POWER & WOUNDS: DIVERSITY AND THE TRANSFORMATIVE POTENTIAL OF LEGAL PRACTICE

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Living in the earth-deposits of our history

Today a backhoe divulged out of a crumbling flank of earth
one bottle amber perfect a hundred-year-old
cure for fever or melancholy a tonic
for living on this earth in the winters of this climate

Today I was reading about Marie Curie:
she must have known she suffered from radiation sickness
her body bombarded for years by the element
she had purified
It seems she denied to the end
the source of the cataracts on her eyes
the cracked and suppurating skin of her finger-ends
till she could no longer hold a test-tube or a pencil

She died a famous woman denying
her wounds
denying
her wounds came from the same source as her power[1]

Poetry is a vehicle which explores the paradoxes, contradictions and complexities of human existence. Sometimes, in this exploration, we are provided with moments of insight and starting points for further thinking. I find just such a moment in the insight that Adrienne Rich illuminates in this poem, specifically, that wounds and power may come from the same source – may coexist at the same location. To understand life, she says, we must see not only its wounds, and not only its power, but also the interplay between the two. We must understand the very specific and concrete ways in which they are linked.

In her lecture, Dr. Razack touched on feminist theorizing about intersectionality and on current efforts to understand the links between different

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[1]A. Rich, "Power" in *Dream of a Common Language* (New York: Norton, 1978) at 3.

forms of oppression.[2] This paper continues with that discussion. I will use Adrienne Rich's insight as the impetus for an exploration of one particular kind of intersection: the intersection of privilege and disadvantage, of power and wound. I will explore this intersection using the case of *Symes* v. *Canada*,[3] a case which involves the intertwining of gender disadvantage with class privilege, and which illustrates some of the problems confronting the legal practice in the quest to account for women's diversity.

The first part of this paper, using the court judgments and academic commentaries surrounding the case, illustrates that current theorizing about diversity has not taken us far enough. Focusing on the intersection of power and wound reveals that our theorizing leaves us with limited options for legal practice. The goal of this inquiry is to demonstrate that the legal community requires a more complex understanding of "diversity", one which focuses not only on the varying levels of disadvantage which exist between women, but also on the paradoxical mixtures of power and wound that mark the experiences of individual women.

The second section of this paper offers some questions and speculations about attempts to develop a more complex understanding of diversity, and suggests that this more complex understanding may provide assistance in fostering a legal practice that better reflects the needs and experiences of clients and society. It should also bring into better focus the links between legal practice and the social and political practices related to justice and the character of social life.

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[2]There is an important and burgeoning literature exploring the manner in which women's experiences are shaped and mediated in complex ways by their simultaneous experiences of race, class, disability, ethnic origin and sexuality. The following is a sampling of some of the pieces that have shaped my own thinking about intersectionality: 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) 89; K. Crenshaw, "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; T. Grillo, "Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House" (1995) 10 Berkeley W.L.J. 16; A. Harris, "Race and Essentialism in Legal Theory" (1990) 42 Stanford L.R. 581; N. Iyer, "Categorical Denials: Equality Rights and the Shaping of Social Identity" (1994) 19 Queen's L.J. 179; L.M. Leonard, "A Missing Voice in Feminist Legal Theory: The Heterosexual Presumption" (1990-91) 12 Women's Rights L.R. 39; A. Lorde, "Age, Race, Class & Sex: Women Redefining Difference" in *Sister/Outsider* (Freedom, Ca.: Crossing Press, 1984) 114; P.A. Monture, "Ka-Nin-Geh-Heh-Gah-E-Sa-Nonh-Yay-Gah" (1986) 2 C.J.W.L. 159; N. Nzegwu, "Confronting Racism: Towards the Formation of a Female-Identified Alliance" (1994) 7 C.J.W.L 15; S. Razack, "Speaking for Ourselves: Feminist Jurisprudence and Minority Women" (1991) 4 C.J.W.L. 440; R. Solinger, *Wake Up Little Susie: Single Pregnancy and Race Before Roe v. Wade* (New York: Routledge, 1992); E.V. Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Boston: Beacon Press, 1988).

