

# **Counter-Hegemonic Citizenship: LGBT Communities and the Politics of Hate Crimes in Canada**

by

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## Introduction

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence of the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor, or... (*Criminal Code*)

In 1994, the Canadian government introduced Bill C-41<sup>1</sup>, an amendment to the *Criminal Code* stating that offences motivated by hate or bias would be subject to harsher sentences. The Bill which received royal assent in July 1995 was applauded by police services, community activists that work closely with targeted groups and others concerned about hate crimes. The amendment was viewed as an important step in addressing the problem of targeted violence. It sent a clear message that the Canadian government and society in general condemns hate and bias crimes. The new legislation offered hope that something was being done to stop hate crimes and that, as a result, targeted groups would be safer.

In advanced liberal-democratic states such as Canada, hate crime policies are part of a larger discourse on issues of difference, equality and social justice. Some of the greatest challenges faced by the public, governments, policy-makers, public institutions (including police services) and the judiciary have to do with the accommodation of differences and protecting people who are different from state discrimination and violence from other citizens. The debates raised when trying “to live together with differences” often focus on issues of equality, equity and social justice (Fraser 1997). They are about access to citizenship, employment, social programs and lodging; they also are about fair treatment by the police, the judicial system and state authorities. They are about the entitlement to safety by all citizens and their right to be free from discrimination. Overall, these are issues that relate to the enjoyment of substantive citizenship by all in society regardless of differences.

The focus of this paper is on citizenship as it is experienced by a group that is considered different. My main concern rests on the fact that in liberal democracies, including Canada, where citizenship is said to be universal —meaning that everyone who is a citizen benefits from the same treatment by the state and is entitled to the same rights— groups that are considered Other on the basis of gender, sexual or gender identity<sup>2</sup>, race, ethnicity, etc., do not enjoy substantive citizenship. Despite claims of universal citizenship, which carries with it a presumption about equality, large segments of society are unable to contribute fully to the political community, nor are they able to access the full benefits associated with citizenship. For those of us who deeply value social justice, this is a troubling situation.

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<sup>1</sup>Bill C-41, *An Act to Amend the Criminal Code (Sentencing) and Other Acts in Consequence Thereof*, 1st Session, 35th Parliament, 1995 (assented on July 13, 1995).

<sup>2</sup>In order to not exclude transsexuals and transgendered people, it is necessary to mention “gender identity” and not simply “sexual identity” and “gender” (Namaste 2000, 140-1).

When I speak of citizenship, I do not limit my focus to the formal-legal definition of citizenship<sup>3</sup>. Ultimately, I am not interested simply in whether one is entitled to vote, run for public office, carry a passport, or access health and welfare benefits. I am also interested in aspects of citizenship that are not necessarily tangible, or at least, not immediately visible. I am concerned with the barriers that prevent individual citizens from accessing the benefits of substantive citizenship or that prevent them from contributing to society. I am particularly concerned with violence—violence motivated by hate and bias targeting specific groups—and state actions to counter such violence. I view targeted violence as the clearest expression of the denial of substantive citizenship. Although targeted violence or the threat of such violence does not negate legal equality and entitlements associated with citizenship, it is likely to undermine substantive aspects of the citizenship of targeted groups (Lister 1997a, 43, 71-2; Phelan 2001, 5).

The above arguments are developed through a focus on the citizenship of lesbians, gays, bisexuals and transgendered (LGBT) people. Even when they enjoy formal-legal citizenship, LGBT people are denied the benefits of substantive citizenship. Violence targeting LGBT people is a reality with which this group is confronted on a daily basis. Although the data available on hate crimes is not as accurate as for other crimes (see Janhevich 2001 and Roberts 1995), we know that LGBT people are one of the main categories of victims of hate crimes. Violence motivated by hate or bias is oppressive for the entire group which is targeted, regardless of whether one is a direct victim of targeted violence or not. Targeted violence consists of random and unprovoked attacks on an individual or her/his property in order to humiliate and subordinate a group of people. The knowledge that one may become a victim at any given time makes this violence oppressive. In this regard, the presence of targeted violence is one indicator that LGBT people are denied access to substantive citizenship. As a result, I consider “being safe” a prerequisite for enjoying substantive citizenship.

