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Constitutional Rights Discourse: Canadian and South African Feminist Engagements¹

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Women have long asserted their 'rights' to equality and freedom and sought to have those 'rights' reflected in domestic and international legal systems. Rights can take a variety of forms in law but the most secure location of rights is within a constitutional democracy. Examining how women's movements interact with the constitutional rights discourse is illuminating and a comparative approach to the issue is especially so. A comparison of the discourse of women's rights in Canada and South Africa in the early 1990s provides important insights into the nature of rights generally and women's engagement with the politics that is associated with law. I begin by noting the role of constitutional rights claims in current political contests and in political theory, in order to justify paying attention to them as a site of both practical and theoretical significance. I then describe the emergence of a race and class critique of feminism within Canada, and the consequent development of an 'intersectionality' model of equality. In South Africa, a different approach was taken, giving particular emphasis to gender in juxtaposition to race and class. This essay queries why that happened, and asserts that the South African approach can only be appreciated by a sensitive account of the political circumstances in which the women's movement found itself when the new constitutional order was being negotiated. The successful invocation of the political category of women in South Africa is fascinating given that it occurred at a moment when the political and philosophical integrity of the concept was thoroughly deconstructed in Canada. I argue that important objectives were achieved by the deployment of the race and class critique within the Canadian women's movement, and the chief one is that it allowed for the necessary democratization of the movement and its practices. I dispute, however, that the race and class critiques represent a discourse of

feminism that is *inherently* just or appropriate for any women's movement. I explain the emergence of the political category of 'women' in South Africa at precisely the same period in an effort to illustrate the need to assess these discourses as sites of power and contestation designed to ensure women were involved in creating the constitutional texts of post-Apartheid South Africa. I conclude that paying attention to the specific historical and political contexts in which constitutionalism develops provides the key both to understanding why women make the strategic choices they make to assert particular forms of women's rights claims, and assessing the political value of those decisions.

The significance of constitutional rights

Contemporary constitutions may emerge as a response to intense and often violent conflict – as is the case with South Africa, or they may be part of a more gradualist development of a nation-state (however complexly defined), as in the case of Canada. Or they may end up as part of a rule of law package of reforms that functions to condition economic aid and development. Rights are always specific political products and this is apparent in jurisdictions where there is legislative supremacy. But putting rights in a constitution changes the narrative about rights. To explain this difference I need to clarify the task that constitutional rights perform. The difference between constitutional democracy and non-constitutional democracy is as critical as it is easy to grasp. With a constitutional democracy, there is a decision by a political community to bind itself to a specific constitutional form as the 'supreme' political expression, which – absent a revolution – constrains political will-formation of a democratically elected government. All constitutional democracies create a dispute-resolution system to ensure that some institutional body exists to ensure that the constitution is observed, and this is expressed (explicitly or implicitly) as the 'supreme' law. Typically the decisions on when the 'supreme' law is violated are taken out of the legislative hands of elected political actors, as it is too easy for them to resolve conflicts in a manner that privileges short-term political goals (like re-election) over long-term interest in compliance with the constitution. So another institutional body is provided for, to play this supervisory role over the constitution. In addition, procedures for amendment ensure that successive democratic governments can change the 'supreme' law as long as they follow the rules for change (again, unless there is simply a new political order established through revolution).

In the absence of any agreement as to the source of 'supreme' law apart from the political collective that calls it 'supreme', it falls to theories of government and human agency to account for legitimacy in law, especially in constitutional law. Now there are different ways to go from this point forward, as there are many different ways of articulating the normative value of self-constituting government or government by consent whether it be grounded hypothetically (Rawls, 1971), sociologically (Habermas's speech-act theory, Habermas, 1996), or actual consent (any constitution ratified by some procedural device that delivers 'consent' of the people, as in the case of Canada's constitutional development in the early 1980s and South Africa's in the 1990s). Once legitimacy is tied to consent and democracy is normatively secured, it is not so difficult then to assert that if nothing else, constitutional law norms are legitimate because they ensure the preconditions for democratic will-formation.

