

RE-FORMING “WOMEN’S” TRUTH: A CRITIQUE OF THE REPORT OF THE ROYAL COMMISSION ON THE STATUS OF WOMEN IN CANADA

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The Report of the Royal Commission on the Status of Women in Canada embodies a mode(1) of social change which emphasizes the importance of law to changing the lives of women and the importance of “women’s truth” to re-forming the content of law. Even the idea that there might exist a univocal women’s truth, let alone its content in any particular context, is highly contested terrain in contemporary feminist discourses. In this paper I draw on critiques of “dominant” feminist analyses to argue that the “truth” of, and about, “women” embedded in the Report erases the objective realities of the lives of “racialized” women in Canada and renders our subjective experiences invisible. The essay “concludes” with some tentative reflections on the possibilities of legal rights struggles as an instrument of proactive social change in the interests of women. In view of “law’s” method of processing material realities in terms of “essential” binary oppositions, I raise the question of whether “law” can accommodate the varied truths of women, or whether it will hear only the “women’s” truth.

Le Rapport de la Commission royale d’enquête sur la situation de la femme au Canada incarne un mode(1) de changement social qui souligne l’importance du droit pour changer la vie des femmes et l’importance de « la vérité des femmes » pour modifier le contenu du droit. Cependant, l’idée qu’il n’existe qu’une seule expression de la vérité des femmes, sans tenir compte du contexte particulier, est une question très controversée dans le discours féministe contemporain. En m’inspirant des critiques sur les analyses féministes « dominantes », je soutiens dans cet article que la « vérité » des femmes, et sur les femmes, contenue dans le Rapport gomme les réalités objectives de la vie des femmes « de couleur » au Canada et rend nos expériences subjectives invisibles. En conclusion, je livre quelques-unes de mes réflexions sur l’utilisation des luttes visant à obtenir des garanties juridiques comme instrument de changement social pro-actif dans l’intérêt des femmes. Étant donné que le droit aborde les conditions matérielles sur le plan d’oppositions binaires « fondamentales », je me demande si le « droit » peut tenir compte des différentes vérités des femmes, ou s’il n’entendra que la vérité des « femmes ».

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I. INTRODUCTION

Before women can work to reconstruct society we must reject the notion that obtaining power in the existing social structure will necessarily advance feminist struggle to end sexist oppression. It may allow numbers of women to gain greater material privilege, control over their destiny, and the destiny of others, all of which are important goals. It will not end male domination as a system.¹

Would it not be comforting to believe in the REPORT OF THE ROYAL COMMISSION ON THE STATUS OF WOMEN² as a model of feminist social change? I am not talking about its specific recommendations, but its method, its strategy, its process. The REPORT tells of the efforts that were made to reach out to "ordinary" women; of hearings which were "scheduled so that they would be held at times and places convenient for women", and organized so that "an atmosphere of informality and easy exchange were maintained".³ Within the REPORT itself, the voices of individual women, and of groups of women, speak of their "pain". The REPORT's message is that the starting point for feminist law reform is the speaking of "women's" truth about the conditions of our lives to official power.

The lure of the REPORT lies not so much in its promise that law may work powerfully to alleviate women's oppression, but in its vision of "women's" truth as a force in the shaping of law. Embedded in the REPORT is a conviction that its story of "women's" plights presents an incontestable claim for "women's" rights — rights shaped, defined and given content by the experiences of "women".⁴ The REPORT seems to offer legal feminists a way out of the dilemma of being forced to choose between being a good feminist and being a good lawyer; it

¹ B. Hooks, FEMINIST THEORY: FROM MARGIN TO CENTER (Boston: South End Press, 1984) at 90.

² (Ottawa: Information Canada, 1970) (Chair F. Bird) [hereinafter REPORT].

³ *Ibid.*, Foreword at ix. It is interesting to note that the REPORT itself says nothing about which women came, and spoke at the hearings, but in her autobiography the Chair of the Commission notes that:

There was a significant sameness about the kind of people who came to the hearings day by day, in city after city. Most of them were women in their forties and fifties. Many of them spoke from harsh experience, having come up against discrimination and prejudice at work. . . . Many were housewives who found themselves bored, dissatisfied and depressed, sitting in mechanized homes, no longer needed by their children, with thirty-five years of potentially active and useful life ahead of them.

F. Bird, ANNE FRANCIS: AN AUTOBIOGRAPHY (Toronto: Clarke Irwin & Company Ltd, 1974) at 274.

⁴ See C. Smart, FEMINISM AND THE POWER OF LAW (London: Routledge, 1989) for a powerful critique of "women's rights" paradigms in legal feminist theory, and a sustained challenge to the idea that feminist legal theory should accept the centrality of law to the liberation of women.

promises relief from feminists' experience of marginality to law, and of law's opposition to feminism. For self-defined feminists who work within the world of law, the REPORT suggests the possibility of convergence of our politics and our professional aspirations.⁵

Others have celebrated the REPORT, I want to talk about its limits. My objective is entirely critical. I think that those of us who advocate feminism cannot afford to say that "we" recognize the "imperfections" of a reform, but that it is better than nothing and takes "us" in the right direction, without considering who constitutes "we" and "us". To whom does reform promise movement? And what is the direction of change? For those of us who advocate feminism, the issue cannot be whether or not a change is "better than nothing" but whether that change challenges, reinforces, or leaves untouched structures of domination.

In this paper, I argue that the mode or model of reform embedded in the REPORT is not conducive to feminist social change. My concern is not so much with either the content or the fate of individual recommendations, but with the assumptions and premises underlying the REPORT. While my comments briefly address the REPORT's general conception of social change, the main focus of the analysis is the REPORT's production and use of a univocal "women's" truth. Part II locates the problem of grounding strategies for change on "women's" truth in the context of the identification of contemporary feminism with the struggle against "gender" oppression. Part III provides an overview of the REPORT. It starts with a description of the process which culminated in the appointment of the Commission, and then proceeds to outline the organization and the ideology of the final REPORT. Part IV is a critique of the REPORT's conception of "women". Drawing upon the Commission's treatment of "racialized" women, I illustrate the way in which law reform constructed around unspecified notions of "womanhood" renders women invisible. In the final section, I offer some tentative reflections on the very possibility that legal rights arguments might offer inclusive models of social change in the interests of women.

⁵ The issue of law's antipathy to feminism has been explored by a number of legal feminists: see, e.g., A. Bottomley, *Feminism in Law Schools* in S. McLaughlin, ed., *WOMEN AND THE LAW* (Faculty of Law, University College London, Working Paper No. 5, 1987); M.J. Mossman, *Feminism and Legal Method: the Difference it Makes* (1986) 3 AUSTRALIAN JOURNAL OF LAW AND SOCIETY 30; K.A. Lahey, ". . . until women themselves have told all that they have to tell" (1985) 23 OSGOODE HALL L. J. 519.

II. FEMINISMS' PROJECTS

Feminism is *a* struggle to end sexist oppression. . . . [I]t is necessarily a struggle to eradicate the ideology of domination that permeates Western culture on various levels as well as a commitment to reorganizing society so that the self-development of people can take precedence over imperialism, economic expansion, and material desires. . . . Feminism is *the* struggle to end sexist oppression. Its aim is not to benefit solely any specific group of women, any particular race or class of women. It does not privilege women over men. . . . Most importantly, feminism is neither a lifestyle nor a ready-made identity or role one can step into.⁶

It sometimes seems as if the word "feminist" admits of almost as many definitions as advocates. Within the Canadian context, it is no longer possible to rely on the conventional classification of radical, liberal and socialist feminisms without taking account of the nuances of "anarchist", "Asian", "Black", "cultural", "eco", "First Nations", "immigrant women's", "Latina", "Lesbian", "libertarian", "marxist", the various "post-s", "Québecoise", "social", "standpoint", "Third-World", "Unmodified", "utopian", and "Women of Colour" feminisms. While for those women who yearn for the time when "we" were all just "women working for change", the proliferating analyses may be a source of discomfort, distress, guilt or hurt, the more "politically correct" response is to respect, tolerate and occasionally even to celebrate, our "differences".

Paradoxically, dominant feminisms⁷ "toleration" of "differences" has tended to reinforce commitments to the notion of "gender" as an experience shared by all women, regardless of "ability", economic class, culture, ethnicity, race, or sexual identity. The resulting alliance of gender essentialism with the "market place of identities" practically mandates the combination of radical individualism and determined apoliticism that appears in such definitions of feminism as:

[A woman's] freedom to decide her own destiny; freedom from sex determined roles; freedom from society's oppressive restrictions; freedom to express her thoughts fully and to convert them freely to actions. . .

⁶ Hooks, *supra*, note 1 at 24-26 [emphasis added].

⁷ I use "dominant feminisms" to refer to those forms of feminism which conceptualize "women" as a "class", "caste" or "minority" (whether the basis for this is biological or social construction) and which assume that the social relation of gender is discrete. I do not deny that there are important differences between the conceptualizations of the oppression of women, and the social relation of gender, between the different feminisms. My concern is rather that each operates on the basis of an implicit "paradigm woman" be she worker, suburban housewife, aspiring professional or victim of male sexuality, from whose liberation the liberation of all other women will follow. It is the methodological centering of the paradigm woman which causes the problem.

Feminism demands the acceptance of woman's right to individual conscience and judgment. It postulates that woman's essential worth stems from her common humanity and does not depend on the other relationships of her life.⁸

Not only does this type of "politics of psychological oppression . . . pit individual against individual and mystify the *social* basis of exploitation",⁹ it has also enabled dominant feminisms to ignore most women's social, economic and political realities.

Dominant feminisms' insistence that "gen(d)eric"¹⁰ oppression is unique and discrete can be understood in terms of the transformation of small-group consciousness-raising from its original political function into a method for discovery of feminist truth.¹¹ Women who came to politics via the consciousness of their "common" oppression; who

⁸ R.C. Wade, Foreword to B.J. Berg, *THE REMEMBERED GATE: ORIGINS OF AMERICAN FEMINISM; THE WOMAN AND THE CITY, 1800-1860* (New York: Oxford University Press, 1978) at x. Hooks, *supra* note 1, uses this quotation to illustrate the limitations of bourgeois liberal feminisms. My point is that dominant feminisms' "toleration" of "diversity" in the "market place of identities" seems to take us to much the same point. Such "toleration" undoubtedly deflects the radical edge of feminisms. Rosemary Brown makes the point more succinctly than I can:

One of the myths that has existed around the movement for a long time has been that no matter what, we are all women together and that's what counts. Well, . . . if that is true, is it political?

