FEMINISM MULTIPLIED OR FEMINISMS' DIVERSITY?

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If today, no one definition of feminism is likely to rally women, the feminist political committment remains essentially the same: to put an end to women's subordination.[1] However, in the last decade, the concepts of "women" and of "subordination" have been perceived as problematic. For example, in her lecture, Justice Baker quoted and affirmed the definition of a "feminist" adopted by the British Columbia Law Society Gender Bias Committee on which she sat.[2] Until recently, people calling themselves "feminists" would not have felt the need to define the term; its meaning would have been taken for granted.

If the realities of women's lives are not being questioned, the concept of womanhood is. The issues of representation and subjectivity have led to a destabilization of the core of feminism. Judith Butler argues:

> My suggestion is that the presumed universality and unity of the subject of feminism is effectively undermined by the constraints of the representational discourse in which it functions. Indeed, the premature insistence of a stable

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[1]In her introduction to *Feminist Studies, Critical Studies* (Bloomington: Indiana University Press, 1986) at 4, editor Teresa de Lauretis emphasized the importance of a consensus on a definition of feminism in the following terms:

> The notion of a feminist discourse, a configuration of rhetorical and interpretative strategies, a horizon of possible meanings that may be agreed upon as constituting and defining feminism at a given historical juncture, is important in view of the tendency to equate women and feminism to which most of us have acquiesced, feminists and not, if for different reasons.

And at 7:

> The conflicting claims that are made for feminism, no less than the appropriation of feminist strategies and conceptual frames within "legitimate" discourses by other critical theories, make us uncomfortable because we know and fear what they signal to us beyond a doubt: the constant drive on the part of institutions (in which, like it or not, feminists are also engaged) to deflect radical resistance and to recuperate it as liberal opposition.

[2]British Columbia Law Society Gender Bias Committee, *Gender Equality in the Justice System* vol. 1 (Vancouver: Law Society of British Columbia, 1992) at 1.3:

> A feminist is a person who believes women and men should be equal participants in society regardless of race, ethnic origin, economic background, gender, sexual orientation, or disability. A feminist believes women have not yet achieved equality in our society and that steps should be taken to correct this situation. Lastly, a feminist believes the world should be a comfortable place for women, men, and children, free of stereotypes and myths which restrict the roles each may assume.

> subject of feminism, understood as a seamless category of women, inevitably generates multiple refusals to accept the category. These domains of exclusion reveal the coercive and regulatory consequences of that construction, even when the construction has been elaborated for emancipatory purposes. Indeed, the fragmentation within feminism and the paradoxical opposition to feminism from "women" whom feminism claims to represent suggest the necessary limits of identity politics.[3]

This line of argument has raised the question of what is meant by the word "woman". Is it a biological, social or cultural characterization? Can we even speak of "woman" or "women" at all? Similarly, opinions differ not only on how to put an end to women's subordination, but also on definitions of this subordination, its foundations, causes and manifestations. Does subordination mean oppression, domination, repression or unequal power? Does subordination operate on an individual or group level? What considerations should be given to factors such as resistance and false consciousness?

This questioning stems in part from the exclusion of women's different experiences and realities in feminists' recounting of world history. For example, in traditional feminist writings, a small segment of western realities – that of the privileged, white, bourgeois, heterosexual woman – has often been used to theorize and generalize women's experiences of the work force and the family. Indeed, both the essentialization of women and the dogmatism present in many forms of feminisms have led to this sharp but well-deserved criticism of feminist positions. Without apologizing for traditional feminisms, I would like to argue in favour of keeping some feminists' insights while at the same time remaining critical of them. The first step in this direction is the exposure of the diversity of feminist postulates and, as a result, of feminisms.[4] I have become more and more impatient with the

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[3]Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990) at 4.

[4]Some feminists resist talking about feminism in the plural form. See, for example, Marianne Hirsch & Evelyn Fox Keller, eds., *Conflicts in Feminism* (New York: Routledge, 1990) at 2:

> As editors of this volume, we choose the singular form of the term "theory," as we do for the term "feminism," precisely in order to emphasize the generic and transitive nature of both efforts. We would like to encourage the reader to think of both "theory" and "feminism" more in the sense of ongoing movement (in Bell Hook's *[sic]* use of the term) than as specific forms, products, among which one is necessarily obliged to choose. ... Rather, it is our assumption that feminism, like theory is an activity that would only be imagined as unified and seamless under the illusion of a unitary governing ideal: in the first case, of "woman," or in the second, of "truth." But it is no improvement to displace one governing ideal by several disparate ideals of "woman" or "truth," or to disperse and multiply these very notions. What we think would be more useful is a shift in attention from the meaning of "truth," "woman" to the process of "truth-making," "woman/women-making." Nouns in the plural form are still nouns, and multiplication is no escape to reification. For this reason, we reject the notion of "feminisms" and choose instead to speak of "feminism".

