Freedom, Sex & Power:[1] Film/Video Regulation in Ontario

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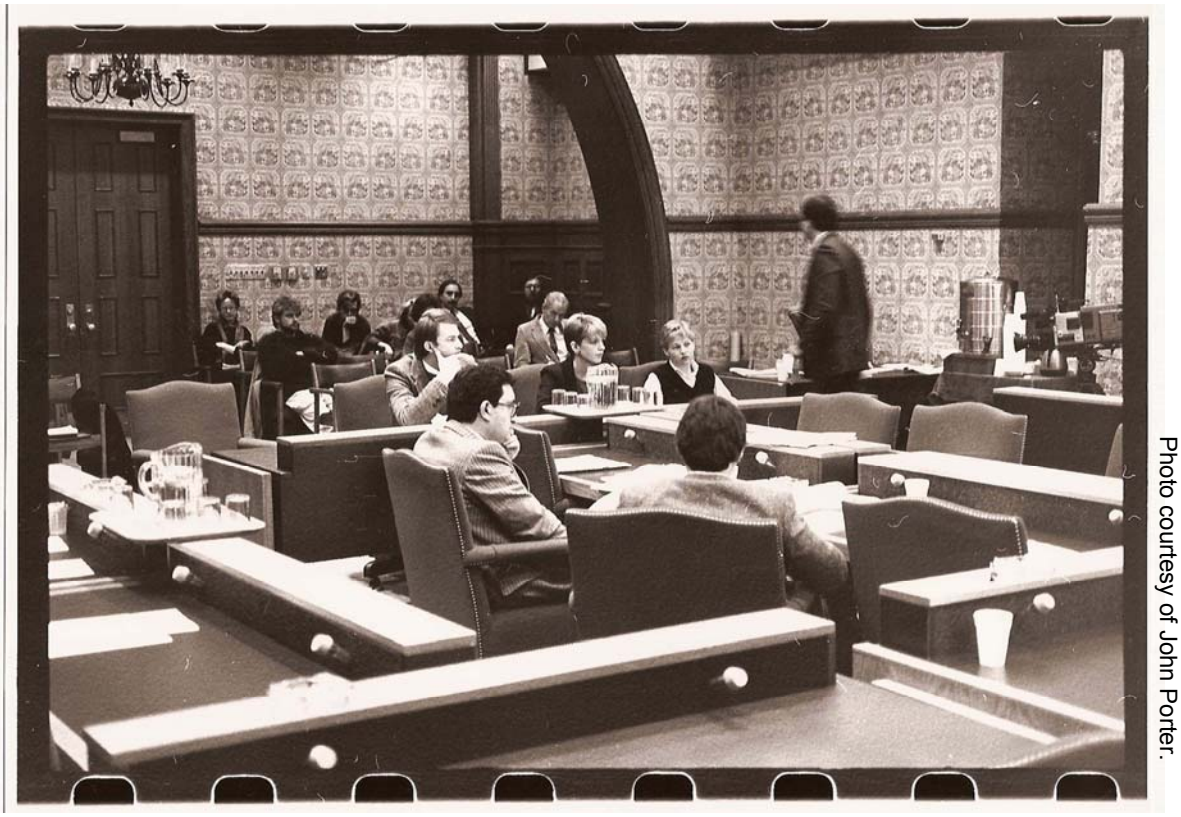

Photo courtesy of John Porter.

Fig. 1. The Ontario Film and Video Appreciation Society (OFVAS) presenting its brief at public hearings on a new film classification law held at Queen's Park, Toronto, Ontario, December 4-5, 1984. *L-R*: David Poole (CFMDC), Anna Gronau (The Funnel), Cyndra MacDowell (CARO). Photo by John Porter.

"Ontario is getting out of the film censorship business," announced the headline of the December 10, 2004 *Toronto Star*.[2] This, after Glad Day Bookshop, a small retailer specializing in queer literature and videotapes, won a decisive legal battle against the Ontario Film Review Board (OFRB).[3] Glad Day Bookshop appealed its previous conviction for illegally distributing the sexually-explicit video, *Descent*, by "renowned" American filmmaker, Steven Scarborough.[4] The bookshop called upon the federal Charter of Rights and Freedoms to overturn a provincial regulation—the *Theatres Act*—which required that all videos and films be either approved by the OFRB, be partially censored, or altogether banned. Despite Glad Day Bookshop's successful legal challenge to the Act and the OFRB, the *Star* headline was totally erroneous; as of today, the OFRB has retained its powers for the prior restraint and banning of film and video in Ontario.

In this essay, I map a number of interventions and contests around the regulation of video and film from the 1980s until the present. In addition to considering

provincial legal contests, I examine the changing definitions of pornography in the Criminal Code of Canada which provide the discursive logic informing censorship policy at the provincial level. Further, I outline negotiations to implement exemptions to the OFRB review process (if a film is deemed 'art'), to better understand, by way of contrast, extant definitions of pornography. Moreover, I interrogate the extent of the Ontario government's bureaucratic powers to censor.

I argue against a notion of the law as a univocal authority by considering the law, instead, as a system of "governmentality" in the Foucauldian sense, in which social agents act out discursive contests in the arrangement of pornography as an object of knowledge; and, I regard censorship as a persistent form of (de)legitimation, thereby troubling a rights-based, libertarian understanding which holds censorship to be simply wrong and thus eliminable.[5] I argue that censorship, as an omission made by those in judicial and executive positions, is an exercise of power as defined within Foucault's "art of government," and that resistances to censorship in both the street and in the courts can constitute meaningful social change.

Governmental film censorship first became possible in Ontario in 1911 with the drafting of the *Theatres and Cinematographers Act* and the appointment of the provincial Board of Censors.[6] Surprisingly, however, the *Theatres Act* was not enforced until 1981 when the then-conservative government appointed a new chair, Mary Brown, to the Board. Film and video screenings in small art houses had, until then, received little scrutiny, as the Board focused on monitoring mainstream titles screened in large, public theatres. Upon Brown's appointment, independent film and video were also required to undergo a Board review. For the first time in Ontario's history, these materials were subject to "prior restraint", the legal term denoting a ban on publication.

This shift in policy prompted many grassroots acts of resistance in the arts community, including the Canadian Images Film Festival held in Peterborough in March of 1981. The organizers screened Al Razutis's film, *A Message From Our Sponsor* (1979), without submitting it for review by the Censor Board**.** Shortly after charges were laid against festival organizers, the Ontario Film and Video Appreciation Society (OFVAS), a lobby group, took advantage of the newly declared Constitution Act (1982) to challenge the Ontario Board of Censors (OCB), arguing that the Board's authority under the *Theatres Act* to censor or ban films and videos was entirely discretionary and in violation of freedom of expression, under section 2 (b) of the *Charter of Rights and Freedoms* (fig. 1).[7] According to OFVAS member David Poole, the society "was formed on the weekend that the Constitution was declared", in order to fight one of the first legal contests based on the guarantee of the freedom of speech.[8] The vague guidelines under which the OCB administered its operations were clarified as a result of this case and written into the *Theatres Act*. Also the OCB changed its name to the

Ontario Film Review Board (OFRB). Unfortunately, however, this only cloaked the powers it retained to cut and ban video and film, and the subsequent enabling legislation, *Bill 82, An Act to Amend the Ontario Theatres Act*, actually expanded the Board's reach to include the classification of all home video (fig. 2).[9]