I am interested in state action—or inaction—with respect to ensuring minimum levels of safety for targeted groups to access citizenship. One response to this violence has been an amendment to the *Criminal Code* that requires that crimes motivated by hate or bias be given harsher sentences (i.e. s. 718.2 in the *Criminal Code*). This legislation mentions “sexual orientation” as one of the groups it protects. Since LGBT individuals are denied substantive citizenship partly as a result of targeted violence, I ask if a public policy that aims to protect LGBT people—in this case through harsher sentences for hate crimes—can ensure or contribute to ensuring the minimum level of safety needed by LGBT people for substantive citizenship. Does the hate crime policy, which confirms the citizenship of LGBT people by mentioning sexual orientation as one of the protected categories, open up the concept of citizenship in ways that allow LGBT individuals to be included in a substantive definition of citizenship (in contrast to a formal-legal one, in which they are already included)?

In this paper, I use the concept of citizenship to establish that LGBT people, as a group, are marginalized. After having recognized that lesbians, gays, bisexuals and transgendered individuals do not benefit from substantive citizenship, I focus on how and when citizenship changes. The process of contesting citizenship is central to a project of transformative politics that wants to remove the barriers to substantive citizenship and thereby allow LGBT individuals

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<sup>3</sup>Formal-legal citizenship is understood as a status that is bestowed on those who are full members of a political community and who, as a result of this status, enjoy rights (e.g. application of laws or legal codes) and benefits (e.g. socio-economic benefits of the welfare state) as well as responsibilities (e.g. political participation such as voting). Moreover, formal-legal citizenship usually corresponds to a given national identity.

to be included in citizenship. Relying on a case study in which I examine strategies used to counter violence targeted at LGBT people, I make the argument that public policies and laws that aim to protect groups cannot guarantee access to substantive citizenship. They can, however, be used as a resource by oppressed groups to force a shift in the boundaries of the citizenship regime.

### **Substantive Citizenship: Understanding Difference, Challenging Exclusions**

The concept of substantive citizenship has been developed and discussed in various bodies of literature. Feminist scholars have a well-established tradition of linking various sources of oppression in a common web, to address simultaneously sexism, racism, classism, heterosexism and other forms of oppression. Women of colour were the first to discuss the issue of intersectional or overlapping discrimination (Moraga and Anzaldula 1983; Collins 1990; hooks 1984; Bannerji 1993). At a time when people were writing about identity politics, their work alerted us to the need of considering power relations as a dynamic system to inform our analysis. These writers argued that it is important to look at race or gender not simply as a difference, but to understand these as embedded in a system of power relations that highlight domination.

This literature has expanded to include the concept of citizenship. Using citizenship as a lens for understanding women's place in society, these works examine gender, sexism, racism, imperialism, colonialism and violence against women. They also explore women and the labour market, women and the welfare state, and the impact of westernization and globalization on women. Feminist theories of citizenship constitute a large and important body of literature (Lister 1997; Walby 1997; Young 2000, 1990; Jones 1990, etc.). As Lister explains, "feminist political theorists have exposed the ways in which women's long-standing exclusion from the theory and practice of citizenship [...] has been far from accidental. The universalist cloak of the abstract, disembodied individual has been cast aside to reveal a definitely male citizen and a white heterosexual, non-disabled one at that" (1997a, 66). Feminists challenge the idea that citizenship is a universal concept by highlighting the ways in which gender serves to exclude them from citizenship. The debate around women's citizenship has often been stated in absolute terms. It is assumed that either women want to be treated the same (meaning equal) as men or differently. Yet, this equality/difference debate is too simplistic. It disregards thinking about citizenship in substantive terms. The choice between being treated the same or different is a false choice. Feminists have shown that to treat women the same as men denies their gender identity by making women be like men. To treat women differently, however, runs the risk of reinforcing the sexual division of labour, the private/public divide and sex roles (Longo 2001, 270). Thus, feminist theories of citizenship tend to propose alternatives for thinking about citizenship.

Feminist theories of citizenship contribute to the understanding of the oppression of women in the political community, an analysis that can be easily expanded to look at the oppression of other groups, including LGBT people. In terms of women and citizenship, gender is articulated when it is the barrier to citizenship, equality and freedom. Gender is not always central to this struggle. In this respect, feminism is not a struggle for an empirically defined group, but for the equality of women (Mouffe 1993). This understanding shows that the analysis is easily adaptable for confronting the barriers to citizenship faced by other groups. Using citizenship as a lens, while being informed by feminist theories of power and oppression, "provides an invaluable strategic theoretical concept for the analysis of women's subordination

[or that of other groups] and a potentially powerful political weapon in the struggle against it” (Lister 1997a, 195).