[3][1993] 4 S.C.R. 695.

The Intersection of Privilege and Disadvantage in *Symes* v. *Canada*

The question of intersecting privilege and disadvantage took center stage in *Symes* v. *Canada*. The issue at the centre of the case was the interpretation of several sections of the *Income Tax Act*,[4] specifically those related to child care and business expenses. Symes, the mother of two children, was a partner in a small law firm. The significance of this fact for taxation purposes was that, according to s. 9 of the *Income Tax Act*, she would be taxed on profit from a business rather than on wages from employment.[5] The calculation of "profit" is in principle rather simple: business revenues minus business expenses. The more difficult part is figuring out what expenditures are or are not business expenses. Section 18(1) of the *Income Tax Act* provides some guidance, specifying that the expenditures must be "incurred ... for the purpose of gaining or producing income from the business", and cannot be "personal or living expenses".[6]

Symes had employed Mrs. Simpson to look after her children while she worked and argued that the salary she paid to Mrs. Simpson was a business expense, deductible from her business revenues in calculating her profit. The Minister of National Revenue disagreed, saying that her child care expenses were not incurred for the purpose of gaining income and that even if they were, they were non-deductible because they were personal expenses. The Minister did, however, suggest that Symes could take advantage of the limited child care deduction available under s. 63, a deduction available to business people and wage earners, male or female.[7] The amount under the deduction was considerably less

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[4]R.S.C. 1952, c. 148, as am. by S.C. 1970-71-72, c. 63.

[5]The section reads as follows:

> 9.(1) Subject to this Part, a taxpayer's income for a taxation year from a business or property is his profit therefrom for the year.

[6]The text of the section says:

> 18.(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of
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> (a) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;
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> . . .
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> (h) personal or living expenses of the taxpayer except travelling expenses (including the entire amount expended for meals and lodging) incurred by the taxpayer while away from home in the course of carrying on his business;

[7]The deduction can, in theory, be claimed by men or women. However, where there are two parents supporting a child, the deduction can be claimed only by the lower income earning parent. The text of the section reads as follows:

> 63.(1) Child care expenses. – Subject to subsection (2), there may be deducted in computing the income of a taxpayer for a taxation year the aggregate of all amounts each of which is an amount paid in the year as or on account of child care expenses in respect of an eligible child of the taxpayer for the year
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> . . .

than the actual child care costs which Symes had paid, and which she would be able to fully deduct if her child care expenses could fit within the scope of a business expense.[8]

The matter went before the courts with two issues to be resolved. The first was an interpretation question which was fundamentally about the meaning of child care. Was it merely "personal" or could it also be related to doing business? The second issue was a *Charter*[9] question: would a restrictive interpretation of business expenses result in discrimination against women?

Before discussing what the courts decided, I note that a veritable cornucopia of issues and concerns was raised by this case.[10] Was the case about the impact of child care responsibilities on women specifically or on parents more generally? Should the government subsidize child care or should the costs of child care be the "private" responsibility of parents who had "chosen" to have children? If the government were to subsidize child care, should it do so through taxation or through other more direct means? Would tax deductions for business women split

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(3) ... (a) "Child care expense". – "child care expense" means an expense incurred for the purpose of providing in Canada, for any eligible child of a taxpayer, child care services including baby sitting services, day nursery services or lodging at a boarding school or camp if the services were provided

(i) to enable the taxpayer, or the supporting person of the child for the year, who resided with the child at the time the expense was incurred,

(A) to perform the duties of an office or employment,

(B) to carry on a business either alone or as a partner actively engaged in the business

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[8]In 1982, the regulations under s. 63 of the *Income Tax Act* provided a $1,000 deduction per child. In 1985, this amount was raised to $2,000 per child. Thus, for the years 1982 to 1985, the Minister of National Revenue would have allowed Symes a deduction of $9,000. The actual amount Symes paid for child care during this period was in excess of $50,000.

[9]*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982. c. 11 [hereinafter *Charter*].