With the passing of Bill 82, opinion that was once fragmented quickly unified, and artists, curators, and art institutions across Ontario mobilized to organize the "Ontario Open Screenings." Dissenters screened videos in several locations across the province from April 21-27, 1985, without pre-approval from the Ontario Film Review Board, thereby contravening the *Theatres Act*.[10] Law professor Brenda Cossman referred to these events as the "largest group civil disobedience Ontario history."[11] Since most provinces throughout the rest of Canada, some with similar censor boards and some without, looked to Ontario's classifications to inform their own regulation of video and film, Ontario was a crucial site for debate and contest of existing censorship laws.[12]

These sorts of censorship laws nest in the larger system of law, itself a system of *governmentality* where government is a "'contact point' where techniques of domination—or power—and techniques of the self 'interact.'"[13] For Foucault, subjects are shaped and constituted by power enacted over them.[14] He explains that for power to function, "'the other' (the one over whom power is exercised) [needs to] be thoroughly recognized and maintained to the very end as a person who acts," and is therefore free and capable of resistance so that "faced with a relationship of power, a whole field of responses, reactions, results, and possible inventions may open up."[15]

Even aside from the development of the *Charter*, I argue that law possesses an enabling and productive potential, as it provides the opportunity for the declaring of rights by social agents in debates that can result in real discursive changes in law. The "contact point" between the law and social agents who articulate their rights is not univocal. Rather, it is a process that flows back and forth between government and social agents. The history of film censorship in Ontario, and the accompanying debates in academic, artist, and activist circles, supports the argument that social agents should be considered vital links in the formation of power, instead of remaining external to it.

In a interview, Glad Day Bookstore manager Toshiya Kuwabara declared that the bookstore is planning to follow the spirit of the appeal court's ruling, rather than adhere to the new regulations under the *Film Classification Act*.[16] In this way, Kuwabara, as a social agent, is exercising a certain amount of agency to interpret the law and its effects where the law is a function of the state, and, as Danny Lacombe describes, the state "is an institutional complex that conditions and is conditioned by the balance of social forces in society. Any distinction between institutional power and the power of social agents must be rejected."[17]

It seems an obvious point, but it is important to note that citizens,

including members of the Ontario Government who are subject to the law, have the option to disobey the law (facing, of course, all the potential consequences of that in/action).[18] Kuwabara has decided to contravene the new *Theatres Act* and conduct his business in consistency with what he interprets as the spirit of the law. I do not mean to trivialize the very real constraining techniques of the law's enforcement, but to investigate the skirmishes between government and social agents that attest to the incompleteness of the law's ability to regulate action. The induction of the *Charter of Rights and Freedoms* into the constitution has allowed for successful legal challenges to the law itself based on fundamental freedoms, as in Glad Day's case. Although rights discourse in law-writing will never eradicate injustice or create a truly egalitarian society, it gives voice to the declaration of what groups characterize as their rights, which in turn constitutes subjectivities via such articulations.

An example of the use of the law to enact a discursive change in legal and popular knowledge occurred in 1988,

Photo courtesy of John Porter.

Fig. 2. Celebrating the OFVAS's semi-victory in its court case against the Ontario Censor Board at The Funnel, March 25, 1983. *L-R*: Edie Steiner, David Bennell, Carolyne Wushke, Ross McLaren, Michaelle McLean, Martha Davis, David Poole, Mikki Fontana, Jim Anderson. Photo by John Porter.

when the *Theatres Act* was amended to allow exemptions for public art galleries and film festivals. Under the new provision, those agencies were no longer required to submit film or video to the OFRB for prior approval.[19] Lisa Steele, a video artist and anti-censorship activist, was part of a group who mobilized to protest these new exemptions.[20] Even before the 1988 amendment, however, the secret practice of granting exemptions for certain films had become widespread. Negotiations for arts exemptions began before the trial concerning Al Razutis's 1979 film, *A Message From Our Sponsor*. In September, 1980, a film package from the National Gallery, including *A Message*, traveled to the Funnel Experimental Film Theatre in Toronto, which was then subject to OCB Chair Mary Brown's scrutiny. *A Message*, which had screened in Ottawa without incident, received unfavourable OCB attention in Toronto and was promptly banned.[21] In early 1981, the National Gallery and the Funnel theatre sought special permits for single screenings of specific films that were banned, including *Rameau's Nephew…* and *Presents* by Michael Snow, as well as *The Art of Worldy Wisdom* by Bruce Elder.[22] The Board approved special permits for films that exhibited "artistic merit" by filmmakers with an "international reputation", after Elder and Snow met personally with Chair Mary Brown. Razutis argues that "these discussions (and I think 'secret negotiations' is appropriate) directly contradicted a public stance…that portrayed a categorical opposition to censorship" (fig.3).[23]

The OCB and provincial police believed *A Message* contained "undue exploitation of sex" and thus did not have artistic merit.[24] Importantly, *A Message* is composed entirely of appropriated images, juxtaposing clips from popular media and pornographic images in an ironic critique of the commodification of sex in advertising (fig. 4).[25] One such strategic juxtaposition intersplices an ad of a woman brushing her teeth with an image of a woman giving head. Razutis, now a film professor at Simon Fraser University, recalled that Officer Petrozeles of the 'P Squad' "informed me that the Censor Board concerns about my work(s) also included concerns about my 'anarchist politics' while I was 'masquerading as a film professor'".[26] Razutis accepted his invitation to show the banned *A Message* at the Canadian Images Festival in Peterborough on March 13, 1981; and, although he asked that a warning be posted alerting audiences to scenes of explicit sex, he was told that "the Board [of Images] had decided to take this action to indict [him and his] film as a political statement."[27] A month after the screening, charges were laid against the "Peterborough Four**":** Razutis (though he was acquitted because there was no proof that he turned on the projector which technically meant he was not involved); David Bierk, executive director of Artspace; Susan Ditta, executive director of the Canadian Images; and Ian McLachlan, board member of Canadian Images and Artspace (fig. 5). Their decision to exhibit *A Messag*e was a political act of civil disobedience in support of the freedom of expression, and,

according to Razutis, "brought out into the open the ideological differences between a more 'fine-arts' (read bourgeois) film practice that sought special exemption and a more socially oriented practice that sought to participate in social and legal change."[28]

Beyond creating a high/low binary of "fine-arts" and "not-art," video-maker Richard Fung asserts that the elitism of legitimation based on the criterion of artistic merit is a historical privilege for the colonizing West. Fung asks

> Is it opportunistic to invoke the defense of artistic merit, which is available to certain types of censored material, or for galleries and festivals to advocate (or accept) exemption from submission to film and video censor review? This discussion has evident implications with regard to the cultural products of minoritized communities.[29]

I argue, further, that providing exemption to institutions that propagate "high" art, despite their function as public spaces, sets up a familiar distinction between art and everyday life, where certain kinds of transgressions are permitted as exceptional and easily explained away as alternative. In this way, alternative images are depoliticized and reduced to tropes for "artfulness," impeding their use in active discourses and debates. Cultural studies theorist, Richard Burt, argues that

> While many artists and critics have argued that art, knowledge, and sexuality are political, often criticizing modern liberal institutions and values as modes of domination, and while many have attacked specifically modernist assumptions about aesthetics and subjectivity such as self-expression, genius, originality, and individual creativity, they invoke precisely these assumptions when they defend freedom of artistic expression from censorship.[30]

Exemption from censorship based on artistic expression sets art in opposition to politics, and erotica in opposition to pornography in a way that normalizes and institutionalizes value judgements about both pornography and art. Granting art exemption from censorship created knowledges not just about what was given exemption, but also about what was not, in this case, *pornography*.