For the purpose of identifying barriers to substantive citizenship, citizenship is best understood as a regime (Jenson and Phillips 1996). Citizenship is a social construct that varies across time and space and that extends beyond the formal title of citizen. The notion of regime helps us consider other practices and institutions that shape the experience of citizenship. A citizenship regime is established through “the institutionalization of a set of practices by which states use public power to shape and regulate markets and communities” (Jenson 1997, 628). The state establishes a citizenship regime through a set of laws and public policies that regulates who is entitled to become a citizen (formal-legal citizenship) and who will have access to the rights and benefits that accompany citizenship (substantive citizenship). The citizenship regime covers a given territory coinciding with the geographic borders of the state. Despite the fact that formal-legal citizenship is granted to most individuals living on a permanent basis in Canada, the full privileges of citizenship are limited to a smaller group of individuals.

By constructing the boundaries of the political community through policies and laws, a system of inclusion/exclusion is established. It distinguishes internally between persons who benefit fully from rights (or first-class citizenship) and some sort of second-class citizen status for those who, despite having legal citizenship, do not. In sum, the citizenship regime extends to all legal citizens; everyone within the territory is affected by the practices and policies of the regime whether or not they benefit from citizenship. Yet, substantive citizenship (or full access to the rights of citizenship) is limited to certain segments of the population. Thus, although lesbians, gays, bisexuals and transgendered people live within the territory covered by Canadian citizenship and most have formal-legal citizenship, LGBT people generally were excluded, until very recently, from important benefits and rights of citizenship, including the right to equality before the law, equal access to justice, health and welfare.<sup>4</sup>

Each regime defines citizenship. In a stable regime, the status proffered to citizens matches the status anticipated by citizens. Apart from widespread restructuring of the economy or fundamental changes in national or international relations that can culminate in changes to the regime, when large segments of society no longer recognize themselves in how citizenship is defined, it is likely that the boundaries of the regime will be contested by them. Because I am concerned with how individuals who are Other experience citizenship, the concept of regime is particularly useful. To think of citizenship in terms of a regime allows us to outline what is citizenship, to define the barriers to substantive citizenship as they are experienced by given groups and to contemplate what could be done to force changes in the regime to better reflect the interests of those who are excluded from the citizenship regime.

The literature on citizenship does not focus sufficiently on how those with legal but not substantive citizenship can challenge situations of oppression or push for change. The model of counter-hegemonic citizenship, which I develop here, contributes to such an understanding. The radical democracy project informs my idea of counter-hegemonic citizenship. About citizenship in radical democracy, Mouffe asserts:

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<sup>4</sup>This is inspired from Carl Stychin’s work. Stychin speaks of nation, nationalism and national identity, in conjunction with citizenship. I have purposely defined counter-hegemonic citizenship in terms of the state and citizenship, rather than nation (1995, 105). For a discussion on the separation of citizenship from nation, see Kathleen B. Jones (1990) and Nira Yuval-Davis (1997).

[c]itizenship is not just one identity among others, as it is in liberalism, nor is it a dominant identity that overrides all other, as it is in civic republicanism. Instead, it is an articulating principle that affects the different subject positions of social agent, while allowing for a plurality of specific allegiances and for the respect of individual liberty (Mouffe 1993, 84).

The interest in the radical democracy project is that citizenship finds itself repoliticized (Delanty 2000, 36). When citizenship is no longer understood simply as a set of rights, but rather as an entry-point from which we can contest, challenge and reshape the citizenship regime, social groups are more likely to mobilize around their citizenship identity, articulating a counter-hegemonic project that, if successful, will force changes in the boundaries of the citizenship regime. Mouffe has claimed that “[a] radical democratic interpretation [of citizenship] will emphasize the numerous social relations in which situations of domination exist that must be challenged if the principles of liberty and equality are to apply” (1993, 84). When citizenship is contested from below—when the regime is challenged by a counter-hegemonic project by social groups who have experienced exclusion from substantive citizenship—then, citizenship is repoliticized. It becomes radical (Turner 1994, 18; Mouffe 1993) or, as I prefer to call it, counter-hegemonic.

Citizens are social agents capable of forcing institutional changes when pressed to do so as a result of a situation of oppression. Counter-hegemonic citizenship consists of political action and projects that try to change how citizenship is experienced by forcing the citizenship regime to incorporate groups who had previously been marginalized and excluded from some of the benefits of citizenship. For example, the implementation of hate crime legislation that would punish those who unlawfully harmed LGBT people aims at a shift in the boundaries of the political community and so contest citizenship. This contestation serves to increasingly legitimize the treatment of lesbians, gays, bisexuals and transgendered people as citizens rather than stigmatize them as deviants. I am not suggesting, however, that citizens easily engage in counter-hegemonic projects. Laclau and Mouffe have argued that a central problem in identifying when such projects are possible has been to “identify the discursive conditions for the emergence of collective action, directed towards struggling against inequalities and challenging relations of subordination” (1985, 153). They conclude that when a relation of subordination have become a source of antagonism, citizens are likely to engage in challenges.

