

PARADISE LOST, PARADOX  
REVISITED: THE IMPLICATIONS OF  
FAMILIAL IDEOLOGY FOR  
FEMINIST, LESBIAN, AND GAY  
ENGAGEMENT TO LAW<sup>®</sup>

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In this article the author addresses the theoretical and political challenges issued to feminists and feminist scholarship by recent debates and litigation concerning "family" and "family-based" benefits. The argument proceeds in four parts: first, the discussion is relocated within socialist feminist theory. The implications of the qualified pro-family stance in the critiques advanced or influenced by women of colour is considered next, followed by an examination of some proposals to extend the definition of "spouse" and "family" to lesbian and gay relationships. The author is critical of both "critiques" and illustrates with reference to Canadian welfare and immigration law that feminists, lesbians, and gays must be attentive to the complex and contradictory implications of family-based strategies.

Successful ideologies are often thought to render their beliefs natural and self-evident—to identify them with the 'common sense' of a society so that nobody could imagine how they might ever be different. ... On this view, a ruling ideology does not so much combat alternative ideas as thrust them beyond the very bounds of the thinkable.<sup>1</sup>

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<sup>1</sup> T. Eagleton, *Ideology: An Introduction* (London: Verso, 1991) at 58.

Attacking the family wage is a bit like an atheist attacking god the father. She wants to say that it does not exist, that the false idea that it does exist has evil consequences and that even if it did exist it would not be a good thing.<sup>2</sup>

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## I. INTRODUCTION

Theoretical complexities confronting Canadian feminists are not so much new as newly acknowledged. The most recent and most powerful example is the imperative to address racism and its implications in our work, and in our society more generally. Lesbians and gay men also challenge feminists to struggle against homophobia and to unravel the myriad ways heterosexual assumptions and prescriptions inform and deform social relations and social life. Additionally, feminists who problematize questions of class structure and class relations are illustrating that class is a concept and a relation that is inevitably mediated by gender and race relations. Those of us who work in law endeavour to explicate the roles played by lawyers, judges, and legal institutions, and the significance of legal principles and processes in all of this. This is not a modest task.

A serious challenge has been issued by critical scholars, political activists, and lawyers, who are grappling with two difficult and complex issues confronting feminist legal scholarship and feminism more generally: the social and legal marginalization of women of colour, and

<sup>2</sup> M. Barrett & M. McIntosh, "The 'Family Wage': Some Problems for Socialists and Feminists" in T. Lovell, ed. *British Feminist Thought: A Reader* (Oxford: Basil Blackwell, 1990) 134 at 139.

of lesbians and gay men. In particular, feminist criticism of "the family" has been criticized in turn both by scholars and activists, who are analyzing the effects of racism and by those leading the current campaign to extend spousal benefits, if not full family status, to lesbian and gay couples. Indeed, the challenge can be stated succinctly: feminists who adopt a critical stance toward "the family" have been urged to acknowledge and rethink the white, heterosexual privilege apparently implicit in such an analysis.

The heightened visibility of these issues in Canadian law and feminism is timely, as is the necessity to respond to and engage in this important discussion. I propose to do this in four parts. First, I will relocate this particular discussion within socialist feminist theory and practice. Next, I will consider the implications of the qualified pro-family stance in the critiques advanced or influenced by women of colour. I will then take up the argument advanced by others that the family is a site of "heterosexual privilege," as evidenced in part by the current prevailing legislative definitions of "spouse." In the final section, drawing upon a socialist feminist conceptualization of the "family" and familial ideology, I will illustrate, with reference to Canadian welfare and immigration law (notably the legislative definitions of "family" and "spouse"), that feminist analysis and advocacy must both identify and explain the specificity *and* interconnectedness of gender, race, and class relations.

It is not sufficient simply to discover and declare race, class, and sexual orientation; one must also illustrate and analyze the inequalities that flow therefrom. Despite the insistence by many feminists, including those who are women of colour, of the simultaneous, intersecting or interlocking nature of gender, race, and class inequalities,<sup>3</sup> the image that often emerges is one of discrete compartments in a pyramid of

<sup>3</sup> See, for example, H.V. Carby, "White woman listen! Black feminism and the boundaries of sisterhood" in Centre for Contemporary Cultural Studies, ed. *The Empire Strikes Back: Race and Racism in 70s Britain* (London: Hutchinson in association with the Centre for Contemporary Cultural Studies, University of Birmingham, 1982) 212; P. Parmar, "Gender, race and class: Asian women in resistance" in Centre for Contemporary Cultural Studies, ed., *ibid.* 236; J. Cook & S. Watt, "Racism, Women and Poverty" in C. Glendinning & J. Millar, eds., *Women and Poverty in Britain* (London: Wheatsheaf Books, 1987) 53; T. Williams, "Re-Forming 'Women's' Truth: A Critique of the Report of the Royal Commission on the Status of Women in Canada" (1990) 22 *Ottawa L. Rev.* 725; P.H. Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment: Perspectives on Gender*, vol. 2 (Boston: Unwin Hyman, 1990); and H. Bannerji, "But Who Speaks For Us? Experience and Agency in Conventional Feminist Paradigms" in H. Bannerji et al., eds., *Unsettling Relations: The University as a Site of Feminist Struggles* (Toronto: Women's Press, 1991) 67.

oppressions<sup>4</sup> in which gender becomes simply a site of privilege, and class drops out, or worse, becomes a bad attitude—"classism."<sup>5</sup> In this paper, I argue that this layering or compartmentalizing approach to the analysis of social relations obscures more than it reveals. In sum, I raise some questions in an attempt to clarify my own thinking and to contribute to continuing dialogue regarding these issues.

