

Contesting Patriarchy: Granddaughters Fight Back

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Abstract

This paper argues that colonial policies discriminating against Native women, as well as defining and circumscribing Native rights and identity, continue to cast a long shadow over the cultural and socio-economic landscape on First Nations Reserves in Canada. The study historicizes the emergence of these discriminatory practices on the Six Nations Reserve, entailing the transformation of Native social organization from a matriarchy to a reification of patriarchy, subordinating Six Nations women and denying them their human rights, if they chose to marry non-Natives. Banished from their homes and families, constrained from participating in Six Nations culture, women continue to suffer under this yoke of oppression that has been naturalized through the hegemony of internal colonialism and meted out according to Canadian statutory law, codified in the Indian Act. The narrative describes several signal cases that posed legal challenges to discrimination, the intervention of the United Nations to protect Native women's cultural autonomy, as well as the internal Canadian political struggle over reform, women's rights and the movement for Native self-government. As Native women continue to struggle against the patriarchal mentality and colonization of consciousness evidenced by their leaders, First Nations communities are attempting to determine their own codes of citizenship, define their own cultural identities and design new indigenous institutions to meet the challenges of the twenty-first century, to ensure the continuation of our Native cultures.

Introduction

St. Edmund's Hall houses a portrait of a Mohawk Indian, known as Oronhyatekha, (Burning Sky), who was invited to come to study here in Oxford by the Prince of Wales in the late nineteenth-century. He traveled from his home on the Six Nations Reserve in Canada and became a physician. Oronhyatekha was called a Red Indian and he was depicted in full Iroquois attire, far different than his dress in nineteenth-century Canadian society. His name, in English, was Peter Martin and he was my great-grandfather's brother.

The reserve in Oronhyatekha's lifetime was a poor, rural agricultural community. Canadian colonial policy proffered assimilation and enfranchisement, as an incentive for First Nations people to leave the Reserve and become members of the Euro-Canadian society. Oronhyatekha, however, was proud of his identity as a Mohawk and he resisted being defined in any way, but as an Indian. Oronhyatekha was named a national historic figure in Canada, last August.

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Today the reserve is no longer a simple farming community, but home to businesses, a bank and a population of approximately 26,000. Almost 11,000 Band members live off-reserve.¹ Many people seek to live on the reserve now, not only to retain their sense of Native culture, but also to partake of socio-economic benefits. Native identity, since Oronhyatekha came to study in Oxford, has become much more complicated and contested, for these entitlements are yoked to Indian status. Native leaders and communities have become invested in and protective of their membership and rights as status Indians.

Indian status in Canada is a complex political and social construct. Canadian legislation naturalized gender discrimination and enshrined patriarchy by altering the basic organization of most Indian groups, such as Six Nations. Many Indian women were literally disinherited and disavowed as Indians in this process. For over one hundred years, Native women, not only from my reserve, but also from all over Canada, were denied their identity as Indians, through Canadian statutory law. The laws were embedded in the Indian Act, defining an Indian and a Band with reference to Canadian mores, not in Native terms. Through political pressure and court rulings, these laws were challenged as discriminatory. Women's rights were partially restored in 1985, through a Bill entitled, C-31.

In an effort to make this complex case clear to you, I had to look no further than my own life. I have never written as a "participant-observer" before, but in this instance, it seems appropriate to explain this colonial construction of identity, and the power it holds to define one's life. My mother, born on the Six Nations Reserve, was my source for the oral history of Oronhyatekha, for his achievements were not well known on the reserve. Oronhyatekha was a frequent guest in her family home and he taught my grandmother all about Indian medicine, so

¹ Population figures for Six Nations Band, 2005, provided by Andrew Doraty (Director of Statistical Analysis, Department of Indian Affairs and Northern Development), Ottawa, January 24, 2006.

she could treat her ten children with natural remedies she made at his direction. My mother was “full-blood,” yet she lived most of her life classified by the Canadian government, as well as her own community at Six Nations, as white, for she chose to marry out of the Band. When she married a non-Indian, she lost her membership and treaty rights not only for herself, but also for her descendants. Still, it was my mother who carefully taught me all the details of Oronhyatekha’s education and career. In our matriarchal culture, women transmitted the history and culture of our people. Even though after her marriage she was essentially banished from the Six Nations community where she was born, she retained and transmitted her own pride in Native identity and history. Indigenous people across Canada are still living with the discrimination that gendered and discriminatory Canadian policies created.