According to the Glad Day Bookshop's manager Toshiya Kuwabara, the OFRB has a secret list that does not circulate publicly.[31] In the absence of access to the OCB/ OFRB's criteria for censorship, we can look to the Criminal Code's obscenity law. As enforcement of film and video imagery played out at the provincial level in Ontario, discursive battles over what constitutes degradation and undue harm were debated at the federal level, both in Canada and in the United States. The crucial difference

Photo courtesy of John Porter.

Fig. 3. The OFVAS press conference at The Funnel, April 29, 1982, announcing its court case aginast the Ontario Censor Board. *L-R*: Bruce Elder and Michael Snow (filmmakers); Cyndra MacDowell (CARO); Anna Gronau (The Funnel); David Poole (CFMDC); Ross McLaren (The Funnel). Photo by John Porter.

between obscenity law and the *Theatres Act* lies in the sequence of application: whereas the criminal code charges people with offences after the fact, the OFRB enacts the prior restraint of materials.[32] A consideration of the changes to this law over the last two decades will enable a study of truth-claims made of pornography (and sexuality), informing positions for or against the OCB/OFRB.[33]

A feminist campaign for the legal regulation of pornography culminated in front of the Supreme Court of Canada in 1992 with *Regina v. Butler*, a challenge to the constitutionality of the existing obscenity law.[34] The most popular representatives of the anti-porn groups were, Andrea Dworkin and Catherine MacKinnon, in the United States, and in Canada, Maude Barlow and Susan Cole. Their basic premise was that "porn is the theory, rape is the practice."[35] They saw women's sexuality as the cause of their oppression and pornography as eroticizing women's sexual subordination, and thus, the cause of women's oppression.[36] This position divided feminists on the political right and left.[37] Although the Court found that the law was within the legal limit of freedom of expression under the equality rights guarantees

in the *Charter*, the Court proposed a new test for determining obscenity.[38] Previously, obscenity was defined simply as "undue exploitation of sex," "undue" being the difficult concept to determine. After *Regina v. Butler*, the definition was focused more specifically on harm against women's equality, based on the presence of violence in explicit sexual imagery.[39]

In opposition to the anti-porn feminists, anti-censorship feminists, such as those represented the in anthologies *Women Against Censorship* and *Pleasure and Danger: Exploring Female Sexuality,* argue against the regulatory censorship of pornography.[40] The anti-censorship feminists on the left do not argue with the sexism that anti-porn feminists see in some heterosexual pornography, but do critique the anti-pornography feminist position for two reasons. First, regulatory censorship of any kind thwarts freedom of expression and, second, the anti-pornography feminist position is not feminist because it does not account for difference.[41] They argue that the anti-porn position is heteronormative in its lack of lesbian or gay image theorization, and without this, the anti-pornography feminists leave no space for plural sexualities, which in turn makes pornography a truth rather than, as the anti-censorship feminists feel it should be, a contest of sexualities.

Brenda Cossman draws on Foucault as she insists that debates produce knowledges about sexual identities as "power is exercised in the very naming of sexual acts: it categorizes and codifies bodies, pleasures, and desires, producing official knowledge of the other," knowledge that values different sexual social identities differently.[42] Whereas anti-porn feminists see texts as univocal, Cossman understands meaning as something that cannot be determined "objectively without reference to the specific communities within which these representations are produced, exchanged, and

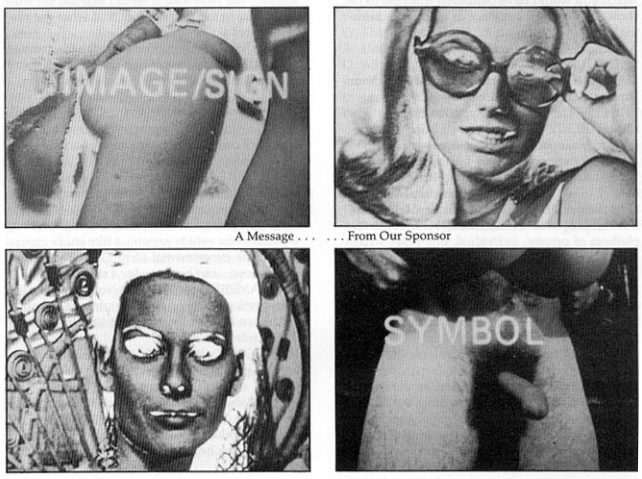

Fig. 4. Al Razutis, *A Message From Our Sponsor*, 1979.

Image Courtesy of Al Razutis.

consumed."[43] In this way, the anti-censorship feminists insist that sexual practices are neither inherently liberatory nor subordinating; instead, knowledge of sexuality is always constructed within discourses on sexuality.

In her testimony at the criminal hearings for the 1992 *Bad Attitude* case, University of British Columbia Professor Becki Ross analyzed the ways in which pornography was produced, exchanged, and consumed in the lesbian community.[44] Ross insisted that lesbian imagery found in *Bad Attitude* did not exploit the unequal power relations that the law had thus far deemed harmful in

heterosexual porn. By engaging in campy reversals of the dominant/ submissive roles found in heterosexual material, the images in *Bad Attitude* subvert the naturalness of these roles.[45] For Neil Malamuth, an American psychologist called as an expert witness for the prosecution, the images taken by photographer Jennifer Gillmor look similar to some in the heterosexual genre, especially those that depicted sexual violence. One of Gillmor's photos shows a model bound submissively to a tomb stone with rope, while another depicts the model posed defiantly wearing motorcycle regalia and combat boots and carrying what appears to be a whip. Gillmor countered Malamuth's stance by pointing out that the same model was used in both pictures; Gillmor testified that her model "likes to switch roles", from submissive to dominant, as a play on and reversal of heterosexual norms.[46] In her explanation, Gillmor demonstrated the role-playing in the images by emphasizing that the whip the model is carrying in the second photograph is not real but is part of a costume. However, during the cross-examination, despite her repetitive insistence that the whip was a fake, Gillmore was pushed by the Crown Attorney to admit that she was uncomfortable with whipping. This was a "tactic that succeeded in bolstering his anti-s/m agenda and in deflecting attention away from the more germane issues of fantasy, representation, and consent."[47]

Nevertheless, the defense that lesbian pornography works differently from heterosexual pornography—under the Butler decision which is based on harm—assumes that heterosexual pornographic representation is indeed harmful. Ross testified that there existed no conclusive research proving harm to consumers of images of lesbian s/m, but she did not make the same claim for heterosexual s/m and, thus, inadvertently over-determined the meaning of heterosexual pornographic representation.

I am not suggesting that Ross is, by contrasting lesbian pornography to hetero-pornography, arguing that heterosexual representation is univocal or has a causal relationship with behavior. Rather, in this instance definitions and meanings of porn and of sexuality are contested and confirmed, even unintentionally, in the crossfire of legal debate.[48]

The court's hegemonic tendency, demonstrated by Malamuth's testimony which was "a clever incantation of Butler's internal logic and coherence", illustrates what Lacombe, calling upon Foucault, views as a conception of power as productive, where there is also a space for resistance.[49] Here, law is no longer a function of prohibitive state-power, but is rather a function of normalization.[50] For instance, it was public debate of obscenity laws that established and unsettled truth-claims about pornography. By considering the transformative potential between the law and social actors who interact with it, even when change is not entirely successful at the discursive level, we can move beyond "conventional conceptions of law, typically defined, as rules commanding behavior backed by the threat of coercive sanction."[51]

In *Male, Gay, Pornography: An*

Image courtesy of Su Ditta.

Fig. 5. Peterborough 4.