R. Brown, *A New Kind of Power* in G. Matheson, ed., *WOMEN IN THE CANADIAN MOSAIC*, (Toronto: Peter Martin, 1976).

⁹ M. Dixon, *THE FUTURE OF WOMEN* (San Francisco: Synthesis Publications, 1983) at 77 [emphasis added].

¹⁰ The term "gen(d)eric" oppression usefully combines the ideas that women share a generic form of oppression "as women" and that women's oppression is derived exclusively from gender relations. As described by Elizabeth Spelman, gen(d)eric analysis typically relies on one or more of the following assumptions:

1. It is meaningful to talk about women "as women";
2. it is meaningful to think that women are oppressed "as women";
3. gender is a discrete social relation which can be "isolated" from all other social relations which shape the material realities and subjective experiences of "women";
4. "women's" social situation can be readily contrasted with "men's" social situation; and
5. the location of "women" within gender relations can be analogized to the location of other oppressed groups within other power relations.

E.V. Spelman, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (Boston: Beacon Press, 1988) at 165.

¹¹ See Hooks, *supra*, note 1 at 24-25 and 46-52; M. Dixon, *Ideology, Class and Liberation* in M. Andersen, ed., *MOTHER WAS NOT A PERSON* (Montreal: Black Rose, 1972) 227; S. Rowbotham, *WOMAN'S CONSCIOUSNESS, MAN'S WORLD* (London: Pelican Books, 1973). See also *supra*, note 4, c. 4, where Carol Smart also makes this point in the specific context of the development of feminist jurisprudence. I am not, of course, suggesting (nor do I imagine any of the authors cited would suggest) that the identification of the interests of "women" with the interests of elite, bourgeois women is a new phenomenon.

created in the small group a sense of individual and collective strength and agency to bring about change; and who have since matured into some of the most audible spokswomen of feminist thinking, undoubtedly have a lot to lose from the decentring of gender. But what is at stake is not the collective power of women, but the authority to name *the truth*.

Adamson, Briskin and McPhail describe early consciousness-raising groups as a "powerful tool for grass-roots organizing".¹² They locate the success of the small group in its ability to focus on "the reality of each woman's life" and so "to reach, and, ultimately, activate women in a way that more abstract calls to organize around an issue would not have done".¹³ The strength of the small group was that it functioned both as a means of mobilization and as a location of support and co-education.¹⁴ The culture of the small group enabled its members' perceptions of a hostile male-dominated world to emerge, and it affirmed, legitimized and made important that consciousness.¹⁵

No-one who advocates feminism can deny the importance of women, in whatever context, coming together to an understanding that oppression is not natural but "man"-made¹⁶ — clearly, it was and remains important for women to know and to name experiences as oppressive. The problem is that the knowledge and the naming is only a start; what matters in women's movement for change is what is done with that knowledge.

The problem with consciousness-raising lay in the subsequent identification of the "truths" revealed within groups which were largely homogenous in terms of class, race, age and background, with *the oppression of "women"*. This process was enabled by the ambiguity

¹² N. Adamson, L. Briskin & M. McPhail, *FEMINISTS ORGANIZING FOR CHANGE: THE CONTEMPORARY WOMEN'S MOVEMENT IN CANADA* (Toronto: Oxford University Press, 1988) at 44-45.

¹³ *Ibid.* at 45.

¹⁴ I am of course using "education" here in its "classical" idealist sense of "leading out" of "ignorance" to "knowledge", rather than referring to the contemporary form of "education" as training to take one's place within social hierarchies. My point is simply that one of the achievements of consciousness-raising was that it enabled women working together to transform perceptions of subjective discomfort into an oppositional conception of the "truth". Ann Scales makes this point in the specific context of the development of feminist jurisprudence in *Towards a Feminist Jurisprudence* (1980) 56 INDIANA L.J. 375 and *The Emergence of Feminist Jurisprudence: An Essay* (1986) 95 YALE L.J. 1373.

¹⁵ For staunch advocacy of consciousness-raising, see P. Carey, *Personal is Political* (1980) 2:2 CANADIAN WOMAN STUDIES 4; J. Freeman, *THE POLITICS OF WOMEN'S LIBERATION* (New York: David McKay Co., 1975).

¹⁶ I use the term "man-made", somewhat ironically, as I am emphatically not endorsing any "men" as the enemy" version of feminism. Indeed my argument is that one of the problems with consciousness-raising as a feminist method is that it quickly slides into such simplistic analyses.

of consciousness-raising's powerful call to action: "the personal is political"; and enforced by the popularization of an ideology of "sisterhood" which articulated the need for change in terms of the *common* oppression, discrimination and disadvantage of all women.

The appeal of "sisterhood" lay in its vision of women's strength through unity. In its contemporary manifestation within the white women's liberation movement,¹⁷ "sisterhood" projected the experience of overcoming interpersonal barriers to relationships between women within the homogenous small group onto the world of "womanhood" at large. It held out the promise and the power of consciousness-raising on a global scale. The failure of "sisterhood" lay in its refusal even to acknowledge, let alone to analyze, real structural barriers to solidarity between women. Thus, the ideology of "sisterhood" functioned to:

[D]isguise and mystif[y] the internal class contradictions of the women's movement. Specifically, sisterhood temporarily disguised the fact that all women do *not* have the same interests, needs, desires: working class women and middle class women, student women and professional women, minority women and white women have more *conflicting* interests than could ever be overcome by their common experience based on sex discrimination.¹⁸

Although Dixon, an American, purports to be talking generally about the women's movement of the 1960s as it emerged in the countries of the North (and she has extensive experience of Canada), it is possible to argue that grassroots Canadian women's groups of the 1960s and 1970s were different, at least in so far as class analysis was integrated with a politics of gender oppression. For example, in

¹⁷ "Sisterhood" or "sistership" is an important feature of many Black women's lives in churches, family and community. In *Race, Class and Gender: Prospects for an All-Inclusive Sisterhood* (1983) 9:1 FEMINIST STUDIES 131 [hereinafter Dill], Bonnie Thornton Dill suggests that Black women's conception of sisterhood differs from that of white women in that it is not typically experienced as a site for the forging of a political identity "as a woman", but is experienced as opposition to racism. My own observation would be that many Black women experience sisterhood as sharing and support, out of which may be derived a political identity as Black women. Clearly, the experience of sisterhood will vary with the material and ideological context in which women are situated, hence, the impossibility of white women's ideology of sisterhood as grounded in the universal common oppression of "women".

¹⁸ Dixon, *supra*, note 9 at 80-81. See also Dixon, *supra*, note 9 at 90ff; Hooks, *supra*, note 1; B. Hooks, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* (Boston: South End Press, 1981) at 148-50; Dill, *ibid*. For an important analysis of historical variations in the meaning of "sisterhood" within white women's movement see E. Fox-Genovese, *The Personal is not Political Enough* (1979-80) 2:4 MARXIST PERSPECTIVES 94.

their review of the Canadian "women's" movement, the Canadian Women's Educational Press Collective writing in 1972 insisted that:

[A]n important distinction from their American sisters was that Canadian women more uniformly developed an analysis of their oppression based on a class notion of society. This was an important development . . . because the Marxist perspective has since been central to the development of the Canadian women's liberation movement.¹⁹

However, the Canadian "women's" movement was no more able to develop an analysis that accounted for other relations of ruling than their American counterparts.²⁰ By the late 1970s, the Canadian women's movement caught between the push of marginalization and the pull of institutionalization,²¹ had also settled on an analytic framework of "gen(d)eric" oppression enforced by "compulsory sisterhood" on terms defined by dominant feminisms.²²

Dominant feminisms today have had to confront the critique that many of the struggles and strategies articulated on the basis of the centrality of "women" do not account for the lives of all women; disproportionately benefit women in elite locations; and implicitly rely

¹⁹ WOMEN UNITE! (Toronto: Women's Educational Press, 1972) at 10. It should perhaps be noted that although socialist/marxist feminist analyses play an important role in the development of Canadian feminisms, much less attention has been devoted to articulating the experience(s) of white working-class and "poor" women. Thanks to Ronald Murphy for clarifying this point with me.

²⁰ See, e.g., H. Bannerji, *Introducing Racism: Notes Towards an Anti-Racist Feminism* (1987) 16 RESOURCES FOR FEMINIST RESEARCH 10; E. Thornhill, *Focus on Black Women* (1985) 1 C.J.W.L. 168; P. Monture, *Ka-Nin-Geh-Heh-Gah-E-Sa-Nonh-Yah-Gah* (1986) 2 C.J.W.L. 159; A. Gottlieb, *Mothers, Sisters, Lovers, Listen* in M. Fitzgerald, C. Guberman & M. Wolfe, eds, *STILL AIN'T SATISFIED: CANADIAN FEMINISM TODAY* (Toronto: The Women's Press, 1982) 234; Women Working with Immigrant Women, *A Message of Solidarity*, in Fitzgerald, Guberman & Wolfe, eds, *ibid.* 243.

²¹ See Adamson, Briskin & McPhail, *supra*, note 12 for an informative account of the pressures on Canadian women's movement during the 1970s and early 1980s. They note that many socialist women's collectives, such as Saskatoon Women's Liberation and Vancouver's Bread and Roses folded during the early 1980s and that other grass-roots groups spent much of the 1980s struggling to avoid co-optation.

²² Such an interpretation is expressly denied by Roberta Hamilton and Michèle Barrett in their introduction to *THE POLITICS OF DIVERSITY: FEMINISM, MARXISM AND NATIONALISM* (London: Verso, 1986) at 4 [hereinafter *THE POLITICS OF DIVERSITY*]. They write that:

A belief in undivided sisterhood was never very marketable in Canada.

. . . Indeed, feminists in Canada have been particularly willing to tolerate diversity, understand split loyalties, negotiate compromises as well as engage in common struggles.

