
Policy Forum: Comments on *Taxing Choices: The Intersection of Class, Gender, Parenthood, and the Law*, by Rebecca Johnson

Editor's note: *Symes v. Canada*¹ is one of the best-known Canadian tax cases. In 1986, the Canada Customs and Revenue Agency (then Revenue Canada) denied Elizabeth Symes, a self-employed lawyer and the mother of two children, a business tax deduction that she had claimed for the expenses incurred to have someone look after her children while she ran her law practice. She objected to the reassessment. She won her case in the Tax Court, but lost in the Federal Court of Appeal and finally lost in the Supreme Court of Canada in 1993. Throughout that period the case was constantly in the news; it was the source of endless debates among women's organizations and the subject of probably more academic and public policy commentary than any other tax case. In *Taxing Choices: The Intersection of Class, Gender, Parenthood, and the Law* (Vancouver: UBC Press, 2002), Rebecca Johnson examines this tax story in depth.

Most aspects of life that matter are relentlessly political, and tax is no exception. Therefore, viewing a tax policy issue from different perspectives almost always reveals important angles that might otherwise be overlooked and opens up vistas that our common sense might otherwise blind us to. Perspectives influence the way we see the facts, the interactions between individuals, and the functions of the law. What makes the *Symes* case so fascinating is that several perspectives intersected in the case. Symes herself represented the perspective of self-employed professional women whose working habits made the use of organized day care impossible. But others interested in the case saw it from very different viewpoints. These groups included self-employed women with children, who earned low wages and for whom a tax deduction would be therefore of little benefit; employed women with children, who faced the same child-care problems as Symes but who could not deduct any of their employment expenses; stay-at-home mothers, who often felt that their caregiving work was undervalued by society; professional men, who might have felt threatened by the increased competition for high-paying jobs from women less encumbered by child-care responsibilities; social conservatives concerned about the decision's symbolic and other effects on the preservation of traditional gender relations within society and within the family; and social activists concerned about the further privatization of child care through the use of demand-side subsidies and the

1 [1993] 4 SCR 695.

possibility that a powerful constituency for universal and accessible day care would be lost if high-income, self-employed women were given an unlimited tax deduction for child-care expenses.

In *Taxing Choices*, Rebecca Johnson presents a case study exploring how all of these perspectives clashed in the development of and eventually the final decision in *Symes*. In unravelling the complexities of the case, the positions taken, and the role played by the various interested parties in the case, Johnson draws upon theories and concepts that are often used in feminist analysis to further our understanding of issues relating to gender and class, such as intersectional theory and theories relating to the public/private divide.

The title of the book, *Taxing Choices*, is an allusion to the fact that the concept of choice was used throughout the judicial process; for example, those who argued that child-care expenses should not be deductible as business expenses repeatedly noted that Symes had chosen to have children, work outside the home, and hire someone to look after her children. In neo-liberal discourse, increasing personal choices, and requiring individuals to bear the consequences of their choices, is frequently asserted to be a precondition of individual empowerment and for furthering responsibility and personal autonomy. One of the book's major themes is an examination of the rhetorical use of the concept of choice in the *Symes* case.

In paying tribute to the contribution that Johnson's book makes to the tax policy literature and the importance of examining the full social and economic context in which tax law operates, Claire Young shows how Johnson's approach can illuminate other areas of tax law. She uses the tax subsidies for retirement savings as an illustration. She shows that women have much less access to these subsidies than men and that the benefits that those who are able to use them derive from them are much less than the benefits men obtain. Young demonstrates how the concepts that Johnson used as the foundations for her analysis—such as the public/private divide, the intersection of class and gender, and the discourse of choice—can be used to further our understanding of the tax treatment of retirement saving. Young concludes that “[t]here is much more work to be done in terms of applying different theoretical frameworks drawn from a variety of disciplines to tax policy issues, and this book has given us a great start.”

In a thorough and laudatory review of book, Nancy Staudt summarizes and comments on many facets of it; but what interests her in particular is why so many feminists, judges, scholars, and members of the public not only felt that Symes's child-care expenses should not be deductible but also commented on her privileged position in society as a lawyer and suggested that her suit was motivated only by greed and self-interest. Staudt notes that although Johnson examined the consequences of this discourse, she did not seek to explain why those opposed to Symes's case adopted this rhetoric.

