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ENGENDERING GAY AND LESBIAN RIGHTS: THE EQUALITY CLAUSE IN THE SOUTH AFRICAN CONSTITUTION

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Synopsis — The paper focuses on the origins and impact of the “gay rights clause” in the post-apartheid constitution of South Africa. The clause, explicitly prohibiting discrimination on the basis of sexual orientation, was the first of its kind in the world. It represents a paradox given the commitment of the post-apartheid state to mass participation in policy formulation and high levels of homophobia. The clause is explained in terms of the ability of a male-dominated gay rights movement to form strategic alliances with the anti-apartheid struggle, to mobilize the master narrative of equality and to lobby effectively during the constitution making process. Since 1996, it is shown that lesbian initiatives have been significant in attempts to mobilize the clause to realize substantive equality. However, these have tended to reflect class- and race-based privilege, and for the gay rights movement to become a transformative force, any development depends on an extension of the present focus on justice as rights, to include redistribution. © 2002 Elsevier Science Ltd. All rights reserved.

INTRODUCTION

The “gay rights clause” in the South African post-apartheid constitution explicitly prohibiting discrimination on the basis of sexual orientation was the first of its kind in the world. However, it represents a paradox given the commitment of the post-apartheid state to mass participation in policy formulation and the high level of homophobia in South Africa. This paper explores this paradox, through an examination of the gay rights clause. The paper, which falls into two parts, explores (i) the origins of the clause and (ii) its impact. The argument is based on interviews with eight key informants who were chosen because of their expertise in the origins and impact of the equality clause, participant observation in the movement for gay and lesbian rights over the past 5 years and secondary and primary sources, including the Gay and Lesbian Archives housed at the University of the Witwatersrand.¹ It is argued that the inclusion of the sexual orientation clause in the final post-apartheid constitution was largely due to the ability of a male-dominated gay rights movement to form strategic alliances with the anti-apartheid struggle, to mobilize

the master narrative of equality and non-discrimination and to lobby effectively during the constitution-making process. The clause has had important, but limited effects. It is argued that homophobia is increasingly challenged, but not by a representative or mass-based movement. The gay rights movement was never a cohesive phenomenon with a strong, collective voice. Instead, the particular fragmented forms that sexual politics have taken in the last 50 years of South African history reflect the complex interplay of sexual identity with the politics of race, class, and gender. The paper demonstrates that the transformative capacity of the gay rights movement in South Africa is limited by its socially conservative and male-dominated nature. The shift necessary for it to become transformative, involves expanding the focus from justice as rights to include redistribution.

THE ORIGINS OF THE GAY RIGHTS CLAUSE

An Insurgent Political Climate

Any explanation of the clause must be rooted in the insurgent climate of South Africa in the early 1990s. A marked cultural effervescence involved a reconfiguration of the discourse on equality. This

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converged with the discourse on sexual rights promoted by a powerful women's movement, and western ideals of human rights. There was no single and simple script at work. In addition, the discourse of diversity, the celebration of difference, and especially the right to freedom of sexual orientation was defended as part of the challenge of building a diverse, pluralistic society. The "rainbow" emerged (and remains) a strong collectivist and inclusive symbol defining unity among the diverse peoples of South Africa and a source of national pride.

The gay rights movement was able to mobilize these discourses very effectively. In addition, the movement made connections with the anti-apartheid struggle, and particularly the African National Congress (ANC) in exile in London and Lusaka. It also made contact with key actors in the political negotiations and was able to offer expert participation in the lobbying process, which produced the final constitution.

According to Graeme Reid, "...we managed to make gay rights part of a much broader political project" (Interview, May 5, 2000). This "broader political project" argued for social justice and opposed all forms of discrimination, but was very loosely defined and the unity of the gay rights movement as a powerful, collective actor should not be overemphasized. It will be shown below that the movement was fragmented, splintered politically and divided along race, gender, class, and ideological lines. While male-dominated, it engaged in some very effective initiatives, which can be periodized in two stages, coalition-building between 1987 and 1990 and effective lobbying between 1990 and 1994.

Coalition-Building with the ANC 1987–1990

During the period 1987–1990, the movement expanded and was able to place gay issues on the agenda of the anti-apartheid struggle both in South Africa and abroad. It achieved this by targeting the leading organizations in the struggle, the ANC in exile and the United Democratic Front (UDF) inside the country.

In this process, the efforts of two men are especially important—Peter Tatchell in London and Simon Nkoli in South Africa. They were the "carriers" of the connection between gay rights and the anti-apartheid struggle through mobilizing an expanded conception of liberation.

Until the late 1980s the ANC had no policy on sexual orientation and senior officials dismissed gay issues as irrelevant. The catalyst was a particularly dismissive statement by a member of the National Executive Committee of the ANC, Ruth Mompati in

1987. "I cannot even begin to understand why people want lesbian and gay rights. The gays have no problems. They have nice homes and plenty to eat. I don't see them suffering. No one is persecuting them. ... We haven't heard about this problem in South Africa until recently. It seems to be fashionable in the West." She saw the gay issue as a "red herring," detracting attention from the main struggle against apartheid, and justified the ANC's lack of policy on lesbian and gay rights by stating, "We don't have a policy on flower sellers either." In her view, lesbians and gays are "not normal. If everyone was like that, the human race would come to an end" (cited by Tatchell, 1987).