Issue of Sex Discrimination, Christopher N. Kendall considers the often overlooked distinctions between hetero and gay pornography and its relevance to anti-censorship arguments.[52] Kendall argues that to treat male, gay porn differently from heterosexual porn is to discriminate, and it should be similarly censored under the Butler decision. Kendall argues that "far from being a threat to gay male identity, any judicial decision that recognizes the feminist call for sex equality does much to ensure the breaking down of those gender hierarchies that allow homophobia to exist in the first place."[53] Kendall argues further that men in gay male pornography are encouraged to mimic traditionally masculine roles.[54]

Here, Kendall assumes that authentically gay roles do exist, but they are occluded by traditionally heterosexual practices as inherently subordinating. Therefore, Kendall's argument is aligned with anti-pornography feminists and is subject to the anti-censorship feminist critique that "harm to equality" is a value judgment rather than an appeal for the protection of women (or of men) from harm through sexual violence.[55]

Anti-censorship feminists like Lisa Steele, writing in *Women Against Censorship,* also argue that the fact of explicitness alone does not make representations of women any more problematic than, for example, a TV commercial for cleaning supplies.[56] In general, Steele considers censorship or any kind of obstruction to the freedom of expression a slippery slope: "I'm an old school civil libertarian in that respect," she explains.[57] Steele's rights-based libertarian argument that censorship can never be an option invites a discussion of censorship as a political concept, which underwent radical reformulation during the 1990s by several political and cultural theorists.[58]

I argue that the libertarian position espoused by Steele and others coincides with a politically liberal position that regards censorship as unenlightened, as though post-Enlightenment society has moved beyond censorship.[59] According to this line of reasoning, liberal democracy abolished the censorship powers of Church and state. Thus, present-day examples of censorship, like that practiced by the OFRB/ OCB, signal a return to pre-Enlightenment oppression.

Cultural studies theorist Richard Burt argues against the liberal free speech position that censorship (defined as state power) can ever be eliminated. Instead he contends that "less visible kinds of domination and control"—such as the manufacture of consent, market censorship, or prohibitive distribution costs and other structural operations—will always pervade the public sphere.[60] Burt troubles the belief that censorship can be eliminated by pointing out the problematic of monitoring its elimination—who draws the line?

An either/or argument that opposes diversity (the freedom of many voices) to censorship (the repression of certain voices) misleads, according to Burt, because every discourse, even a discourse of diversity, works to marginalize, exclude, or "deligitimatize" other discourses.[61] In this way, the argument to eliminate censorship is in itself a form of what Burt terms "delegitimation".[62] In his words, "opposition to censorship serves not to guarantee diversity free of censorship, but to regulate membership in the critical community by appealing to the notion of diversity as a criterion of inclusion and exclusion."[63] Here, the censor is just one of many voices of legitimation.[64]

The liberal-political and libertarian positions understand that all censorship as abhorrent; however, if diffuse relations of power always exist, then it follows that democratic systems housing these positions are not excluded from producing unequal power relations. Burt's aim is to avoid the problem of, in the name of progressive politics, reproducing the pitfalls of censorship and simplifying modes of repression, so that we may open up discussion and debate of contemporary formulations of power and control.[65] Once we acknowledge that techniques of coercion or constraint are necessarily always components of democratic systems and not just characteristics of totalitarianism, we see that Burt's concept of censorship—as a discourse of legitimation—allows us to treat its regulation (in its overt forms or covert forms) as a technology of power.

To consider censorship as a technology of power necessitates a consideration of the law as a technology of government. For criminologist Dany Lacombe, the indeterminacy of the social body and lack of a unitary source of power within it make transformation possible within the law based on the politics of rights.[66] Once the social body is no longer organized by a condensed source of power which instills in it "virtues deriving from transcendent reason and justice, law and knowledge assert themselves as separate from and irreducible to power."[67] And once power and law are separated, rights and their

contents can never be determined. As Claude Lefort puts it, "…rights are not simply the object of a declaration, it is their essence to be declared."[68] In this way, political subjecthood is enacted through the repetitive declaration of indeterminable rights.[69]

With the inclusion of the *Charter of Rights and Freedoms* in the Canadian Constitution in 1982, social agents have more readily been able to call upon the now fundamental freedom of expression in legal challenges against the OFRB, such as in the Glad Day case. Even aside from the development of the *Charter*, I argue, after Lacombe, for the "enabling" potential of the law, as it allows social agents to declare and thus constitute their political subjectivity and play out debates that result in changes in the discursive spirit of the law.[70] Lacombe frames the Butler decision as an occasion of discursive regulatory change enacted by feminists (of the anti-pornography camp) and uses this example to reject the "conventional wisdom concerning law reform [as] incapable of accounting for resistance, for the emergence of unconventional subjectivities, values, and beliefs, because it assumes the existence of a single dominant ideology."[71]

Lacombe insists on replacing this view with a theory that accounts for the organization of power in law as a process that occurs within—not outside of—the social relations that produce knowledge. For instance, the anti-pornography feminists developed the language and concept that changed the obscenity law to recognize pornography specifically as harmful to women's equality rather than simply (and vaguely) as "obscene."[72] Cossman argues that the Butler decision is still predicated on value judgements and moralizing discourse that lacks specificity to define what "harm" is; however, in the long run, Cossman would agree with Lacombe's characterization of the law in general: "I think the law is an important site of discursive struggle and potential change. I just didn't think that Butler accomplished much in that direction – it was still doing the same old thing with a new justificatory rhetoric."[73]

The Glad Day Bookshop won its appeal based on a declaration of the right to the freedom of expression, but there were also less overt, structural delegitimations at work that Glad Day's appeal did not succeed in overturning. Glad Day's position held that the *Theatres Act* "expressly restricts the distribution of expressive materials, and thus violates s. 2(b) of the *Charter*;" the fundamental freedom of expression; moreover, "the *Theatres Act* film censorship scheme…trenches on the federal government's exclusive jurisdiction over criminal law;" and that the "fee structure…trenches on the federal government's exclusive jurisdiction over the regulation of international trade."[74]

Justice Russell Juriansz threw out the latter arguments, and Frank Addario, Glad Day's lawyer, was pleased that the critical argument—that the powers of the OFRB violated freedom of expression under the *Charter*— succeeded.[75] However, the last two arguments, which have been downplayed in the media, deserve consideration.[76] Firstly, the federal Criminal Code already covers criminal acts of obscenity, so the

question is, why does the Ontario Government have power to supersede this form of security with its own regulations? Secondly, distributors are required to pay for a license from the Ontario government to be in business. Then, although "no fee is charged to screen films 'wholly produced in Canada,'… for films produced outside Canada with English or French dialogue, the fee is $4.20 per minute. For films produced outside Canada with dialogue in a language other than English or French, the fee is $78.85 per film."[77] Addario puts it thus: "the province is treating films like a cash cow. They charge sellers and distributors for the privilege of having their films reviewed. If you strip away all of the fancy language in the law, this is just a tax on the freedom of expression."[78] Glad Day manager, Toshiya Kuwabara, explains that since foreign distributors don't care about an Ontario law, they are often unwilling to pay for licensing and screening costs, which are higher for films in foreign languages.[79] To Kuwabara, since this regulation inevitably discourages material from entering the province or inhibits small independent producers from distributing material, this is in itself a form of omission, of censorship.[80]

I contend that this non-constitutional argument in Glad Day's case is most obviously discriminatory towards minority representations of sex. Referring to the tax on speech—the fees the OFRB charge for its mandatory screenings of videos—Paul Gallant comments that "the lesson the OFRB wants to teach Glad Day is to play the sticker game…that it should expect to pay hundreds of dollars of reviewing charges per video to serve its relatively-small customer base, that serving minority interests is a profit-less endeavor."[81] Gallant further comments that "content doesn't matter [when one is] picking on certain channels of distribution," suggesting that by targeting distribution, the OFRB manages to avoid publishing value judgments about gay/lesbian sexualities, while limiting the *de facto* distribution of gay/lesbian images.

