedoms. For federalists, the Charter was a powerful weapon to be used for promoting national unity.[33] The Charter paid homage to the civil and political rights that advocates such as Stewart and Diefenbaker had long envisioned for the Constitution. However, it was a testament to the changes occurring within Canada at this time that sections on equality, multiculturalism, and Aboriginal rights were included in the Charter. Most important, language rights were added to the Constitution and placed beyond the purview of the notwithstanding clause.

The Charter of Rights and Freedoms ushered in a new era and was, in many ways, the ultimate manifestation of the rights revolution in Canada. With some

notable exceptions, particularly in the form of some recognition of minority rights, the Charter focused primarily on civil and political rights. The absence of any extensive recognition of economic, social, and cultural rights was a manifestation of the minimalist approach to human rights evident in much of the political discourse on human rights in Canadian history. Nonetheless, the break from parliamentary supremacy was a significant development in the evolution of Canada's rights culture.

The Human Rights State: Human Rights and the Law

The rights revolution went far beyond constitutional debates. Up until the war there was little legal recognition of the rights of minorities, but within forty years a massive human rights program was initiated by federal and provincial governments in Canada, creating a veritable "human rights state." The human rights state was an institutional infrastructure designed to protect human rights through various state institutions.

Anti-discrimination legislation was the most visible pillar of the state's human rights program. Ontario's 1944 Racial Discrimination Act banned discriminatory signs and publications in an effort to prohibit the use of "Whites Only" or "No Jews or Dogs" signs. Saskatchewan's 1947 Bill of Rights also prohibited discrimination with respect to accommodation, education, and employment.[34] Both statutes lacked an enforcement mechanism and were weak instruments for protecting citizens against discrimination. Judges, who found it difficult to conceive of discrimination as a criminal act, were reluctant to convict. Fines did little to help victims find new jobs, and most minorities were unaware of the legislation.[35]

It would take the combined efforts of dozens of advocacy groups (discussed in Chapter 3), from churches to civil liberties advocates, to convince governments to enact legislation with some teeth. Ontario took tentative steps in this direction in 1950, with an amendment to the Labour Relations Act to withhold legal protections from collective agreements that discriminated on the basis of race or creed, and soon after it introduced a bill that prohibited the enforcement of restrictive covenants. Within a year, the Conservative government of Leslie Frost passed the country's first Fair Employment Practices Act and Female Employees Fair Remuneration Act. A Fair Accommodation Practices Act soon followed in 1954. These were significant milestones in the history of the human rights movement in Canada, and Ontario's foray into the field of human rights legislation had a snowball effect. Within five years, similar laws were enacted in five other provinces.[36]

These initial steps represented a significant transformation in the role of the state. Governments directly intervened in everything from business practices to rental accommodations to discourage discrimination. Nonetheless, many people looked upon these early advances as a pitiful beginning; the legislation lacked any

kind of effective enforcement mechanism or penalties. David Orlikow, a New Democratic Party (NDP) member of the Manitoba Legislative Assembly in 1960 and a local human rights activist, decided to take action. He teamed up with Gerri Sylvia, an African-Canadian woman living in Winnipeg, and drove her around town to a series of restaurants to apply for employment. Her applications were quickly rejected, and, in some cases, merchants did not even bother to ask about her qualifications. The next day, Orlikow sent two Caucasian women to the same restaurants to apply for the same jobs, and they were promptly offered the positions. Faced with such blatant examples of racial discrimination, the government decided to appoint a commission under the Fair Employment Practices Act to investigate the complaint. After numerous delays, the commission concluded that there was insufficient evidence to prove discrimination, and the charges were dismissed.[37] The case highlighted the difficulties involved in proving cases of discrimination, and, in fact, the legislation was rarely used. Between 1953 and 1969, for instance, only twenty complaints were adjudicated under various anti-discrimination statutes in British Columbia; more than 70 percent of these complaints were dismissed.[38]