My remarks focus on the historical context for this problem and the truncated legislative efforts to repair the damage it did to Indian families. By restoring only some women and some children to their rightful place in their communities, but not others, the implications of continuing the same patterns of gender discrimination and inequality continue to divide indigenous families, today. As leaders of our matrilineal culture at Six Nations, the granddaughters, my daughter, will continue the fight against the racial and gendered construction of identity, as it has evolved through the Indian Act and as it continues to be perpetuated by our own leaders, today.

Six Nations Women and the Indian Act

Onkwehonwe (the real people) women are historically renowned for leadership in matrilineal societies, such as Six Nations. We are still exercising that leadership today, bringing attention to the gender inequities that intrude in our lives. Committed to the social reproduction of the Native extended family and clan, we instill a cultural identity, rooted in indigenous

spiritual and ecological consciousness and mutual respect. Native women are the embodiment of tradition, while also serving as the harbingers of change; perhaps, serving as the crucial link N. Scott Momaday refers to as a “memory in the blood.”²

This paper focuses on the contested issue of Native identity and status, not as an expression of self-definition or reflexive sense of cultural consciousness, but as defined by a body of statutory laws known as the Indian Act. Under the British North America Act, the legislative authority for both Indians and Indian reserves rests in the Parliament of Canada. It is important to understand the difficulty of mounting an effective Native challenge to any law promulgated by the Federal government of Canada, due to this political construct, for there is no constitutional separation of powers where Indians were concerned. Native affairs are regarded as a separate entity, as the responsibility of the Federal Parliament of Canada. Subsequently, Natives have often had to go outside of Canada, to international forums, to fight unfair legislation and to challenge patriarchal norms.

Canadian officials recognized the power of women in sustaining native communities and sought to abrogate their power, both in the public and private spheres. The Federal approach to the “Indian problem” was assimilation, including education and enfranchisement. This policy was not always implemented gradually, though. At Six Nations Reserve, near Brantford, Ontario, Canada seized power at gunpoint in 1924, replacing our Confederacy Council of hereditary chiefs with a democratically elected Council. After a Canadian commission

² Native American Indian Education Association of New York, Twelfth Annual Conference, “Listen with Care, Speak with Care: Honoring Traditions and Mastering the Tools of Expression,” Hauppauge, New York, October 14-16, 2004; Conversation with N. Scott Momaday, in response to my query about criticism concerning his oft-repeated comment, he thoughtfully responded that several years ago, he might have tended to yield to the critics. Now, he asserts, there is something to his belief that there is an intrinsic link to his sense of native identity. One can plumb his own understanding of himself as Kiowa, when he travels to his grandmother’s grave, in The Way To Rainy Mountain, (Albuquerque: University of New Mexico Press, 1969). As he read his latest work, he demonstrated in the cadence and accent of his spoken English, the intonation and cadence of home. Momaday encourages us to tell the stories and to bring forth the history of our own people, as we were taught to remember.

investigated conditions on the reserve, it was argued that “a comparatively small number of old women have the selection of those who are entrusted with the transaction of business of the Six Nations Indian.”³ Notably, though, the elected council still does not draw a mandate from our community; most of the Indians on the Reserve simply choose not participate in the voting process. I will argue that the assimilation process was more readily accomplished at Six Nations Reserve, by extinguishing and circumscribing Native women’s identity, through the statutes of the Indian Act. Male authority was gradually naturalized, effacing the leadership of women in Native families, clans and cultural life. Patriarchy was reified in Euro-Canadian society and it was inculcated within the local gender relations of Six Nations through federal statutes, limiting women’s roles in the community. Patriarchal norms and forms became entrenched, severely impacting the matriarchal character of Six Nations culture, as well as engendering widespread discrimination against Native women in Canada.