[10]There are a number of articles which explore many of these issues. See A.M. Cassin, "Equitable and Fair: Widening the Circle" in A.M. Maslove, ed., *Fairness in Taxation: Exploring the Principles* (Toronto: University of Toronto Press, 1993) 104 [focusing on the non-neutrality of taxation and the need to incorporate the real world into "neutral" categories like "business expense"]; B. Cossman, " 'Dancing in the Dark': A Review of Gwen Brodsky and Shelagh Day's *Canadian Charter Equality Rights for Women: One Step Forward or Two Steps Back?*" (1990) 10 Windsor Y.B. Access Just. 223 [focusing on the failure of Symes to account for the needs of non-business women]; D.M. Eansor & C. Wydrzynski, " 'Troubled Waters': Deductibility of Business Expenses Under the *Income Tax Act*, Child Care Expenses and *Symes*" (1993) 11 Can. J. Fam. L. 249; J. Grbich, "The Tax Unit Debate Revisited: Notes on the Critical Resources of a Feminist Revenue Law Scholarship" (1990-91) 4 C.J.W.L. 512; D.A. Steele, "The Deductibility of Child care Expenses Re-examined: *Symes* v. *R.*" (1991) 7 C.F.L.Q. 315; F. Woodman, "The *Charter* and the Taxation of Women" (1990) 22 Ottawa L. Rev. 625; C.F.L. Young, "Child Care – A Taxing Issue?" (1994) 39 McGill L.J. 539; C.F.L. Young, "Child Care and the *Charter*: Privileging the Privileged" (1994) Review of Constitutional Studies 20.

the child care lobby and reduce the likelihood of a more comprehensive national day care system? For the purposes of this discussion, I put these undeniably interesting problems aside, including the question, "should Symes have won or lost?" The focus will be on the way the courts and commentators talked about Symes herself, as a litigant whose situation was marked by a mixing of power and disadvantage.

So, what did the courts conclude? At trial, Symes won her case.[11] Justice Cullen referred to the expert evidence about the impact of child care responsibilities on women's ability to participate in the paid work force and concluded that the meaning of business expense must account for the business needs of both men and women, and thus could include child care. A contrary interpretation, he found, would violate the guarantee of sex equality in s. 15 of the *Charter*. The judges of the Federal Court of Appeal disagreed.[12] According to them, despite the influx of women into the workforce, the circumstances relating to business expenses had not changed. Business was business and child care was something else altogether. The court drew a sharp line between objective "commercial needs" of business and the "particular" non-business needs of individuals.[13] Further, the court interpreted the limited child care deduction in s. 63 of the *Income Tax Act* as a complete mini-code, finding that child care could only be deducted under this section and that such an interpretation was not discriminatory. Writing for the unanimous Court of Appeal, Justice Décary stated that he was "not prepared to concede that professional women make up a disadvantaged group" suffering from s. 15 discrimination as a result of this interpretation.[14]

Clearly, there was a divergence in the perspectives behind these two decisions. Professor Audrey Macklin, in a critique of these two judgments, provided a useful analogy for understanding the divergence.[15] She suggests that we imagine the judges peering at Beth Symes through different pairs of glasses. The trial judge saw a business woman standing next to a business man. The Federal Court of Appeal saw a self-employed, professional woman standing next to a salaried woman:

> In the former scenario, Symes was disadvantaged by her sex ... and deserved to have her business expenses treated the same as a businessman's. In the latter, she was privileged by her class and made a mockery of s. 15 of the Charter by

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[11] *Symes* v. *Canada*, [1989] 3 F.C.R. 59 (T.D.).

[12] *Symes* v. *Canada*, [1991] 3 F.C.R. 507 (C.A.) Décary, Pratte, and MacGuigan JJ.

[13] *Ibid.* at 523.

[14] *Ibid.* at 531.

[15] A. Macklin, "*Symes* v. *M.N.R.*: Where Sex Meets Class" (1992) 5 C.J.W.L. 498.