Carlyle Jansen, owner of Good For Her, another small Toronto bookstore, confirms this argument:

> Videos made for our community tend to come from small producers and distributors. Mainstream distributors don't carry marginal videos, and so small businesses must pay for stickers [the OFRB product marker] which makes the system discriminative against the LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Queer) community.[82]

The OFRB can remain uninvolved in the contentious issue of minority sexualities in obscenity because its fee structure allows the restriction of both distribution and retail sales.

Gay and lesbian groups, as well as artists dealing with queer representation in Canada, had (and still have) a tremendous investment in the outcome of pornography and censorship debates. Though lesbian feminists like Susan Cole and gay authors such as Christopher N. Kendall campaigned for the regulation of all pornography, a large

cohort of artists dealing with queer representation were aligned with the anti-censorship feminists. As Lisa Steele explains, for these artists, access to sexually explicit imagery was essential to their practices:

> Artists dealing with queer representation tended to contextualize their work around representations from the porn films of that day in order to make a point of bringing that into the public eye. There is no other place to look at it because it's forbidden.[83]

Video artists using explicit images of gay sex during the early 1980s include John Greyson, Colin Campbell, Andy Fabo and Michael Balser, Rodney Werden, Richard Fung, and Wendy Geller.[84] Richard Fung's *Chinese Characters* (1986) illustrates how crucial access to pornography is for many artists. In this work, which he describes as "an intervention," Fung exposes the ways in which Asians are constructed to cater to the pleasure of white male actors and viewers in gay male pornography.[85] The video, screened in April 1986 without prior approval by the Censor Board, juxtaposes a revisionist version of an ancient Chinese parable of a man on a mystical journey with contemporary staged interviews in which Fung

Image courtesy of Richard Fung and V Tape.

Fig. 6. Richard Fung, *Chinese Characters*, 1986.

Image courtesy of Richard Fung and V Tape.

Fig. 7. Richard Fung, *Chinese Characters*, 1986.

poses as a porn star (fig. 6).[86] In these scenes, he talks about his first discovery of a gay magazine and the way the images of whiteness therein caused him to wonder, "how much Asianness [he was] denying…by moving closer and closer to the image."[87] Inter-cut with these interview scenes, scenes of the man on his mystical journey depict the traveller walking into a forested area looking for anonymous sex. There he finds an attractive, white man and approaches him, but once both men enter the same shot, we realize that they are not in the same space at all, but that the white hunk is part of an appropriated image of a Joe Gage porn video over which the Chinese traveller is superimposed (fig. 7).[88] Here, the Asian man is constructed by Fung as forever outside this image of white porn.

Fung explains that in 1988 most gay porn actors were white, while tapes that included minority actors were marketed through specialty outlets, as if ethnicity outside of whiteness constitutes an unusual sexual interest that falls outside a stable norm: "this visual apartheid stems, I assume, from an erroneous perception that the sexual appetites of gay men are exclusive and unchangeable."[89] Here Fung is pointing to the way desire is sometimes treated as naturalized and essential, which is also exemplified in Dworkin's and Cole's characterization of (straight) male desire as essentially dominating and brutal.[90]

Fung agrees with defenders of gay porn that, in contrast to typical

straight porn, "'the spectator's positions in relation to the representations [of queer sexuality] are open and in flux.'"[91] However, Fung points out that this is only the case when the actors and viewers are all white.[92] To introduce race means to shore up the potential for positional mobility. At the same time, Fung realizes that gay porn is not inherently oppressive; "as with the vast majority of North American tapes featuring Asians, the problem is not the representation of anal pleasure per se, but rather that the narratives privilege the penis, while always assigning the Asian the role of the bottom."[93]

At one level, the implication in the censorship debate here is that without unregulated access to these appropriated images from so-called non-art house pornography, Fung cannot make his critique. At another level, Fung exposes a bias on the part of both the anti-pornography and anti-censorship camps; as Fung explains,

> What struck me was that they assumed that both the consumers and the practitioners – the objects and the subjects in this debate were white. Once one introduced race as a category or as a perspective in this debate it became much more complicated. So one of the things I was trying to do in *Chinese Characters* was to represent something of that complexity.[94]

Fung intervenes in official knowledges of sexuality by exposing their constructedness. He illustrates a form of racialized sexuality that otherwise is excluded from mainstream pornography. And he introduces the element of race into the censorship/porn debates through this street-level mode of resistance, agonism aided by the illegal screening of *Chinese Characters*.

As discussed earlier, these social agents were forced to react to the heteronormative legislative results of the anti-pornography (sometimes lesbian) feminists.[95] There were many legal challenges focusing on queer representation. It is difficult to allege discrimination on this basis alone, however, for there were also legal challenges that dealt primarily with representations of heterosexual sex in pornography, such as in *Regina v. Butler*. Although it is difficult to catalogue exact statistics on queer censorship versus hetero-sex censorship, video artist and anti-censorship activist Lisa Steele relates a revealing incident that occurred at A Space in Toronto. In May 1984, during the *British/Canadian Video Exchange '84*, A Space presented a program of tapes that were not pre-screened by the Censor Board. During several screenings on several separate nights, inspectors from the Censor Board were present. Steele explains that, "not coincidently, the evening that the censor board decided to confiscate the videotapes and playback equipment was during the program with gay video. Nothing explicit whatsoever was shown in the program. There was something like a music video, and some sort of identity pieces and such, but at the end, they stood up and confiscated the tapes and they took the playback

equipment out."[96]

After Glad Day won its appeal on its constitutional arguments, the Ontario government decided to amend the law, changing the *Theatres Act* to the *Film Classification Act*.[97] As of December 10, 2004, when the *Toronto Star* reported the end of film censorship in Ontario, the new act had passed two out of three readings. The reporter quoted the Consumer Minister as saying, "The film review board's role will no longer be censorship; it will be a classification board."[98] Since this initial hopeful report, Glad Day's lawyer was able to analyze the proposed legislation and reveal that the OFRB has maintained its power to approve or disapprove films and videos, to cut parts out of films and videos and, in fact, has expanded its powers to cover video games and digital files.[99] The *Film Classification Act* has since received approval.[100] Given that the Ontario government did not appeal but acted as though it was going along with the court ruling, the debate is no longer in the courts.[101] The burden now rests upon those who oppose censorship to bring the issue back to court and, even then, the challenge would enter the lower court; again, the onus for change rests with social agents operating on the margins of the legal and judicial system.[102]

The relationships between struggles occurring in the street, in the law, and in formal, legal debates about pornography in Ontario testify to the complex inter-relationship between resistances and structures of constraint, between discursive change and semantic/superficial change that produce knowledges about pornography, sexuality, art, and the self.[103] The Ontario government, enacting its own bureaucratic regulation based on laws, can be, and was, resisted through various channels. These channels include the law itself, specifically the *Charter*, which facilitates rights-based challenges to government regulations. And this, in turn, encourages the constitution and contestation of political subjectivities.