Under the Indian Act, Native women who married non-Indians were stripped of their legal status and Band membership; so were their descendants. Yet, if an Indian man married a non-Indian, he not only kept his status and Band membership, his spouse and their children became Indian. This was obviously gender discrimination. Since assimilation was the objective of Canadian policy, Native people might also lose their status by enfranchisement, namely, by pursuing a higher education, a professional occupation or serving in the military.⁴ Native men

³ Memorandum from the Superintendent General of Indian Affairs, September 15, 1924, as quoted in “Report of a Committee of the Privy Council,” P.C. 1629, September 17, 1924.

⁴ Public Archives of Canada, RG14, Accession no. 1990-91/119, Box 166, Wallet 1, File 6050-321-I3. House of Commons, Standing Committee on Indian Affairs, Sub-Committee on Indian Women and the Indian Act, 32d Parliament, 1st sess., 1980-82, 8. In his testimony, Professor Douglas Sanders related an incident during the hearings, concerning Elsie Cassaway, in which each spouse lost all status, despite the fact that both were “full-blood.” The Indian Act determined membership to a Band in terms of kinship and residency on a reserve, not race. There was a “double mother” clause, in which individuals lost their Indian status at age 21, if their mother and paternal grandmother did not have Indian status. Sanders referred to this process as “cultural genocide in action.”

were empowered to enfranchise their entire family, without the consent of their wives and children.

Given the discordant and fractious relationship between Native and Euro-Canadian societies, hierarchies of race and gender pervaded the colonial discourse at critical fault lines, with pressure building to the point where Native life-ways were increasingly subsumed beneath majority cultures. The particular conditions on my own reserve are emblematic of an ongoing First Nations struggle, across Canadian society, against this archaic series of colonial statutes, known as the Indian Act, governing the most basic elements of Native life in Canada.

Forged in the mid-nineteenth-century, specific provisions of the Indian Act were ostensibly created in 1850 to protect Reserve lands for exclusive Indian use.⁵ The definition of an Indian was at first, rather inclusive, extending to those who lived with, or were adopted by the Indians in the community, but this understanding began to be revised almost immediately as the Indian Act evolved. Descent by blood was defined as a bilateral process in 1851, so Indians were defined through descent “on either side,” including non-Indian women who were married to Indians.⁶ Non-Native women therefore, who married Indians, were obviously not as troubling to the framers of this early legislation as non-Native men, whom they viewed as simply marrying Indian women to gain access to Indian lands.⁷

The statutes were further tightened regarding intermarriage in 1869 to exclude non-Native men, who married Indian women, from settling on Reserve lands intended specifically for

⁵ John Leslie and Ron Macguire, eds., “The Historical Development of the Indian Act,” (Ottawa: Treaties and Historical Research Centre, Department of Indian and Northern Affairs Canada, 1979) 24. Two Acts were passed on August 10, 1850, for the protection of lands held by Indians in both Upper and Lower Canada. An Indian was defined rather loosely at that time by blood, intermarriage, descent, residence, as well as adoption.

⁶ *Ibid.*, 26.

⁷ *Ibid.*, 27.

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Indian use.⁸ By exclusion of these non-Native husbands, as well as their Native wives and children, the Canadian government began its policy to dictate and define who is an Indian. In 1876, the statutory provisions of the Indian Act were consolidated and extended, using a patrilineal line of descent to determine Native identity, in contradistinction to customary matrilineal or bilateral descent for many Native groups.⁹ Six Nations, historically, was matrilineal, so this statute completely inverted customary patterns of social organization, both at the community level and within the family.