The tendency then is rather to deny the political birth of rights and instead focus on developing a philosophical creation story in which fundamental rights or human rights theories are not conceptually tied to any jurisdiction. Because rights and freedoms are defended on the basis of their philosophical correctness, academics engage in ferocious debates over exactly how to ground and elaborate basic rights such as equality, autonomy and the most recent actor on the philosophical stage, dignity. Theorists argue in terms of universals because they are trying to defend a claim in which the basic right involved (freedom, equality, dignity, speech) extends to everyone. It is hard to argue against some type of universalism: How can anyone lack a right to life? A right to be free from torture? To be treated with dignity?

This form of universalism does a great deal of work, and is not especially problematic, but only because at the highest levels of abstraction it is easy to achieve consensus. Actual justice of social practices, however, depends mostly on the details. One of those 'details', in my view, includes theories of constitutional rights of women. Yet it is very hard to appreciate the way in which constitutional rights are generated in particular locations and to grasp why they take the form that they do. Within a given jurisdiction, it may not seem important to resist the siren song toward 'correct' theory; for the most part the discourse is internal in any event. But feminist theorizing on the intersection of race, class and gender within Canada does not seem limited to Canada, and the discourse of constitutionalism, promising as it does to provide guideposts for just societies, now and in the future, generally makes it difficult to identify the political aspects of legal claims within a specific

jurisdiction. Few disagree that women's movements and assertions of agency in different parts of the world merit their own attention, but I am suggesting that when you look closely, you can see that even the particular theory of rights being advanced has to be understood in relation to the discourses and social conditions that are dominant in the lives of women in particular locations. The key is assessing how women achieve space for intervening in emerging debates. They use different theories depending on what works to make room for their voices. For women, the concerns are wide-ranging and include criminal and civil as well as constitutional law. But regardless of the issue, a theory of women's rights is deployed to protect or challenge measures on the basis of their impact on women's lives. The basic claim is that women are denied access to power by a myriad of laws, policies and attitudes that serve to limit women's lives and possibilities. So, is there a single theory of women's constitutional rights that can account for all this and serve to guide future legal and normative change in a way that addresses the needs and concerns of women? I believe that even a cursory study of different women's movements can serve to warn against any sort of constant narrative about women's rights that will work wherever women are.

Women and constitutional law projects

Canada

In the past twenty odd years of the Canadian women's movement, the focus has been on equality theory and the manner in which women's differences *from men* are conceptualized on whatever axis of comparison, be it economic, social, political, psychological or physiological. Legal disputes over pregnancy and affirmative action are ready examples of the issues that gave rise to this focus, but violence against women also generates a discussion of why women are subjected to male violence to the degree that they are, and what kind of responses in law are required to take account of that phenomenon. This is familiar terrain for the women's movement in Canada.

The terrain had shifted in an earthquake-like fashion by the 1990s. This was the period in which the women's movement was identified as a *source of oppression for women*. The oppression was at two levels: philosophical and political. The philosophical critique is that feminist discourse is essentialist. Essentialism is a reductionist mode of thought that both assumes and/or asserts that women have a shared and common identity. The title to the justly famous book by Elizabeth Spelman