> attempting to use her status as a business woman to obtain greater benefits than those available to salaried women.[16]

In other words, looking at the same woman, the Court of Appeal saw power; the trial judge saw wound.

At the Supreme Court of Canada, in a much remarked upon seven to two gender-split decision, the male majority dismissed Symes' claim. I will look first at what the majority said and then offer some speculations about how this relates to what they saw. On the "interpretation" question, the majority spent pages discussing past case-law dealing with the meaning of business, and the characterization of child care as a personal expense.[17] Oddly, after this big build up, the majority came to the somewhat surprising and anti-climactic conclusion that it was not necessary to revisit these questions because, as the Court of Appeal found, s. 63 is a complete code for child care.[18] As for the *Charter*, the Court avoided any real engaging discussion of the problem of equality in the case with a second anti-climactic slight of hand: lack of evidence. Symes, they claimed, had proven only that women carried the disproportionate burden of child care.[19] What was required, however, was evidence "that women disproportionately pay child care expenses".[20] In the absence of this evidence, no discrimination could be shown. In the terms of the case ratio, the insufficiency of the evidence was the basis of the Court's decision.

However, the majority go on to make additional comments about the case, and from these comments, I suggest that we can draw three different inferences about how the majority saw Symes herself. A first set of comments raises the possibility that Symes lost because the majority saw her as the wrong woman for the case: she was married. Justice Iacobucci suggests that it might well be impossible for a married woman to provide the required evidence of discrimination.[21] Married couples, he argues, are legally required to share the burden of child care expenses (by that he means the cash paid for child care, though not the actual child care

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[16] *Ibid.* at 508-9

[17] *Supra* note 3 at 720-744.

[18] *Ibid.* at 750. Justice Iacobucci writes: "[T]he Act intends to address child care expenses, and does so in fact, entirely within s. 63. It is not necessary for me to decide whether, in the absence of s. 63, ss. 9, 18(1)(a) and 18(1)(h) are capable of comprehending a business expense deduction for child care."

[19] *Ibid.* at 762. Iacobucci J. states: "An abundance of information was placed before this Court which conclusively demonstrates that women bear a disproportionate share of the child care burden in Canada."

[20] *Ibid.* at 763.

[21] *Ibid.* at 764: "It is difficult to imagine how such statistics could arise."

burden itself).[22] Given this joint legal obligation, a married woman simply could not show these tax provisions to be discriminatory based on gender. Any disproportional impact would not be a function of the law. In this situation, marriage is a structural privilege, one which negates the possibility of discrimination. Justice Iacobucci does not dismiss the possibility of gender discrimination. He hastens to add that other categories of women, such as single mothers, might be able to show the required disadvantage.[23] The problem then was not with the evidence but with the plaintiff: Symes was simply not the right woman.

In a second set of comments, the court suggests that Symes should have focused on a different kind of disadvantage; she might have been successful had she argued that the discrimination was based on something other than gender. Iacobucci J. alerts the reader that Symes' gender-based argument "effectively ignored the relevance of a parental status distinction", and failed to consider the impact of s. 63 on other groups such as "business people in a loss position and farmers".[24] The implication is that she might have been more successful had she described the disadvantage in a way other than how she experienced it.

Third, the Court seems to take Symes to task for not having used her power to help all groups. Iacobucci J. chastises her for asking the court to rectify her disadvantage without considering the position of other women, other parents and the government's overall response to child care.[25] This is an odd comment. Questions concerning the impact of a proposed remedy on other groups would ordinarily be ones addressed by the government under s. 1 of the *Charter*, a section which places the burden of proof on the government.[26] Such considerations are not normally part of the onus placed on an individual plaintiff.

What implications are there for legal practice in the ways the majority dealt with the intersection of disadvantage and privilege in *Symes*? The Supreme Court struck down Symes' claim but at the same time held out a beacon of hope. One implication is that success is possible, with the right case. We are, in effect, sent on a quest, a search for the grail, for the right plaintiff, the one who is truly disadvantaged. Good facts make good law, so we need good facts. For women, it would seem that good facts mean plenty of damage and not a hint of privilege.