This continued for over one hundred years; women who engaged in miscegenation and married non-Native men, as well as their descendants, were no longer deemed Indian and were not listed on the Band list. Under the guise of an infamous statute 12 (1) (b), of the Indian Act, women suffered under this assault of gender discrimination, until it was partially remedied in 1985, by a law known as Bill C-31.¹⁰ Their native identity was totally effaced by the Canadian government, as well as their own Bands. Since they were removed from Band lists, they were denied residence on their reserves, access to socio-economic benefits targeted to benefit Natives, money from treaties, annuities and educational grants – all of which were distributed through Band Councils. In the investigation that resulted in the change of government from the hereditary Confederacy to an elective Council in 1924, Mrs. Emily Tobico, sought an elective system in order to vote in Six Nations affairs. Mrs. Tobico complained to Commissioner Andrew Thompson that once she married her husband, a Chippewa, she could no longer

⁸ Sally Weaver, “First Nations Women and Government Policy 1970-92: Discrimination and Conflict,” in Changing Patterns: Women in Canada, eds. Sandra Burt, et al., (Toronto: McClelland and Stewart, 1993) 95.

⁹ *Ibid.*, 96.

¹⁰ “The following persons are not entitled to be registered, namely, (b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.” Indian Act, RSC 1970, c. I-6, s. 2.12(b). Women’s status became was tied to their fathers, or their husbands in Sections 11, 12 and 14 of the Indian Act. For the text of Bill C-31, see An Act to Amend the Indian Act, 33d Parliament, 1st sess., 1985.

participate in Six Nations affairs. Ironically, in a change of government that was viewed by Canada as progressive, nothing changed to remedy her predicament under the mandate of the elective Band Council until 1985.¹¹

A colonial construction of identity seeped into the consciousness of the Native population and was naturalized, for the obvious economic benefits tied to Indian status and Band membership created a political constituency for the continuation of gender discrimination. Native men sought to hold on to their property, status and membership in a culture of gendered entitlement and anti-feminist sentiment. These policies have twisted and scarred the most intimate relationships within Native families, both nuclear and extended, brutally re-shaping gender conditions and cultural roles, weakening the core of matrilineal societies, such as Six Nations, to the point that the community internalized and supported the model of patrilineal descent embodied in the Indian Act.¹² Interestingly, the countervailing political force on the Reserve, the followers of the hereditary chiefs of the Six Nations Confederacy, never vocally protested the gender discrimination evident in the composition of the Band Council list. Although they have fiercely contested their own loss of power, as well as Six Nations sovereignty in a series of historic court cases, striving to overturn the Indian Act, they did little to protest the alteration of gender roles, perhaps, because they too, were imbued with a Victorian, patriarchal world-view.

¹¹ PAC, RG10, Volume 3231, File 582,103. Letter to Colonel Thompson from the Acting Deputy Superintendent General, September 13, 1923. See also, "Investigation in Full Swing Regarding Six Nations Indians," The Expositor (Brantford, ONT), September 19, 1923.

¹² PAC, RG14, Accession no. 1996-97/193, Box 80, Wallet 3, File 5900-331-II. Chief Wellington Staats (Six Nations Band Council), "Presentation to the Standing Committee on Indian Affairs," House of Commons, Standing Committee on Indian Affairs, 33d Parliament, 1st sess., 1985. For example, in the presentation of the Six Nations Band Council before the Standing Committee on Indian Affairs on Bill C-31, Chief Wellington Staats noted, "...That bilateral descent principle should replace the historic rules of patrilineal descent." [Emphasis mine].

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There was a silence that cloaked this discrimination, for many women reacted with shame and bitterness to their banishment from their families and communities and also, did not protest. Many were too traumatized to fight to return to their communities, fearing further discrimination and rejection. Yet, it is a mistake to assume that women did not actively protest this discrimination. For women from our Reserve, the loss of identity had other far-reaching consequences, especially if one married a United States citizen. Despite the provisions of the Jay Treaty of 1794, allowing Six Nations people to cross the international border at will, if a woman lost her Six Nations citizenship under the Indian Act, she encountered the full weight of international border surveillance and punishment, including the possibility of incarceration at the Canadian-United States border.¹³