(1988), *Inessential Woman: Problems of Exclusion in Feminist Thought*, is suggestive of the theoretical issues that she identifies as caused by essentialist reasoning about women. The political oppression follows: the feminists theorizing about women are white, privileged, well-educated, and they know little about the lives of women who do not share those characteristics. As a result, they advance policies and pursue objectives that vacillate from being irrelevant to being harmful to those women who are not so fortunate. The category 'women' was thus destabilized by fundamental critiques of feminism as racist and classist in Canada and the United States in the 1980s.² The roots of the challenge can be traced in a variety of locations,³ but their success is manifest in institutional forums like the National Action Committee on the Status of Women (NAC), the major umbrella organization of Canadian feminist organizations, and the Women's Legal Education and Action Fund (LEAF), set up to engage in constitutional litigation on behalf of women's interests with the advent of the *Charter* in 1982. In NAC and in the first decade of LEAF's work, a set of ideas from radical feminism identified the existence, endurance and on-going force of *patriarchy* as a particular form of power relationship.⁴ Both groups reflected and produced a feminist discourse in which gender was identified as *the* determinative category of social thought and action pertaining to the status of women. This discourse was extremely effective and successfully opposed the discourses of progressive conservatism and process-oriented liberalism in the male-dominated Canadian political and legal arenas. Race and class had no real existence as discourses within the movement in that first decade. For many years the institutional women's movement simply did not recognize racism as an important issue while class also took a backseat to dominant concerns that seemed to focus on law and legislation, at the expense of economic and social issues that had a direct effect on women like the loss of jobs or access to affordable day care.

The race and class claims that emerged were identity based – and to that extent relied on concepts of authenticity, experience and subjectivity that the women's movement had long employed to assert the value of *women's voices* as contrasted with the dominant male perspective. Race and class are presented as separate and independent critiques, each bearing equivalent force against the dominance of gender as a category of thought and practice in analysing the conditions of women's lives. Identity politics works to challenge the way in which many liberal regimes steer clear of difference between groups of people and rather insist on the primacy of the individual and what makes that person

distinct from all others. Drawing attention to the group allows for recognition of patterns of maldistribution of all manner of social resources and privilege. Drawing attention to difference within groups raises different issues because it risks infinite regress, and an inability to point to patterns and thus to mobilize around disadvantage being redressed. Ironically, it can come back to an excessive focus on individual contexts. The change is in the content of the individual – instead of being essentially empty of difference (the liberal model), the individual is all difference (the postmodern model).

When poor women, Aboriginal women and women of colour felt that their concerns, their issues, were not being addressed, they looked to the forms of dominant discourse and found themselves being constituted by a discourse of gender exclusivity. It was, from their perspective, a source of the problem, yet another form of oppressive treatment, and one that they would be powerless to contest until they created and deployed a counter-narrative challenging the legitimacy of the basic claims of the women's movement. But it was a critique that was threatening at several levels – personal, political and philosophical. I have found two main responses in the Canadian women's movement to the race and class critique (Murphy, 1998). First and foremost, the criticism was conceptualized as a form of moral condemnation to which feminists responded defensively by recitation of various initiatives undertaken by the women's movement that 'demonstrated' an absence of racism or classism. I will call this the 'inclusionary response' to the race and class critique, where the goal is to ensure that everyone's story of struggle is told. A subsequent response, however, proved more powerful. Now dominant, this response interpreted the race and class critique as primarily directed at theory itself. Feminist theory was recast in terms that avoided 'essentializing' the 'nature' of the 'woman'. The object was to eliminate the practice of positing as the 'universal woman' a woman in fact representative of only a particular community of women: the white, educated middle class. The legitimacy of the feminist movement in Canada and the United States has always been derived from its purported ability to tell the 'truth' of women. This shift redirected political contests over access to discourse within the movement itself to debates over how to ensure the correct articulation of philosophy. The feminist movement's response categorizes racism and classism as problems to be solved; and proposes that the solution is a matter of finding a way to continue telling the truth about women, that is, all women. It remains, then, a question of subjectivity; a belief in the political power of telling the truth about women and now also about 'black women' and

'Aboriginal women' and 'disabled women' and 'women of colour'. While I do not disparage this analysis or belief, I do believe that it overlooks the most powerful implication of these events. I believe that race and class challenges have been 'managed' in this way partly because feminists have failed to fully conceptualize the discourses themselves as locations of power and thus subject to democratic critique. Clearly, there is acknowledgement that individual women or groups of women are power-holders; but these have achieved their power independently of the feminist movement. And this is also how their power is understood: that is, independent from, but deployed within, a feminist context. It is critical that we understand the discourses of race and class in Canada as politically strategic sites of democratic contestation *against* the forms of power wielded by the discourse of a feminism that had become hegemonic and institutionalized. While feminism is certainly not the most powerful source of the oppression facing those contesting racism and classism, it is one such source nonetheless.