too often dogmatic assumptions which feminists, non-feminists, and anti-feminists alike make about the content and nature of feminism itself. Notwithstanding many feminists' unstated underlying assumption to the contrary, "feminism" is not a monolithic domain. I would like to focus on two kinds of interrelated diversities within feminisms. The first diversity deals with the divergent political postulates underpinning different feminisms. The second diversity is the split between Québec and English Canada in feminist approaches.

THE POLITICS OF FEMINISMS

The theoretical assumptions and the political programs of feminisms presuppose divergent understandings of the nature and social constructions of our realities. These too often unstated understandings leave behind a legacy which in turn restrains future possibilities and conceptualizations of womanhood. For example, there is a world of difference between the categories[5] of liberal feminism,[6] radical feminism,[7] conservative and maternal feminisms,[8] relationist feminism[9] and

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I have chosen to use the plural form of feminism to emphasize the multiplicity of political postulates and assumptions among feminists.

[5]Typologies are fallible conceptual categorizations. My categories of legal feminist theories provide one example. For another illustration of such a typology in the legal field, see the excellent article by Michelle Boivin, "Le féminisme en capsule; un aperçu critique du droit" (1992) 5 Can. J. Women & L. 357. For a helpful analysis of the relationship between feminist theories and political philosophy, see Alison M. Jagger, *Feminist Politics and Human Nature* (Brighton: Harvester Press, 1983).

In the following footnotes, I have limited the references to one or two major authors in each category. Two anthologies of feminist legal literature provide a helpful introduction to this field of thought: Katharine T. Bartlett & Roseanne Kennedy, eds., *Feminist Legal Theory: Readings in Law and Gender* (Boulder: Westview Press, 1991), and D. Kelly Weisberg, ed., *Feminist Legal Theory: Foundations* (Philadelphia: Temple University Press, 1993). The Weisberg collection has the added benefit of including a few English Canadian writings. In the Québec context, Professor Louise Langevin edited a special issue of the Cahiers de Droit: "Avant Propos: L'influence du féminisme sur le droit au Québec" (1995) 36 C. de D. 1216.

[6]Liberal feminists traditionally engaged in the "equality debate" which examined the meaning of equality in terms of equal treatment versus special treatment. See *Feminist Legal Theory: Foundations*, *ibid.* for an excellent sample of these positions.

[7]Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, Mass.: Harvard University Press, 1987); Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, Mass.: Harvard University Press, 1989); Andrea Dworkin, *Intercourse* (New York: Free Press, 1987).

[8]For many feminists, conservative feminism should not be included in the category of women whose aim is to eradicate women's subordination. In Canada, one example is the REAL women movement which promotes the "traditional" role of women.

[9]Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca, N.Y.: Cornell University Press, 1990).

postmodern feminism[10], to name only a few.[11] These feminisms do not exclude each other. They reflect the North American panorama and thus, one could add to these their European counterparts.

Each trend of feminism is informed primarily by divergences at three levels. First, these feminisms embrace different and opposing definitions of women based on nature, culture or a mixture of both. Second, they subscribe to divergent conceptions of the relationships between women and men and of their respective roles in society. Third, they hold varying notions of equality and of the role that law plays and/or ought to play in these different dynamics. In turn, each of these theoretical backgrounds affects the relative openness to diverse experiences of womanhood and, thus, to women's differences. Finally, the postulates of equality, stated or implicit, lead to disparate and conflicting justifications and legitimizations of political programs.

For instance, in the labour context, the same maternity leave program can be conceptualized in a number of ways. Maternity leave can be justified as: a) the equivalent of a physical handicap under liberal notions of formal equality and "neutral" legislations; b) a remedy for a historical prejudice against women; c) a program essential to accommodate women's particular biological needs or women's traditional maternal role;[12] d) a program to compensate for the sexual domination of men as a group and the corresponding sexual subordination of women as a group; or e) a program benefiting all members of society as opposed to the individual mother when considering the social function of reproduction. The common feminist political program on the necessity of maternity leave is thus justified and legitimized by competing and complementary conceptual understandings.