It was a most unusual and intractable situation, for this reordering of Native society was done almost invisibly, by completely restructuring the Band lists. By privileging the male in specific categories, such as enfranchisement, inheritance, bloodline, and treaty rights, the Canadian government totally swept away the matrilineal moorings of Native cultures across Canada. No longer was a “full-blood” Native woman to be considered to be a priori, Indian, if she chose a non-Native spouse, or a spouse from another Indian Band. Under this perverse colonial calculus, however, if her brother opted to do the same, he would lose nothing. In fact, under the provisions of the 1876 statutes, his legal status as Indian and Band membership were linked, so he was entitled to confer upon his non-Native bride and their children a home on the

¹³ “The Accomplishments of the Indian Defense League,” clipping file, Niagara Falls Public Library, Ontario. The Indian Defense League of America, forged under the leadership of Chief Clinton Rickard, Chief David Hill and Sophie Martin, was supported by men and women from Six Nations Reserve and the Tuscarora Reservation, on the American side of the border, to help Indians stopped at the border. The IDLA conducted an annual border-crossing celebration to support Indians, who were separated from their families and denied their treaty rights. The League intervened in the case of Dorothy Winifred Goodwin, a Cayuga woman from Six Nations who was stopped from crossing the border. The IDLA won her case on the grounds that “her marriage did not change her nationality.” The Congress of the United States finally passed a Bill giving individuals from Six Nations entry to the U. S. at all times. See, “Old Six Nations Council Celebrates New Privilege, The Expositor (Brantford, ONT), undated, article received from John Leslie (Indigenous research consultant), Ottawa, Canada, February 2006.

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reserve and a newly created identity as Indian; very unlike the fate of his sister and her family. In sharp contrast to the discrimination suffered by Native women, Native males were empowered to provide all the economic benefits tied to being Indian, including education. These practices caused much heartache and bitterness in Native families.

Indian status was not defined in Canada with reference to the customary 'gold standard' of colonial rule, blood quantum. Generations of women, many tracing their lineage exclusively through Indian families, "full blood" women, who would have served as clan mothers and transmitted cultural knowledge, such as language, ceremonial customs, as well as spiritual beliefs and practices, were banished from their communities. Many of their descendants still suffer from this exclusion, today. The colonial constructs of Indian status and Band membership often set brother against sister, as well as generation against generation. There is obviously no logic to these rulings, but the stakes are high; for in Native communities social and economic benefits such as housing, health, education, and entitlement programs all hinge on Indian status and Band membership.

How was this structural inequality to be challenged and how were Native women to do this alone, with no support from the federal government or their own communities? Native women turned to the Courts and the women's movement for help in their struggle. Interestingly, former status Indians found support from non-status and Metis women, who were also shut out of the Canadian system. The Canadian social contract came under assault in the latter part of the twentieth-century. Criticism was infused by a wellspring of energy generated from key social movements, including women's rights and Indian rights activists, motivated to obtain social justice and ideological change. Notably, a Royal Commission issued a report recommending

that Indian women retain their status even if they married a non-Native spouse.¹⁴ A critical nexus of Native leaders and organizations lent a high profile to Indian affairs, underscoring the third-world conditions of many Native communities in Canadian society.

The Indian Act, severely criticized by Native groups, foremost among them, the deposed hereditary council at Six Nations, was slated for reform.¹⁵ Yet, paradoxically, the Indian Act, itself, became naturalized as a line of defense against termination of Native rights and privileges. In its historic evolution, the Indian Act came to encode a litany of policies, treaty rights and hard-won privileges that many Native leaders did not want jeopardized. Particularly, following the firestorm of criticism that erupted after the release of a 1969 Canadian White Paper, proposing a policy of termination of special rights and dissolution of the federal agency mandated to handle Indian affairs, Native leaders fought to retain the Indian Act, until substantive negotiations took place and forged a new agreement.¹⁶ The foremost Indian leaders were intent on pressuring the Canadian government for a special sphere of Native rights. As with many movements for social justice at the time, women's issues were not always at the forefront of leaders' political agendas for change. Although Native women's rights were a logical extension of the ideological struggle against the Canadian government, they were hardly embraced by patriarchal, male, Native leaders as a priority. Native women went directly to the courts as their only avenue of appeal, to challenge the discriminatory policies that impacted their

¹⁴ Canada. "Report of the Royal Commission on the Status of Women," House of Commons, 1970, p. 238.