I invite you to judge for yourself by glancing at the table of contents in *THE POLITICS OF DIVERSITY*.

on a “trickle down” theory of social change.²³ However, there remains a marked reluctance to relinquish the (relative) power afforded by “gen(d)eric oppression”. The somewhat uneasy compromise now emerging in the discourses of dominant feminisms is to talk about “how the oppression of women by men *is related to* other forms of social oppression such as race and class”.²⁴ What this seems to mean in theoretical practices is that “we” should take seriously our differences even as “we” search for what is the same. For example, in describing the “new” methodology of contemporary feminism, Lorraine Code asserts that:

It is no longer assumed that there is a single, essential “women’s” experience out of which universal analytic categories can be developed. . . . Contemporary feminist theorists face the tasks of accounting for significant differences among the experiences of women and, simultaneously, of discerning common threads and themes that make these experiences specifically women’s. It is a matter of developing theoretical tools to understand the samenesses and differences in women’s lives: of acknowledging specificity *and* commonality.²⁵

While such an approach appears to recognize that “experience is always structured and mediated by a complex of material, social, cultural, historical, and even unconscious forces [and that] there is no ‘pure, untainted’ experience”,²⁶ it leaves untouched the central problematic of dominant feminisms as “understand[ing] *the* gender order”.²⁷

Part of dominant feminisms’ resistance to a theory and practice which emphasizes diversity in the social, economic and political realities of women is presumably the fear that such an approach decentres

²³ I use “trickle-down” to refer to two arguments in (some forms of) dominant feminisms. The first relies on the revival in maternal/nurturing feminism which seems to have followed in the wake of Carol Gilligan’s work *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT* (Cambridge: Harvard University Press, 1982). It implicitly argues that “women” have a sufficiently different morality from men. That once “women” are in power, the world will automatically be a better place for everyone. The second is a more obvious combination of hierarchy of oppression and straight interest-group pluralism. Advocates seem to believe one or more of the following to be true: either that “women” are more oppressed than other “minorities” or, that the oppression of “women” takes moral and political precedence over the oppression of other “minorities” because women are the largest “minority” group, or that “women” are better organized than “minorities”. From one or more of these premises, it is taken to follow that “we” or “society” should “deal with” the problems of women first and that the lifting of other oppressions will follow after the liberation of “women”.

²⁴ L. Code, *Feminist Theory* in S. Burt, L. Code & L. Dorney, eds, *CHANGING PATTERNS: WOMEN IN CANADA* (Toronto: McClelland and Stewart, 1988) at 18 [emphasis added].

²⁵ *Ibid.* at 20 [emphasis in original].

²⁶ *Ibid.*

²⁷ *Ibid.* [emphasis added].

"women" from the analysis of change. In view of an orthodoxy which attributes victories such as women's suffrage to an analysis which stressed that women are, above all else, or underneath everything else, "women", there is a genuine concern that if women forsake their identity as women, they give up on the prospect of social change in the interests, and to the benefit, of "women". But this approach is primarily an assertion of power to set priorities and to tell the "truth". Take the example of women's suffrage in Canada. It is part of the lore of Canadian feminism that by 1922, the "first wave" women's movement had won the vote for women throughout English Canada.²⁸ This interpretation of history is simply untrue and its effect is to erase Chinese Canadian women, Japanese Canadian women, South Asian Canadian women and First Nations women from the conception of "women".²⁹ Furthermore, it obscures important conflicts between the politics and the struggles of the bourgeois women who dominated the suffrage societies and organizations of working class and farm women.³⁰ I tell this story, not, of course, to suggest that women should refuse to recognize the struggles of those women who were enfranchised by 1922; but to insist that if feminism is to work for all women it is essential to understand the historical specificity of women's victories.

My point is that dominant feminisms' insistence that there exists a gender order which constitutes the oppression of women by men, and that this order is sufficiently distinct that it may be *related to* "other forms of social oppression", is one of the practices that stands in the way of women's movement for social change. To ground a theoretical practice for social change on the gen(d)eric identity of "women" is to privilege a "truth" that women are constituted in binary opposition to men, and may *in addition* constitute themselves as Black

²⁸ For example, Jane Errington's review of the history of women in Canada asserts that:

It was in the West . . . that women first received the provincial franchise in 1916. Within the next six years, all of Canada's provinces, with the exception of Quebec . . . had granted women the vote.

Pioneers and Suffragists in Burt, Code & Dorney, eds, *supra*, note 24 at 71.

²⁹ It was not until the late 1940s that Asian Canadian and South Asian Canadian women and men were qualified to vote, and women and men of the First Nations of Canada were disqualified from voting in federal and provincial elections until the 1960s: REPORT, *supra*, note 2 at 337.

³⁰ See C. Bacchi, *Divided Allegiances: The Response of Farm and Labour Women to Suffrage* in L. Kealey, ed., A NOT UNREASONABLE CLAIM: WOMEN AND REFORM IN CANADA 1880s-1920s (Toronto: Women's Educational Press, 1979). Errington, *supra*, note 28 at 70-73 explicitly notes that women who campaigned for the vote did not speak with one voice, but the class conflict is subsumed into an interpretation which emphasizes different agenda. See also Berg, *supra*, note 8 for an interesting version of the argument that the suffrage campaign of the 19th century transformed the American feminist movement's commitment to the liberation of all women into class-based interest group politics, and Hooks, *supra*, note 18 for a critique of the racism of the American suffrage movement.

in binary opposition to white, as workers in binary opposition to capitalists and so on, and to disempower the truths of women who do not experience their lives nor analyse their relations to power, as a woman *and* a Black person *and* a worker.³¹

Critical feminisms insist that truths about "women" cannot be assumed or taken for granted, but must be established through analyses of different women's social and political reality. Such analyses cannot assume "gender" to be a discrete relation within our lives, nor can it assume that the experience of "gender" oppression is the defining characteristic of women's exploitation. Neither feminist theory, nor women's movement for liberation can rest on the authority of a few women to name the oppression of all women. Thus, the point of what is becoming popularized in feminist discourses as "the race critique" is not simply to reveal pain, to cause guilt, to proclaim or to celebrate our "differences", nor even to demand that white women acknowledge their privilege. The aim is to force dominant feminisms to confront the inability of theory that privileges gender as a *discrete* relation of ruling to generate strategies which are liberatory for *all* women. For as long as white bourgeois women continue to see the objective of feminist struggle as achieving equality with men, however that goal is defined, other women will ask: On what terms, on whose backs, and to what end do you join that company of privileged men?³²

For those of us who operate within elite locations, working to build feminist theory, the lesson is a hard one. The failure of "our" theoretical frameworks to explain the material reality and lived experience of *all* women, generates a sense of powerlessness. The urge either to marginalize, or to appropriate critical feminisms, and thereby to reclaim authority and to retake power is strong. However, neither marginalization nor appropriation is a response to the real challenge

³¹ There are numerous critiques of "additive" approaches to relational oppressions. For very clear examples of critical analysis by Black women, see Hooks, *supra*, note 1 especially at 29-31; A. Lorde, *Age, Race, Class and Sex: Women Redefining Difference* in *SISTER OUTSIDER* (New York: the Crossing Press, 1984); D.K. King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology* (1988) 14:1 SIGNS 42; B. Smith, *Notes for Yet Another Paper on Black Feminism, or Will the Real Enemy Please Stand Up?* (1979) 5 CONDITIONS 123.

³² This comment, of course, echoes Virginia Woolf's reflections on the importance of women joining the professions. She imagines a parade of men dressed in the uniforms of their professions and asks:

[D]o we wish to join that procession or don't we? On what terms shall we join that procession? Above all where is it leading us, the procession of educated men?... What is this "civilization" in which we find ourselves? What are these ceremonies and why should we take part in them? What are these professions and why should we make money out of them? Where in short is it leading us, the procession of the sons of educated men?

-V. Woolf, *THE THREE GUINEAS* (Harmondsworth: Penguin, 1977) at 62-63.

of critical feminisms which is to demand that dominant feminisms restructure theory and practices to "call attention to the *diversity* of women's social and political reality . . . [in order to] centralize the experiences of all women".³³

At this point it seems necessary to spell out "my" "definition" of feminism. I hesitate to take this step. I do not want to name that which is not mine to name. Naming for definitional purposes involves saying what is and what is not; what fits and does not fit. As a Black woman born in Jamaica, raised in England and living in Canada I do not relish exercises which may perpetuate exclusion. As a law professor, and as someone who experiences privileges of ability, wealth/class and heterosexuality I worry about exercising my privilege. It seems contradictory for any individual to name a collective politics. On the other hand, to say nothing is to engage in deception and a false humility. Writing in academic journals is an elite activity, I do mean something when I advocate feminism; and you, the reader, should know what that something is.

I take feminist project to mean the transformation of all women's lives. The change that is envisaged is not limited to achieving equality with men, however that may be defined, but necessarily involves *dismantling* all of the "relations of ruling" — "ability", "age", "class", "gender", "heterosexuality", "merit", "race" — which function to constitute exploitation and oppression of most women and of most men. Relations of ruling interact to constitute the social reality of different women, of different men and of relations between different women and different men, with the result that the objective conditions of women's exploitation and women's experiences of oppression are shaped by women's location within, *and resistance to*, relations of ruling.

It is important to emphasize that relevant "differences" between women include, but are not limited to, subjectivity. Difference refers to more than culture or experience. It is not only patriarchy, but imperialism, capitalism, racism and heterosexism, which are reinforced by institutional structures and ideological forms. To take just one example, my claim is not simply that the middle-class, straight Black woman experiences "racism" as integral to "patriarchy", whereas her white equivalent only confronts "patriarchy". It is rather that for both women racism and patriarchy, together with class location and heterosexism, constitute the structuring of social relations as these are institutionalized in the organization of the economy, the family, relations with the state, sexuality, as well as their subjective experience of oppression.³⁴ The social, cultural, political and economic realities of

³³ Hooks, *supra*, note 1 at 25.

³⁴ For an attempt to systematically develop this perspective in the context of social welfare policies in the United Kingdom see F. Williams, *SOCIAL POLICY: A CRITICAL INTRODUCTION: ISSUES OF ROLE, GENDER AND CLASS* (Cambridge: Polity Press, 1989).

the lives of these two women will differ not only because they occupy different locations within the ruling relation of race, but because their location within the social relation of race shapes what it means to be "middle-class" and heterosexual in the context of work, the family, consumption and relations with the state.