Many of these feminisms have been essentialist and dogmatic and, as a result of their own self-definition, have excluded a number of women's experiences. Considering the diversity of feminisms, I would like to plead for greater scrutiny of feminist political and theoretical assumptions. Indeed, it is essential to examine more closely not only the result reached but also the path used to get there. Each feminist conceptualization and legitimization comes with its own legacy and, thus, its own *a priori* boundaries for the future.[13] A greater openness and self-criticism

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[10]Mary Joe Frug, *Postmodern Legal Feminism* (New York: Routledge, 1992); Drucilla Cornell, *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law*, (New York: Routledge, 1991); Patricia J. Williams, *The Alchemy of Race and Rights* (Cambridge, Mass.: Harvard University Press, 1991).

[11]Other fascinating feminist writings in law which do not fit the above labels include the writings of Lama Abu-Odeh, Kimberle Crenshaw, Karen Engle, and Karen Knop, to name only a few.

[12]Many feminists question the "feminist" qualification of this last position as it seems to justify women's historical disadvantages.

[13]I wish to thank Dr. Sherene Razack for stating this idea in the context of her remarks on my paper.

is necessary to introduce, in legal education and in the profession as a whole, a more subtle and nuanced exposition of what feminism is and what it ought to be. However, the acknowledgement of the diversity of feminisms is often viewed with scepticism. The need to adopt a more nuanced understanding of feminist postulates and the acknowledgement of women's differences has often raised the fear of dismantling feminism, at least in its theoretical understanding if not in its political program.

In the face of such differences, the question turns to whether we can still talk about "women". In my view, this is a non-issue. Along with Judith Butler, I assert that "[i]n the course of this effort to question 'women' as the subject of feminism, the unproblematic invocation of that category may prove to *preclude* the possibility of feminism as a representational politics."[14] Rather, the question ought to be: can we call "feminism" a theoretical and political program which purports to represent women when it excludes too many women by failing to account for the differences between them?

I also reject the argument of political paralysis. An increased awareness of our underlying assumptions has the benefit of raising our consciousness about the flaws, exclusions and contradictions of our political action. However, this does not prevent us from being political activists. We may be better prepared to undertake many differing, and even conflicting political actions to deal with our divergent needs. Incoherence, ambiguity and contradiction are problematic only when we want to hold on to the "truth". Ideally, a deeper self-awareness of our conflicts would help us stay clear of the essentialism and dogmatism that has been hurtful to too many of us. Indeed, theoretical diversity leads to better and more fruitful politics rather than to immobilization.

THE QUÉBEC/ENGLISH CANADA DIVIDE

The second type of diversity I would like to sketch here is the Québec and English Canada feminist divide in law schools.[15] However, this is a large issue that I have

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[14] *Supra* note 3 at 5.

[15] I am aware that, by adopting this dichotomy, I am courting the trap of essentialism which I have denounced in the first part of this paper. However, in contrast with Québec, English Canadian feminist literature is vastly influenced by American scholarship. Even if there are many important differences between the two, I will base the following few comments on my knowledge of both American and English Canadian feminist legal scholarship. In this paper my comments about Québec are limited to what I perceive to be an expression of feminism by those that I know, i.e. white francophone women jurists working in the province of Québec. I do not pretend to talk about the feminist manifestations of the numerous cultures that form Québec society. In addition, I have not included in the equation French Canadians outside of Québec scholarship because they lie between the two dominant Canadian cultures.

only recently started to examine more thoroughly. I wish to share with you some of my preliminary reflections.[16]

The Québec culture is at the crossroad of two worlds. In some odd way, we are too American to be European and too European to be American. Once, a fellow passenger on a plane smiled knowingly when she heard my Québec accent. She explained that I was too well dressed to be an American yet, since I was smiling to people as I boarded the plane, I could not be French!

As a student of feminist analysis of law, all of my training came from the Anglo-Saxon traditions.[17] This Anglo-Saxon allegiance has occasionally been pointed out to me as a sign that I did not fully understand or give credit to the specificity of the French Canadian manifestations of feminisms in the legal context. The traditional accusation of having been "polluted by the common law" was once again heralded against me. I plead guilty. The argument, in a sketchy and caricatured form, is that, in contrast with the Anglo-Saxon manner, Québec women do not fight for women's causes in an atmosphere of conflict; we have the assistance of and are in solidarity with our men. Instead of fighting for a revolution of human relations, Québec women proceed by taking one discrete step at a time. The majority of Québec women do not identify with the historical myth of exclusion and inferiority, as the entire Québec nation – possibly the men more so than the women – has internalized this feeling.[18] This general posture is projected in the legal environment as well as in other aspects of social life.[19]

In more ways than one, women in law in Québec are at least as successful as their common law counterparts in the advancement of women's cause. For

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Yet, I am not concluding that the legal culture is in part responsible for the varying feminist expression. The legal culture may be a small participant in the distinction between feminist approaches but the differing feminist manifestations are due to a far more complex set of factors, resulting mainly from marking historical legacies. These issues are far more complex than this brief paper would suppose.