Peter Tatchell, an anti-apartheid campaigner in Britain, publicized the statement, petitioned the then ANC Director of Information, Thabo Mbeki, and at its policy conference in 1992 the ANC formally recognized gay and lesbian rights.

Ironically, while Ruth Mompati's statement was a catalyst for forging a strategic alliance between the gay rights movement inside South Africa and the leading force in the anti-apartheid struggle abroad, the ANC, a process driven by Peter Tatchell, the detention of Simon Nkoli was the catalyst for forging a strategic alliance between the gay rights movement and the anti-apartheid struggle within South Africa, led by the UDF. The UDF, formed in 1983, was the country's leading internal anti-apartheid organization with 600 affiliated bodies and over 1 million members (Cock, 1991, p. 32).

Coalition-Building with the UDF 1987–1990

In 1987, Simon Nkoli, one the Gay Association of South Africa (GASA)'s few black members, went on trial with 19 others, charged with "high treason," following the mass protests in the black townships of the Vaal region, southwest of Johannesburg in 1983 and 1984. After his acquittal after nearly 3 years of imprisonment, he became chairperson of the Gay and Lesbian Organisation of the Witwatersrand (GLOW). They saw themselves as part of the broad movement against apartheid. The only openly gay person among the Delmas treason trialists, Nkoli always emphasized that the battles against homophobia and racism were inseparable. He said, "I'm fighting for the abolition of apartheid, and I fight for the right of freedom of sexual orientation. These are inextricably linked with each other. I cannot be free as a black man if I am not free as a gay man" (in a speech at the first public parade in 1990 organized by GLOW. Cited by Luirink, 1998, p. 5).

This assertion of a linkage shifted the attitudes of key political actors. According to Graeme Reid,

“Simon Nkoli’s detention was a watershed in gay politics here. He represented that engagement between the gay movement and the broader liberation struggle” (interview, 2000).

The Reactionary Nature of GASA

However, any alliance between the gay movement and the anti-apartheid struggle was complicated by the reactionary nature of the most prominent gay rights organization in South Africa at the time—GASA, which was largely white, middle class, and male. “It had a very white, male view of what constituted politics” (Kevin Botha, Interview, 2001). Nkoli said, “It is largely because of the consistent support of the British lesbian and gay movement that I survived the terrible days and nights I spent in prison. . . . I have had no support from GASA since the moment of my arrest” (*Capital Gay*, October 9, 1987).

GASA’s “apolitical stance” meant non-alignment in broader South African politics and “secondly, following a moderate, non-confrontational, and accommodationist strategy” (Gevisser, 1994, p. 51). Other accounts view GASA as “apartheid-friendly” and patriarchal (Luirink, 1998, p. 21). GASA constituted a “very male world, and they (women) did not feel welcome” (Anne Smith, a GASA president; cited by Gevisser, 1994, p. 50). Furthermore, the organization refused to show solidarity with a group of lesbians fired in 1983 by their employer. . . (Luirink, 1998, p. 21). Ultimately, the failure to link the struggle for gay equality with the struggle against apartheid was fatal for GASA, which was expelled from the International Lesbian and Gay Association (ILGA) in 1987.

These political differences demonstrate the splintered nature of the gay rights movement in South Africa at the time. As Graeme Reid states, “It was not a strong and unified movement” (interview, 2000). However, it was changing; as Gevisser demonstrates, there was a major shift from the conservative or apolitical gay movement of the 1980s to the liberationist gay movement of the 1990s, which took as its starting point the need to fold lesbian and gay issues into the agenda of the anti-apartheid struggle. It was able to lobby very effectively during the 1990–1994 period in South Africa’s transition to democracy.

Public Participation in the Constitutional Process 1990–1994

Sexual orientation was included in the equality provision of the draft/interim post-apartheid Consti-

tution, thus providing protection against discrimination against gays and lesbians, making South Africa the first country in the world to do so. This came to be known as “the gay rights clause” and it emerged from the complex negotiations that marked South Africa’s transition to democracy during the period between 1990 and 1994. These protracted multi-party negotiations led to the Interim Constitution and the first democratic elections.

The policy process around the constitution was structured on input from the public. It was planned as participatory, consultative, and representative. The participative process meant that, during 1995, the Constitutional Assembly received submissions, written and oral, from all sectors of society on the draft constitution. This provided crucial political space, which the National Coalition for Gay and Lesbian Equality (NCGLE, 1995) used to mobilize.

Effective Lobbying by the NCGLE

This body was formed in 1994 specifically to coordinate the lobbying efforts to retain the sexual orientation clause in the draft South African constitution and became a powerful structure representing 65 member organizations.

The key actors in this process were men who used power strategically in the policy process of the constitutional assembly. Part of the NCGLE’s success was its single-issue focus. In this respect, it was similar to the Law Reform Movement of 1968, which was narrowly defined around a single issue, preventing proposed changes to the Immorality Act which would criminalize male homosexuality. Another key to success was the accommodationist tone of the gay rights movement at the time. According to Graham Reid, “It was important that the coalition wouldn’t speak about gay rights, only about equality” (interview, 2000).