What does it mean to place at the centre of legal feminist analysis those "women whose social conditions have been least written about, studied or changed by political movements"?³⁵ What are the implications for feminist legal theory of treating the goal of feminism as the destruction of all systems of domination which function to exploit and to oppress women? What will legal feminism which treats relations of ruling as inter-related rather than "related to" gender look like?

If we are not yet able to specify a liberatory praxis for legal feminisms we may still sketch its contours. Any theoretical practice which is going to account for the complexity of women's lives and engage with the potential of law as a means of changing our lives will have material bases. Such theory requires a high degree of historical specificity and it must confront relations between different groups of women, different groups of men and the institutionalization of social, economic and cultural power in the organization of knowledge, the state and capital. Furthermore, liberatory legal feminism cannot substitute hierarchies of oppression for the domination of compulsory sisterhood. It should not reduce the diversity of women's lives to a market place of identities; rather it must stand in opposition to the institutionalization of power in relations of ruling.³⁶

To move from where we are to where we would like to be requires legal feminisms to scrutinize much more carefully the way in which law and legal reforms are implicated in relations of ruling. Legal feminisms cannot afford to *assume* that to put women into law is to effect change which will benefit all women. At a minimum, legal feminisms need to question whether the liberal legal forms of capitalist democracy have the power to bring about change in the interests of

³⁵ Hooks, *supra*, note 1 at 25.

³⁶ The analysis that I am searching for will treat relations of ruling as "relatively autonomous" from one another in the sense that no one relation is determinative of all others. Stuart Hall describes such a relationship of "race" to "class" in the following terms:

"Race" is thus, also, the modality in which class is "lived", the medium through which class relations are experienced, the form in which it is appropriated and "fought through". This has consequences for the whole class, not specifically for its "racially defined" segment.

S. Hall, *Race, Articulation and Societies Structured in Dominance in SOCIOLOGICAL THEORIES: RACE AND COLONISATION* (Paris: UNESCO, 1980) at 341. Of course, socialist feminist theorists have a parallel conceptualization of class and gender as relatively autonomous, and there have been many attempts to formulate the relative autonomy of "race" and "gender". However, as noted by Dill, *supra*, note 17, no one of these approaches seems able to move beyond its chosen two relations of ruling.

all women or whether the form of that law requires women to assume a gen(d)eric identity. To the extent that "women's" access to legal reform requires women to be just women and to present women's case in terms of the meaning of "womanhood", the law cannot centralize women's diversity.³⁷

III. THE REPORT OF THE ROYAL COMMISSION ON THE STATUS OF WOMEN IN CANADA

Clearly, it is not possible to derive from a critique of a single moment of reform, final conclusions about the capacity of law to centralize the experience and social reality of *all* women; just as obviously, the REPORT represents only one, historically specific, approach to reform in the interests of women. Neither the premises of the REPORT, nor its priorities are uncontroversial within dominant feminisms.³⁸ Having made the appropriate disclaimers, I still want to suggest that critical analysis of the REPORT reveals something of the limitations of *all* models of reform which treat "women" as the essential category of interest. By examining the REPORT's use of the category of "women", I hope to explore the way in which the structuring of change around a conception of discrete gen(d)eric identity, at best, leaves untouched and, at worst, reaffirms, other relations of power.

A. *Background to the REPORT: The making of a Royal Commission*

Cerise Morris³⁹ characterizes the decision to commission a REPORT on the Status of Women in Canada as "an official public event [that] clearly defined the status of Canadian women as a social problem *warranting treatment*".⁴⁰ She argues that the development of the "status

³⁷ See *infra*, Part IV.

³⁸ See, e.g., National Action Committee of the "Strategy for Change" Convention of Women in Canada, *Summation of the Strategy for Change Convention* in Adamson, Briskin & McPhail, *supra*, note 12 at 269 where, at a convention of "women's" groups held two years after the REPORT, it was noted, somewhat ominously, that "the philosophic underpinnings of the RCSW [obviously] do not satisfy everyone" and it was "regret[ted] that representation from the gamut of Canada's women was not ideal." See also the introduction to THE POLITICS OF DIVERSITY, *supra*, note 22; P. Armstrong & H. Armstrong, THE DOUBLE GHETTO, rev'd ed. (Toronto: McClelland and Stewart, 1984) at 135-40 [hereinafter DOUBLE GHETTO].

³⁹ This section draws extensively on Cerise Morris' rich account of the making of the Royal Commission: C. Morris, "Determination and Thoroughness": *The Movement for a Royal Commission on the Status of Women in Canada* (1980) 5:2 ATLANTIS 1.

⁴⁰ *Ibid.* at 1 [emphasis in original].

of women" as a social problem should be understood as a product of interaction between "established" women's groups,⁴¹ the print media and the government headed by Lester B. Pearson. According to Morris' story, the relative economic prosperity of Canada in the 1960s created a space for the development of humanitarian and civil rights ideologies. That these ideas should crystallize in the form of a royal commission is attributed to a conjunction of the highly developed lobbying skills of professional and reformist women's groups; a consciousness of a "universal" women's experience which emerged from the internationalist focus of the Voice of Women;⁴² and the influence and hard work of a few highly motivated and strategically located individuals.

One such individual, Judy LaMarsh, had been promoting the idea of a royal commission modelled on United States President Kennedy's Commission, from the time that she took office within Pearson's administration.⁴³ Pearson's response at that time is not recorded, but LaMarsh goes on to say that by early 1965, "Pearson seemed at last to be prepared to accept my advice and to set up such a commission".⁴⁴ However, the hostile reaction from "some of the responsible press" to a LaMarsh speech sent the Prime Minister into retreat behind the convenient facade of federal-provincial relations, with the government of Quebec being used as a scapegoat.⁴⁵

⁴¹ Morris' phrase is intended to capture the combination of business and professional women's organizations and reform oriented women's associations. Adamson, Briskin & McPhail, *supra*, note 12 at 42 describe this class of women's groups as the "institutionalised" women's movement which they compare with the "grass-roots" women's groups. I shall adopt the Adamson, Briskin and McPhail classification as I think that it more accurately captures the meaning of the groups involved in the campaign for the Royal Commission.

⁴² The Voice of Women (VOW) began in Toronto in 1960 as a non-partisan, nuclear disarmament group. Morris describes its composition and role in the revival of the women's movement as follows:

[The VOW's] social base of upper middle-class married women was sociologically similar to other women's voluntary associations. However, its internationalist focus brought its membership into . . . contact and collaboration with groups of diverse ideological backgrounds. VOW appears to have served as a crucial link between groups with left wings and mainstream tendencies; groups with explicit women's rights or women's liberation aims and those others only secondarily or implicitly concerned with women's issues. . . . Thus, the VOW at once linked and helped to generate the ideological and programmatic developments which led into the "new route of the march" for women's rights in Canada.

Morris, *supra*, note 39 at 7-8.

⁴³ J. LaMarsh, *MEMOIRS OF A BIRD IN A GILDED CAGE* (Toronto: McClelland and Stewart, 1969) at 301.

⁴⁴ *Ibid.*

⁴⁵ Specifically, LaMarsh notes that she was told that Premier Lesage objected to a federal royal commission because it would be likely to impinge on provincial jurisdiction. *Ibid.*

The process of lobbying the administration from the outside which began in April 1966, illustrates the organizational and co-ordination skills, as well as the priorities of the "institutionalized" women's movement of the 1960s.⁴⁶ This process was orchestrated by the national president of the Canadian Federation of University Women (C.F.U.W.), Laura Sabia, a woman whose perspective on feminism probably summed up the frustration of many business and professional women of her generation, but whose words could hardly capture the reality of most Canadian women. Interviewed in *MacLean's* after the successful campaign for the Commission, she describes women's plight in terms of "our" location in "a concentration camp of comfort".⁴⁷

In April 1966, Sabia, acting on behalf of the C.F.U.W., contacted "established" women's organizations to invite them to send representatives to a meeting at which the sole agenda item would be the possibility of doing something about the status of women. It appears from Morris' account that the women who came to the meeting quickly agreed that something had to be done and that a steering committee, chaired by Sabia, should be given a mandate to come up with a plan of action.

At the meeting of the steering committee on May 27, 1966, it was decided that a federal royal commission was the best possible vehicle for "doing something" about the status of women in Canada, and within a month the steering committee had prepared a brief for presentation to the federal government. The brief was accepted by the second meeting of representatives on June 27 when it was also decided to constitute the group as a national women's lobby — the Committee on the Equality of Women in Canada (C.E.W.).

The decision to campaign for a federal royal commission reflects the strategic priorities of the women who led the C.E.W. First, it was important to ensure that "women's" issues, needs, and concerns would be placed at the centre of public attention and to avoid the submersion of "women" in the amorphous rhetoric of general human rights discourse. Second, it was thought that a federal royal commission would provide tangible evidence of discrimination against women and in its recommendations would provide concrete suggestions for change. Third, a royal commission format allowed the C.E.W. to link the need for substantive change with an agency of which the majority of members would be women like themselves.⁴⁸ The focus of the C.E.W.'s concerns

⁴⁶ Adamson, Briskin & McPhail, *supra*, note 12 at 42.

⁴⁷ A. Edmonds, "Cheer Up Girls, Help is on the Way", *MacLean's* (January 1968) 11.