To determine when individual citizens find themselves outside the realm of substantive citizenship, it is useful to rely on Iris Young’s framework of oppression (1990). According to Young, “...oppression designates the disadvantage and injustice some people suffer not because of tyrannical power coerces them, but because of everyday practices of a well-intentioned liberal society” (1990, 41). Oppression is a concept that is rarely used to name injustices in the Canadian political context; oppression does, however, reflect the reality experienced by disadvantaged groups. She identifies five faces of oppression: exploitation, marginalization, powerlessness, cultural imperialism and violence (1990a, 53-63). If experiencing a situation of oppression as defined by Young, it is likely that the conditions needed to stimulate engagement in a counter-hegemonic project are met. LGBT people are subject to several of the forms of oppression as identified by Young, the most obvious one being targeted violence. As I argue in the next section, targeted violence can serve as a catalyst to push for change.

With respect to the goals of such a project, Mouffe has argued that “the aim of a radical democratic citizenship should be the construction of common political identity that would create the conditions for the establishment of a new hegemony articulated through new egalitarian social relations, practices and institutions” (Mouffe 1993, 86). Citizenship is understood here as the lens through which some injustices are addressed and marginalization contested. In sum, the essence of counter-hegemonic citizenship is the redefinition of the boundaries of citizenship regime to achieve the promise of social justice implicit in the idea of universal (or formal-legal) citizenship to the extent that it is within the state’s scope.

The model of counter-hegemonic citizenship that I propose takes into account feminist critiques of radical democracy regarding the autonomy of individuals. Social positioning has differential outcomes for different groups. At present, not everyone has an equal opportunity to participate in radical democracy. Counter-hegemonic citizenship is based on three pillars: “voice, difference and justice”. First, there is a need for citizens to be active participants, although this participation may take different forms (e.g. traditional party politics, local liaison committee with the police, etc.). Second, there is the assumption of difference. This model is proposed in part because we want to come to terms with the challenge that difference poses to the governance of liberal-democratic states. Finally, there is the assumption that social justice is the desired end (Delanty 2000, 46) because formal equality leaves LGBT people in a situation of having fewer rights and freedoms or second-class citizens. These are the conditions for the success of a project of transformative politics. The progressive potential for counter-hegemonic citizenship is met when the process leads to real changes, when the experience of the oppressed group is taken into consideration and when diversity is represented in the accounts of knowledge produced by oppressed groups to force changes in the boundaries of the citizenship regime (see Andrew 2003, 324).

To work towards a regime shift through contesting the boundaries of citizenship, what is needed is an “agenda for change [that] will require the collective engagement in a positive politics of difference that combines short-term responses as well as long-term transformative practices which disrupt institutionalized structures of inequality” (Perry 2001, 23). This means that the approach to counter-hegemonic citizenship takes place on several fronts. To understand how to proceed, first, we must analyze systems of oppression, in this case heterosexism. We need an understanding of how heteronormative principles are upheld so that they can be challenged.

The concept of hegemony is useful for explaining how a citizenship regime that is unfavourable to sexual minorities is maintained (Kinsman 1996). Taken for granted privileges built on the assumption of heterosexual relations, as well as numerous rules and policies that reinforce the assumption of heterosexual privilege. In this respect, we can speak of heterosexual hegemony, which is maintained in a variety of ways either through the non-recognition of sexual minorities, policing practices and application of laws and regulations in ways that reinforce the oppression of LGBT individuals, and historically, through the criminalization of acts considered as deviant. Such an analysis can guide groups in their choices of issues on which to focus and in their choice of mobilization.

Considering that targeted violence is possible only in a system of inequalities, the state’s role in the institutionalization of power relations must be recognized. When violence targeting a group goes unabated, the state is responsible for its legitimization. Connell claims that “[t]hrough laws and administrative arrangements, the state sets limits to the use of personal violence, protects property (and thus unequal economic resources), criminalizes stigmatized sexualities,

and organizes violence in policing, prisons and war” (1994, 148). Laws that focus specifically on sexual assault, partner assault, or hate crimes send a message that the state will not tolerate these specific forms of personal violence. Of course it is not sufficient for these laws to exist; they must also be enforced through policing and the criminal justice system.