At the federal level, the 1960 Bill of Rights was a dismal failure. Frank Scott noted in 1964 that "that pretentious piece of legislation has proven as ineffective as many of us predicted."[39] The Bill of Rights suffered a painful reception at the hands of the judiciary. In *Robertson and Rosetanni v. The Queen* (1963), the Supreme Court of Canada rejected arguments that the Lord's Day Act (banning the operation of a business on a Sunday) violated freedom of religion under the Bill of Rights. According to Ronald Ritchie in his decision for the majority, the Bill of Rights only enshrined *existing* rights when it was passed in 1960. The statute did not create any new rights, and since freedom of religion already existed before 1960, when the Lord's Day Act was enforced, there was no basis for making the law inoperative.[40] By 1969, the Court had yet to use the Bill of Rights to assert an individual's civil liberties against the state. Even the famous *Drybones* case in 1970, in which the Court ruled Section 94(b) (prohibiting Aboriginals from being intoxicated off reserves) of the Indian Act inoperative because it violated the equality under the law clause of the Bill of Rights, failed to set an effective precedent. In 1974, the Court effectively reversed itself in *Attorney General of Canada v. Lavell,* where the Court refused to accept a section of the Indian Act that required women (but not men) to surrender their Indian status if they married a non-Indian violated equality under the law. Once again writing for the majority, Ritchie suggested that to accept Lavell's claim would essentially invalidate the federal government's ability to designate special treatment for Native people and thus render it impotent in carrying out its responsibilities under the Constitution.[41] In effect, the judgment meant that Indian women could be discriminated against so long as all Indian women were discriminated against equally.[42]

Subsequent attempts in the 1970s to use the Bill of Rights' "equality under the law" clause to render legislation inoperative were equally unsuccessful.[43] Out of this failure, however, came success. The inability of the Bill of Rights to provide concrete protection for human rights led activists and policy makers alike to demand a constitutional amendment in 1982. The Charter of Rights and Freedoms would transform the courts into a far more active agent in combating human rights violations.

While the Court remained unimaginative in its approach to human rights issues in the 1960s, a more effective pillar of the human rights state was the ombudsman. The role of the ombudsman was to "generate complaints against government administration, to use its extensive powers of investigation in performing a post-decision administrative audit, to form judgements that criticize or vindicate administrators, and to report publicly its findings and recommendations but not to change administrative decisions."[44] Canada's first ombudsman appeared in Alberta in 1967, followed by New Brunswick (1968), Quebec (1968), and Manitoba (1969). Ombudsmen were available in almost every jurisdiction by the end of the 1970s (except in Prince Edward Island and the federal government).[45] While ombudsmen had no direct link to human rights legislation, they clearly played a role in defending individuals from the state by establishing machinery in which citizens could pursue claims against the government. This process included complaints not falling under the jurisdiction of human rights legislation, such as the case of a civil servant abusing his or her power.

In addition to the ombudsmen, Canada's two largest provinces initiated major investigations in the 1960s to revise their laws to conform with current standards of human rights. The Ontario Royal Commission Inquiry into Civil Rights was appointed in 1964 and was chaired by former chief justice of the High Court, James McRuer.[46] For the next seven years, the McRuer Commission examined hundreds of Ontario statutes, received thousands of submissions, and heard hundreds of witnesses. All told, the commission's reports contained 2,281 pages and 976 recommendations. As McRuer's biographer has suggested, "nothing quite like McRuer's inquiry into civil rights had been seen before in Canada."[47]

While McRuer was preparing his first report, another major commission was announced by the Quebec government in 1967, led by lawyer and former minister of municipal affairs, Yves Prévost. The Commission of Enquiry into the Administration of Justice on Criminal and Penal Matters in Quebec investigated the application of criminal and penal law in Quebec. If McRuer's report was a monumental effort that produced a massive tomb to occupy policy makers for years, then Prévost's report was almost biblical in proportions, with enough recommendations to keep policy makers busy for another generation. The commission produced five volumes (some as long as 1,500 pages), with more than a dozen

subvolumes and appendices. It represented the most comprehensive analysis of Quebec penal law ever conducted by the provincial government.

It would be impossible to summarize the hundreds of recommendations and analyses presented in these two voluminous reports in this space. McRuer and Prévost dealt with such issues as ombudsmen, legal aid, provincial bills of rights, the operation of juvenile and family courts, coroner's inquests, the provision of bail for poor people, providing compensation to victims of crimes, and making the judicial system more efficient in processing appeals. Both resulted in the implementation of widespread reforms.