Staudt argues that much of the rhetoric used by the parties interested in the *Symes* case, as described in the book, can be explained as the result of a strategic choice about how best to advance their own self-interested goals and aims. Unlike Johnson, Staudt does not think that it is useful to attempt to understand the debate

over the case as one between friends who happen to have different views about what result will ultimately be in the public interest. Instead, she suggests that a greater understanding of the context of the case can be gained by assuming that the various participants in the debate, including judges, were using language strategically in the pursuit of their own personal preferences; that is to say, by assuming that not only Symes but all of the participants were acting in their own self-interest, even though they might have honestly and strongly believed that what was in their self-interest coincided with the public good. This framework, she contends, better describes the fact that the men on the Supreme Court of Canada held against Symes while the two female justices dissented in her favour, and the fact that although professional women generally supported Symes, stay-at-home mothers, wage-earning women, and professional men generally opposed her: "Symes was unlikely to be the only self-interested actor in the drama that unfolded. The courts, the survey respondents, and the commentators—virtually every one of them—supported or objected to Symes's legal reform for reasons that could have reflected, and indeed most likely did reflect, their own personal goals and preferences." And unlike Johnson, who thinks that those opposed to Symes's position used unfortunate language in characterizing her as selfish, narcissistic, and a con artist, Staudt argues that this language was likely deliberately and strategically chosen to disparage and ridicule her, and thus punish her, for attempting to displace a social norm they supported.

Lorna Turnbull notes three important contributions that Rebecca Johnson makes in *Taxing Choices*: she provides a "thoroughgoing analysis of a case that represents a watershed in Canadian feminist litigation"; she "uses a methodology that opens the windows of legal analysis to allow consideration of the whole context of a case"; and "she inspires hope and purpose in social activists who may despair about the utility of law as a tool for social change." Turnbull also elaborates upon a number of the theoretical concepts that form the foundation of Johnson's analysis. She notes that the case is a further illustration of the fluid and politically determined divide between the private and public spheres that is often drawn in a way that ignores the social role of caregiving and the power dynamics within the family. She elaborates upon the many uses of the rhetoric of choice in the history of the case and argues that "[t]he rhetoric of choice, responsibility, and blame, and the definition of the boundaries between business and personal, between public and private, all work in the service of regulating women and mothers." She asserts that "Johnson's work is important because she makes explicit the various discourses operating in the *Symes* case that contribute to the inequality that women with children continue to experience." Finally, in commenting on the usefulness of the tax expenditure concept in assisting in understanding the case, she states, "tax expenditure analysis should not apply to the reasonable costs associated with the raising of future generations."

Pat Armstrong, a sociologist who has written extensively on women and work in Canada, was called as an expert at the trial. She gave wide-ranging evidence demonstrating that the burden of child care falls almost exclusively on women, even when they work outside the home, and that child-care services are particularly a problem

for self-employed women. Her evidence was heavily relied upon by Justice Cullen at the trial level in deciding in favour of Symes and by the dissenters in the Supreme Court of Canada. In her comment, Armstrong illuminates a number of aspects of the case; in particular, although she remains somewhat ambivalent about the case, she takes issue with those who characterized it as a battle fought on behalf of only privileged women. She points out that an increasing number of low-income self-employed women have difficulty obtaining day care because of the variable hours they work. She also argues that if child-care expenses were deductible, the deduction would likely benefit paid child-care workers in the home by making it easier for them to demand benefits and minimum wages. As for the allegations that Symes was acting only in her own self-interest, Armstrong notes that Symes's personal financial gain would have been small even if she had won, but that the many costs of her bringing the action were significant. In response to the concern that if Symes had won, pressure on the government to provide more access to child care might have been lessened, Armstrong simply notes that since so little progress has been made for equal access to public day care it does not appear that the alternative strategies have worked in any event.

At one time, scholars laid claim to objectivity and discovering the truth. No one takes the doctrine of formalism that embodied these notions seriously any longer. Instead, all scholars now admit that the state of their knowledge is incomplete and that the problems they study, the arguments they use, and the conclusions they draw are all determined by myriad contextual and contingent personal and social factors. Therefore, many researchers engage in a continual process of self-awareness and a scrupulous analysis of their own frameworks of understanding. In this vein, Rebecca Johnson concludes these comments with a personal note about her motivations in writing the book and offers a wide-ranging review of the legal discourse of choice.