Here violence is understood as a process of exclusion. Hate crimes or violence targeted at LGBT people are a way to maintain power inequalities between LGBT people and others in society. By upholding heterosexism, this violence denies LGBT individuals first-class citizenship. The state must intervene when such violence occurs and should aim to prevent these incidents. If not, it must shoulder the blame for targeted violence on its territory (Wieviorka, 1998). Targeted violence is a process of social control. Targeted violence is also the product of certain discourses. Violence targeting LGBT people only makes sense in a context in which heterosexuality is privileged over other forms of sexualities, and to this the state contributes.

Although the right to live free from violence is rarely discussed as a right of citizenship, since without adequate safety and protection the other rights of citizenship are undermined or rendered inaccessible, security should be considered as a basic requirement for citizenship. The state’s most basic role is the protection of its citizens. The freedom to walk down the street or move around in public spaces “is fundamental to the functioning of a state that considers itself to be ‘democratic’ ” (Lahey 1999, 150). Citizenship is a central point for launching projects of political contestation or developing counter-hegemonic projects that will result in the inclusion in citizenship of groups disadvantaged by the current citizenship regime. By mapping the inclusions/exclusions delineated by the citizenship regime we can understand that certain groups have been marginalized and illuminate some strategies to overcome such exclusion and oppression. Although this will not allow me to explain why LGBT people are stigmatized and subsequently excluded, it allows me to focus on how to change the situation. The state must make targeted violence its responsibility and work to prevent it to fulfill its duty in granting equal protection from violence to all of its citizens.

The difficulty with issues of difference and citizenship, or more precisely of exclusions from substantive citizenship, is that the problem is so broad that identifying where to start can be daunting. Considering the extent to which heterosexism and homophobia affect the citizenship of LGBT individuals, solutions must be equally broad. However groups decide to challenge this system of oppression, we must keep in mind that every little gain with respect to substantive citizenship is one step closer to being able to *be ourselves safely* regardless of our sexual identity.<sup>5</sup> Keeping a sharp eye on the functioning of heterosexism is mandatory if the boundaries of citizenship are to be successfully challenged. As someone I interviewed said:

Wherever homophobia exists, there will be a perversion of people’s freedom and rights of which hate crimes is a component. I think there have been some shifts in homophobia within the culture, but I still think it is preminent. Therefore, all issues around our interests have to be, in my opinion, premised on that as the environment and probably even in terms of our ability to self define is hampered by that. We [...] continue to seek a self-definition of who we are and what that means in a completely

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<sup>5</sup>Discussions on social control suggest that regardless of our sexual identity, we are all controlled by the same gender norms that are not to be transgressed if violence, harassment, discrimination is to be avoided (Rubin 1993, 31; Carabine 1992, 27-35; Smith 1994, 241; Connell 1994)



unbiased way by chipping away at this homophobic environment in which we live (Interview David Hoe, 11 April 2003).

The next section focuses on an application.

### **The Ottawa Police Liaison Committee with the LGBT community<sup>6</sup>**

Although issues of safety are a concern for everyone, safety and living free from violence and discrimination is an even greater concern for LGBT communities which like others marginalized by difference are more likely to be the target of hate and bias-motivated activities and least likely to get the help they need to be safe. To determine whether the adoption of hate crime legislation could have an impact on the citizenship of LGBT individuals, I assessed police practices in Ottawa. More specifically, I studied the *Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities* (subsequently referred to as the Liaison Committee). I focused on the Liaison Committee to understand how the boundaries of the citizenship regime were challenged to better accommodate the interests of LGBT individuals. Through the study of the Liaison Committee, I show that the Ottawa police, more specifically the Hate Crime Section, as a result of the partnership with LGBT individuals and community organizations, has been willing to work with a definition of crime and safety that corresponds to the LGBT communities' definition of violence or hate crimes. I conclude that this is key for challenging the boundaries of citizenship and ensuring minimum levels of safety to allow LGBT people to enjoy the benefits of citizenship and contribute to the political community. Although in the case of Ottawa the hate crime sentencing legislation does not seem to be at the origin of the changes that brought about specialized hate crime units and liaison committees, the case study helps to ascertain the role played by public policy in protecting LGBT people and enlarging their citizenship rights. My case study allows me to show that the hate crime policy was used as a resource for LGBT individuals to access police services and hold them accountable for their safety, subsequently resulting in a contestation of the boundaries of citizenship.