In order to comprehend how gender discourses operate and are contested in different parts of the world at different times, especially in terms of constitutional law, it is insufficient to merely historicize them; they must be politicized as well. If we shift the discussion away from the 'truth' of the race and class discourses and toward the terrain of politics and political action, I believe race and class discourses can be read as claims for participatory democracy in the women's movement itself. Women whose faces, histories and bank balances were strangers to forums such as NAC and LEAF were being ignored or treated poorly by the state, even as members of many institutional sites of feminism, and the many practitioners of feminist legal theory were purporting to speak for them. While feminists may disagree with this for strategic reasons (i.e., because feminists are not the 'real' enemy), it is clear that the 'feminist discourse' wields sufficient power to make it a site of political contestation. The discourse of identity of race and class deployed against the feminist movement successfully undermined the feminist movement's foundation of authenticity, forcing it to understand that legitimacy is not a given but something that has to be achieved. I think these developments in feminist politics are extremely positive: necessary advances in feminism and democracy alike. In the absence of any factual consensus on theory and action, the only sure basis of legitimacy for any social movement will be whether it emerges from a process that is internally democratic. I interpret the race and class critique as one primarily effective in securing participation in a movement that was more than merely frequently racist and classist, but one which, through the

rhetoric of representation, claimed to speak on behalf of *all* women. But can we conclude from this history that the emerging discourse of a Canadian (or American) feminism that incorporates a simultaneous opposition to all forms of oppression is inherently progressive? Have we solved the analytical and personal problems to such an extent that we can now articulate this new feminism as *the* universal feminism of the future and thus the discourse of gender rights everywhere?

South Africa

Any review of the history of women's distinctive struggles in South Africa demonstrates the absence of feminism as a discourse, even when the particular battle is waged overwhelmingly by women. This was the political effect of the incendiary race-class debate in popular political movements and in academic discourse in South Africa during Apartheid's heyday and until its demise in the 1990s. The debate was about which of a race or class-based analysis accounts for Apartheid and the resistances it engendered, but it produced the effect of rendering it impossible to organize around gender. In this final section I explain the emergence and assess the utility of the 'Women's National Coalition' (WNC) in South Africa. This group was created by the women leaders of the liberation struggle to intervene in the male-dominated processes that were leading up to the writing of a constitution for a democratic South Africa.

The history of women's movements in South Africa during Apartheid is detailed and complex⁵ but there is no debate over the absence of a feminist consciousness in the various struggles within which women in South Africa engaged. Race mattered more than anything else and competed only with class as the major conceptual basis upon which all women of South Africa understood their realities. Perhaps in no place on earth is the utter paucity of the claim of female 'sisterhood' more readily revealed. This is not, however, to say that black women did not successfully organize with sympathetic white women, as indeed they have done at significant moments in South African history. It is to claim that when they did, it was not in the name of a sisterhood that women bonded. The three main episodes of women's historical movements involve resistance to laws that regulated the vote, the sale of beer and passes (documents used to restrict movement of people). The voting struggle was resolved in racist terms: white women eventually obtained it but they did so because granting it to them served to dilute the still-existing black male vote in one region of the country (subsequently taken away). But even the struggle for voting rights by white women was

not feminist. The 'Beer Protests' are an infamous period in South African history and this was a struggle of black women. Beer protests were well known in South Africa and they drew the attention of political and social historians. Beer making was done by women and represented an important source of autonomous income for them. The protests were against government policy that made the production and sale of beer illegal except in 'beer halls' that were newly constructed and controlled by white municipal governments.