The master narrative of equality was equated with non-discrimination. According to Botha and Cameron, this had a strong appeal. They argued that the constitutional protection of gays “is no doubt the product of our peculiar history, where institutionalized discrimination against people on the ground of race was perfected through the legal system. The racial legacy has given the majority of South Africans a repugnance for the use of legal processes for irrational discrimination” (Botha & Cameron, 1997, p. 37).

One of the most influential submissions to the Constitutional Assembly from the NCGLE emphasized two themes: (1) equality and (2) the uniformity of all forms of discrimination. The submission stressed that “equality and non-discrimination are

the fundamental and overriding principles of the interim constitution.” Furthermore, discrimination against gays and lesbians “displays the same basic features as discrimination on the grounds of race and gender.” The second significant theme was the argument that sexual orientation is fixed, immutable, and therefore part of the natural order. “. . . Sexual orientation is immutable—in that the individual cannot change it.” This is supported by “scientific evidence.” Thus, “Sexual orientation is an ineradicable part of human identity. Compelling historical, scientific, and medical evidence shows that homosexual orientation is a natural phenomenon.” (NCGLE, 1995, p. 8).

Part of the success of this submission is this accommodationist tone—reformist rather than revolutionary, it did not present a substantial threat to prevailing gender relations or patriarchal power.

Opposition to the Inclusion of the Gay Rights Clause

While in South Africa in the 1990s the master narrative of equality was powerful, there were also competing ideological elements involving notions of “African tradition,” “Christianity,” and “normalcy.” These notions were claimed by the African Christian Democratic Party (ACDP), which lobbied very hard for the removal of the gay rights clause from the final constitution. However, there were “a total of 7032 submissions from gay, lesbian, and sympathetic persons, and about 13,000 signatures on petitions. In comparison, there were only 564 submissions against the inclusion of sexual orientation” (Kevin Botha interviewed in *Equality*, Botha, 1996, p. 2).

The main source of opposition to the clause, the ACDP won only 88,104 votes out of the 32 million cast in the 1994 election. They subsequently claimed that the inclusion of the sexual orientation clause was ‘undemocratic’ (SABCTV interview with ACDP leader, Rev. Kenneth Meshoe, May 29, 1996). The same point was made recently by the Western Cape Premier Peter Marais, who attacked the clause by saying that Christians must choose between the Constitution and the Bible, because the former was written by communists under the disguise of democracy” (cited in *The Mail and Guardian*, Dec. 22, 2002). In reality, public participation in the constitutional process was generally limited. The process was an expert-dominated one in which participation was shallow and public voices had limited impact.

The homophobic nature of that public is illustrated by a survey of 2163 respondents drawn from all races

and regions of South Africa in 1995. On an attitude index over eight questions posed to respondents, 48% of the public was rated as anti-gay. The survey found that 44% of respondents were against giving homosexuals equal rights in the constitution. A total of 64% were opposed to giving homosexuals who live together permanently the same rights as married people. An even larger number of 68% opposed letting homosexuals adopt children (Charney, 1995, p. 7).

This was the context in which the gay rights clause was achieved. Fortunately, the dominant notion of democracy was rooted in a conception of rights rather than a simple majoritarianism. In 1996, when the constitution—including the sexual orientation clause—was adopted by parliament, NCGLE shifted its focus to the implementation of the rights in the constitution and on supporting the gay movement throughout Southern Africa.

THE IMPACT OF THE GAY RIGHTS CLAUSE

The clause was the product of a reconfiguration of the discourse on equality, a reconfiguration that was driven by the gay rights movement. However, there are contrasting views on the significance of the clause for gays and lesbians. Graeme Reid states, “The clause is very important. . .it promotes a sense of citizenship” (interview, 2000). Kevan Botha maintains, that “The clause is meaningless unless you’re ‘out.’ In order to claim the rights you have to acknowledge and own the identity of being gay” (interview, 2001). Sharon Cooper, editor of *Womyn*, argues that the clause “has had no impact on the masses. It’s brilliant legislation but meaningless to people without jobs. The law is a luxury, it only works for rich, white people” (interview, 2001). Edwin Cameron maintained that since the equality clause, there has been “a major shift in intellectual and cultural circles in accepting homosexuality, and beyond these circles, the issue of equity is being taken seriously by the government for the first time” (Cameron cited by Daniels, 1998, p. 9).

Much of the action to establish full equality on the basis of the gay right clause has involved legal efforts to recognize the validity of homosexual family relationships, to secure the recognition of gay relationships in the courts on domestic issues such as the parental rights of same-sex partners, and their access to benefits. In contrast, to the male-dominated nature of the gay rights movement in South Africa before 1994, lesbians are playing a prominent role in these attempts.

A Base for Legal Action

The first recognition of same-sex relationships in South African law was the Special Pension Fund Act set up for veterans from the liberation struggle in 1996–1997. According to Kevin Botha, this was due to the lobbying efforts of “the many lesbian women in MK (the armed wing of the ANC)” (interview, 2001). An important example of lesbian action occurred in 1998 when the Pretoria High Court ruled in favor of a lesbian police captain to register her partner of 11 years on her medical aid. This judgment, which overturned the denial of the police service medical scheme, was hailed by the NCGLE as “historical” and “a victory for equality, dignity, and justice for all people in South Africa” (*The Sunday Independent*, February 2, 1998).