The Liaison Committee, a community-based committee with police involvement, is a successful model of police accountability to the communities. The Liaison Committee's collaboration with the Ottawa Police Hate Crime Section has been key in developing an approach to police work which conceptualizes crime and safety in ways compatible with the communities' experience of targeted violence or hate crimes, rather than as strictly define in law (which addresses only most serious offences).

The Liaison Committee came into being as a result of pressures from the LGBT communities and their willingness to liaise with the police to solve problems that compromised the safety of LGBT people. In the beginning, the LGBT communities wanted to secure an entry point to have access to the services of the Ottawa Police to which they were entitled as residents of Ottawa. The individuals who initiated the Liaison Committee were willing to work with the police to overcome police indifference to the problems of violence in the parks, community reluctance to report, and, more generally, safety issues affecting the LGBT communities. The

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<sup>6</sup> This paper presents partial findings from a broader study on citizenship, hate crimes and the safety of LGBT people. The fieldwork consisted primarily of formal and informal semi-structured interviews with LGBT individuals and individuals affiliated with LGBT organizations, individuals and state actors called upon to intervene with respect to the safety of LGBT citizens (police officers, policy-makers), mostly in Ottawa. I conducted 53 in-depth interviews in the period from 15 February 2002 until 4 March 2003.

police did not initiate this committee and originally had to be shamed into meeting with the LGBT communities. More than a decade later, this committee still exists and is vibrant.

Police participation in the Liaison Committee has been necessary and is central to its existence (Interview David Pepper, 22 March 2002 and Interview Bruce Watts, 26 February 2002). According to Bruce Watts who was head of the Hate Crime Section from 1995-1998, a key distinction between this committee and other committees of the Ottawa Police is that unlike the others, this committee is community driven with some police involvement, rather than being police driven with community involvement (Interview, 26 February 2002). Although police voices are heard at meetings, the LGBT communities use the committee to voice their concerns and problems to the police. The committee meetings are a forum used to find solutions that will promote the safety of LGBT people in Ottawa, thereby opening up spaces where LGBT individuals are able to enjoy the rights associated with Canadian citizenship.

As in most cities, the LGBT communities are quite diverse and not always visible. The Liaison Committee does attempt to represent the LGBT communities, but cannot do so fully. The Committee involves a number of organizations that represent diverse segments of the LGBT communities.<sup>7</sup> LGBT people of colour and youths, however, have had little if any representation over the years. Moreover, since this committee engages with the police, some community activists are uncomfortable with or unwilling to associate with such a committee. The history of the LGBT communities' relations with the police in Ottawa and elsewhere has been marked by a number of homophobic and repressive moments that still today leave some individuals unwilling to engage with the police. Nevertheless, the Liaison Committee does voice the concerns of a number of individuals from various backgrounds and works in the best interest of the LGBT communities.

Many changes in the approach of the Ottawa Police are the result of work, outreach, and pressure from the Liaison Committee and community groups. The Liaison Committee was a major catalyst in getting the Hate Crime Section set up in January 1993. Also, over the years, there has been a noticeable increase in reporting of hate and bias-motivated incidents on the basis of sexual identity, which can be attributed to LGBT communities having come to recognize safe entry points to access police services, either through the Liaison Committee or the Hate Crime Section (Wellness Projects 2001, 42; OPS, 1993-2002; Roberts 1995, 17-18).

The *Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities* is considered a definite success by those involved and most likely by a large number of LGBT people. Although it is quite possible that most LGBT individuals in Ottawa will not make a direct connection between their feelings of relative safety and the work done by the Liaison Committee, the partnership established between the police and the communities that is maintained through the Liaison Committee has been key in ensuring that increasing numbers of incidents are being reported, that actions are being taken to prevent incidents from occurring and that incidents are resolved (or investigated) when they do happen. As one community member explained, "the police is a great resource to deal with safety issues. If the community is not accessing police services, their safety is likely to be compromised" (Interview Matt Lundie, 26 February 2002). The Liaison Committee and the work being done by the Hate Crime Section

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<sup>7</sup>The committee has a permanent membership that includes the representatives of the Ottawa Police Services, the Gatineau police, Carleton University Safety, University of Ottawa Security Services and the Crown Attorney's Office. The list of community organizations that are represented are: Pink Triangle Services, Parents and Friends of Lesbians and Gays (PLAG), Gender Mosaic, Sage, AIDS Committee of Ottawa, Ottawa Knights, GLBT Centre (Carleton University), Pride Centre (University of Ottawa), Pride Committee of Ottawa, and VASOC.

which plays a central role in reducing the traditional barriers between minority communities and the police therefore affect the lives of countless individuals directly and positively, especially those who are the victims of hate and bias-motivated crimes and incidents.