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[22] *Ibid.* at 764. Iacobucci J. says: "[R]egardless of 'family decisions', the law will impose the legal duty to share the burden of child care expenses, if not necessarily a duty to share the child care burden itself."

[23] *Ibid.* at 765-767.

[24] *Ibid.* at 767.

[25] *Ibid.* at 773.

[26] *R* v. *Oakes*, [1986] 1 S.C.R. 103 at 104.

From the point of view of the practitioner, this implication can only be met with frustration. Many people who are suffering from disadvantage in a given dimension also carry the markings of privilege in another. So we are left with a dilemma. While we are continuing the search for the grail, what do we do with the imperfect clients before us?

Did the academic commentators see more in the mix of privilege and disadvantage than the courts? I will look briefly at two – Michael Mandel and Audrey Macklin – to discover what they saw in *Symes* and what the implications of their visions are for legal practice. In his book *The Charter of Rights and the Legalization of Politics in Canada*, Mandel discusses the *Symes* case, using it as ammunition for his thesis that use of the *Charter* inevitably reinforces oppressive class hierarchies.[27] Mandel considers class privilege to be the real issue of the case. He says that for Symes (and her lawyer, Mary Eberts), "the only way to win was to align themselves with their class at the expense of their gender."[28] In fact, he suggests that gender is a red herring – that "Symes was trying to use the trump card of sex equality to claim extra credibility" but that all she was really looking for was "equal access to a scam", a class based scam against all wage-earning men and women.[29] Mandel has an interesting and provocative thesis but manages to completely erase the complexity and texture of the case in his haste to construct it as "really" about class rather than gender. In the end, his analysis of the intersection leads him to conclude that, where class privilege is present, there is no room for legal practice – law can only reinforce class hierarchy. The implication seems to be that there is a certain immorality in bringing forward a case where the client has some class privilege. Mandel concludes that interested people should band together in movements – in coalitions and in the streets – but not in the courts.[30] This is a rather disempowering conclusion for those who believe that legal practice can make a difference for the better.

Audrey Macklin also examines the intersection of class and gender in *Symes*.[31] Macklin identifies both disadvantage and privilege and is thus less harsh in her criticism than Mandel. At worst, she sees Symes as "attempting to redress a disadvantage she experiences as a woman while leaving intact the current system's preferential treatment of business people", another category to which she

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[27]M. Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Thompson Educational Publishing, 1994) at 443–454.

[28]*Ibid.* at 443-4. As a side note, it is interesting that Mandel here launches his critique against both client and lawyer.

[29]*Ibid.* at 452.

[30]*Ibid.* at 454.

[31]*Supra* note 15.

belongs.[32] Macklin sees disadvantage in *Symes*, but also sees it as the kind of disadvantage which is likely to be encountered only by women of a certain economic class. She fears that a *Charter* claim tends to represent this disadvantage as "emblematic of 'women's condition' " when it clearly is not.[33] Her primary concern is that equality claims should advance the interests of poor and rich women alike. Without dismissing the disadvantage in this case, she finds that it is not emblematic enough to be represented as reflecting the damage of all women, and so concludes that the case is more about class than about gender.[34] As for implications of the intersection for practice, she notes the tension between the individual and collective interests inherent in equality litigation and concludes that we are at "a dispiriting impasse".[35] She suggests neither opposition to nor support for such cases; nor does she suggest a way through them. She proposes only that feminists allocate their resources and support to those cases which are likely to better advance the interests of more women.[36]

Given that the resources of the feminist community are limited, one cannot take issue with this conclusion. Further, Macklin is not suggesting a search for the "right" plaintiff but rather is talking about the strategic allocation of funds to causes which further the interests of more women. While this solution is designed to meet the problem of getting the biggest payback on limited dollars, it does not help solve the problems posed for legal practitioners by the intersection. We are still left trying to weigh privilege and disadvantage to figure out which is heavier in order to decide what course of action to take.