There have been other significant gains. A Pretoria High Court judge ruled in 2000 that a Johannesburg schoolgirl could live with her lesbian mother (reported in *The Sunday Times*, October 27, 2000). In 2000, the Pension Fund Adjudicator ruled that pension funds, which excluded same-sex partners from benefits, were unconstitutional.

In 2001, a Pretoria High Court judge ruled that the Child Care Act and the Guardianship Act, which prevented a lesbian couple from jointly adopting their two children, was unconstitutional. He ruled that the legislation should be amended to include same-sex life partners. This is important in view of a projected 3 million AIDS orphans in South Africa in the next 10 years. In a second ruling, the judge ruled in favor of a lesbian in a 14-year cohabiting relationship who sought to have the conditions of the Judges Remuneration Act made applicable to her domestic partner. This would involve benefits such as pension, medical aid, and a subsistence allowance.

A number of cases, including the two cited above, have been brought to the ultimate legal authority, the Constitutional Court. For example, in 1999 the Constitutional Court ruled that laws relating to sodomy in various pieces of legislation were unconstitutional and invalid. In his separate concurring judgment, Judge Sachs argued that “the violation of equality by the anti-sodomy laws is all the more egregious because the offenses also violate the right to privacy by touching the deep, invisible, and intimate side of people’s lives. “ In his view, the Constitution requires that the law and public institutions “acknowledge the variability of human beings and affirm the equal respect and concern that should be shown to all as they are. . . . The decision of the Court should thus be seen as part of a growing acceptance of difference in

an increasingly open and pluralistic South Africa.” (www.concourt.gov.za).

Another case won by the NCGLE on behalf of several same-sex partners, both male and female, before the Constitutional Court in 1999 involved the right of same-sex partners to South African residence as spouses.

Clearly, a strong legal framework has been established. This is also evident in the Labour Relations Act of 1995, which states that discrimination on the basis of sexual orientation is an unfair labor practice. Examples of such discrimination include: not being hired because you are gay or lesbian, losing your job because of your sexual orientation, refusal by the employer to include your partner in employment benefits such as medical aid, pension, housing benefits, life insurance, bursaries, provident fund, and other employment benefits, abuse, and harassment at work by other employees because of your sexual orientation, denial of leave when your partner is sick or dies. Another victory is the Employment Equity Bill which defines “family responsibility” to include gay and lesbian relationships.

The cases brought by the NCGLE have involved “clever sequencing.” We started with the sodomy law. That was the basis for a lot of the discrimination in law. But it was seen as a male issue, as an issue that women could not relate to. After that, we took up the immigration matter, which opened up access for all couples, then pension and custody cases. . . cases all leading up to marriage” (Kevin Botha, interview, 2001).

Probably the most controversial issue relates to same-sex marriages.² Kevin Botha maintains that “Gay marriage is the big issue we have to address” (interview, 2001). A white lesbian couple who took part in a marriage ceremony in 2000 have vowed to take it to the Constitutional Court to make their union legal. “. . .we’ll fight not only for ourselves but for the many other gay and lesbian couples whose marriages are not recognized in this country” (cited in *The Star*, March 15, 2000).

In many other societies around the globe, gay men and lesbians are struggling for this kind of recognition and right. “As the new millenium begins, struggles by non-heterosexuals to secure equal recognition and rights for the new family relationships they are now creating represent some of the most dramatic and fiercely contested developments in Western family patterns” (Stacey & Biblarz, 2001, p. 159). The struggles are intense because existing marriage and family policies “encode Western culture’s most profoundly held convictions about gender, sexuality, and parenthood” (Stacey & Biblarz, 2001, p. 160).

However, it is debatable how transformative these efforts are. All the legal actions described above reflect racialized class privilege. All promote an image of neatly couple list, “almost normal” domesticated gays and lesbians. Castells maintains that the legal recognition of same-sex marriages means “a fundamental breach has been opened in the institutional scaffolding constructed to control desire” (Castells, 1997, p. 220). However, American gay playwright Tony Kushner argues that “Openly queer GI’s (soldiers in the US army) and same-sex confectionery couples on wedding cakes won’t be enough” (*The Nation*, April 7, 1994). His argument is that gay men and lesbians are more than “heterosexuals with a difference.” The crucial question relates to whether the full realization of gay rights implies the transformation of fundamental societal institutions such as marriage and the military.

Gay Rights and the Transformation of the South African Defence Force

The difficulty in establishing substantive, as opposed to purely formal or abstract, equality may be illustrated with reference to a specific South African institution, the military. The apartheid army, the South African Defence Force (SADF) enforced particularly rigid gender identities and was particularly abusive to homosexuals (Cock, 1991; Krouse, 1994). While gays were not excluded, they were subjected to “a form of hidden terrorism which permeates every echelon of the military environment” (Krouse, 1994, p. 211). This “terrorism” is evident in how an unknown number of gays and lesbians in the SADF between 1969 and 1980 were subjected to electric shock treatment, and sex-change operations (Van Zyl et al., 1999).