While McRuer and Prévost were busy transforming the statute books that would affect two-thirds of the population, human rights legislation was undergoing a significant transformation. Fair Employment Practices and Fair Accommodation Practices laws were consolidated into human rights codes. Ontario led the way with the country's first Human Rights Code in 1962, and by 1977 every jurisdiction in Canada had a code and a full-time human rights commission.[48] Human rights codes were expansive statutes prohibiting discrimination on numerous grounds (e.g., race, religion, ethnicity, national origin, age) in accommodation, services, and employment. Codes differed by province (Newfoundland, for instance, also prohibited discrimination on the basis of political opinion), but in each case the state paid full-time human rights officers to enforce the code and appointed a commission to spread awareness about it. In British Columbia, for instance, the Human Rights Code was enforced by the Human Rights Branch and the Human Rights Commission. The branch was responsible for investigating and conciliating human rights complaints. Any complaint that could not be informally adjudicated was sent to a board of inquiry to either impose a settlement (e.g., fine, offering the complainant a job, posting a notice promising to abide by the code, etc.) or dismiss the complaint. The Human Rights Commission initiated education programs, instigated complaints, and represented complainants before boards of inquiry. Until 2002, when British Columbia disbanded its Human Rights Commission, and 2006, when Ontario followed suit, these commissions remained a mainstay of the state's human rights program in every jurisdiction across Canada.[49]

Human rights commissions were at the forefront of challenging traditional ideas about human rights. Rights discourse and the role of the state had traditionally favoured the discriminator; the rights to freedom of speech or association were interpreted to mean the right to refuse service to certain peoples or to express prejudicial ideas. In contrast, anti-discrimination legislation "represented a fundamental shift, a reversal, of the traditional notion of citizens' rights to enrol the state as the protector of the right of the victim to freedom from discrimination. It was, in fact, a revolutionary change in the definition of individual freedom."[50] The first tentative steps towards the human rights state included policies designed to

end legal distinctions among citizens in areas such as immigration and the franchise. Eventually, however, the human rights state matured with prohibitions on overt acts of discrimination and state policies designed to "correct systemic conditions that produce discriminatory results even in the apparent absence of overt prejudicial acts."[51]

Another facet of the human rights state was law reform commissions. Law reform commissions were responsible for conducting extensive research and study into provincial and federal laws in their respective jurisdictions and, as was the case with the McRuer Commission and Prévost Commission, offering recommendations to improve the law in ways that could better respect individual rights. Ontario began the trend by appointing a law reform commission under McRuer in 1964 at the same time as it appointed the Royal Commission Inquiry on Civil Rights; and, by the end of the 1970s, most of the provinces had similar institutions. The federal Law Reform Commission was created in 1971.

Law commissions, human rights codes, ombudsmen, and royal commissions were only the most visible manifestations of the human rights state. A myriad of new initiatives were undertaken by the state to deal with human rights issues. The Canadian Association of Statutory Human Rights Agencies was created in the seventies to act as a national coordinating committee for human rights commissions. A conference on human rights ministers was held for the first time in British Columba in 1974. An interdepartmental committee on human rights emerged from the conference to organize task forces within the federal government to study human rights issues.[52] These and numerous other initiatives represented a significant shift from the days when governments actively discriminated against minorities.

With the introduction of the Charter in 1982, the deficiencies of the Bill of Rights were overcome and the human rights state was fully entrenched. Numerous other pieces of legislation, royal commissions, and bureaucratic structures were created to promote the state's human rights agenda. The rights revolution thus entailed a significant transformation in the law from the pre-Second World War period, when, as one scholar has suggested, "the violation of civil liberties in Canada did not seem to be of serious concern."[53]

Strategies for Change: Human Rights Activism

The impact of the rights revolution was felt outside the realm of policy making and the courts. Social movement activism reached a fevered pitch in the sixties and seventies, and thousands of Canadians eagerly formed social movement organizations to promote the ideals of their respective movements. Many, but not all, of these organizations represented a human rights community, a collection of activists and organizations employing human rights discourse. Political lobbying and legal reform was only one form of activism. True equality for gays or women, for example, could not be achieved simply by adding new sections to human rights

codes. Education programs, women's centres, gay pride parades, civil disobedience, and a multitude of other forms of activism forced Canadians to confront new ideas about equality, and activists did not always employ rights discourse. Nonetheless, social movement activists were an integral a part of the rights revolution.

