

INTRODUCTION

One of the primary concerns within the sociology of law has been to understand the “law-society relation.” Underlying this concern is the belief that law has a distinctly *social* basis; it both shapes — and is shaped by — the society in which it operates. The main objective of this book is to explore this law-society relation or, as the title of the book implies, to *locate* law. More specifically, we propose that to understand the law-society relation, we need to place law within the nexus of race, class, and gender relations in society.

As individuals, our interactions and experiences are very much informed by our social positioning in society, and that social location is contoured and conditioned by three key elements: our race, our class, and our gender. But these three elements do more than specify “difference” between individuals; they are used to divide, separate, and categorize. In short, race, class, and gender constitute the primary bases on which inequality is produced and maintained — though they are not the only bases: sexual orientation and (dis)ability are at least two significant others.

Historically, inequalities of race, class, and gender have been an imbedded feature of Canadian society. It is a sad fact that our history is tainted by the systemic processes of colonization and forced dependency of First Nations people. This history includes not only the appropriation of their land, but also the transfer of their populations to geographical areas more often than not devoid of the natural resources needed to sustain traditional economic practices. It includes the forced removal of their children to residential schools, where physical and sexual abuse became an all-too-common practice in the drive to “assimilate” them to the ways of the supposedly “civilized” white society. This historical legacy is one that mainstream Canadian society is only beginning to fully comprehend in terms of its long-lasting effects on the lives of Aboriginal peoples and on their communities. As Geoffrey York (1990: xiii) notes, “Most Canadians are better acquainted with the history of native people in the eighteenth and nineteenth centuries than they are with the unsavoury realities of recent years.” Consider the following

- During the 1960s, in what became known as the “Sixties Scoop,” child welfare agencies removed Aboriginal children from their families, communities, and cultures, placing them in non-Aboriginal families. These interventions carried on through the 1970s and 1980s. Between 1971 and 1981 alone, the agencies shipped over 3,400 Aboriginal children off to adoptive parents in other communities and sometimes in other countries (Hamilton and Sinclair 1991: 520).
- Aboriginal people constitute one of the poorest groups in Canadian society. In 1995, 46 percent of all Aboriginal people had incomes below \$10,000, compared with 27 percent of the non-Aboriginal population (Statistics Canada 2001: 6). According to 1996 census data, almost two-thirds — 64.7 percent — of Aboriginal households in Winnipeg had incomes below the poverty line (Lezubski, Silver, and Black 2000: 39).
- In 2001 seven in ten Canadians aged 15 and older had more than high-school graduation. In contrast, almost one-half of the Aboriginal population in the same age group had less than high-school graduation. The Aboriginal unemployment rate in 2001 was 19.1 percent, compared to a total unemployment rate of 7.4 percent (Mendelson 2004: 18, 27).
- Houses occupied by Aboriginal people are twice as likely to be in need of major repairs as are those of other Canadians. Some 13,400 homes on reserves need repairs, and 6,000 need outright replacement. Aboriginal houses are 90 times more likely than are those of other Canadians to be without piped water. More than 10,000 reserve homes have no indoor plumbing. About one reserve community in four has a substandard water or sewage system (Canada 1996).
- Some 69 percent of Aboriginal peoples live off-reserve, and 50 percent of all Aboriginal peoples now live in urban areas. One in every four off-reserve Aboriginal children lives in poor housing conditions, compared to 13 percent of all children in Canada (Campaign 2000, 2005).
- Life-expectancy rates for First Nations people are 74 years for women and 67 years for men, compared to the Canadian average of 81 years for women and 74 years for men. Aboriginal infant mortality rates are more than 10.9 births per thousand, compared to the national average of 6.3 (*Globe and Mail* March 11, 1996: A6).
- The suicide rate for First Nations people is three times the national rate; for young people it is five to six times higher (Canada 1996).

The experiences of other racialized groups who historically made Canada their home have been similarly marked by inequities and dispossession. At various points the treatment of the Chinese, Japanese, East Indians, Jews, and other groups has been characterized by both overt and subtle forms of discrimination. Signs of discrimination continue to the present day.