⁴⁸ Morris, *supra*, note 39 derives these objectives from interviews with Sabia and Margaret Hyndman, a Toronto lawyer, who at the time of the campaign was the national President of the Canadian Federation of Business and Professional Women's Clubs.

is reflected in the 800-word brief which described the objective of a royal commission on the status of women as “enabl[ing] women to achieve such excellence in public and private life as meets the standards set by the Universal Declaration of Human Rights”.⁴⁹

By September 1966, the brief had been endorsed by all except one of the women’s organizations whose representatives had attended the initial meeting,⁵⁰ and the C.E.W. felt that it was ready to go to the federal government. On November 10, delegates from the C.E.W. met Lucien Cardin, the Justice Minister, and presented their case. It appears that Cardin was willing to offer a parliamentary committee or a senate committee,⁵¹ but in response to the C.E.W.’s demand for a royal commission he reiterated the “interested-but-reluctant-to-move” stance with which LaMarsh’s earlier efforts had been met.⁵²

To this point in the campaign, the C.E.W. were relying on the tactic of persistent reasonableness standardized by established women’s groups. The next major event — *The [Toronto] Globe and Mail* story — involved a clear departure from the traditions of the C.E.W. membership. On January 5, 1967, the following comments, directly attributed to Sabia, appeared on the front page of *The [Toronto] Globe and Mail*:

We’re tired of being nice about trying to get an official inquiry into women’s rights in Canada. . . . If we don’t get a royal commission by the end of this month, we’ll use every tactic we can. And, if we have to use violence, damn it, we will.⁵³

The “militant” tone of the article briefly threatened to split the already fragile alliance of the C.E.W.,⁵⁴ and prompted a sharply critical response from LaMarsh:

I am very much afraid that if the strident tone that has been used in the last couple of days continues, it will constitute pushing too hard on an open door and will undo all the good that has been done. . . The Prime

⁴⁹ From the “Submission to the Government of Canada from the Committee on the Equality of Women in Canada” quoted in Morris, *ibid.* at 13.

⁵⁰ The Catholic Women’s League dropped out of the campaign because it did not agree with the C.E.W.’s stance on abortion. Morris, *ibid.* at 20 n. 9. However, later in the year the C.E.W. gained the support of the newly formed Fédération des femmes du Québec. *See generally* T.S. Casgrain, *A WOMAN IN A MAN’S WORLD* (Toronto: McLelland and Stewart, 1972).

⁵¹ B. Craig, “Women’s March May Back Call for Rights Probe” *The [Toronto] Globe and Mail* (5 January 1967) 1.

⁵² *Ibid.* Sabia described her perception of the meeting as follows: “they hedged of course, . . . they tried the old trick of being nice to us. But we weren’t there to be treated like children.”

⁵³ *Ibid.*

⁵⁴ *See* S. Fraser, “Laura Sabia: Not Exactly Mom & Apple Pie” *Chatelaine* (November 1975).

Minister and the Cabinet are men as other men and if you have harpies harping at them you will just get their backs up and they won't do anything.⁵⁵

Although Morris reports some division of opinion among the women she interviewed as to the impact of Sabia's comments, given the speed with which the federal government responded,⁵⁶ it is hard to believe that some "yelling and screaming" was not in the end as important as "determination and thoroughness".⁵⁷

B. The REPORT

The official Terms of Reference given to the seven-member Commission⁵⁸ provided a mandate "to inquire into and report upon the status of women in Canada, and to recommend what steps might be taken by the Federal Government to ensure for women equal opportunities with men in all aspects of Canadian Society" and listed nine

⁵⁵ R. Platiel, "'Stop Harping About a Royal Commission': Judy LaMarsh Warns Women's Groups" *The [Toronto] Globe and Mail* (9 January 1967) 13. See also Morris, *supra*, note 39 at 17 where she describes this quotation as a "strategic public response". This interpretation must be derived from her interviews with participants as there is nothing in *The [Toronto] Globe and Mail* article or in LaMarsh's autobiography to suggest that her comments had any meaning other than what appears at face value.

⁵⁶ The decision to appoint the Royal Commission, and its chair "man", Florence Bird, was announced in the House of Commons on February 3, 1967.

⁵⁷ These phrases are taken from Margaret Hyndman's response to Morris' question about "the relative contributions of the older and younger branches of feminism to the contemporary women's movement in Canada". The full text is as follows: "determination and thoroughness is more important than yelling and screaming", Morris, *supra*, note 39 at 20 n. 21.

⁵⁸ Five out of seven Commissioners were women who were prominent achievers in their own fields: chair "man", Florence Bird was a well-known writer and broadcaster, Anne Francis; Lola Mary Lange was a director of the Alberta Farm Women's Union; Jeanne Lapointe was a professor of French literature at Laval University and had been a member of the Quebec Royal Commission on Education; Elsie Gregory MacGill was the first woman in Canada to become an aeronautical engineer; Doris Ogilvie was a Deputy Judge of the Juvenile Court in New Brunswick: *The [Toronto] Globe and Mail* (17 February 1967) 11. The oldest of the women, MacGill, had been born in 1905, and the youngest, Lange, in 1922; the older man, John Humphrey (who replaced Donald Gordon), had also been born in 1905 and Jacques Henripin, in 1929: N.E.S. Griffiths, *PENELOPE'S WEB: SOME PERCEPTIONS OF WOMEN IN EUROPEAN AND CANADIAN SOCIETY* (Toronto: Oxford University Press, 1976). At the time of their appointment, three of the Commissioners were located in Quebec (both of the men and Lapointe), two were from Ontario (Bird and MacGill), Ogilvie was from New Brunswick, and Lange from Alberta.

areas of specific concern.⁵⁹ In the three-and-one-half years from appointment to submission of the final report, the Commissioners held 37 days of public hearings and met for an additional 178 days; they received 468 briefs, and about 1000 letters of opinion; and organized a research program which resulted in the commissioning of 40 special studies.⁶⁰

The REPORT opens with a statement of "the criteria and principles" that informed the Commission's thinking and its organization of material. In this statement we learn that equality of rights, freedoms, opportunities, and obligations between women and men is justified both in terms of the innate humanity of every individual and because "the full use of human resources is in the national interest".⁶¹ More specifically, equality of opportunity for women is taken to require:

[That] women . . . be free to choose whether or not to take employment outside their homes . . . [that] care of children [be] a responsibility to be shared between the mother, the father and society . . . [that] society [assume] responsibility for women because of pregnancy and child-birth [and provide for] special treatment related to maternity and [a recognition that] in certain areas women will for an interim period require special treatment to overcome the adverse effects of discriminatory practices.⁶²

In the space of eighteen pages the first chapter gives a panglossian and somewhat breathless account of women in Canadian society. The problem of the status of women is identified with women's exclusion from full participation in contemporary Canadian society. Responsibility for this exclusion is attributed to misguided attitudes and coercive cultural stereotypes about women's roles, abilities and potential; the result of exclusion is described in terms of women's experience of boredom, the frustration of women's legitimate aspirations and the loss of productive resources to the national economy.

The theme of women's productivity is articulated in more detail in the most substantial chapter of the REPORT: "Women in the Canadian Economy". The chapter is divided into three main sections: a description of the "Economic Power of Women", a survey of women's unpaid work and an analysis of the problems faced by women in paid work.

⁵⁹ The nine specified areas were: Federal laws and practices concerning political rights of women; the present and potential role of women in the labour force "including the special problems of married women"; "measures that might be taken . . . to permit the better use of the skills and education of women"; Federal labour laws and regulations; laws, and policies germane to the employment and promotion of women by the Federal Government; Federal taxation pertaining to women; marriage and divorce; women under the criminal law; immigration and citizenship. REPORT, *supra*, note 2 at vii-viii.

⁶⁰ *Ibid.* at ix-x.

⁶¹ *Ibid.* at xii.

⁶² *Ibid.* at xii.

The most valuable aspect of this chapter is its synthesis and presentation of studies on women's paid and unpaid work. The evidence starkly reveals the extent of women's contribution to the functioning of the Canadian economy, the systematic underemployment in paid work of many women and that women's role in the economy is not fully recognized either in terms of material or psychological returns for women's labor. While it is hard to believe that the information in this chapter came as a surprise to anyone, the relentless presentation of data portraying systematic exploitation of women both in the home and in the labour market enabled the Commission to build an unanswerable case for change. However, in its analysis of the problems and potential solutions the Commission reveals a sometimes breathtaking naivety. For example, women's underemployment in the labour market is attributed to employers' failure "to understand the capacities of women and the importance of the full use of womanpower",⁶³ to which the solution is "continuing research programmes on the employment of women and a wide distribution of the findings to employers and to women".⁶⁴ Similarly, although the Commissioners are willing to extend sympathy to women who find themselves frustrated in their work, they are reluctant to absolve all women from all responsibility for their plight:

We firmly believe that women must break their occupational bonds. They must develop enough self-confidence to raise their career sights, refuse to work for less pay than men and stand up for their rights in the face of discrimination.⁶⁵

The Commission refuses to acknowledge even the existence of employers' economic power, never mind the importance of collective organization. Instead, solutions are to be found in tinkering with the wording of legislation, better enforcement, women acquiring the "courage" to be pioneers and the creation of a climate "in which commodity production [is] no longer . . . seen as primarily the responsibility of men, with women helping out in subordinate jobs as the need arises".⁶⁶

In the third chapter — "Education" — the idealist analysis which pervades the REPORT is given full expression. The chapter opens with the assertion that "[c]hanges in education could bring dramatic improvements in the social and economic position of women in an astonishingly short time."⁶⁷ We are then told that "[e]qual opportunity

⁶³ *Ibid.* at 155.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.* A good critique of the idealist ideology of the REPORT in general and of the way in which it plays out in the Commission's analysis of women and work is to be found in DOUBLE GHETTO, *supra*, note 38 at 127-49.

⁶⁷ REPORT, *supra*, note 2 at 161.

for education is fundamental. Education opens the door to almost every life goal. Wherever women are denied equal access to education they cannot be said to have equality.”⁶⁸ After a brief history of the development of education for girls since colonization, and a survey of the participation of women and girls in secondary and post-secondary education, the chapter launches into its two main themes. First, Canadian women and girls do not fully exploit the educational opportunities that are available, and secondly, society fails to recognize many of women’s educational needs. The first problem is to be solved by eliminating the cultural myths and stereotypes internalized by girls and young women which cause them to lack motivation and ambition; the second, by providing continuing education and retraining programs which recognize the needs of women. Predictably enough, the REPORT devotes significant attention to the problems faced by women who left paid work in order to work without pay in the marital home and who wish to return to the paid labour force. The aspirations of such women are to be assisted by continuing education programs which are structured to accommodate the needs and family responsibilities of women participants and by the promotion of educational programming on television. However, the Commission’s advocacy of mature students’ programs intended to expand the horizons and opportunities of women sits somewhat uneasily with its enthusiasm for the introduction and expansion of programs to train women for paid household employment, voluntary work, family life and their lives as consumers.⁶⁹

Chapter Three also addresses the “special” educational needs of rural women, immigrant women and “Native Women of the North”. Both rural and immigrant women are perceived to face problems of access to education and training and of adjustment to the lifestyles of Canadian urban environments. However, while the needs of rural women are to be met by governments, responsibility for delivering educational services to immigrant women is delegated to the voluntary sector.⁷⁰ As for “Native Women of the North”, the Commission sympathizes with their alienation from the intrusion of Euro-Canadian education into their lives. But ultimately the REPORT holds First Nations women responsible for ensuring that their daughters receive “proper” education.⁷¹

The fourth chapter is devoted to “Women and the Family”. The introduction summarizes some “widely different views” on changes to and within the Canadian family of the 1960s. These “views” range from Article 16 of the *Universal Declaration of Human Rights*⁷²

⁶⁸ *Ibid.*

⁶⁹ *Ibid.* at 203-07.