It seems then, that when we look at the intersection of privilege and disadvantage, we are left with a limited palette of options. We can continue in the search for the "holy grail" plaintiff or take the plaintiffs before us and characterize them in ways which fail to acknowledge the complexity of their situations; either we erase the disadvantage or try to hide the privilege, reducing the texture of their experience to one of either disadvantage or privilege. We could accept Mandel's suggestion that we abandon law and return to political movements and coalitions; or, like Macklin, we could just acknowledge that we are faced with a dispiriting

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[32]*Ibid.* at 510.

[33]*Ibid.* at 516.

[34]*Ibid.* at 515. Macklin says:

> Symes is not a case where a successful sex equality claim by a relatively privileged woman will have a positive "trickle down" effect on the women who are most in need of affordable, accessible child care. I consider this to be the decisive factor tilting the balance in favour of depicting Symes's cause as one which champions class privilege as opposed to equality.

[35]*Ibid.* at 516.

[36]*Ibid.* at 517.

impasse, and focus on the strategic decisions to look, not for the "right" plaintiff, but simply for a better plaintiff.

New Questions and Speculations

Diversity as a mix of power and disadvantage poses a very real dilemma, and our current thinking about diversity does not seem to provide a way past this problem. Rather, it seems to leave us continually mired in conflict over a woman's relative advantage and disadvantage. Is she better or worse off than other women? Is she "more" or is she "less"? Let there be no mistake here. I am not suggesting that these questions are unimportant. These questions prevent us from falling into the trap of universalizing women's experience. All women's experiences (like all men's experiences) are *not* the same. Class, race, able-bodiedness, sexual orientation, even physical attractiveness are determinants that mediate and shape a woman's experience of both privilege and disadvantage.[37] What I am arguing is that our first set of questions about diversity between women must be supplemented with additional ones if we are to do more than construct hierarchies of oppression.

In the interests of stimulating discussion about the kinds of questions we might ask, I turn to a framework suggested by Patricia Hill Collins in her work, "The Tie That Binds".[38] She argues that systems of sexism and racism do not function independently but are bound together by various mechanisms. She suggests that violence is one of the mechanisms that functions in defence of both systems, operating as one of the conceptual glues that binds these oppressions together. I would note that Collins defines the term "violence" very broadly to encompass not only physical violence and legitimate state violence, but also mental violence, verbal violence, rhetorical violence, and practices of exclusion. To understand how violence functions to sustain multiple dimensions of oppression, she suggests that we need to have a more nuanced understanding of the relationship of groups to violence: the relationship is more complex than that of just victim and oppressor. Groups, like individuals, are both victimized and function in ways that victimize others. To use Adrienne Rich's terminology, they are marked by combinations of power and wound.

Hill Collins proposes that we engage in four different dimensions of inquiry designed to better illuminate the specifics of how violence is used both by and against different groups. These four dimensions focus our attention on the group's history of victimization, the group's history of access to power to limit legitimate violence done to them, the group's beneficiary traditions (the ways in which the

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[37]See generally *supra* note 2.

[38]P. Hill Collins, "The Tie That Binds: Rethinking Racism, Sexism and Violence"(Address given at the University of Michigan, Ann Arbor, Michigan, 25 October 1994) [unpublished].

group benefits from violence done not by them but on their behalf), and the differing resistance traditions of groups.

The first dimension involves an inquiry into the specific history of violence against a given group, both in quantity and kind. The goal is not to identify the violence as necessarily related to class, race, or gender but rather to get a better picture of the forms of violence that mark the experiences of particular groups. Immigrant women employed as domestic labourers have different histories of victimization than do unionized francophone women in Quebec, than do farm women in Alberta. At this level of inquiry, one could note that white, anglophone, heterosexual, professional women (like Symes) also have a particular history with violence and much of it is related to gender-based exclusion in law.

The second inquiry looks at the group's access to power to limit the violence done to them. We need to see how access to power enables some women to minimize the impact of certain forms of disadvantage. Certainly, this access may be used to deflect violence from one group to another, and there may even be instances where a group seems to have the power to choose only between deflecting or suffering the violence themselves. We need to better understand the limits of access to power and the costs of power's exercise, both for members of the group in question and for members of other groups. We also need to ask realistic questions about the amount and nature of access to power that exists at any location. The Supreme Court suggested that Symes should have accounted for the needs of all disadvantaged groups. One wonders how much power they thought she had?