Publicly funded art institutions and large-scale distributors of pornography are now exempt from review and prior restraint by the OFRB. Thus, the issue of censorship is no longer in mainstream media as it was during the *Six Days of Resistance*. However, to ask if overt censorship provides the conditions for resistance, where constitutive censorship veils issues and thereby inhibits resistance, assumes that only unitary, overt power has the potential for resistance. The liberalist hope that censorship can be abolished is irrelevant, and Richard Burt is right in renaming censorship a "discourse of legitimation." Once such a definition is adopted, we can approach contemporary issues related to but beyond overt censorship. The ramifications of the current classification system that alerts audiences to potentially offensive scenes have not been considered. Kerri Kwinter recalls that as she watched the previously banned and censored films at *Six Days of Resistance*, she "found [her]self periodically wondering if the board would find this part seditious, that part obscene or gratuitous. I felt like I was wearing someone else's morality. This is a sign of a truly colonized mind."[104]

Notes:

1. "Freedom, Sex & Power" was the title of the January/February 1983 issue of *Fuse Magazine*, an issue dedicated largely to sexuality, pornography, and censorship debates.

2. Robert Benzie, "Film Board Cut Out as Censor; Ontario Responds to Court Ruling on Classification Law 'We're not in the Business of Censoring Films,'" *Toronto Star,* December 10, 2004, A.04.

3. *R. v. Glad Day Bookshops Inc.*, (2004) 239 D.L.R. (4th) 119 (Ont. S.C.J.).

4. Nancy Irwin, "Video Censorship: Glad Day Goes to Court to 'Fight for Survival,'" *Xtra!* November 30, 2000, http://www.xtra.ca/site/toronto2/arch/body702.shtm.

5. This essay considers certain social agents engaging with the law as a form of "legal mobilization," which is a larger armature of social and cultural activism that includes labour, feminist, queer, student, ecology, and other such movements: "the most distinctive contribution of the legal mobilization approach [is] that of shifting the focus of legal analysis away from the initiative of judges and state officials towards that of politically active citizens, and away from the 'law in books' to law as a resource in practical social struggle." See Michael McCann and Helena Silverstein, "Social movements and The American State: Legal mobilization as a strategy for Democratization," *A Different Kind of State? Popular Power and Democratic Administration,* eds. Gregory Albo, David Lamgille, and Leo Panitch (Oxford: Oxford University Press, 1993), 133.

6. Brenda Cossman, *Censorship and the Arts: Law, Controversy, Debate, Facts* (Toronto: Ontario Association of Art Galleries, 1995), 20.

7. *Ontario Film and Video Appreciation Society v. Ontario Board of Censors* resulted after the OFVAS submitted four films for approval and *Amerika* by Al Razutis "was rejected on the basis of explicit portrayal of certain sexual activity" (Cossman, *Censorship*, 75).

8. David Poole (Head of Media Arts, Canada Council of the Arts), interview with author, November 8, 2006**.** Although OFVAS is often pronounced "oh-fav-as," Poole pointed out that with a slight shift in emphasis, the acronym denotes, "off-of-us." Poole light-heartedly reminisced that the name of the society was chosen hastily in order to quickly guarantee its availability for registration so that the group could move forward in their legal challenge as soon as the constitution was declared.

9. Cossman, *Censorship*, 76. *Bill 82* was passed on December 14, 1984.

10. Kerri Kwinter, "Ontario Open Screenings, Six Days of Resistance Against the Censor Board, April 21-27, 1985," in *Issues of Censorship*, A Space Exhibition Committee (Toronto: A Space, 1985), 47.

11. Cossman, *Censorship*, 122.

12. Susan Ditta (writer and curator), interview with author, November 6, 2006.

13. Graham Burchell, "Liberal Government and Techniques of the Self," in *Foucault and Political Reason*, eds. Andrew Barry, Thomas Osborne, and Nikolas Rose (London: UCL Press, 1996), 20.

14. Michel Foucault, "The Subject and Power," *Critical Inquiry* 8, no.4 (Summer 1982), 781.

15. Foucault, 789.

16. Toshiya Kuwabara (Manager of Glad Day Bookstore), interview with author, March 4, 2005.

17. Dany Lacombe, *Blue Politics: Pornography and the Law in the Age of Feminism* (Toronto: University of Toronto Press Incorporated, 1994), 139.

18. For a discussion of the characteristic of incompleteness that necessitates a conception of the law as governance see Alan Hunt and Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (London, Sterling, VA: Pluto Press, 1994), 102-3.

19. Cossman, *Censorship*, 25.

20. In 1982, Lisa Steele, Kim Tomczak, Colin Campbell, Kate Craig, Clive Robertson, and Rodney Werden refused to show their work at the Festival of Festivals "Video/Video" program in protest of the organizers' compliance with the censor board's regulations and "by invitation only" advertising (Cossman, *Censorship*, 111).

21. Al Razutis, "*Regina v. Ian McLachlan, Susan Ditta, Al Razutis, David Bierk*: The Theatres Act, Provincial Court, Criminal Division, Peterborough, Ontario; June 22nd to June 25th, 1982," *Opsis: The Canadian Journal of Avant-Garde and Political Cinema* 1, no.1 (1984), eds. Michael Eliot-Hurst, Al Razutis, Tony Reif, http://www.alchemists.com/visual_alchemy/opsis/Censorship.html.

22. Razutis, "*Regina v. Ian McLachlan, Susan Ditta, Al Razutis, David Bierk*". The NFB's *Not A Love Story* is also banned.

23. Razutis, "*Regina v. Ian McLachlan, Susan Ditta, Al Razutis, David Bierk*".

24. *A Message* is a nine minute section of a larger project called *Amerika*.

25. Razutis, "*Regina v. Ian McLachlan, Susan Ditta, Al Razutis, David Bierk*". Razutis recalls that "[t]he entire three-hour film 'Amerika' was screened in the court room, one reel at a time, on a rickety 16mm projector, stand up screen, Venetian blinds closed, and since this film is 'trying in patience' in the first place, the look on the Judge certainly confirmed that was indeed a 'trying' task of viewership for 'My Lord' and the Barristers." Al Razutis (Filmmaker and professor, Simon Fraser University), e-mail message to author, April 8, 2007.

26. Razutis, e-mail message to author, April 8, 2007.

27. Razutis, e-mail message to author, April 8, 2007.

28. Razutis, "*Regina v. Ian McLachlan, Susan Ditta, Al Razutis, David Bierk*".

29. Richard Fung, "Uncompromising Positions: Anti-censorship, Anti-racism, and the Visual Arts," in *Suggestive Poses: Artists and Critics Respond to Censorship* , ed. Lorraine Johnson (Toronto: Toronto Photographers Workshop and The Riverbank Press, 1997), 141.

30. Richard Burt, "Introduction," in *The Administration of Aesthetics: Censorship, Political Criticism, and the Public Sphere*, ed. Richard Burt (Minneapolis and London: University of Minnesota Press, 1994), xiv.

31. Kuwabara, interview with author, March 4, 2005.

32. A second meaningful difference is that the criminal code applies to obscenity offences committed in various forms of visual as well as non-visual material, whereas the *Theatres Act* (now the *Film Classification Act*) only applies to film and video.

33. There is an intimate connection between the logic of the OFRB and that found in the criminal code. In fact, the OFRB's functional overlap with the Criminal Code has been a point of contention in several legal challenges. One of the arguments Glad Day presented in its 2001 legal challenge was that the OFRB had initiated its own criteria and procedures for defining obscenity. Glad Day argued that in doing so, the OFRB was overriding the authority of the existing obscenity provision in the provincial Criminal Code.

34. Donald Butler was charged for selling "hard core" pornography from his Manitoban video store selling "hard core" pornography. The case went to the Supreme Court of Canada. This was the "first constitutional challenge to the obscenity law, s.163, of Canada's Criminal Code", as Brenda Cossman and Shannon Bell observe in their introduction to Brenda Cossman et al, *Bad Attitude/s on Trial: Pornography, Feminism, and*

the Butler Decision (Toronto, Buffalo, London: University of Toronto Press, 1997), 3-4.