The most clearly transformative political action undertaken by women under Apartheid involved resistance to 'pass laws'.⁶ Passes gave the Apartheid state pervasive and perpetual control over movement, and provided an ever-ready means by which the police or an employer could harass or punish. The resistance of these women is historically significant because their concerted protests marked the first mass action against Apartheid since the ANC (originally called the South African Native National Conference) was formed in 1912. Neither the ANC nor the African People's Organization (APO) allowed women to be admitted to full membership. Since women were not permitted to join the organizations as members, they formed autonomous groups and mobilized on the issue. The most important lesson, Walker argues, that women drew from the anti-pass campaign was one that is best understood within notions of Black Nationalist thinking:

While the resistance focused strongly on the particular evils seen to be inherent in applying these laws to women, the pass laws provided an area of common experience for both men and women that was exclusive to the African group. The suffragists had shown how indifferent they were to the problems and the organization of black women; the only possible political home black women could find at that time was in the already existing black political organizations. From the beginning, then, African women's political behavior was shaped in terms of their community of interest with African men. (Walker, 1990: 32)

The anti-pass campaigns of the later period were unique in that they developed within a national movement to challenge the entire Apartheid system (at this time the resistance movement was generally well organized as the Congress Alliance, but was restricted to passive and non-violent methods), but were eventually spearheaded by women's organizations.⁷ While the women's anti-pass campaigns were incredible, they were not conceptualized as protests for women; they were clearly part of the larger struggle by many organizations against Apartheid.

The dominance of the race and class-based accounts of Apartheid can hardly be overstated. Gender was not ignored as much as theorized to be either subsumed within the liberation struggle or understood simply to be unimportant as a political issue until after the liberation struggle was won. The liberation heroines could advocate gender issues ultimately because they could prove that they had spent their lives privileging the nationalist and liberationist struggles. The gradual emergence of a discourse on gender was not primarily a function of the interventions of a few prominent women; rather, women on the ground were beginning to question the wisdom of a strategy that places gender-specific demands at the bottom of the hierarchy. In this section I explore the fact that '[p]olitical organization of women in South Africa has always been (and still is) overshadowed by what are considered to be the central, most important issues – race and economics' (Murray and O'Regan, 1991: 37). A 1987 article noted the contribution of many women's organizations had gone unnoticed in contrast to other groups in the mass opposition movement. Over a 75-year period, 'the women's question has moved through distinct phases where the issue was not being considered at all, to the contemporary period where women are beginning to articulate women's demands as part of the national political struggle' (Patel, 1988: 25). Other activists at the time commented that '[g]ender oppression has been, and continues to be, an issue of secondary or little importance in the political life of South Africa' (Segar and White, 1987: 95). In terms of the ANC, where it had previously been 'almost taboo to talk about women's emancipation' (Serote, 1991: 5) there were several resolutions and 1984 was declared by the ANC in exile to be the 'Year of the South African Women'. In debates that year among ANC members, '[i]t was felt that two aspects affecting women, race and class oppression, were being dealt with while the other one of patriarchy was being overlooked' (Manzini, 1998: 100).⁸ In the Mass Democratic Movement, a serious attempt was made in 1987 to develop a national women's group but the state of emergency imposed extreme and disabling restrictions on political organizations.

In 1990 the Malibongwe Conference was held by the ANC in Amsterdam on gender issues. This conference had been preceded by an in-house seminar held by and for the ANC in Lusaka (Zambia), which resulted in ANC women drawing up a list of women's demands. The Malibongwe meeting is described as a 'watershed' in the history of women in South Africa and in the ANC in particular, because the women's concerns were 'legitimated as political issues to be addressed within the process of national liberation' (*Memo* dated 20/01/90,