The third inquiry directs us to consider the beneficiary tradition of the group, that is, the ways in which members of the group benefit from violence done to others, though they are not themselves the perpetrators of this violence. One dimension of this problem is the matter of unearned privilege.[39] The links are complex between the beneficiaries and those at whose expense they are benefiting. In some cases, a "beneficiary" can attempt to break the link by refusing to benefit (i.e. not buying certain products, boycotting certain companies), but in other circumstances, attempting to avoid the benefit will not improve things for the related group. The *Symes* case certainly raises questions at this level.

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[39]On privilege generally, see: Wellesley College Center for Research on Women, *White Privilege and Male Privilege: A Personal Account of Coming to see Correspondences Through Work in Women's Studies* (Working Paper no. 189) by P. McIntosh (Wellesley, MA: Wellesley College Center for Research on Women, 1988); P. McIntosh, "White Privilege: Unpacking the Invisible Knapsack" July/August 1989 Peace & Freedom 10. McIntosh points out that discussions of privilege are complicated because the subject matter of the privilege is not always undesirable. In many instances, the privilege (such as being safe while in the neighbourhood in which one lives or being treated respectfully) is one that should be enjoyed by everyone. The "problem" with the privilege is that only some people have access to it.

Fourth, Hill Collins directs us to look at the specific resistance traditions of the group. What strategies have been used by white men? By First Nations women? By homeless women? By gay men? How have the people in these different groups resisted the violence done to them? She reminds us to look closely because the specific mix of power and disadvantage shapes the possibilities for action at any location. There is no point in expecting people to resist in ways that assume they experience the same mix of privilege and disadvantage. We cannot hold people to standards of resistance that are inappropriate to the mix of power and disadvantage that shapes their location. We need to look more closely to identify more resistance traditions in more locations.

When we look at these four dimensions, we begin to get a more detailed map of the terrain before us. While large forces like race, class, and gender have a profound shaping experience, we also come to see that victimization is very specific, and that its dimensions are often quite unique. That is, oppression is in some sense "specialized", and resistance to it must also be "specialized". The mix of privilege and disadvantage also suggests that we must better identify the powers to which women have access in order to craft strategies which build on these powers. Collective action is critical and links must be forged between groups, but links cannot be based on a simple "shared victimization". We need to see more.

Taking diversity into account requires an exploration which helps to reveal the connections between the advantages in a location and damage in other locations. Such an exploration helps to expose the ways in which law is connected to and fundamentally depends on other areas of society. A more complex theorizing should help us to understand the ways in which our clients' interests may require action in fields other than or in addition to law. Our rethinking of diversity should lead us to see not only that legal practice is part of the struggle, but also that other struggles are essential for legal practice.

The challenge for legal practitioners is to gain a deeper understanding of diversity and its linking of power and disadvantage in order to better craft legal approaches. An understanding of diversity should lead us to more complex legal practice with actual men and women – ones who manifest the complex markings of advantage and disadvantage – rather than towards a holy grail quest for the "right" plaintiff, an abandonment of practice, or a dispiriting impasse. These are all, in some ways, strategies of denial. This discussion began with Adrienne Rich's visionary insight that power and wound may come from the same source. To return to her metaphor, if we want to benefit from the power of radium, we must acknowledge its capacity to wound, and understand it well enough that we can develop ways of using it that do not leave us with cracked and suppurating fingers, unable to hold a test-tube or a pencil. Denying our wounds will not help us here, nor will denying our power. If we take diversity seriously, we cannot ignore the mixing of privilege and disadvantage. Without a better vision of the links between power and damage, we will continue to circle around the challenge of diversity,

distracting ourselves from the heart of the matter, focusing on only power or only wound, while denying that, for some of us, our wounds may come from the same source as our power.