In 1969, a psychiatric unit was established by the South African Medical Services at 1 Military Hospital, Voortrekkerhoogte. “Within the military, homosexuality was seen as a “disease,” requiring medical treatment rather than grounds for exemption from conscription. Conscripts who were suspected of being gay were encouraged to “confess” their deviance and submit for treatment—electric shock aversion therapy—in the psychiatric unit. Some gay conscripts and drug abusers were given the “choice” of going to Greefswald, a notorious labor camp on the then Transvaal border, or submitting to electric shock aversion therapy” (Van Zyl et al., 1999, p. v).

Such “therapy” was applied to lesbians as well as gay men. “Trudie Grobler, an intern psychologist in the psychiatric unit at 1 Military hospital, was forced to observe an aversion therapy session under guid-

ance of the psychiatrist. A woman was subjected to such severe shocks that her shoes flew off her feet” (Van Zyl et al., 1999, p. 73). Grobler is quoted as saying, “I know that he (Dr. Aubrey Levine, a colonel in the SADF) did aversion therapy with gay men. You know that he showed the gay boys men and then shocked them. Then he showed them women. I presume that the same strength, method and everything was given to the woman. It was traumatic. I could not believe how her body could handle it” (Van Zyl et al., 1999, p. 73).

Such practices belong to the apartheid era and all discrimination against gays and lesbians in the post-apartheid army is illegal. However, negative attitudes persist. A recent survey of attitudes within the new post-apartheid army, the South African National Defence Force (SANDF) reported that only one quarter of the almost 3000 persons surveyed felt good about the integration of gays and lesbians in the military. Almost a third (30.6% did not want to share mess facilities with gays and lesbians. Almost half (46.9%) (and 49.3% of the African respondents) felt that the integration of gays and lesbians will lead to a loss of military effectiveness. Almost a third (31.0%) felt that gays and lesbians are “morally weaker” than heterosexual people (the largest racial category in the sample were Africans, totalling 52.8%) (Department of Defence, 2000, p. 2).

One informant who is a lesbian and a colonel in the SANDF described an intense social isolation. “I can’t afford to have any intimate relationships. If it were known that I was gay I wouldn’t be able to do my work, I wouldn’t get anywhere” (Informant 3. Interview, 2000).

As gay activist, Zackie Achmat said recently, “In South Africa we have a really good legal framework, what we need now is a change in our social understandings, our attitudes” (Zackie Achmat, SABC-TV, January 31, 2001). Such social understandings may change following a recent ruling that same-sex partners of members of the SANDF will, in future, have the same benefits as spouses. Regulations amending the definition of “marital status” and “spouse” to include partners in permanent life partnerships have been published in the *Government Gazette* (Streek, 2002, p. 12). The amendments bring the defense regulations in line with the gay rights clause of the Constitution and follow the Satchwell ruling cited above.

Continuing Social Discrimination

Despite the inclusion of the gay rights clause in the post-apartheid constitution, homophobia is

intense and widespread in post-apartheid South Africa. Gays and lesbians continue to be denied cultural recognition and are subject to shaming, harassment, discrimination, and violence. Violence against women is increasing and there is a particularly vicious edge to some lesbian attacks. For instance, in December 1996, a 14-year-old girl from Carletonville was assaulted by a man who told her that she should go and fetch her mother and their lesbian friends. He said, "they were trying to be men and he was going to beat them up like men." He went on to say that "I am going to wipe out all the lesbians in Carletonville." When the mother tried to lay charges at the local police station, she was told by the sergeant-in-charge, "If I ever see you lesbians in this police station, I will kick you so hard under your arses that you will not find your way back to Carletonville. You are sick people and you disgust us" (Press statement issued by NCGLE, February 10, 1997).

According to one source, "The 'Jackrollers' (a notorious Soweto gang) go particularly for lesbians and when they catch one they say, 'We'll put you right.'" So, it's really dangerous for a young woman living in the townships to be open as a lesbian" (Informant 4, interview 2001).

As one informant said, "The constitution protects us, but only on paper" (Informant 4, interview 2001). Because of this constitutional protection for gay rights, South Africa has been termed "a satanic state." In 1999, a gay bar in Cape Town was the target of a bomb attack in which six people were injured. In a television interview, Safety and Security Minister Steve Tshwete said that the vigilante group, People Against Gangsterism and Drugs (PAGAD), was behind the recent spate of urban terrorism in Cape Town and was anti the post-apartheid state. They saw it as a satanic state because of the state's support for abortion and gay rights (SABC-TV, Tshwete, 2000). As Luirink writes, both PAGAD and the ACDP "link up perfectly in their agitation around still broadly popular prejudices that exist across a wide spectrum of communities" (Luirink, 1998, p. 145).

These negative attitudes and practices have been legitimized by statements from African leaders, including the presidents of Namibia, Zambia, Kenya, and Uganda, who have characterized homosexuality as "unnatural," "unaffrican," and a western import.