35. Varda Burstyn, "Porn Again: Feeling the Heat of Censorship," *Fuse* (Spring 1987): 12.

36. Cossman and Bell, "Introduction," 21.

37. While the moral conservatives of the Regan-Bush era regarded pornography as inherently immoral, the anti-porn feminists argued that it should be censored for the specific reason that it causes harm to women. Despite this difference of opinion on the effect of pornography, the leaders of both movements supported legislation to censor it. See Burstyn, "Porn Again", 12.

38. Cossman and Bell, "Introduction," 4.

39. Lacombe, 136. With the Butler decision, the court defined obscenity as: "(1) the portrayal of explicit sex with violence will nearly always be obscene; (2) the portrayal of explicit non-violent sex that is degrading or dehumanizing is obscene if the risk of harm is substantial; and, (3) the portrayal of explicit non-violent sex that is neither degrading nor dehumanizing will not be obscene unless it uses children in its production" (Lacombe, 136).

40. Burstyn, "Porn Again," 12. The full citations for these publications are Varda Burstyn, ed., *Women Against Censorship* (Vancouver: Douglas & McIntyre Ltd., 1985) and Carole S. Vance, ed., *Pleasure and Danger: Exploring Female Sexuality* (Boston: Routledge & Kegan Paul, 1984). For an extensive review of *Pleasure and Danger,* see Sue Golding, "Pleasure and Danger," *The Body Politic* (March 1985): 26-27. And for an interview with Carole Vance by Lee Waldorf, see "Letting Experience Come Out," *The Body Politic* (March 1985): 27-28.

41. Burstyn, "Porn Again," 12.

42. Cossman and Bell, "Introduction," 24.

43. Cossman and Bell, "Introduction," 25.

44. In April of 1992, the then-owners and managers of Glad Day Bookshop, John Scythes and Tom Ivison, were charged at Canada Customs for distributing obscene material in the form of the lesbian erotica magazine, *Bad Attitude*. The case is filed as *Regina v. Scythes*. See Becki L. Ross, "'It's Merely Designed for Sexual Arousal': Interrogating the Indefensibility of Lesbian Smut," in *Bad Attitude/s on Trial: Pornography, Feminism, and the Butler Decision*, eds. Brenda Cossman et al. (Toronto, Buffalo, London: University of Toronto Press 1997), 152.

45. Ross, 160.

46. Quoted in Ross, 162.

47. Ross, 164.

48. See Ross, 164. Later in the article, Ross does make the claim that heterosexual s/m is not always harmful; however, according to her account, the argument wasn't made in court. I do not want to suggest that she is arguing for the idea that representation is univocal or has a causal relationship with behavior, but the maneuver of contrasting lesbian pornography with hetero-pornography as a means of assigning it special legal treatment has its own consequences. My project here is to trace the changing knowledge-claims about pornography as they were developed, even if inadvertently, by the major voices in public debate. This necessarily includes default positions that appear in a forced juxtaposition of arguments and are not necessarily intended. This phenomenon may say something about the hegemonic tendency of the law to constrain discourses; however, this is precisely the reason for studying truth-claims that develop in debates within and adjacent to legal proceedings.

49. Ross, 175. Foucault deals with the law illustratively in order to contrast older notions of power embodied by the King's body and his concept of power as capillary and diffuse. The only reason Foucault did not apply his diffuse conception of power to state law is because he only treated the law illustratively and never took it up as an object for study. See Hunt and Wickham, 41.

50. Hunt and Wickham, 49.

51. Hunt and Wickham, 41. Cossman and Bell petition feminists to "push forward the understanding of the role of law in social change. Early anti-censorship feminists did not, by and large, develop their analysis of the role of law, but rather tended to adopt a more instrumentalist conception of the state as serving capitalist and patriarchal interests. This has lead some anti-pornography feminists to suggest that anti-censorship feminists abandon law altogether as a site of feminist engagement. We believe that this view not only misrepresents the position of anti-censorship feminists, but moreover unduly simplifies the role of law in social change." Cossman and Bell, "Introduction," 28.

52. The full citation for this work is, Christopher N. Kendall, *Male Gay Pornography: An Issue of Sex Discrimination* (Vancouver, Toronto: UBC Press, 2004).

53. Kendall, xiii.

54. Kendall, xiii.

55. Since there has never been any proof that pornographic imagery has a causal connection to rape, supporters of both positions argued that the "harm" was "harm against equality."

56. See Lisa Steele, "A Capital Idea: Gendering in the Mass Media," in *Women Against Censorship,* ed. Varda Burstyn, 58-78 (Vancouver & Toronto: Douglas & McIntyre Ltd., 1985).

57. Lisa Steele (Video Artist, Faculty of Fine Arts, University of Toronto), interview with author, April 4, 2005.

58. See Jim McGuigan, "Censorship and Moral Regulation," 154-175, in his *Culture and the Pubic Sphere* (London: Routledge, 1996); Sue Curry Jansen, *Censorship: The Knot That Binds Power and Knowledge* (Oxford, New York: Oxford University Press, 1988); Richard Burt, ed. *The Administration of Aesthetics: Censorship, Political Criticism, and the Public Sphere* (Minneapolis and London: University of Minnesota Press, 1994).

59. Jansen, 181; Burt, xv.

60. Burt, xii.

61. Burt, xv. Burt argues that the term "censorship" should be replaced with the phrase "discourse of legitimation."

62. Burt claims that his proposal is no more progressive than the left or the right. Rather, he is attempting to replace the left/ right and for/ against censorship binaries with a more ambivalent position (xx).

63. Burt, xvii. Burt cites the video distribution facility V/tape of Toronto as a good example of diversity used as a criterion to determine inclusion and exclusion. In 1986, Steele, along with other members of V/ tape and the arts community at-large, committed to equity initiatives in the effort to promote diversity.

64. Of course there are different levels of enforcement and methods of de-legitimation and I don't want to minimize the moments when coercion is used. Whether it is through outright banning of materials, or through instituting a tax on speech in the form of screening fees, information is regulated, legitimated and de-legitimated.

65. Burt, xxi.

66. Lacombe, 147.

67. Lefort quoted in Lacombe, *Blue Politics*, 147.

68. Quoted in Lacombe, *Blue Politics*, 147.

69. Since multiple and diverse subject-positions do not spontaneously align themselves, Chantal Mouffe asks for a "new common sense" in which "democratic equivalences" can be made. After Mouffe, Lacombe suggests that such a common good "does not assume already constituted identities…[but] would attend to the fluidity of political identities, and their continual development…[and] cannot be legitimized in some absolute or spontaneous desire or in abstract principles, because… it comes out of the forms of existence in which we find

ourselves" (Lacombe, 153). These forms of existence are the postmodern conditions that characterize a multiplicity of struggles for equality, the very relations of subordination that Mouffe brings to the political project of liberalism.

70. The concept of "enabling" when used to describe the productivity of the law is taken from Lacombe's *Blue Politics*.

71. Lacombe, *Blue Politics*, 11.

72. Lacombe, *Blue Politics*, 137.

73. Brenda Cossman (Faculty of Law, University of Toronto), e-mail message to author, April 14, 2005.

74. Glad Day Bookshop Inc, *Factum,* May 29, 2001, http://www.gladday.com/ofrb/Charter_factum.pdf.

75. Darren Cooney, "Big Win for Glad Day," *Xtra!* May 13, 2004, www.xtra.ca/site/toronto2/arch/archives.shtm.

76. See such articles as Tracey Tyler's "Film Board Powers Cut By Ruling on Censorship," *Toronto Star*, May 1, 2004, http://www.fradical.com/Court_strikes_down_OFRB_powers.htm. Joseph Couture, "Keep on Censorin,'" *Eye Weekly*, July 29, 2004, http://www.eye.net/eye/issue/issue_07.29.04/city/gladday.html, Joseph Couture, "Papers Swallow Government Doublespeak," *Eye Weekly*, 23 December 2004, http://www.eye.net/eye/issue/issue_12.23.04/city/ofrb.html, and Robert Benzie, "Film Board Cut Out as Censor", A.04.