One of the most powerful movements to sweep Canada, and most of the Western world, in the 1960s was the New Left and the student movement. Within ten years the student movement peaked and declined. Organizations such as the Student Union for Peace Action (the successor to the Combined University Campaign for Nuclear Disarmament) mobilized university students across the country to work with disadvantaged communities, protest the Vietnam War, and raise awareness on a variety of social issues. It was "the single most important New Left organization in Canada."[54] The Company of Young Canadians (created by an Act of Parliament in 1965), which absorbed the leaders of the Student Union for Peace Action as it declined in the late 1960s, continued to mobilize youths until the 1970s, when it became defunct.

In the midst of an expanding student movement, the women's movement experienced its own resurgence. By the sixties increasingly larger numbers of women were joining the workforce and receiving a university education. Branches of the Voice of Women, formed in 1960, began campaigning for the legalization of the birth-control pill as early as 1962 – a position the country's largest women's organization, the National Council of Women, was slow to accept. The contradictions between the promise of education and the reality of the labour market, as well as changing attitudes towards sexuality and the family, contributed to the revitalization and radicalization of the women's movement. The Royal Commission on the Status of Women, established in 1967, was a watershed for the women's movement and a symbol of second wave feminism, a critical juncture characterized by Naomi Black as the "first success of the second wave of Canadian feminism."

When the Royal Commission on the Status of Women published its report in 1970 it provided a rallying point for women and led to the formation of a new national federation of women's organizations. Those feminists who had been central in lobbying the government to create the commission formed the National Action Committee on the Status of Women (NAC) in 1971. NAC's primary mandate was to ensure the implementation of the commission's recommendations. By 1972, NAC represented more than forty-two associations.

The women's movement expanded exponentially in the 1970s. British Columbia's feminists claimed two established organizations in 1969; by 1974 they could boast more than a hundred. There were at least thirty-nine women's centres across Canada by 1979. National conferences were held by lesbians in 1973 in Toronto and by rape crisis centres in 1975. International Women's Year, proclaimed by the United Nations for 1975, contributed to the continued mobilization of women and their entry into various organizations and activities. The expansion of women's rights

groups created a veritable mosaic of organizations. Women organized their own unions, political parties, and advocacy groups; opened women's centres, bookstores, publishing houses, hostels, and transition houses; and held cultural events such as women's music festivals. Radical feminists came together in groups such as the Lesbian Organization of Toronto (LOOT), which was formed in the early 1970s and rejected any working relationship with men on the basis that such relationships were inherently unequal.[55] An apartment rented in downtown Toronto for LOOT meetings became, in part, a physical sanctuary for lesbians, a place where they could socialize, share stories, and plan political action away from the scrutiny of a community that, at the time, was ill-prepared to accept alternatives to heterosexuality.

One of the most difficult issues the women's movement had to grapple with was the place of lesbians. Mainstream women's groups were either uninterested or sometimes outright hostile towards lesbians, leading lesbians to form their own separate organizations.[56] The proliferation of gay and lesbian groups is another example of a social movement dramatically coming to life in the 1970s.

As one historian has suggested, the "1970s are hailed as the decade of gay rights in North America."[57] Several small gay liberation groups appeared in Canada's larger cities in the early 1970s, groups such as the Front de libération homosexual in Montreal, in reaction to the closure of gay bars under the War Measures Act. Gay liberationists challenged established moral codes (e.g., heterosexuality) by living an alternative lifestyle and articulating a new set of values. During this same period, gay rights activists (including, for example, those involved in Gay Alliance Towards Equality in Vancouver and Toronto) called for legal protections for gays and lesbians; a gay and lesbian journal, *The Body Politic,* emerged in Toronto.[58] These organizations were at the forefront of the gay rights movement, which sought, among other things, to secure protections for homosexuals in human rights legislation. While there are no statistics on the number of organizations formed in the seventies, there is no doubt the number was quite substantial. Even a national organization was formed – the National Gay Rights Coalition – in 1975.[59]