[16] I do not wish to provide here a meta-narrative of the many factors contributing to the distinctions between civil law and common law feminist manifestations. Rather, I wish to point out the existence of such a split and to offer preliminary – even if unbalanced – observations of factors potentially coming into play in this division.

[17] My feminist professors and mentors were Constance Backhouse (from the University of Western Ontario Law School), and Elizabeth Schneider and Martha Minow (my thesis director) at Harvard Law School.

[18] Jennifer Stoddart, "Des lois et des droits: Considérations à propos d'un cheminement distinct" (1995) 36 C. de D. 9.

[19] A first attempt at understanding these differences was made in 1995: see *L'influence du féminisme*, *supra* note 5.

example, women account for 65% of the students in Québec law schools.[20] Women are represented in the professorial bodies of law schools, in legal practice, and in political life at least as much as, if not more than, in some contexts, their English Canadian counterparts. Yet, Québec women who are important role models often reject the feminist label. Not surprisingly, there are almost no self-professed feminist students and there is very little interest, if any, shown in the feminist courses offered in the civil law school curriculum. In addition, consciousness raising among Québec law students is extremely difficult to achieve.[21]

My first reaction to the specificity of Québec's feminist manifestations was dismissal. However, upon further reflection, it seems more than doubtful – even completely absurd – to assume that all québécoises women suffer from a severe case of "false consciousness". I also reject the idea that this split is merely an excuse to avoid facing the real issues raised by the combative common law form of feminism. These arguments are particularly unbelievable in the Québec context where, in contrast with today's European situation, feminism in the lay world has been and still is a common discourse which has had many important repercussions in the lives of Québec women.[22] However, in Québec as in the rest of North America, the unequal situation of women in the legal profession is well documented. For example, the problem of the silence of women in legal education[23] as well as the unenviable fate of women in private practice have been

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[20]In 1976, women already made up 45% of the students in Québec law schools.

[21]On a larger scale and in another context, a fascinating example illustrates the paradox and irony of the contrast between these worlds. In law, as in other disciplines, the three great French women, Luce Irigary, Hélène Cixious and Julia Kristeva have been adopted by and are often quoted as authority in English feminist legal writings. I find it interesting to note that all three of these extraordinary women are of "non-French" origins. Indeed, Irigary is Belgian having taken her husband's Basque last name; Cixious is a Jewish Algerian Pied-Noir, and Kristeva is Bulgarian. The French critical heritage and its "feminist" component (at least in the eyes of Anglo-Saxon jurists) thus comes back to the Latin world translated (by their Anglo-Saxon students and followers), used and reinterpreted through the Anglo-Saxon culture. Examples in legal scholarship include the writings of Ann Bottomley, Drucilla Cornell, Peter Goodrich and Patricia Williams. In the civil law context – even in France – these same French women are virtually unknown. This comment can also be applied to the three "fathers", Jacques Derrida, Michel Foucault and Jacques Lacan.

[22]One telling example is the increased popularity of the feminization of the French language, leading, among other things, to the creation and use of a feminine form of all titles, professions and trades. Québec seems to be the only place in the francophone world where this change has been achieved. It came about as a result of the initiative of school boards and labor unions in the 1980s.

[23]Two important American studies on this topic are: Elizabeth M. Schneider, "Task Force Reports on Women in the Courts: The Challenge for Legal Education" (1988) 38 Journal of Legal Education 87, and Catherine Weiss & Louise Melling, "The Legal Education of Twenty Women" (1988) 40 Stanford L. Rev. 1299. Teaching experiences and discussions with my colleagues have convinced me that the same holds true in Québec's law schools.

proven to exist in Québec as they do elsewhere.[24] Yet, although the feminist tradition has been important in the last four decades in many fields, the number of outspoken feminist professors in Québec law schools can be counted on one hand. Unlike the situation in the rest of Canada, there is very little interest in feminist criticism in Québec law schools, whether at the administrative, professorial or student body level.