<sup>4</sup> M.L. Fineman, in "Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship" (1990) 42 Fla. L. Rev. 25 at 39-40, has issued a note of caution concerning what she regards as a tendency to regard race, class, and sexuality as the only relevant "markers of difference" resulting in a "hierarchy of oppression," which does not address the myriad complexities of women's lives. Again, this is not a new development nor one unique to feminist legal scholarship, as Kathryn Harriss' retrospective article on the rather dispersed state of the British Women's Liberation Movement illustrates. In "New Alliances: Socialist-Feminism in the Eighties" (1989) 31 Feminist Rev. 34 at 37, Harriss argues that in the early 1980s, "[a]n obsession seized the movement for self-labelling and labelling others, not to elucidate debate but to fix a woman somewhere along a predetermined hierarchy of oppressions in order to justify or contest a political opinion by reference to the speaker's identity" [references omitted].

<sup>5</sup> It is significant to note that "class" does *not* drop out in the black feminist work cited *supra* note 3; however, it is invisible in some of the work inspired by the work of black feminists. See, for example, M. Kline, "Race, Racism, and Feminist Legal Theory" (1989) 12 Harv. Women's L.J. 115; E. Thornhill, "Focus on Black Women!" (1985) 1 Can. J. Women & L. 153; and J. Herbert, "'Otherness' and the Black Woman" (1989) 3 Can. J. Women & L. 269. See also C.A. MacKinnon, "From Practice to Theory, or What is a White Woman Anyway?" (1991) 4 Yale J.L. & Feminism 13; MacKinnon, *ibid.* at 18, argues that "in recent critiques of feminist work ... it is worth noting that the fact that there is such a thing as race and class is assumed." Harriss, *ibid.* at 37 and at 38-39, argues that in the British women's movement the slogan "the personal is political" took on a meaning in which the political became reduced to the personal, and "the coinage of the term 'classism' served to reduce the whole issue of class exploitation to a set of attitudes or prejudices." See also T. Eagleton, "Defending the Free World" (1990) Socialist Registrar 85. Eagleton, at 88, observes that he has not encountered the concept of "classism" outside North America.

## II. FEMINISM AND "THE FAMILY"

At the outset, it must be acknowledged that not all feminists adopt a deeply critical stance toward the family.<sup>6</sup> While most acknowledge women's double day of paid and domestic labour, the nature of gender relations revealed by the forms of violence women and children endure, the dimensions of women's sexual subordination, poverty, and inequality in virtually every sphere of life, and so on, only socialist feminists offer an explanation that systematically implicates the nuclear family, and more specifically, familial ideology, in women's subordination in Western capitalist societies.<sup>7</sup> This concern with the contribution of the family to women's oppression has led radical feminists, such as the American legal theorist Catharine MacKinnon, to argue that within socialist feminism,

<sup>6</sup> See, for example, Judith Stacey's review of conservative feminists' stance toward the family in "Are Feminists Afraid to Leave Home? The Challenge of Conservative Pro-family Feminism" in J. Mitchell & A. Oakley, eds., *What is Feminism?* (Oxford: Basil Blackwell, 1986) 219; S.A.M. Gavigan, "Law, Gender and Ideology" in A. Bayefsky, ed., *Legal Theory Meets Legal Practice* (Edmonton: Academic Printing & Publishing, 1988) 283; and E. Abner, M.J. Mossman & E. Pickett, "No More Than Simple Justice: Assessing the Royal Commission Report on Women, Poverty and the Family" (1990) 22 Ottawa L. Rev. 573. Abner, Mossman & Pickett, *ibid.* at 603, conclude that the Royal Commission Report

rejected the profoundly critical stance toward the family which might have resulted in a more clear understanding of the role of the family in the oppression of women, the need for fundamental structural change for achieving equality goals, as well as the uneven potential of law for securing such aims.

<sup>7</sup> In the Canadian literature, D.E. Smith's early work stands out: see, for example, "Women's inequality and the family" in A. Moscovitch & G. Drover, eds., *Inequality: essays on the political economy of social welfare* (Toronto: University of Toronto Press, 1981) 156. Smith, *ibid.* at 156, carefully distinguished women's experience based on their class position:

Though it is a serious over-simplification to treat the family as the sole basis of women's inequality, it is the social organization of women's labour in the home and outside, and the relations between the two which *are* women's inequality, and it will be argued here that the character of inequality and of its history differs in different class settings [emphasis in original].

See also M. McIntosh, "The state and the oppression of women" in A. Kuhn & A. Wolpe, eds., *Feminism and Materialism: Women and Modes of Production* (London: Routledge & Kegan Paul, 1978) 254; M. Barrett, *Women's Oppression Today: Problems in Marxist Feminist Analysis* (London: Verso, 1980) [hereinafter *Marxist Feminist Analysis*]; M. Barrett, *Women's Oppression Today: The Marxist/Feminist Encounter*, rev. ed. (London: Verso, 1988) [hereinafter *Marxist/Feminist Encounter*]; M. Barrett & M. McIntosh, *The Anti-social Family* (London: Verso Editions, 1982); M. Luxton, H. Rosenberg & S. Arat-Koç, *Through the Kitchen Window: The Politics of Home and Family*, 2d ed. (Toronto: Garamond Press, 1990); and M. Luxton & H.J. Maroney, "Begetting Babies, Raising Children: The Politics of Parenting" in J. Roberts & J. Vorst, eds., *Socialism in Crisis? Canadian Perspectives* (Winnipeg/Halifax: Society for Socialist Studies/Fernwood Publishing, 1992) 161.