Aboriginals were also highly active in forming social movement organizations. Between 1960 and 1969, four national Aboriginal associations and thirty-three separate provincial organizations were born.[60] Many of these groups were pioneers in organizing Aboriginals beyond the local level for the first time. For instance, the Union of Nova Scotia Indians (1969) was Nova Scotia's first province-wide Aboriginal association. At the national level, one of the most influential Aboriginal organizations was the National Indian Council of Canada (1961), which disbanded when the National Indian Brotherhood was formed in 1968. The National Indian Brotherhood was the first national Aboriginal organization run by and for Aboriginals and would later evolve into the Assembly of First Nations.[61] Indian friendship centres multiplied across the country thanks to substantial financial support from the federal government's Secretary of State. As David Long notes, a significant

aspect of this revived Aboriginal activism was "the expansion of the term 'aboriginal rights,' which by 1981 had been revised from its original focus on land rights to include the rights to self-government."[62]

Human rights activism was only one part of the "Red Power" movement, which called for a fundamental realignment of Aboriginals' relationship with Canadians through an aggressive assertion of Aboriginal identity. Louis Francis, a Mohawk, had been purchasing goods in the United States and bringing them to Canada for years without paying customs duties thanks to the provisions of the eighteenth-century Jay Treaty, which guaranteed Mohawks' open access across the border. When Francis tried to bring a used washing machine across the border in 1968, he discovered that a 1956 Supreme Court of Canada ruling had opened the door for the government to charge duties, although it had taken customs officials over a decade to decide to enforce it. Within weeks, a group of Mohawk from the St. Regis reserve, led by a charismatic young female activist named Kahn Tineta Horn, blockaded the Seaway International Bridge near Cornwall, Ontario, to protest the imposition of cross-border taxes. Protestors raised barricades and Horn purchased a Native headdress in the United States and flouted the law by carrying it over the bridge and refusing the pay duties. It took the combined efforts of the RCMP, the Ontario Province Police, and the Cornwall police to raid the barricades, take them down, and arrest thirty-five protestors. The incident was as much an exercise in promoting collective identity as it was in using civil disobedience to assert Aboriginal interests.[63] However, by the mid-seventies much of the radicalism that had blossomed in the sixties was on the decline. In its place was an increasingly bureaucratic movement dominated by hierarchical organizations employing interest group tactics.[64]

Ethnic minorities also mobilized in unprecedented numbers. Associations for the Advancement of Coloured People proliferated in the late 1950s and 1960s.[65] These black rights organizations employed tactics similar to those of NAC, the Gay Alliance towards Equality, and the National Indian Brotherhood, focusing primarily on political lobbying, educational programs within the African-Canadian community, and providing services to their members.[66] Some of the more active of the new groups representing African Canadians included the Black United Front in Nova Scotia, the Urban Alliance on Race Relations (Toronto), and the National Black Coalition. The Black United Front, formed in 1969 at a meeting of seven hundred mostly young black militants, is a good example of the increasing assertiveness of African Canadians.[67] Black United Front activists rejected the assumption that discrimination was a result of individual acts, and they located the problem in systemic obstacles to black equality. They sought to promote a collective sense of identity, to develop programs to enhance the economic and political power of African-Canadian people, and to improve their self-image. These organizations provided African Canadians with a stronger voice on the local and

national stage than they had ever had before. Empowering black people was at the heart of their activism.[68]

By the mid-1980s, the Secretary of State was providing funding to 3,500 separate organizations across the country.[69] Greenpeace was founded in 1971 when a group of people from Vancouver rented a boat and set off to protest the testing of atomic bombs in Amchitka, Alaska. Children's rights, prisoners' rights, animal rights, and advocates for peace and official language groups are just a few other examples of the many social movement organizations active across Canada during this period.