summarizing the Conference and the resolutions that were passed. This and conference papers on file with the author). The purpose was to integrate women's emancipation into the national liberation struggle but gender oppression and exploitation were explained by an analysis of Apartheid and capitalism alone. In May of 1990 the ANC leadership issued a document entitled 'Statement on the Emancipation of Women in South Africa' (document on file with the author). In this the ANC states that in the commitment to eradicate racism, oppression and exploitation in South Africa, it 'cannot fail to address also the question of the emancipation of women'. After articulating its understanding of the oppression that women endure in South Africa and committing to rid itself of sexist patterns and practices, the ANC called on its Women's League to initiate a campaign for a 'Charter of Women's Rights' which will be designed to 'elaborate and reinforce our new Constitution' (ANC, May 1990: 4). The mobilizing effects of such a campaign were understood to be themselves part of the way to redress the lack of full participation of women in the liberation movement's operations.

The idea of a Charter was work-shopped within the ANCWL when it was officially relaunched in South Africa on 9 August, 1990. Some women began to assert that the role of women's organization simply had to change from its primary absorption with the liberation movement if gender was to be successfully on the negotiating table in the processes governing a transition to democracy. Equally important was the necessity of challenging the use of conceptual frameworks that on the one level seemed progressive, because they acknowledged the co-determination of factors such as race, class and gender, but in the context of South Africa, served once again to ignore the gender aspect of women's worlds. The value of developing a more gender-oriented approach was touted as politically useful because it would widen the support base for liberation movements. Shireen Hassim argued, for example, that:

[w]ithin women's organizations, analysis of patriarchy has not extended beyond the notion of triple oppression with its concomitant focus on the needs of black working class women ... Broadening the scope of politics to include these issues [control over women's bodies, and women's labor, sexuality and the social legitimation of violence against women] would mean that the ANCWL can begin to appeal to a much wider constituency, not merely those that suffer 'triple oppression'. (1990: 5)

The ANCWL committed itself to organizing a 'Charter for Women' and did so on the basis that the Charter would replace any existing documents that purported to identify women's demands and that 'the process of developing the Women's Charter is as important as the product itself' (Hassim, 1990: 5). In other words, there was to be no advance conception as to what women's needs, concerns and aspirations were; the objective was to determine these in a way that empowered women to define their own conception of what 'rights' they sought to obtain. Moreover, the movement argued a participatory research approach was required to reach out to women in the more remote parts of the country. These women lived in extremely harsh conditions and were usually unable to be involved in political activities. After regional and local community meetings, designed to determine the level of support for such a campaign, on 25 April 1992 the WNC was formally established by a wide variety of women's organizations. Frene Ginwala, the ANC activist who went on to become the Convener of the WNC, addressed this diversity as follows:

Our common past, over these last four decades especially, is of separation; divided by race, ethnicity, language, by poverty and privilege; divisions entrenched in law and sanctified by practice. These we have shared as South Africans, men, women and children alike. But we have also been divided as women, isolating ourselves in separate struggles and because the over-arching divisions in our society have placed women in unequal power relations with each other. ... ALL this is part of our history, but though we cannot forget, we do not have to be overcome by the past. We are all the products of history, but each of us can choose whether or not to become its victims. Our past can be the reason for retaining our divisions, or can be something we move beyond as we go forward together. That is our choice. Our presence here today indicates, that despite the many things past and present that divide us, women are anxious to work together for a common future. (*Non-Racial Democracy – Soon Non-Sexism – How?* Speech given at the Women's National Coalition – National Workshop, Johannesburg, 25–26 April 1992. On file with the author)

This discourse of unity is not valid because 'unity' is the best philosophical position, quite the contrary; it is valid because it reflects a strategic understanding that the dominant justice narratives of race and class oppression served to silence women. The challenge of the WNC was to break that silence in a politically effective manner. In the