- According to 2001 census data, the incidence of poverty for racialized groups (not including Aboriginal peoples) far exceeds that for the Canadian population at large. More than half (52.8 percent) of single persons of colour and one-quarter (26 percent) of families of colour are living in poverty, compared to 36.6 percent of single persons and 10.6 percent of families who are not visible minorities (Cheung 2005: 23).
- In 2000 recent immigrants living in metropolitan areas in Canada had a low-income rate of 35 percent, nearly twice the average rate for metropolitan areas overall. In Toronto, the low-income rate was 17.7 percent. Among recent immigrants, however, the low-income rate was 37.4 percent; the low-income rate among all other individuals was 15.4 percent (Statistics Canada 2004).
- At least one in four recent immigrants with a university degree and employed between 1991 and 2001 had a job requiring no more than a high-school education — which was twice the proportion of only 12 percent among native-born Canadians. Those most likely to have low-education jobs in 2001 came from South or Southeast Asia; about 37 percent of men from South Asia and 48 percent of men from Southeast Asia held at least a university degree in 2001 but worked in an occupation requiring at most a high-school education. In 2000 recent immigrants employed full-time in low-education jobs had weekly earnings that were at least 20 percent lower than their Canadian-born counterparts. The gap reached 30 percent among those aged 35 to 64 (Statistics Canada 2004).
- Workers of colour, of whom about one in six was born and educated in Canada, make up 12.6 percent of the Canadian workforce. Lower incomes, higher unemployment, and precarious work status are prevalent for these workers, and not just for recent immigrants. Native-born workers of colour have the most difficulty in securing steady employment at decent wages, even though they are more highly educated than are immigrant workers of colour and native-born whites. In 2000 the average annual earnings for Canadian-born workers of

colour (\$21,983) lagged by more than \$3,000 behind the earnings for immigrant workers of colour and \$8,000 for other persons born in Canada, and this gap had widened over the previous five years. The unemployment rate in 2000 for Canadian-born workers of colour was 10.7 percent, compared with 9.1 percent for immigrant workers of colour and 7.1 percent for other Canadians. Canadian-born workers of colour are overrepresented in part-time and temporary jobs, even though as a group they have the highest proportion of people in the 25 to 44 age group with a bachelor's degree or higher (37.5 percent compared with 31.5 percent of immigrant visible minorities and 19.1 percent of native-born whites) (Cheung 2005).

- Racialized groups in Canada have experienced discrimination not just in the labour market and workplace but also in education, housing, and social services (Henry and Tator 2006; Bolaria and Li 1988).

As a group, women have also encountered inequalities in the labour market and elsewhere. Women's wages, for instance, have historically been only a portion of the wages earned by male workers and, despite advances in recent years, continue to lag behind men's. Historically women were denied basic rights of citizenship — like the right to vote, to own property once married, and to hold public office. While most Canadian women won the right to vote in federal elections in 1918, Aboriginal women (and their male counterparts) could not vote until 1960 (and provincially in Quebec until 1969). The desperate economic situation of many Canadian women has resulted in what is referred to as the “feminization of poverty.”

- Women form the majority of the poor in Canada. One in seven (2.4 million) Canadian women lives in poverty. Over one-half (51.6 percent) of lone-parent families headed by women are poor (CRIAW 2005).
- Almost half (41.5 percent) of single, widowed, or divorced (“unattached”) women over 65 are poor. The poverty rate for all senior women is 19.3 percent, while the rate for senior men is 9.5 percent (CRIAW 2005).
- In Canada it is not enough to have a job to keep you out of poverty. Most poor people do work full-time or part-time. Women, particularly immigrant and visible-minority women, make up 70 percent of minimum-wage workers. One person living alone in a major urban centre needs to earn at least \$10 an hour at full-time, full-year work to avoid being poor. Some two million adult Canadian workers earn

less than \$10 an hour, and two-thirds of those workers are women (National Anti-Poverty Organization).

- Women make about 71 percent of what men earn for full-year, full-time work. Education does not eliminate the wage gap: women with university degrees employed full-year, full-time earn 74 percent of what men with university degrees earn. Women earn less than men even if they work in the same sectors or in the same jobs. There are no occupations in which women's average earnings exceed men's, not even female-dominated areas such as clerical work and teaching (CRIAW 2005).
- Women hold just 14 percent (752 of 5,361) of corporate officer positions in Canada. More than half of Canada's top 500 companies have no women on their boards (McFarland 2003; Kingston 2005: 59).

That class inequalities exist in Canada has long been recognized as “fact.” What is perhaps less understood is the extent to which these inequities have been increasing in the past two decades in tandem with capitalist globalization, corporate restructuring and downsizing, and the dismantling of the Canadian welfare state and its social programs.