Human rights discourse pervaded these social movements, but not all social movement organizations could be characterized as human rights advocates. Important distinctions divided many of these activists. Gay *reformers* sought amendments to human rights statutes while gay *liberationists* encouraged people to openly declare their sexual orientation. At times, liberationist militancy on such issues as pornography and removing the age of consent "grated on assimilationist, equality-seeking advocates, who saw them as impediments to securing legislative reform."[70] Several activists have also, in retrospect, criticized rights-based reformers. As Tom Warner notes in the case of gay rights groups, "pursing human rights amendments would lead ultimately to the dominance of conservative voices and assimilation with heterosexuals on their terms, rather than the liberation sought by more radical proponents."[71]

A similar dichotomy divided the women's movement. Faith in the human rights agenda was perhaps the most critical factor distinguishing liberationist feminists from reformers. One of the first books produced by the women's liberation movement, *Women Unite!*, published in 1972, introduces women's liberation by distinguishing it from reformers' concern with equal rights: "The philosophy of the women's rights groups is that civil liberty and equality can be achieved *within* the present system, while the underlying belief of women's liberation is that oppression can be overcome only through a radical and fundamental change in the structure of our society."[72] Becki Ross, in one of the few exhaustive studies of a radical women's organization in Canada, offers the same distinction. In her discussion of the Lesbian Organization of Toronto's clashes with the International Women's Day coalition, Ross notes that "in both 1978 and 1979, lesbian feminists criticized the way in which a civil-rights approach to lesbianism revealed the coalition's liberal-individualistic approach to the terrain of sexual politics. By directing its inventory of anticapitalist and antipatriarchal demands at the state, the coalition reduced lesbian oppression to the rights of lesbian mothers in child-custody battles and the inclusion of anti-discrimination protection in the Ontario Human Rights Code."[73] For activists who adopted a radical or liberationist approach, while the rights revolution promised a new era of equality, it was not without its limitations.

The massive expansion of social movement organizations was an important aspect of the rights revolution. Previously marginalized and powerless members of

Canadian society were employing rights discourse to make claims for equality and fair treatment. It is interesting to note, however, that rights associations were bastions of white, Christian, male activists. As the case studies demonstrate, it is surprising how consistently most rights associations, from Newfoundland to British Columbia, tended to attract mostly men and few visible minorities. The proliferation of identity-based movements undoubtedly drew women, visible minorities, and others away from rights associations and contributed to this lopsided demographic trend. But the nature of human rights discourse, a discourse that was embraced by reformers employing conservative tactics, may have further discouraged people with more radical aspirations from participating in organizations dedicated purely to the pursuit of a rights agenda.

Canada's Rights Culture

Demands for a bill of rights, law and policy reform, and social movement activism offer only a glimpse into the profound impact of the rights revolution on Canadian society. Fundamentally, however, the rights revolution was about new ideas. Human rights are intimately linked with changes in the law, yet at the same time they are informed by the cultural context of the community they serve. In 1914, for instance, the Supreme Court of Canada upheld a Saskatchewan statute banning white women from working for Chinese men. As James Walker notes in his study of the case, the entire issue was reduced to a debate over the right of Chinese men to hire white women; no one raised the issue of a woman's right to choose her own employment. In the case of a Jewish man who, in 1951, challenged a restrictive covenant that barred Jews from owning property in a Toronto neighbourhood, "the Court allowed the respondents' argument – that racial discrimination was both morally and legally acceptable – to pass without contradiction, and declined to confirm the appellants' assertion that racial distinctions were contrary to public policy."[74] Within a generation, racial and religious discrimination would be considered not only illegal but also morally reprehensible.

Human rights are a powerful force because the source of human rights lies not in the law but in human morality.[75] A society with a strong rights culture allows individuals to make rights claims even though, at the time, they are not recognized by the state or even the community around them.