Constitution of the WNC, s.2 states that its role is 'to coordinate a national campaign for the development and education of women which will (1) acquire and disseminate information about women's needs and aspirations and (2) unify women in formulating and adopting a Charter to entrench equality for women in the new Constitution' (WNC, Constitution of the Women's National Coalition, 1992; on file with the author). The campaign itself was pursued from November 1992 until February 1994 and identified several major concerns: inclusivity in decision-making; promotion of women's awareness and rights, gender equality, women's assertiveness, the Charter as an enforceable document and women's unity. From these broader concerns, five specific and powerful issues were chosen both to mobilize women and to further explore the specificities of women's needs and demands. These were women and (1) legal status; (2) land resources; (3) violence; (4) health; and (5) work. As a result of these extraordinarily wide-ranging initiatives, both a Charter and political movement were solidified. As stated by the WNC, the Coalition's Charter Campaign stimulated public awareness about and promoted considerable debate on women's issues. It gave women the opportunity to act together to begin to change their lives. The Campaign unified women, both within and outside established organizational structures, on issues that affected their lives. It constituted a unified women's movement where none had existed before. The Charter that was the product of this unity is more than an important political document. It is a symbol that speaks about women's empowerment and their desire to take an active role in transforming their lives (WNC, 1994: 29, on file with the author).

A draft Women's Charter was adopted as 'The Women's Charter for Effective Equality' at the National Convention convened by the WNC on 25–27 February 1994. It did not just represent the demands – for reforms in all sectors from law to the economy – but was a continuation of the participatory process the WNC encouraged and validated. The Charter can be summarized as follows. Apart from demanding particular changes in laws and policies, and the satisfaction of basic needs such as water and food through a range of mechanisms, the Charter places overwhelming emphasis on the need for women simply to be represented in every area of decision-making in their communities and in the nation-state as a whole.

The WNC then can be seen as a success. It was a fully representative body that managed to reach out to a wide cross-section of South African society. It sustained its commitment to democratic, grass roots

determination of women's needs and rights, and it functioned as a political mechanism for women to ensure that some of those issues were dealt with in accordance with women's articulated demands. As a result, women intervened in the constitutional debates effectively and secured many gains, in part by invoking the political and normative status of the WNC. Part of the reason why the WNC was effective was that while it stressed and proceeded on the assumption of 'unity', there were no pretences that there was a 'sisterhood' among the women of South Africa. Apartheid makes that an untenable myth. Thus the women involved did not need to be educated about racial and class diversity. They were able to operate from the valid belief that all women were well aware of the differences in the lives of rural women in the Western Cape and the affluent urban whites in Johannesburg. Another factor of import was women's long history of varied political activity. This gave them a basis on which to survive internecine conflicts (including race and class ones) and to accommodate the power politics that did emerge as the WNC became more influential and thus offered a base for individuals to improve their own political status. There were many organizations involved, and the WNC did not attempt to control the work of these groups but rather offered support, direction and a common aim. Unity was not an oppressive concept but a facilitative one. The Coalition was fragile, but not politically naive. Finally, instead of trying to fit women's needs into a standard legal claim, the appeal of the participatory method was viewed as more important than getting a perfect legal document attached to the Constitution. In other words, participation was legitimated as an independent value that overshadowed the significance of achieving consensus on even controversial issues. Process was not just important to the end result, it rather became recognized as a normative claim in and of itself. Indeed, the right to participate in decision-making affecting their lives was translated into one of the most significant rights claimed by women.

Apartheid destroyed the lives of people, and it did so overwhelmingly on the basis of their race and their class. Apartheid deployed narratives of difference based on race, and it was opposed primarily by a narrative of justice that argued against the recourse to racial categories at all. Apartheid constantly denied its economic dimension, while the opposition movements constantly stressed the exploitation of the poor and working classes. Gender and 'women' were chosen concepts; advocates of Western feminism did not force them on the women's movement. Moreover, the use of 'women' as both a mobilizing and

conceptual framework was completely intelligible from the perspective of politics in South Africa. It was never the case that the women involved in politics in South Africa did not appreciate the intersection of race, class and sex. But the dominance of race and class narratives exhausted all the space for justice and the invocation of the concept of 'triple-oppression' was of little value unless gender first achieved some political content. The emergence of the WNC reflects both a decision to develop a concept of gender-specificity, and the political unity of organizing around the notion of 'women'. But most significantly for me, it reflects the need to locate these developments squarely within their precise historical context before any judgement about their philosophical value is made. Organizing around gender, with a unifying call to women, was not merely strategically correct for women in South Africa; it was the only course of action that would ensure representivity in the women's movement.