⁷⁰ *Ibid.* at 208-10. Compare recommendations 86 and 87 with recommendation 88.

⁷¹ *Ibid.* at 213. See *infra* text accompanying notes 104-110 for a more in-depth discussion of this issue.

⁷² GA Res. 217A, 3 UN GAOR Pt 1, UN DOC. A/810 (1948).

ringing affirmation of the family as "the natural and fundamental group unit of society . . . entitled to protection by Society and the State",⁷³ to a position ascribed to the Women's Liberation Movement: "that marriage as we have known it is a contract of slavery for women, and . . . the family is an unjust and outdated arrangement for modern human beings".⁷⁴ Faced with such divergence the Commission quickly decides to take "the family in a somewhat altered form" as a permanent institution of Canadian society,⁷⁵ and to concentrate on reforming laws which do not seem conducive to women's equality and dignity. The main body of the chapter is divided into two sections: "Legal Aspects of Marriage and Divorce" and "Parents and Society". The first deals with the legal regime for the solemnization of marriage, the effects of marriage on a woman's status, matrimonial property law, maintenance, child custody and the *Divorce Act*.⁷⁶ The second section focuses on public responsibility for the care of children, access to contraception, abortion, one-parent families in general and the "unmarried mother" in particular.

The fifth chapter focuses on restructuring the tax regime to counteract specific barriers to the freedom of women, particularly of those who are married, to choose whether, and on what terms, to participate in the paid labour force. The Commission was particularly concerned with the paradoxical effect of the tax system's bias in favour of married couples (whereby wages earned by a previously "dependent" wife reduced the husband's personal exemption and so raised his effective tax rate) and with the costs to women of tax policy refusing to recognize substitute child-care as a legitimate deduction from gross salary.

Chapter Six highlights women's poverty, an issue which was described as "an unexpectedly significant finding in our investigation".⁷⁷ The Commission is willing to concede that poverty is rarely the preferred lifestyle choice of an individual:

According to recent investigations, it appears that there are few "voluntary poor"; that on the contrary most of the poor are ready to seize appropriate job opportunities when these are available. [Research suggests that] . . . "the aspirations of the poor for economic opportunities and a middle-class style of life may be very strong, and that the desire to participate in a productive way in our society is more often frustrated than lacking."⁷⁸

However, there is a marked reluctance to move from a cultural to a structural analysis of differential access to wealth in Canadian society.

⁷³ REPORT, *supra*, note 2 at 225.

⁷⁴ *Ibid.* at 226.

⁷⁵ *Ibid.*

⁷⁶ S.C. 1967-68, c. 24.

⁷⁷ REPORT, *supra*, note 2 at 331.

⁷⁸ *Ibid.* at 311.

Thus, having apparently rejected the idea that individuals choose poverty, the Commission implicitly assumes that poverty is a function of "the living pattern inherited by generations of poor women [which] makes it very difficult for them to break the bonds of poverty".⁷⁹ In the light of a mandate and analysis which left the Commission unable to confront structural inequality, their primary response to women's entrapment in the "culture of poverty" was to offer sympathy and suggest that "society" should selectively intervene to help the poor to pull themselves together.

The chapter dealing with the participation of women in public, that is, political, life focuses on the failure of formal rights to participate in public life to bring about real changes in the gender composition of governments. The importance of this issue to the thinking of the Commission is revealed by the assertion that:

Nowhere else in Canadian life is the persistent distinction between male and female roles of more consequence. No country can make a claim to having equal status for its women so long as its government lies entirely in the hands of men. The obstacles to genuine participation, [whether] they lie in prejudice, in unequal family responsibility, or in financing a campaign, must be approached with a genuine determination to change the present imbalance.⁸⁰

In the view of the Commission, change must be aggressively pursued through such means as the preferential appointment of women to the Senate,⁸¹ and changes in "attitudes". We are told that "women must show a greater determination to use their legal right to participate as citizens. They must reconsider the reasons that have kept them from entering politics", and that "[m]en should be expected to accept their share of party work at all levels".⁸²

The most extraordinary feature about the chapter on immigration and citizenship is that the Commission could find so little to say. The REPORT notes that immigrant women have a higher rate of participation in the paid labour force than Canadian-born women, but neither here nor in the chapter on the economy does it have anything to say about the experiences of immigrant women in the labour force. In terms of the policies of the Immigration Service of Canada, the only points thought worthy of comment were the practice of considering only the husband's application in situations where a married couple both sought

⁷⁹ *Ibid.* at 319.

⁸⁰ *Ibid.* at 355.

⁸¹ *Ibid.* at 341. Interestingly this is one of the very few places where the Commission thought women ought to receive "special rights". These were justified on the basis that "what has happened in the Senate is not a normal situation. On a merit basis, women have been overlooked", *ibid.* at 341. It is hard to understand why, in this instance, the problem is not attributed to "attitudes"!

⁸² *Ibid.* at 356.

admission to Canada as independent applicants;⁸³ and the use of the term "head of family" in immigration legislation. The REPORT also raises the issue of the isolation of married women immigrants who do not work outside the home, but felt that the resulting problems of *integration* into Canadian society should be treated as part of the broader problem of continuing education and training for women.

The final substantive chapter deals with criminal law and women offenders. After a brief introduction to the statistics, characteristics and behaviour of women offenders, the remainder of the chapter is divided between discussion of women under the *Criminal Code*,⁸⁴ and the treatment of women within the administration of the criminal "justice" system. The statistics revealed in discussion of the treatment of women "offenders" clearly illustrate the way in which the criminal process functions as a mode of state surveillance over women of the First Nations.⁸⁵ For example, Table 3 shows that in only one out of six correctional facilities surveyed did First Nations women comprise less than 50% of the population and, as noted in the REPORT, the overwhelming majority of those incarcerated were jailed for liquor offences. However, once again the Commission refuses the challenge of explaining in order to change what is revealed by its data. Its recommendations go no further than to suggest that the authorities should look to treatment as an alternative to incarceration, and that more resources should be devoted to rehabilitation programs.

C. The Model of Change

The most striking characteristic of the REPORT, taken as a whole, is its reliance on an "ideology of change" which privileges the individual, law, education and goodwill as agents of social change. The reliance on consciousness and goodwill promotes an interpretation of "women's" oppression as a particular form of psychological oppression,⁸⁶ while to treat law as the instrument of change is to import a certain neutrality into "law". Law is conceived as an empty box. The REPORT assumes that the purposes of law take shape from what is put into the box. That content may be malign or benign; law may function to maintain male privilege or it may just as easily be used to bring about women's equality. The REPORT does not even contemplate

⁸³ *Ibid.* at 360.

⁸⁴ R.S.C. 1985, c. C-46.

⁸⁵ REPORT, *supra*, note 2 at 380.

⁸⁶ Let me make it clear that I do not deny the authenticity of this experience of oppression. My concern is rather with the choices that are made when the boredom of the suburban homemaker, or the professional woman's feeling of marginalization at work is universalized into "women's" oppression.

that law may be a hierarchical form which is itself constitutive of structures of domination such as the social relation of property. Nor does the REPORT confront the implications of its own linkage of the content of law with social relations. That is to say, although the REPORT assumes that inequalities in the status of women and men of the same race and class are a function of the rights of women and men, the Commission does not acknowledge the role of rights in perpetuating and maintaining inequalities between women and men, women and women, men and men, of different races and classes. Thus, when confronted with data showing the extent to which control over wealth in Canada is concentrated in the hands of a tiny minority of the population, the Commission's response is that women should be better represented within that tiny minority.⁸⁷

The REPORT's limited conception of the economic significance of rights leads the Commission to an unreserved embrace of the "market" and social institutions, such as the heterosexual nuclear family, with which the market is associated. While governments are expected to act to remove barriers to equality of opportunity in public sector employment and to supply services (such as daycare) to enable women to compete in the market, "private" sector institutions are at most to be encouraged to come to consciousness.⁸⁸

IV. THE MEANING OF WOMEN WITHIN THE REPORT

What I had originally hoped to do at this point was to examine the REPORT's treatment of "racialized" and non-racialized women and then to compare its conceptions of racialized women with the experiences and material realities of racialized women within Canada. However, apart from *occasional* references to First Nations women, even fewer allusions to "immigrant women", and the sporadic use of parallels between "women" and "minorities", the REPORT renders invisible the social and political realities of racialized Canadians. This left me with a dilemma. It is essential to confront the REPORT's own racialization of women of the First Nations and its implicit equation of "women" with "whiteness". However, I do not wish to appropriate the cultures or experiences of First Nations women, nor do I see much point in locating spaces into which Black women might have been "inserted". It is easy to say that Black women, and women of other racialized groups, are not in the REPORT, and should have been in the

⁸⁷ REPORT, *supra*, note 2 at 30.

⁸⁸ See *supra*, text accompanying notes 63-67 for illustrations of this approach. See also the Commission's discussion of various stock exchanges' overt exclusion of women members, *ibid.* at 29.

REPORT, but simply to "add" us would be to make us "white women, only more so".⁸⁹ Seriously to address our exclusion would be to write an alternative report. My somewhat uneasy compromise is to consider First Nations women as a racialized group, and so to focus on the way in which the REPORT constructs "women" in contradistinction to its construction of First Nations women.

Although the focus of my comments is the Commission's analysis and not the lives of First Nations women, I am still concerned that I may be appropriating your experiences and/or objectifying your lives: Even to use the concept of "racialized" women, is to rely on a description of yourselves that you may not choose. I realize that to acknowledge that I may be doing these things does not erase the wrong. I hope to stand in solidarity with you. I hope that my words are respectful, and that they celebrate your courage and your survival: I take full responsibility if they do not.