Homosexuality as "Unaffrican"

A particularly hostile set of attitudinal constraints cohere around this notion that homosexuality is

"unaffrican." This has been most crudely stated by President of Zimbabwe, Robert Mugabe who, in mid-1995, declared that "gays are perverts and their behavior is worse than that of pigs" (cited by Luirink, 1998, p. iii) He said, "They are lower than dogs and pigs, for these animals don't know homosexual behavior" (cited by Luirink, 1998, p. 51). He then encouraged the population "to take the law into its own hands, to arrest homosexuals, to report, and deport them..." Homosexuality was "unaffrican and in conflict with black culture" (Luirink, 1998, p. 51) "Lesbianism is not part of Zimbabwean culture," he claimed (cited in *The Star*, April 24, 1998).

A letter to the Johannesburg newspaper, *The Star* praised Mugabe because "he espouses and cherishes our traditions and customs. Homosexuality is an aberration to all thinking Africans and indeed to most of civilized mankind. Homosexuals are regarded as an abominable species, which must be punished and locked up, even in the United Kingdom." The letter ends, "Viva Robert Mugabe...who defends our continent from satanists, sodomists, and faggots" (*The Star*, August 21, 1995).

According to one view, "Mugabe is right in one sense when he accuses Westerners of thrusting a phenomenon onto Africa. It is not homosexuality as such that has been imported, but rather a set of far more open and visible expressions of it—a supposed liberation that has developed over some time in the West" (Luirink, 1998, p. vi).

The implication is that what has been "imported from the West" is not homosexual behavior but a homosexual identity. Among the many European myths about Africa, the myth that homosexuality is absent from African societies is one of the strongest. Murray and Roscoe (1998) exposed this myth, and demonstrate that gay and lesbian sexuality is both indigenous and traditional to some 50 African societies. What is clear is that while same-sex behavior is both widespread and diverse, the identities of "gay" and "lesbian" are not. Murray and Roscoe show that while homosexual behavior is probably universal, homosexual relationships, roles, and identities are not. This raises difficult questions when the strength of the modern gay rights movement is precisely the assertion of a public gay identity.

The Impact of the Clause on the Cohesion and Transformative Capacity of the Gay Rights Movement

A crucial question concerns the impact of the gay rights clause on the gay rights movement. Has it

operated to strengthen the coherence and transformative capacity of the movement? Has it provided a basis for individuals to assert a gay identity and claim rights?

The cornerstone of contemporary sexual politics is the assertion of a gay identity that can be claimed and celebrated. Castells argues that the issue of self-definition is crucial. In the network society, identity is no longer defined by what people do but by their self-identity—what they believe they are. Castells argues that “gayness and lesbianism cannot be defined as sexual preferences. They are fundamentally identities. . . they do not originate from some form of biological determination. . . but are culturally, socially, and politically constructed” (Castells, 1997, p. 206). This contrasts sharply with the CGLE submission on the biologically fixed and inevitable nature of homosexuality, which reduces it to a condition rather than a choice.

Gay and Lesbian Identities

This notion of gayness and lesbianism as “identities” involving choices is politically dangerous and can be expected to provoke strong reactions. The American sociologist Alan Wolfe found that “middle class Americans most hostile to homosexuality were most willing to see it as a conscious choice. . . . Make something a natural condition and Americans are quick to empathize. Make it a choice and people feel that they have the similar choice in condemning it” (cited in *The New York Times*, August 2, 1998).

There are two forms of essentialism involved in contemporary sexual politics. A biological essentialism that asserts homosexuality as an intrinsic condition is not the only problematic form this takes. There is also a form of political essentialism which asserts that the homosexual identity “trumps” all other identities and claims that homosexuality necessarily implies a intrinsic commitment to a revolutionary and transformative agenda. This is clearly not the case. The complicated terrain of sexual politics in South Africa demonstrates the competing force of multiple identities and that gay and lesbian people can be deeply conservative, exploitative, and racist. This context differs sharply from that of a rigid and exclusive identity politics.

Multiple Identities in an African Context

The assertion of a public gay identity is particularly problematic in an African context. To illustrate, Kendall found that the notion of “lesbian” was not helpful in understanding female–female relationships

in Basotho. She found widespread, apparently normative erotic relationships among Basuto women, but this (including instances of cunnilingus) was not defined as sexual, and not a single Mosotho—to Kendall’s knowledge—defined herself as a lesbian. Kendall concludes that “love between women is as natural to Southern Africa as the soil itself, but that homophobia is a Western import” (Kendall, 1998, p. 224). She emphasizes that Basotho society has not constructed a social category “lesbian.” Basotho women define sexual activity in such a way that makes lesbianism linguistically inconceivable. As one informant told Kendall, “You can’t have sex unless somebody has a koai (penis).” Kendall comments, “Lillian Faderman’s observation that ‘a narrower interpretation of what constitutes eroticism permitted a broader expression of erotic behavior (in the 18th century) since it was not considered inconsistent with virtue’ makes sense here” (Kendall, 1998, p. 233) “No koai, no sex means that women’s ways of expressing love, passion or joy in each other are neither immoral nor suspect” (Kendall, 1998, p. 233). “The need for legitimacy only arises in cultures (like my own) in which love between women has been pathologized or made illegitimate” (Kendall, 1998, p. 237). This implies a very different form of sexual politics to that of “the North.”