77. Glad Day *Factum*.

78. Quoted in Toshiya Kuwabara, "Glad Day Bookshop Press Release," November18, 2004, http://www.gladdaybookshop.com/ofrb/press%20release11_17.pdf.

79. Kuwabara, interview with author, March 4, 2005.

80. Kuwabara, interview with author, March 4, 2005. Political liberalists argue that this state-sponsored regulatory system in effect taxes the freedom of expression. Liberalists contend that the privitization agendas pushed by the conservative Reagan and Bush administrations fostered a form of marketized censorship in Canada, whereby distributors often monopolize the market, and government censors cater to the largest distributors See McGuigan's chapter "From State to Market," 51-73, in *Culture and the Pubic Sphere,* for a discussion of the Bush/Reagan agenda to privatize what used to be state-controlled endeavors. Also, see Burt for a discussion of the liberalist view of the way privatization causes new forms of censorship, such as the inability to appropriate cultural material that has been copy-righted or patented.

81. "If You're Over 21, Click Here to Enter: Censorship Isn't Just Outrageous, It's Futile," *Xtra!* November 30, 2000, http://www.xtra.ca/site/toronto2/arch/body701.shtm.

82. Quoted in Irwin, "Video censorship."

83. Steele, interview with author, April 4, 2005.

84. As Steele recalled, in the 1980s only a handful of women artists were involved in producing pornography: "So that was a strategy all throughout the eighties, to appropriate gay male pornography, bring it into the art gallery and thus bring it into discussion. It was a highly politicized speech that doesn't have a parallel even with people like myself who are feminists actively engaged in anti-censorship activist activity. There wasn't a parallel of us taking hard-core porn and hetero porn and using it as context. That's because of the difference in the means of production. Certainly at that point, there were very few women directors of explicit pornography. There are a few now, like Blush Productions and a few others that have become well-known, but mostly, heterosexual pornography was produced by men." Steele, interview with author, April 4, 2005.

85. Richard Fung (Video Artist, Faculty of Art, OCAD), interview with author, June 3, 2005.

86. "Habits" was held April 8-12, 1986 at YYZ, and artist-run centre in Toronto, Ontario.

87. Video tape transcript of Richard Fung's *Chinese Characters*, 1986.

88. Phil Van Steenburgh, "'Habits' by YYZ, Toronto," *Cinema Canada* (July 1986): 26.

89. Richard Fung, "Looking for My Penis: The Eroticized Asian in Gay Video Porn," in *How Do I Look?*, eds. Bad Object-Choices (Seattle: Bay Press, 1991), 151.

90. Varda Burstyn explains that "Dworkin does not speak of 'masculine,' that is of learned, sexual behavior, but of 'male,' that is of ascribed sexual behavior, clearly implying that misogyny and brutality are biologically coded into men's sexual response." "Anatomy of a Moral Panic," *Fuse* (Summer 1984): 29-38. Furthermore, "to use censorship to inhibit misogynist feelings in men is to imply that there is no way that individuals or society can change – either at a deep unconscious level, or through conscious choice and work. Censorship enshrines the present inequality of the sexes in the law" as Anna Gronau contends in "Censorship: Caught in the Crossfire," *Parallelogramme* 9, no. 3 (Feb/March 1984): 42-44.

91. Waugh quoted in Fung, "Looking for My Penis," 154. Becki Ross's analyses of homosexual pornography also reveals the potential for slippage in identity construction (see note 44).

92. Fung, "Looking for My Penis," 154.

93. Fung, "Looking for My Penis," 153.

94. Fung, interview with author, June 3, 2005. Nourbese Philip argues that censorship can overshadow the issue of race for writers in Canada. In her book, *Frontiers: Essays and Writings on Racism and Culture* (Stratford: The Mercury Press, 1992), she comments on the way censorship becomes a central issue in dominant liberal democracies because it is a "talismanic cultural icon around which all debates about the 'individual freedom of man' swirl," meaning that freedom of imagination is not entirely free insofar as it is affected by societal norms and values (278). She goes so far as to say, "in Canada, that wider context is, in fact, very narrowly drawn around the artistic freedom of white writers" (284).

95. For example, *The Body Politic* was the first gay newspaper made in Canada. In the late 1970s, the paper faced several charges for distributing obscene material in the mail. Little Sister's Book and Art Emporium of Vancouver was also subjected to repeated seizure by Canada Customs in the 1980s. Little Sister's initiated a legal challenge against Canada Customs in 1994, alleging that the *Customs Act*, which grants inspectors broad powers of exclusion, violated section 2 of the *Charter of Rights and Freedoms*. The case *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)* was heard by the Supreme Court of Canada in 2000. The Court ruled that while the *Customs Act* did violate section 2 of the *Charter*, it was justified under section 1. See Janine Fuller and Stuart Blackley, *Restricted Entry: Censorship on Trial* (Vancouver: Press Gang Publishers, 1995).

96. Steele, interview with author, April 4, 2005.

97. *Film Classification Act*, 2005, S.O. 2005, c.17**.**

98. Benzie, "Film Board Cut Out as Censor", A.04. Film *classification* as an issue in itself is beyond the scope of this paper, but it is worth contemplating briefly. Films that receive approval after their pre-screenings are rated and the corresponding warnings are applied. More than neutral safeguards, these warnings can signal audiences to be offended.

99. Joseph Couture, "Papers Swallow Government Doublespeak," *Eye Weekly*, December 23, 2004, http://www.eye.net/eye/issue/issue_12.23.04/city/ofrb.html.

100. The Ministry of Government Website published these words in their information bulletin: "These changes modify the powers of the Ontario Film Review Board (OFRB) with respect to approval of film, and narrow

the criteria the OFRB uses to review and approve film. These changes are intended to be consistent with the direction given by the court." However, for the OFRB to narrow the criteria for approval, or rather, for banning, means that the OFRB still maintains the power to ban video and film. The OFRB also maintains the authority to require the pre-screening of all video/film material. Furthermore, the criteria for approval is still based on the obscenity law, which is itself debatable for its ambiguity. Ontario Ministry of Government Services Website, "Information Bulletin: Regulatory Changes to the Theatres Act Now in Effect," July 5, 2005, http://www.cbs.gov.on.ca/mcbs/english/62LJ73.htm.

101. Alexi Wood (Policy Analyst, Canadian Civil Liberties Association), interview with author, March 29, 2005.

102. Wood, interview with author, March 29, 2005.

103. Examples of these knowledge-claims include the position that pornography is not art and that explicit sexuality means something different in art than it does in pornography or, alternatively, that representations of explicit sexuality are just as constitutive of political meanings in all their forms. Another set of knowledges include arguments that women share a characteristic sexuality and are subjected to harm to equality when men exploit this sexuality in pornography, or, that there exists a multiplicity of sexualities constituted within discourse that should thus be available for discursive contest. Still others include the position that images causally motivate action, or that they don't; that minority sexualities depicted in pornography mimic the same unequal power relations that are found in hetero-sex pornography or that these depictions, in avoiding discriminating alternative readings, are themselves discriminated against. Of course there are many more knowledge-claims in addition to these.

104. Kwinter, 28.