- According to Campaign 2000's *2005 Report Card on Child Poverty in Canada*, 1,201,000 Canadian children — a number equivalent to the population of Manitoba — live in poverty. Over the past 30 years the poverty rate in Canada has been one in six children. Over 30 percent of these children live in families with at least one parent working full-time, full-year (Campaign 2000).
- The first Canadian food bank opened in Edmonton, Alberta in 1982. By 2005 the country had 650 food banks. According to *Hunger Count 2005*, an annual survey of food banks and emergency food programs carried out by the Canadian Association of Food Banks, during one month in 2005, 823,856 Canadians used a food bank — more than the combined populations of Newfoundland/Labrador, Prince Edward Island, the Northwest Territories, Yukon, and Nunavut. Some 40 percent of food bank clients are children (CCPA 2006: 17).
- Canadians had total personal wealth of more than \$2.4 trillion in 1999, or an average of \$199,664 for each family unit. But the actual distribution of wealth was anything but equitable. The wealthiest 10 percent of family units in Canada held 53 percent of the personal wealth, and the top 50 percent controlled 94.4 percent of the wealth.

That left only 5.6 percent to be shared among the bottom 50 percent (Kerstetter 2002: 1).

- Of the 100 largest economies in the world, 51 are now corporations. Wal-Mart, the number 12 corporation, is *bigger* than 161 countries, including Israel, Greece, and Poland (*Canadian Forum* 1997: 48).
- The wealthiest Canadian is publisher Kenneth R. Thomson. In 2004 his personal wealth was estimated at \$22.03 billion. Following Thomson are Galen Weston (Loblaws) at \$8.67 billion, Jeff Skoll (eBay) at \$6.6 billion, James and John Irving (oil) at \$4.99 billion, James Pattison (industrialist) at \$4.17 billion, and Paul Desmarais Sr. (Power Co.) at \$3.94 billion (CCPA 2005: 35).

The recognition of these inequalities along race, class, and gender raises important questions, not the least of which concerns the role of law. What role has law historically played in generating today's inequalities? Is law part of the problem or part of the solution in alleviating inequities based on race, class, and gender? Can we use law as a mechanism or strategy to achieve substantive social change? The purpose of this book is to address these kinds of questions.

To engage in such an inquiry, we need some appreciation of the different ways of understanding or making sense of law and its location within society, and this is the task of the first chapter, "Theoretical Excursions." Law's image of itself — or what Australian writer Ngaire Naffine (1990) refers to as the "Official Version of Law" — will be used as a backdrop to explore the different theoretical approaches that have emerged in the sociology of law to understand the law-society relation. As we will see, some of the approaches take the Official Version of Law as a given, some are more sceptical of its claims, and some reject it altogether. Exploring the reasons behind a particular theoretical stance regarding law tells us a great deal about how "society" — including its race, class, and gender dimensions — is understood within a theoretical perspective. In the process we can arrive at a better sense of the kinds of issues and questions that emerge in our efforts to locate law within its broader historical and social context.

The rest of the book is divided into three parts: "Racism and the Law," "Class Interests and the Law," and "Gender, Sexuality, and the Law." Carving out the race/class/gender dimensions of the law-society relation in this way, though, is very much an artificial construction. Just as individuals do not experience their race, class position, or gender in isolation from the other defining elements in their lives, so too it is difficult

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to separate these components for analytical purposes. As such, while the chapters by Patricia Monture, Lisa Marie Jakubowski, and Kirsten Kramar and David Sealy in the book's first part concentrate on how racism has been manifested in legal policies and practices, the authors also display a sensitivity as to how class and gender figure into the matters discussed. In the same way, in the "Class Interests and the Law" section, Eric Tucker, Laureen Snider, and Janet E. Mosher focus on the connections between law and the class relations of society, while drawing out the implications of the issues they consider for race and gender. In the final section, on "Gender, Sexuality, and the Law," Dorothy E. Chunn, Karen Busby, and Kirsten Kramar explore issues relating primarily to the gendered and sexualized nature of social relations, while also attending to their class and race dynamics.

My hope is that, taken together, these chapters will not only assist our efforts to locate law, but also generate new insights and understandings of the (inter)connections between the race, class, and gender dynamics of our society.