Keeping this success in mind, one might ask then whether the adoption of the hate crime sentencing legislation contributed in some way in changing police practices and ensuring the safety of LGBT individuals. In the case of Ottawa which already had a Hate Crime Section and Liaison Committee when Bill C-41 was adopted, it would be logical to assume that the LGBT communities would not benefit from this change in the *Criminal Code*.<sup>8</sup> What then is the role of this legislation?

When assessing the impact of the changes to the *Criminal Code* made in 1995 with respect to the work of police services, we need to keep in mind that this provision is intended for use by judges at the sentencing stage of a criminal process (Interview David Pepper, 22 March 2002). By introducing hate crime sentencing enhancement measures rather than a new category of crime, this provision offers no new laws or tools that can be used by police. This is not to say that the provision had no effect at all, however. It made the public more aware of what hate crimes are. It has also raised the public's expectations of the police who are mandated to enforce the *Criminal Code* and must address hate crimes. In the long run, this can contribute to the reporting of these crimes and have an indirect impact on policing. What the hate crime sentencing legislation more generally contributed was a change in the ability to assess the situation with respect to hate crimes. Introducing changes to the *Criminal Code* gave police forces the ability to quantify hate crimes, which could not be done before. The concept of hate crime needed to be included in the *Criminal Code* in order for police to have the authority to charge individuals with such an offence. Once there was an operating definition of hate crimes in the *Criminal Code*, it became possible to quantify the number of cases in which charges are laid or the number of cases investigated (Interview Yves Martel, 28 February 2002). In other words, it became possible to compile data on this type of crime.

Tabulating hate crime data does help police services in terms of resource allocation. Speaking about the initial stages of setting up the Ottawa Police Hate Crime Section, officers have also mentioned how it was a struggle to secure resources at a time when people were questioning whether this work should even be done. Now that the process is well entrenched in Ottawa, resources are secured for this section (Interview Bruce Watts, 26 February 2002). The codification of hate crime has likely contributed to this. The question is no longer whether resources will be allocated for work on hate crimes, but rather in what proportion. More generally, justifying the existence of a hate crime section is no longer an issue at the executive level of a number of large police services. It is accepted that the problem of hate crimes exists and that a specialized unit is needed to address these crimes. This substantiates how, in the case of Ottawa Police, there is an openness to community outreach and addressing hate crimes. This openness contributes to enlarging the boundaries of the citizenship regime by giving communities access to the protection they need and are entitled to.

The police and criminal justice system have a role to play in terms of making sure that when such incidents occur there is an adequate response. In this respect, I conclude that cities with a liaison committee that plays a significant role in making police accessible to LGBT

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<sup>8</sup> The Ottawa Police and Liaison Committee actively lobbied for such a change. See: Ottawa-Carleton Regional Police Bias Crime Unit and the Liaison Committee for Lesbian, Gay, Bisexual and Transgender Communities. 1995. *Brief Submitted to the House of Commons Standing Committee on Justice and Legal Affairs respecting Bill C-41*. (February)

communities, as does the Ottawa Liaison Committee, are likely better off than those who do not because access to police is a prerequisite to ensuring minimum levels of safety to enable the citizenship of LGBT individuals. Having a liaison committee means, in the case of Ottawa, that individuals have a place to which to turn when there is a problem, even if they do not wish to go directly to the police (for it is possible to report crimes anonymously through the liaison committee). It also means that there is an established dialogue with the police when there is a problem with that very institution. When the communities have a problem with the police, they can address them at Liaison meetings—a forum where the police are held accountable for their actions or inaction. Without such a venue, individuals are forced to use official complaints against, for example, an individual officer that are made to the police itself, which puts the onus on the individual making the complaint in a process which tends to be adversarial or confrontational, not to mention formal and much slower than raising issues in the informal setting of the Liaison Committee. Moreover, the scope of the issues addressed in the context of the Liaison Committee is much broader than in the system of complaints. For example, the community may ask the police to step up patrol in a given area where they have identified a problem or it may question why it had not received a warning that there had been a series of incidents and so on.

A Liaison Committee is a tool that can contribute in making certain cities safer for LGBT individuals when used by the communities to hold the police accountable for their safety. It is not a sufficient condition however to ensure that a city is safe for LGBT communities. Carole Holland, one of the persons involved since the setting up the committee, assessed the work of the committee by saying that, because the focus of the Liaison Committee is on crime prevention, the work of the Committee will never be finished. The Committee must always question whether it is covering all the bases. In her words:

Two necessary components [of the work done by the Liaison Committee]: Vision and Vigilance. Speaking about vigilance, we cannot assume that the police will be at a shared place of understanding and goal setting every moment on all issues; we cannot assume that the issues will come to us. We have to be aware of the issues and we have to identify the issues. This speaks to being proactive (Interview Carroll Holland, 15 February 2002).