It would be wrong to suggest that the REPORT contains an entirely monolithic conception of women. The REPORT explicitly addresses differences between women derived from "characteristics" such as "age", marital and parental statuses, poverty, rural and urban locations, and most obviously participation in the labour market. For the most part, the REPORT distinguishes between differences which it can attribute to choice, albeit highly constrained choices, and those which it treats as "natural". In the minds of the Commissioners, the first set of differences between women can only be understood in terms of differences between the statuses of women and men. Thus, the problem for women is that the implications of being a mother and/or a wife, of living in the country and of "choosing" whether and on what terms to participate in the labour force are a function of the "man-made" quality of Canadian society. What is taken to follow is that none of these differences between women is as significant as the primary social cleavage between women and men, so that the appropriate policy response is to remove the constraints upon, and to expand the horizons of, women's choices.⁹⁰

⁸⁹ Angela Harris uses this phrase specifically in the context of a critique of Catharine MacKinnon's "dominance theory". However, it seems to me that it is easily adapted for use against many other forms of gen(d)eric analysis. See A.P. Harris, *Race and Essentialism in Feminist Legal Theory* (1990) 42 STANFORD LAW REVIEW 581 at 592.

⁹⁰ Age-related variations between women are conceptualized differently according to the context in which they appear on the Commission's agenda. For example, immaturity/youth is viewed as a biological/"natural" characteristic of girls and boys in the context of qualification for marriage and protection against sexual assault. But the meaning of "girlhood" is treated as a social construction distinct from the meaning of "boyhood" when the issue is education. By contrast, "elderliness" appears in the REPORT only as a biological fact associated with poverty, to which the appropriate response is "generosity" rather than the expansion of opportunities deemed necessary for women who are not elderly.

So, who are these women located in binary opposition to men? What are the conditions of their lives? How do they experience their "status" as women? The construction of women that informs the rest of the REPORT is articulated in greatest detail in the first chapter: "Women in Canadian Society". There, we learn that the main aspiration of women is "elementary human rights and genuine equality" defined as "equality of the sexes as human beings and as citizens", that one of the primary concerns in women's lives is the failure of "present political, economic and social structures of Canada . . . [to] respect women's sense of personal dignity",⁹¹ and that:

A woman suffers when she is not recognized as having an individual identity as a person with her own aspirations, strengths, weaknesses, tastes and ideas that are not necessarily those of all other women whether married or unmarried, whether wives at home or workers outside. She does not accept with good grace the easy generalizations, often accompanied by a superficial idealization of the concept of womanhood, that fill so much of the literature, thought and even languages of western countries. Many Canadian women protest against the stereotypes imposed upon them.⁹²

Despite women's attempts to protest, it is apparent to the Commission that "[t]he stereotype of the ideal woman has its effect upon Canadian women. . . . [M]any women have accepted as truths the social constraints and the mental images that society has prescribed, and have made these constraints part of themselves as guides for living."⁹³

In seeking to account for many women's passive acceptance of "demeaning" and constraining stereotypes and the apparent reluctance of these women collectively to identify with other women, the Commission notes that "social scientists have noticed a similar phenomenon in their study of certain minority groups".⁹⁴ Despite the appeal of analogizing "women" to Black "people" in the United States, the Commission is reluctant to relinquish conceptions of "woman" which emphasize her individuality rather than her membership in a homogeneous group. The Commission eventually transcends the difficulty of naming the problem of women by "discovering" the notion of a "psychological minority group" defined as "an aggregation whose collective destiny depends on the good will or is at the mercy of another group".⁹⁵ The beauty of this construction of women for the

⁹¹ REPORT, *supra*, note 2 at 3.

⁹² *Ibid.*

⁹³ *Ibid.* at 14.

⁹⁴ The REPORT footnotes this "scientific" proposition to Gunnar Myrdal's work on Black people in the United States and at the same time reinforces its gen(d)eric framework by commenting that: "Similarities between women and racial minorities have been noted by a number of persons". *Ibid.* at 14 n. 36.

⁹⁵ *Ibid.* at 14.

purposes of the Commission is that it accounts for women's "feel[ing] . . . that they live in a state of dependency", provides a means for strong-willed individual women to escape⁹⁶ and legitimates the idea that social change is a matter of changing everyone's attitudes. Thus, the REPORT creates a vision of (some) women as oppressed by a psychology which leads them to believe that they are less capable than men, and by social attitudes which lead men/society to doubt women's capacity to "succeed". Women's oppression is transmuted into feelings (theirs) and expectations (men's and society's). In this process, "women" are quite literally disembodied; their equality with men becomes a matter of bringing their socially constructed psyches in line with their unsituated selves.

In contrast to its treatment of "voluntary" differences between women, the REPORT lurches between malevolent maternalism and incomprehension in its approach towards First Nations women. The socio-economic realities of First Nations women's lives are variously constructed as irrelevant to the status of women in Canada, as adding the burden of "race" to the oppression of women and as a "deviation" from the norm of whiteness to which the appropriate response is correction. At no point are the material conditions of First Nations women's lives related to the history of colonialism in Canada or to contemporary economic and cultural imperialism. Not only do these analytic practices fail to address structures of domination which constitute the distinctive exploitation of First Nations women, they also help to maintain the exclusion from the agenda for change of issues relating to the material needs of both First Nations women and non-First Nations women.

Of the many ways in which gen(d)eric analysis is used to render women invisible, the most pervasive is the construction of racialized women as something "other" than women. This construction is frequently achieved by comparing "women" to "minorities",⁹⁷ in which event the "minority" woman is either entirely erased, or her life is subsumed into the oppression of the larger group. "Erasure" operates by making the "minority woman" an impossibility. The structuring of analytical categories as essentially exclusive means that the "minority woman" can neither exist as a woman nor as a member of the minority group. Where "invisibility" takes the form of "submersion", the minority woman becomes the least well off member of the "minority" group. Within this framework, it is assumed that the "minority" woman experiences the disadvantages of being a minority more intensely than

⁹⁶ The importance of maintaining the idea that the dynamic motivated individual woman could escape her status as a member of a "psychological minority" is revealed by the number of times the Commission prefaces "women" with "some" or "many" within this section.

⁹⁷ See, e.g., *supra*, text accompanying note 94.

a man. It is as if the status of "minority" individuals can be measured in degrees of oppressiveness and the "minority" woman occupies a location in which she experiences more of the oppression experienced by the group as a whole.

Invisibility is also maintained by the assumption that a partial and particular conception of women adequately accounts for the material reality of all women. This model of gen(d)eric oppression is "enforced"⁹⁸ by the simple expedient of refusing to recognize the specificity of *any* women's lives. Thus, *neither* the "norm" *nor* the "variation" is articulated in any detail. Instead, the oppression of women is located in a vague conception of woman"ness" which we are all supposed to fit. The effect of this construction of woman"ness" is, of course, implicitly to reintroduce the "other"ness of non-conforming women.

An example of explicit exclusion of First Nations women from the category of "women" occurs in the first chapter where as part of its celebration of science and medicine the REPORT states that "[i]n 1968, in Canada, women could expect to live almost to the age of 76",⁹⁹ and then notes in parenthesis that "[l]ife expectancy was approximately 66 years for Indian women [sic] in 1968 and 50 years for Eskimos [sic]."¹⁰⁰ These statements are remarkable for their explicit distinction between women in Canada and First Nations women. Of more importance to my analysis is the REPORT's failure to treat the implications of the statistics as an issue pertaining to the status of women.¹⁰¹ At a minimum, such stark evidence of disparity in meeting the health and housing needs of First Nations and non-First Nations women might have prompted systematic analysis of the delivery of housing, and both community and individual health care services to First Nations women. However, my point is not just that the REPORT fails seriously to address the needs of First Nations women, but that an analysis which took First Nations women's definitions of their needs as *central* to the status of women could not have treated the distribution of resources to meet the material needs of women in Canada as a peripheral issue.

Quite apart from the explicit portrayal of First Nations women as something other than "women in Canada", the REPORT implicitly

⁹⁸ Although I use the language of "enforcement", I do not mean to suggest that "racialized" women are powerless, or that we have no option but to accept others presentations of ourselves. In every context imaginable, "racialized" women have insisted on our own definitions of ourselves and our needs.

⁹⁹ REPORT, *supra*, note 2 at 5.

¹⁰⁰ *Ibid.*

¹⁰¹ The statistic is repeated *ibid.* at 329 together with infant mortality figures which show that mortality rates among Inuit peoples are five times higher than the rate for all Canada, and infant mortality rates among other First Nations peoples are two and a half times higher than the rate for all Canada. Again there are no recommendations and no comments on these figures.

excludes First Nations women, along with Black women and women of other racialized groups, from its discussion of the economy/work, and the participation of women in public life. "Indian" women are mentioned in the chapter on the family but only in the context of the enfranchisement of women who married men who were not registered under the *Indian Act*.¹⁰² The omission of First Nations women from the analysis of women and work seems particularly bizarre in the light of the Commission's subsequent reliance on a brief from the Alberta Native Women's Conference which explicitly addresses the racism encountered by First Nations persons seeking work in urban centres.¹⁰³ On the other hand, in view of the recommendation of the Alberta Women's Conference that solutions to the problem would require white people to take educational programs, perhaps the suppression is less remarkable.¹⁰⁴

For reasons outlined above,¹⁰⁵ I do not see any value in showing how racialized women might have been "inserted" into these sections of the REPORT. The whole point of "our" exclusion is that "we" do not conform to the REPORT's conception of women. In the face of the Commission's refusal to take responsibility for specifying its women, there is nothing much for me to say beyond its women are not "us".¹⁰⁶

The REPORT's discussion of First Nations women in the context of education illustrates a more vicious paradigm of erasure. Here, the Commission attempts to enforce "women's" "norm"-ality by holding First Nations women responsible for ensuring that Euro-Canadian education completes the program of cultural destruction begun by the first imperialists. For example, the REPORT acknowledges that Euro-Canadian education seems to have led to "some conflicts . . . between generations"¹⁰⁷ and notes the "understandable" "ambivalence toward the idea of education in the public schools [of] . . . many Indian mothers",¹⁰⁸ but insists that the problem lies with the women's lack of involvement in the education of their children, rather than with the form and content of that education.¹⁰⁹

First Nations women's resistance to Euro-Canadian education is translated into *their* inability to grasp the value of that education. For

¹⁰² R.S.C. 1985, c. I-5. *Ibid.* at 238.