The emergence of the race and class critiques of the women's movement in Canada successfully contested exclusionary practices and accounts of feminism. In Canada it was, and remains, a progressive intervention that aims to secure democratization in the political movements of women and in the theories of feminism they employ in responding to the conditions of their lives. Achieving it required a deconstruction of the concept of 'women'. But in South Africa a narrative in which race, class and gender were equivalent would have failed to disrupt the power relationships that were impairing the ability of women in South Africa to become actors in a participatory democracy. The decision to create a distinct women's movement in the early 1990s, to press for constitutional rights and other forms of response to deprivation of needs, cannot be judged by reference to whether it would make sense to do that in Canada or the United States or anywhere else at the same period of time. The continuing insistence in Canada on the theoretical and strategic coherence of women's rights in the early 1990s had very different effects (overwhelmingly negative) than the same insistence in South Africa at the same period of time (overwhelmingly positive). You cannot understand women's rights discourses without situating them historically, and certainly it would be unwise to judge them without assessing their political purpose and effect. Theories of rights alone cannot provide us with the information needed to assess whether particular claims operate in manner that increases access by people to challenge forms of power that undermine democratic will-formation by a political community. It is necessary to consider what works to secure participation in the creation of constitutional discourse itself.

Notes

1. The author expresses appreciation for the assistance of her student, Elaine Craig, in preparing this chapter for publication.
2. There were, and are, other criticisms – heterosexism and ableism figured as well. In this paper I refer only to race and class, as these were concepts of particular lucidity in South Africa at the same time.
3. I cannot fully document these assertions in this paper. I do fully document the history of the discourse of race and class in the Canadian women's movement over a time period of 1970–90 as reflected in a variety of locations: institutional feminism (the National Action Committee and the Prince Edward Island Advisory Council on the Status of Women); grassroots feminism (20 years of the publication of *Kinesis* in British Columbia); academic feminist writing throughout Canada; and finally legal feminism in the 1990s in which the constitutional issues are more directly addressed, in my doctoral thesis. See: Murphy, 1998.
4. I draw on J. M. Vickers *et al.* (1993) and my own review of available NAC resolutions and documents over the period of 1970–90. For LEAF, I draw on my own reading of the facts submitted in Supreme Court of Canada litigation over the years on a range of cases. See also: LEAF, 1996; Razack, 1991.
5. Excellent treatments on the history of women's political activity in South Africa include: Walker, 1982, 1990; Beall *et al.*, 1989; Bozolli, 1991; Murray and O'Regan, 1991; Cock, 1993; Hassim, 1993.
6. The historians Julia Wells (1993) and Cheryl Walker (1990) both examine the pass law issue and provide excellent summaries of the history on which I draw in this section. They come to different accounts of the implications for feminism, however. In the discussion that follows I draw mostly on Walker's account of the anti-pass activity.
7. The ANC Women's League was formed, a Women's Charter was formulated, and the Federation of South African Women (FSAW) was launched in the 1950s. FSAW was the more significant actor in this period. It was explicitly non-racial in its organization. It was formed for the purpose of uniting women in 'common action for the removal of all political, legal, economic and social disabilities'. It generated two key documents: a 'Women's Charter' (1955) and a list of 'What Women Demand' (1956). The documents are overwhelmingly directed at a critique of the Apartheid regime, especially in terms of its economic and social effects. (On file with the author.)
8. Within the various working class and union activities, the gender issue was also being raised. Space does not permit me to expand on these developments here. I do so in Murphy (1998) and briefly in a forthcoming essay in Newman (2003). In addition, a more in-depth analysis is provided in Murphy (2003).

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