By the 1990s, there were organizations of lesbians and gay men in many black townships throughout Southern Africa. But there is a frequent clash of different discordant identities and racial differences cut across a unifying gay identity. For example, one informant reported, “. . . in the end I only feel at home with women, with black lesbian women specifically. I don’t feel at all at ease with white lesbians” (cited by Luirink, 1998, p. 71).

Black lesbians experience a particular oppression. Luirink describes an interview with Tiny Machida, 28 years old and chairperson of Gays and Lesbians of Zimbabwe, (GALZ) who experienced conflict with her family over her sexuality. Her father threw her out of the house when he found her in bed with a girlfriend, and she lived in the streets for over a year. She explained her parents response in terms of “it is their culture” (cited by Luirink, 1998, p. 89). “As in the case of Simon Nkoli, Tina Machida’s family dragged her from one nyanga to the next. The one burnt stones to steam out evil spirits, another prescribed medicinal herbs. A third pushed her in a dam to wash “it off” (Luirink, 1998, p. 70).

Vera Vimbela illustrates the penalties which traditional African society can impose on lesbians. She described a public whipping ordered by the Transkeian chief, “I don’t remember how many. . . lashings

I received; all I remember is crying and screaming with pain as the whole village jeered at me" (Vimbela & Olivier, 1994, p. 194). She describes having "very little contact with white gays" (Vimbela & Olivier, 1994, p. 196).

For Thembi Mandla, the major problem for black lesbians is African culture and tradition. "A woman is expected to conform and is silenced into a wife-and-mother role. . . . White lesbians do not face the same problems. They do not have to grapple with African culture." Mandla said black lesbians also face problems with straight black men. "Their manhood is threatened and they are scared we might take their women" (cited by Daniels, 1997, p. 17).

Several key informants emphasized these racial differences in the gay and lesbian experience in South Africa. For instance, "Racism is huge. Black and white lesbians know nothing about each other. There is no social space for black and white lesbians to chill" (Cooper, interview, 2001). It would seem that a lesbian identity takes very different forms with many white middle class women still "closeted," younger white lesbians claiming bisexuality in a 'rave' culture that is saturated with drugs and "clubbing" and a black, lesbian culture that involves rigid role playing and distinctions between "butch" and "femme."

The latter is illustrated by the social dynamics in the Namibian township of Katatura, where a lesbian football team—the Rainbow Warriors—has been formed. Members wear men's clothes, openly try to pick up women and visit gay-friendly shebeens. They call themselves the "lesbian men," their partners are "the ladies." (Maurick, 1999, p. 29). "The strict roles are of great importance for this group. A woman cannot love another woman, so she becomes a man" (Maurick, 1999, p. 29) They wear men's clothes, even men's underwear and aftershave.

Social cleavages

A public gay culture is slowly emerging in Southern Africa, but reflects these deep social cleavages. According to one informant, "The Johannesburg clubs like Stardust are racially mixed but white-dominated. Some clubs are racist and discriminate against blacks, they turn them away. Also, they discriminate in class terms. Heartland has a R200 membership fee and you're only allowed in if you're a member. . . . Also, women do not always feel welcome. At the Skyline in Hillbrow women were not allowed in, whether they were lesbians or not" (Informant 4, interview, 2001).

But there are other indications of a more inclusive, public, and assertive gay identity emerging in

scattered and embryonic forms. A Lesbian and Gay Pride March has taken place in Johannesburg every year since 1990. Its numbers and increasing representativeness chart the increasingly visible, assertive, and public presence of the movement. The 12th Gay and Lesbian Pride Event that took place in Johannesburg in October 2001 involved some 25,000 people according to the organizers. This is a strong contrast to the first march in 1990 organized by GLOW when 800 marchers were provided with paper bags to put over their heads (De Waal, 1999).

The challenge is to define a lesbian and gay identity as an inclusive African identity. As Gevisser and Cameron write, "there is no single, essential gay identity in South Africa. What has passed for 'the gay experience' has often been that of white, middle-class, urban men." (Gevisser & Cameron, 1994, p. 3) The divisions of gender, race, and class, which still scar the South African society mitigate against any powerful, representative gay and lesbian movement developing. These social cleavages mean that there is no "common experience of sexual oppression," as Jara and Lapinsky (1988, p. 1) claim.

Furthermore, the post-apartheid state's commitment to gay and lesbian rights could be shallow. "While South African lesbians and gays have achieved unprecedented political recognition and legal protection, the rationale for these developments appears to draw more on Western ideals of social justice and human rights than on claims about traditional acceptance and social roles for same-sex patterns" (Murray & Roscoe, 1998, p. 278). However, the same could be said of many of the policy innovations of the post-apartheid state, for example those relating to gender equality.

Also, there is uncertainty about the strength of the commitment to gay and lesbian rights within the ANC. While Nelson Mandela has emphasized that "Equality is for everybody," Winnie Mandela played on township homophobia as part of her defense when she was accused of kidnapping a young African boy. She maintained that it was a "rescue attempt" from a white priest accused of having sexually abused a number of African boys. A banner outside her trial in 1991 that "Homosex is not in black culture." So, ". . . . The status of gay and lesbian issues in the broader movement for democracy remains tenuous: gay issues continue to be seen as both frivolous and 'unaffrican'" (Gevisser & Cameron, 1994, p. 4). It could be that in the 7 years since the Gevisser and Cameron report, the criticism has strengthened as a response to the assertion of a public, chosen, gay identity.