Canadians have come to view themselves as rights-bearing citizens, and this has had a profound impact on the relationship between the state and civil society. With the hardships of the Great Depression still fresh in the minds of many Canadians, the government's successful prosecution of the war both at home and abroad convinced many people that the role of the state had to change. Laissez-faire economics gave way to the modern welfare state. And if the state could protect citizens against old age and unemployment, why not protect them against discrimination? Over time, Canada's rights culture has evolved from simply prohibiting overt acts

of discrimination. Cynthia Williams suggests that Canada's rights culture has shifted from a traditional focus on negative rights towards egalitarian and cultural rights. According to Williams, the "preoccupation with procedural equality in the 1950s centred on equality before the law ... During the 1960s and later, however, popular equality claims turned to more substantive concerns, and a new focus on equality of opportunity included the demand that citizens be guaranteed equal benefits from society."[76] Sections in the Charter on language rights, multiculturalism, and Aboriginals are only one manifestation of this new era. By the 1980s, Canadians increasingly considered access to education and health care as rights. In many ways, the pillars of the welfare state, from employment insurance to workers compensation, were as much a manifestation of Canada's rights culture as was the right to vote and the right to equal pay. The welfare state is rooted in a powerful belief in the legitimacy and necessity of social rights.

A unique rights culture has evolved in Canada. According to Michael Ignatieff, Canada's rights culture is today defined by three qualities: "First, on moral questions such as abortion, capital punishment, and gay rights, our legal codes are notably liberal, secular, and pro-choice ... Second, our culture is social democratic in its approach to rights to welfare and public assistance ... The third distinguishing feature of our rights culture, of course, is our particular emphasis on group rights."[77] This rights culture has found expression in many forums other than the courts. Ignatieff goes on to suggest that skyrocketing divorce rates since the 1970s is about more than the introduction of new divorce legislation; the endorsement of individual autonomy through rights talk partly eroded the assumption of female self-sacrifice that bound many families together. The power of rights discourse is also based on its ability to empower marginalized and powerless people in the community. They may be denied legal recourse for their claims, but rights discourse provides them with a legitimate forum in which to advance their claims in ways that are not easily ignored. Such is the case with the battle for sexual equality for gays and lesbians, in which human rights claims are used consistently, and sometimes effectively, to challenge the power of the sexual majority to define what is normal.[78]

The legal, political, social, and cultural manifestations of the rights revolution were thus part of a fundamental shift in Canadian society. Human rights discourse was mobilized to challenge basic notions of common sense. Ideas about racial hierarchies and parliamentary supremacy were discarded, and new conceptions of the role of the state and the law emerged. The human rights movement altered Canadians' perception of what was right and fair.

A rights revolution had occurred in Canada.

3
The Forties and Fifties: The First Generation

Stimulated in part by the Russian Revolution in 1917 and the subsequent geo-political developments, the spread of communism concerned Canadian political leaders, and their fears had a trickle-down effect. In 1933, Constable Joseph Zappa of the Montreal police force shot an unarmed Pole, Nick Zynchuck, in the back during an eviction proceeding in Montreal. When asked to account for his actions, Zappa shrugged his shoulders and replied "He's a Communist."[1] With its rejection of capitalism and private property, and its dedication to the overthrow of the state, communism represented a fundamental challenge to the status quo. The Canadian state became an active participant in the persecution of communism at home. In time, the state's campaigns against communism would lead to the formation of the country's first rights associations.

Victims of discrimination played a crucial role in mobilizing the human rights movement in Canada. To be sure, the state had its own role to play in fomenting the rights revolution. Political leaders such as Tommy Douglas, John Diefenbaker, and Pierre Trudeau were influential advocates for reform, and, as the following chapters reveal, the state was responsible for funding numerous social movement organizations. These organizations, many of which could not possibly have survived without state funding, were at the forefront of innovations in human rights reforms, from lobbying for human rights legislation to educating the public.

But victims of oppression have always been the best advocates for reform.[2] A Jew banned from a law school can become a symbol of the hypocrisy in a society that espouses liberal principles while denying equal opportunities to all of its citizens. Individuals who suffer the shame and frustration of discrimination are not only motivated to advocate for change but are also in a better position to mobilize others who have been targets of similar treatment. It is thus hardly surprising to see the first rights associations emerge from the ranks of communists, political radicals, and trade unionists who were the targets of the most extreme forms of government repression. Meanwhile, visible minorities, women, and other targets of oppression began to organize themselves and became powerful advocates for change. By the 1950s, rights associations would prove to be useful allies for minority advocates who had the resources to mount campaigns for reform but lacked the privileged access to the corridors of power enjoyed by many rights associations.

The first generation of rights associations set the stage for the emergence of their successors in the 1960s. Many parallels exist between the two generations.