I have come to the conclusion that there are fundamental differences between feminist manifestations in Québec and in the rest of Canada. Not surprisingly, this split concerns not only feminism but also other critical approaches, such as those denouncing racism, homophobia and other kinds of group discrimination as well as the consequences of intersecting[25] and forms of discrimination. Indeed, the Québec civil law school curriculum has been much more reticent about this kind of critical thinking than that of common law schools. Putting aside my Anglo-Saxon instincts, I wish to attempt to make a good faith effort to face what I have come to see as a fundamental cleavage. Multiple factors contribute to expose this split in the legal context. Explanations are numerous and extremely complex. Many discussions with my québécoises colleagues have revealed how puzzling and confusing this issue is for us. I will end this discussion by mentioning a few issues which have affected this division but which also illustrate its complexity.

First and foremost, the language issue by itself is not sufficient to explain this split in the Canadian context. Indeed, in contrast with English Canadians, French Canadians often examine and refer to the legal solutions proposed or adopted in the rest of Canada. However, surprisingly, and for reasons that are difficult to identify, critical legal theories prevalent in many English Canadian law schools do not seem to be able to transcend the civil law/common law divide.

Second, the civil law conception and criticism of the dichotomy between politics and law seem to have had an influence on feminist and other critical approaches. However, the tradition of critiquing law's neutrality, objectivity and

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[24]See for example, Barreau du Québec, *Les femmes dans la profession* (Montréal: Barreau du Québec, 1992), and Canadian Bar Association Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993).

[25]The concept of the intersectionality of different forms of discrimination was developped by Kimberle Crenshaw in "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) University of Chicago Legal Forum 139.

rationality has certainly not had the same expression in Canadian civil law as it has in the common law.[26]

Third, as I pointed out earlier, Québec women assert that the differences in relations between men and women in Québec and English Canada explain the divergence in feminist theoretical and political programs. According to this view, in Québec, men and women work side by side and reject the conflicting relationships that they perceive to be characteristic of the English Canadian legal context.[27]

Fourth, some feminists have argued that for a number of historical and cultural reasons, English Canadian women have focussed on judicial reforms to improve the legal status of women, whereas their French Canadian counterparts have turned to legislative and administrative changes to achieve the same goal.[28] Interestingly, this argument reiterates the traditional – and overstated – distinction between the common law, which relies on case-law, and the civil law, which turns mainly to legislation.

Fifth, in the Québec context, nationalism may also have contributed to putting all other issues that threatened to divide the common front on the back burner. Yet, feminist rhetoric has been very present in Québec's nationalist movement. Québec's progressive politics and legislative advancements of the last three decades seem to have been counterbalanced, if not counteracted, by a conservative legal profession and judiciary. Another factor may be the importance, impact and manifestations of faith of the protestant and Catholic religions at different levels. Historically, religion may have affected not only the understanding of the relations between men and women, but also the conceptions and approaches to law as a code of conduct. This historical legacy, coupled with the issue of the importance of religion in both Québec and English Canada today, may also have an impact on critical approaches to law in general, and on feminist legal theory in particular.

Finally, on a larger scale, the different manifestations of individualism in Québec and English Canada have also affected the approach of group or collective

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[26]However, as I have tried to demonstrate in my doctoral thesis, French civil law, which is at the origin of and still acts as authority in Québec's private law, has a long and penetrating critical tradition, one that unfortunately has been defanged and forgotten in the course of history. This is an important legacy worth uncovering.

[27]For example, the debate concerning the sexist climate and the feminist issues raised about appointments, law school curriculum and legal education that have shaken Osgoode Hall, Queen's University and the University of Western Ontario law schools are often seen as incomprehensible by my French Canadian Québec colleagues. The incomprehension is mutual. An example can be seen in the opposing reactions of French and English Canadian feminists in the debate over the "distinct society" clause of the *Meech Lake Accord*.

[28]*Supra* note 18 at 20, 21 and 24.

politics. If class politics have played a fundamental role in Québec's legal system, group or collective claims – outside of the nationalist venture – have often been viewed with great scepticism. In this respect, Québec might have been influenced by a brand of individualism typical of France.

I hope these few observations will provide a fruitful basis for discussion and will contribute to a wider recognition and understanding of the diversity of women's differences and experiences through the multiplicity of feminist perspectives. Feminists need to be more vigilant about the assumptions and postulates underlying their positions and political programs. Clear-sightedness about our own presumptions would contribute not only to better politics but, most importantly, to a greater consciousness about the inclusions and exclusions that our past and future categories carry.

As the few reflections I have shared suggest, much research is needed to understand more fully the differences between feminist attitudes prevalent in Québec and in English Canada. I believe that such divergences exist and need to be taken seriously. My hope is that, from each other, we can learn ways to improve the status of women and attempt to end their subordination.