CONCLUSION

Writing 5 years after the gay rights clause, it seems clear that it's most lasting impact should be strengthening the capacity of the gay rights movement to promote both formal and substantive equality and claim diversity of sexual orientation as part of South Africa's "rainbow nation." Most informants agreed on the significance of the clause and the important role the NCGLE played in its achievement. However, the NCGLE is now disbanded and overall, informants were divided on the status of the gay rights movement. "No, in South Africa the gay rights movement, perhaps not even a movement, just a set of initiatives, was and is socially conservative." (Informant 5, interview 2001) "The lesbians are the radicals now. The boys are leaving the struggle. They're an elite living privileged lives within the structures of patriarchy. The people protecting the equality clause are a handful of under-resourced people, mainly lesbians." (Cooper, interview, 2001) Another informant maintained that, "It is the lack of a historical perspective and an insistence on a rigid, inappropriate identity politics that is weakening the gay rights movement and threatening the gains that have been made" (Key informant 8, interview, 2001).

Informants were also divided on the transformative capacity of the movement. Transformation involves addressing the deep structures that maintain inequality. This has two aspects: recognition and redistribution. While redistribution involves changing access to income, power, and resources, recognition involves "upwardly revaluing disrespected identities and the cultural products of maligned groups" (Fraser, 1997, p. 15). These two aspects have yet to be integrated into a comprehensive political project in South Africa.

The assertion of rights involves expanding conceptions of humanity and citizenship. In this respect, Kevin Botha maintains that "the claiming of a new identity, based on justice and rights, is what defines empowerment. . . . Gay rights is empowering. It involves the claim to full citizenship and full moral standing" (interview, 2001). But the justice of rights must be linked to the justice of redistribution. "The majority of gay people in South Africa are poor. They remain marginalized from the social and economic mainstream and live outside of the emerging gay rights movement. . ." (Jara & Lapinsky, 1998, p. 8). "At the moment, we see a Western rave culture. This is not the case for the majority of lesbians and gays in South Africa. Here the majority are poor, black, and female, and their issues are not addressed by the lesbian and gay movement. . ." (interview with Mazi-

buro Jara in *The Mail and Guardian*, September 17, 1999, p. 3).

Many informants stressed the radical shift in sexual politics in South Africa in recent years, from the largely white, "apolitical," and accommodationist single-issue politics to an assertion of gay rights as human rights. This human rights discourse is strongly connected to a feminist discourse on sexual freedom, but it can be mobilized to promote an assimilationist politics. The emphasis on individual rights for gay men and lesbians to be "just the same" as heterosexuals in terms of the rights to marriage, medical benefits, child custody, and military service, is socially very conservative. As Tony Kushner writes, "it is entirely conceivable that we will one day live miserably in a thoroughly ravaged world in which lesbians and gay men can marry and serve openly in the army and that's it" (Kushner, 1994, p. 4) His concern is that, "Capitalism, after all, can absorb a lot. Poverty, war, alienation, environmental destruction, unequal development, the fetishization of violence—these things are key to the successful functioning of the free market. Homophobia is not; the system could certainly accommodate demands for equal rights for homosexuals without danger to itself" (Kushner, 1994, p. 5).

At the end of the day, the challenge is for the gay rights movement to move beyond a socially conservative and surface homogenization to promote a revolutionary agenda. To do so means fighting for equality while resisting the notion that equality equals sameness, as well as connecting the justice of rights to the justice of redistribution.

This assertion of difference is central to the new left that is emerging globally with its animating notions of human potential and social justice. It is a reinvention of the left that involves new formations in place of traditional communist parties and emphasis on the factory floor. The new left activism includes historically oppressed groups such as gay and lesbian activists as well as feminists and environmentalists.

The reinvented left emphasizes the realization of human potential and the diverse ways involved in such realization. Where the old, traditional left asserted class relations, control of the factory or the state, the new, reinvented left promotes wider individual possibilities such as the expression of indigenous cultures and languages as well as the expression of sexuality. In practical terms this implies a form of "coalition" or "alliance" politics that is structured on the recognition of difference.

The gay rights movement in South Africa is a model of this, and contains the promise of a cohesive and transformative sexual politics. It is one aspect of

South Africa as a post-colonial society that is re-inventing itself. However, the gains of the movement are fragile and in danger of being swamped by other issues such as aids and poverty.

ENDNOTES

1. Interviews conducted with key informants including: Jabu Dube—March 9, 2001; Kevin Botha—March 8, 2001; Graham Reid—May 22, 2000; Sharon Cooper—June, 12, 2001; Kathleen Satchwell—April, 3, 2001.
2. Other societies are changing marriage laws. In December 2000 The Netherlands gave final approval to groundbreaking laws allowing same-sex couples to marry in a civil ceremony and adopt children. Dutch law has recognized registered partnership of gay couples since 1998 but those couples did not have the same rights as heterosexual couples with regard to adopting children. Only one partner had full parental rights (*New York Times*, December 20, 2000). Same-sex couples can now wed in a civil ceremony for the first time anywhere in the world.

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