¹⁰³ REPORT, *ibid.* at 329. The Commission appropriates the language of the brief to reinforce a picture of the poverty of First Nations people.

¹⁰⁴ *Ibid.* Interestingly enough the Commission makes no response to this recommendation despite the fact that the Alberta Native Women's Conference framed their proposals in the Commission's own language of "education".

¹⁰⁵ *Supra*, text accompanying note 89.

¹⁰⁶ I am not suggesting that all racialized women of all groups share a common experience of oppression or socio-economic reality of exclusion.

¹⁰⁷ REPORT, *supra*, note 2 at 213.

¹⁰⁸ *Ibid.* at 212.

¹⁰⁹ *Ibid.* at 213.

example, in paragraph 183 the REPORT refers to a survey conducted by Indian Affairs which apparently indicates that:

[S]ome Indian [sic] and Eskimo [sic] adults give little support to their children as students. Some consider their children's service at home more important than school and complain about the difficulty of adjusting the family living pattern to allow for their children's schoolwork and need for sleep. They also recognize that they lack the ability and knowledge to help their children with schoolwork or personal problems.¹¹⁰

After this extraordinary exercise in “victim”-blaming, the paragraph concludes, almost as an afterthought, that the survey also indicated that “[m]any parents . . . indicated that they would welcome some proof of the value of the white man's education.”¹¹¹ However, this perspective is not thought worthy of further elaboration. Instead, we are told that the problem of First Nations women is that “education” makes them feel redundant to their children's lives: “In the past, [native] women were totally responsible for the education of their daughters. Today school often *appears* to them to teach the children alien ideas in an alien language.”¹¹² The Commission's complete failure to grasp the point of First Nations women's resistance to Euro-Canadian education of their children is revealed by the REPORT's conclusion that the problem will be solved by the extension of education to adults so that their behaviour conform to the Commission's conception of “proper” parenting.¹¹³

V. WOMEN'S RIGHTS AND WOMEN'S TRUTHS

The focus of my critique, thus far, has been the use of a gen(d)eric truth about women in the production of the REPORT's case for reform. My argument is that the REPORT's conception of women's truth is partial and that its use of that truth is oppressive. In this final section I want to explore further the notion that “women's” rights are an instrument of progressive social change. The focus at this point is not the text of the REPORT, but the assumption embedded in the entire process of the making of the REPORT that struggles for rights are inherently liberatory for all women. More specifically, my interest lies in relationships between the form of legal rights, the role of legal rights struggles and gen(d)eric conceptions of women's oppression.

Legal feminisms have developed a rich literature on the manner in which the post-Enlightenment dichotomies of “Western” thinking

¹¹⁰ *Ibid.* at 212.

¹¹¹ *Ibid.*

¹¹² *Ibid.* at 213 [emphasis added]. Notice how the Commission dismisses First Nations women's conceptions of their reality.

¹¹³ *Ibid.*

in general, and of law in particular, have operated to erase, devalue and obscure "women's" lives.¹¹⁴ The identification of binary oppositions which associate qualities of "maleness" with qualities of "law" and characteristics of "femaleness" with "non-law" have undoubtedly served important critical ends. However, attempts to transcend the dualisms by adding or inserting "women" into law are considerably more problematic.¹¹⁵

It is clearly arguable that women's contradictory locations within legal dualisms such as the public/private dichotomy hold out the possibility of exploiting law's power in the interests of "women". On the other hand, as Judy Fudge has suggested, attention to the historical processes of law raises serious questions about the extent to which the capitalist legal forms of liberal democracy are able even to sustain their symbolic promise, let alone deliver substantive material change to women.¹¹⁶ Other critics of the *Canadian Charter of Rights and Freedoms*,¹¹⁷ have challenged the liberatory claims of liberal rights in general, insisting that the "legalization" of political struggle in the form of rights claims offers an illusion of improved access to power, but leaves untouched the institutionalization of power in hierarchical social relations.¹¹⁸

The work of Mary Ellen Turpel provides a further basis to doubt the potential of rights struggles.¹¹⁹ She explains that Aboriginal peoples experience the rights paradigm, with its embedded assumptions of the "individual" and private property, as yet another form of cultural imperialism. By careful analysis of the cultural imagery of the Canadian Constitution, Turpel demonstrates the absolute incommensurability of Aboriginal and Euro-Canadian conceptions of law. As she states:

The rights paradigm, whether it be articulated in terms of legal or political rights, or through civil conceptions of a consolidated property right, is simply a historically and culturally specific mechanism for the resolution of disputes and the allocation of resources.¹²⁰

¹¹⁴ For a good review of this literature see M. Thornton, *Feminist Jurisprudence: Illusion or Reality?* (1986) 3 AUSTRALIAN JOURNAL OF LAW AND SOCIETY 5.

¹¹⁵ Smart, *supra*, note 4 provides by far the most sustained critique of using law to advance even conventionally defined feminist goals.

¹¹⁶ J. Fudge, *The Public/Private Distinction: The Possibilities of and the Limits to the Use of Charter Litigation to Further Feminist Struggles* (1987) 25 OSGOODE HALL L.J. 485.

¹¹⁷ Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

¹¹⁸ See, e.g., H. Glasbeek & M. Mandel, *The Legalization of Politics in Advanced Capitalism: The Canadian Charter of Rights and Freedoms* (1984) 2 SOCIALIST STUDIES 84 and M. Mandel, *THE CHARTER OF RIGHTS AND THE LEGALIZATION OF POLITICS IN CANADA* (Toronto: Wall & Thompson, 1989).

¹¹⁹ M.E. Turpel, *Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences* (1989-90) CAN. HUM. RTS Y.B. 3.

¹²⁰ *Ibid.* at 30.

One response to these critiques is to point to feminism's transformation of the "official" meaning of women's "equality" rights. It is said that women's rights claims are no longer based on the highly abstract conception of "sameness" with men, a model which we can agree offers little by way of real change to women. Instead, women's claims for equality require the State to recognize historically derived and structurally maintained economic, social and cultural inequalities between women and men.¹²¹ Obviously this change does not fully respond to the challenge of rights critics, but it might suggest that rights do not have to be so abstract that they are devoid of content, but may be made more historically specific to relations of power between different groups.¹²²

At another level it may be argued that even to debate the potential of rights *per se* to bring about substantive change in the material conditions of peoples' lives is to be hoaxed by bourgeois ideologies, and to overlook the ways in which some oppressed and exploited peoples deploy rights claims as a means of mobilization.¹²³ It may be the case that rights claims play much the same role as "the personal is political" and "Black Power". That is to say, they act as a call to action, a means of asserting solidarity and collective identity, and as a rhetoric by which to articulate resistance and opposition to the institutionalization of power in liberal democracies.¹²⁴

Recognition that rights claims are contradictory, so that understanding their meaning and political significance requires a high degree of analytic specificity, may enable us to escape the binary opposition of rights are good v. rights are bad.¹²⁵ However, it does not address the central problem of using rights to advance the interests of women.

One of the most important claims of the "rights as resistance" perspective is the assertion that rights struggles build collective identity.¹²⁶ The question that advocates of feminism have to confront is whether rights discourses limit the content of that identity. For if the

¹²¹ This "transformation" in the meaning of "rights" is associated with the decision of the Supreme Court of Canada in *Andrews v. The Law Society of British Columbia*, [1989] S.C.R. 143, 56 D.L.R. (4th) 1 [hereinafter *Andrews*].

¹²² Turpel argues that even as "expanded" or "transformed" by the *Andrews* decision, "equality rights" paradigms are no more "sensitive" to cultural difference between Aboriginal and non-Aboriginal peoples, than other Euro-Canadian rights claims. She argues that analysis which operates on the basis of recognizing the differential "impact" of law on groups retains the implicit requirement of "comparison" between non-comparable tradition: Turpel, *supra*, note 119 at 27-29.

¹²³ See, e.g., P. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights* (1987) HARVARD CIVIL RIGHTS/CIVIL LIBERTIES LAW REVIEW 401.

¹²⁴ See Williams, *ibid.*; D. Herman, *Are We Family? Lesbian Rights and Women's Liberation* (1990) 28 OSGOODE HALL L.J. 789.

¹²⁵ Herman, *ibid.*

¹²⁶ Williams, *supra*, note 124; E. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement* (1986) 61 N.Y.U. L. REV. 589.

articulation of rights struggles requires women to define and to assert ourselves as "women", it would seem that the process of rights struggles takes us back to the construct of the essential woman.¹²⁷

The problem lies in the way in which law's response to the complexity of the material world shapes the potential form of our claims. Law manages the material world by ordering its truths into categories: law sifts, sorts and classifies on the basis of discrete binary oppositions. The form of law with which we are most familiar deals in "essences", it works best when categories are clear and mutually exclusive. This law may be able to recognize that the significance of different categories is historically specific, but it evolves by substituting a new "essence" for the old. It seems likely, therefore, that in order to put women's truth into law, women must assert that there is an essence to womanhood, or at least an essence to the oppression of women, and cannot insist that the meaning of "women's" oppression is socially constructed and historically specific to different groups of women. To speak women's truths to law seems to require us also to use law's language and so to sift, classify and order our presentation of "selves" in terms of discrete binary oppositions.¹²⁸

Thus, it is not surprising that both the old and the new model of women's equality rights share the assumption that women have a common gen(d)eric identity and social status inferior to the gen(d)eric identity and social status of men. Neither theory confronts the problem that to isolate gender relations as a basis for the proactive use of law leaves untouched the organization of other relations of ruling within the structuring of rights. To the extent that law will hear us only if we speak in the univocal tones of the gen(d)eric woman, our basis for solidarity must be opposition to, rather than collaboration with, law.

¹²⁷ Herman, *supra*, note 124 explores this dilemma in the context of sexuality.

¹²⁸ Smart, *supra*, note 4; Thornton, *supra*, note 114.