She warns that now that the Liaison Committee is more than a decade old, and should not allow itself to slip into a place of self-satisfaction. It needs to sharpen up and be vigilant and assess where it is at and what it should be doing next to continue on with crime prevention and safety of LGBT individuals. One can easily draw parallels between what Holland is saying about the role of the Liaison Committee and a project of radical democracy. A project of radical democracy implies that those engaged in counter-hegemonic projects, such as negotiating the conditions to ensure one's safety, are always having to renegotiate their position to secure their access to substantive citizenship (Mouffe 1993, 83-6).

This negotiation is made legitimate and possible in part because the *Criminal Code* now recognizes “hate crimes” as a particular form of violence. By naming this problem, it became easier for communities to demand police protection. The identification of the problem probably gave the Liaison Committee the needed legitimacy to pursue its work. For the police, the identification of hate crimes in the *Criminal Code* allows to justify the allocation of resources towards the Hate Crime section, the Liaison Committee, training, etc. An immediate and

concrete outcome is that LGBT individuals are more likely to receive appropriate and fair treatment at the hands of the police when they are victims of a crime. A less obvious and longer-term outcome is that the Liaison Committee, by allowing LGBT people to access police services, is empowering their communities by enabling their citizenship. This, I argue, is a necessary first step toward a regime shift, toward redefining citizenship in substantive terms that are inclusive of the LGBT communities.

## **Conclusion**

In advanced liberal democracies, like Canada, managing diversity is one of the greatest challenges faced by state and society. For those concerned with social justice, debates raised by trying to “to live together with difference” can best be answered by understanding substantive citizenship. It is my premise that we must measure the citizenship of groups considered different or Other to determine how sexual identity, gender, race, ethnicity, etc. work as barriers to substantive citizenship. This requires in-depth analysis if Canada is to become a peaceful democratic state. A lot has changed over the last decade and even more since the events of 11 September 2001, reminding us that we cannot take for granted that Canada will act as a model state as its human rights record, its multiculturalism policies and its success in addressing matters that have to do with difference suggest is possible. Over the last decade, we have experienced a rolling back of the rights of citizenship. The re-organization of the state directed by neo-liberal tendencies in governance has compromised social rights (Rice and Prince 2000), while increased security measures invoked to combat terrorism have imperiled civil rights (Adelman 2002). In other words, the citizenship of many individuals has been diminished as a result of the changing political landscape. My concern is the particularly severe result for those who, on the basis of their identity, already encountered barriers to enjoying the rights and privileges of citizenship; whose citizenship remained proforma rather than substantive.

The concept of citizenship is a useful lens for assessing power relations, understanding situations of oppression and developing strategies to challenge this oppression. Citizenship also helps us make sense of everyday situations. I argued that the hate crime sentencing provision (a policy of the Canadian state), by identifying sexual orientation as one of the protected categories, reaffirmed the citizenship of LGBT individuals, sending a clear message that violence targeted at LGBT people will not be tolerated. The hate crime sentencing provision is an instrument for judges rather than policing services. For the most part, it has not had a direct impact on policing practices. Nevertheless, as it was shown in the selected case study, the provision has been used, by the LGBT communities of Ottawa to hold the police accountable for their security (a right of citizenship) and in this way change policing practices. Again, this is a situation in which the state (through its police services) mediates a right associated with citizenship: the right to security and protection.

Counter-hegemonic citizenship engages with the theory elaborated by Mouffe to allow concrete expressions of her framework. Mouffe’s work is invaluable for understanding the social struggles taking place in advanced liberal-democratic states. Her work is theoretical, however, and does not provide examples of the application of her framework. This paper has contributed to understanding how Mouffe’s model can become a strategy used by social actors to challenge situations of oppression. Throughout this paper, I have insisted on thinking about citizenship as a process - something that could be contested, enlarged, redefined- rather than a status or set of rights. I have also focused on understanding citizenship from below. The use of

interviews allowed me to hear from those who do not experience substantive citizenship and from individuals who engage in challenging inequalities and oppression. Based on the refinement of existing theories, I proposed counter-hegemonic citizenship as a meaningful concept for oppressed groups, one that can shed some light on the struggles ahead to achieve a meaningful end: the redrawing of the citizenship regime for social justice.

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