¹⁵ The Indian Act, the uniform statutory code for Indians across Canada, underwent substantive reform in 1951 and 1970, so native leaders were engaged in negotiation with the federal government. The Minister for Indian Affairs at the time under the auspices for the Trudeau government was Jean Chrétien, Minister for the Department of Indian Affairs and Northern Development.

¹⁶ This White Paper sent a shock wave through Native communities, for rather than the repeal of the Indian Act and the end of special rights for Indian communities, Native leaders had negotiated and argued for reform. In addition, the manner of its release embittered Native leaders and caused a great deal of mistrust, energizing their opposition to Canadian policy, for they were engaged in substantive discussions about the reform of the Act, rather than abnegation of its provisions.

lives directly, for their housing, health and welfare, for themselves and their children, was in jeopardy.

Political pressure on the Canadian government to remove discrimination from the Indian Act arose from three principal areas: the non-Native and Native women's movement; the international human rights' movement; and the Canadian national effort to repatriate the Canadian Constitution.¹⁷ Canada's statutes were in violation of international accords, as well as its own emergent doctrine of human and civil rights, encoded in the Charter of Rights and Freedoms. Enactment of the Charter created a 1985 deadline for Canada to comply with the principle of gender equality.

Legal Challenges to Discrimination

The precipitating factor in bringing about a reevaluation and change of Canadian policy toward Native women was the agency of several First Nations women who challenged the prevailing laws in the Canadian courts. Also, in one case, women lodged a complaint against Canada with the United Nations. The initial cases were filed in Ontario and the first, brought by Jeannette Lavell, was narrowly constructed to achieve her own reinstatement. While Lavell lost her first bid, she won on appeal, for the judge ruled that the statute of the Indian Act was indeed discriminatory and conflicted with the Canadian Bill of Rights.¹⁸ The second major case, initiated by Yvonne Bedard, originally from Six Nations, was won due to the favorable ruling

¹⁷ The Canadian Constitution Act provided a three-year window to remove forms of discrimination in Canadian law and reconcile the legal code with the new Charter of Rights and Freedoms, passed in April 1982.

¹⁸ Justice Thurlow, of the Federal Court of Appeal ruled that sections 12 (1) (b) of the Indian Act, "are thus laws which abrogate, abridge and infringe the right of an individual Indian woman to equality with other Indians before the law...the consequences of the marriage of an Indian woman to a person who is not an Indian are worse for her than for other Indians of her Band who marry persons who are not Indians. In my opinion this offends the right of such an Indian woman as an individual to equality before the law and the Canadian Bill of Rights therefore applied to render the provisions in question inoperative. *Attorney General of Canada v. Lavell* and *Isaac v. Bedard* [1973] 38 DLR (3d) 481, 1973 SSC. Copy of transcript obtained from Indian and Northern Affairs Canada, Office of Claims and Historical Research, Ottawa.

concerning Lavell's appeal.¹⁹ Bedard sought not only reinstatement of her Indian status, but to reside on the reserve with her two infants. Despite Bedard's urgent need for a place to call home, the Six Nations Band Council sought to force her from the reserve, from the house she inherited from her mother, while, ironically, setting forth their position as consistent with Six Nations custom. No chorus of voices rose to challenge this blatant reinvention of tradition on the Reserve known for its "cultural conservatism."²⁰ One of our most historically celebrated Cayuga chiefs, Deskaheh, or Levi General, known for arguing for the sovereignty of the Confederacy in the League of Nations, once complained that the children of enfranchised Indians were often impoverished and returned to the reserve for help. In Deskaheh's tenure as Speaker, the Confederacy Council assumed the cost for the children's education, without any support from the parents, for they were no longer Band members and had legally enfranchised their own minor children.²¹ Yet, in the late twentieth-century, Six Nations, a historically matrilineal and matrilocal culture, had shifted to uphold and defend the colonial construction of identity contained in the once vilified Indian Act, touting its gendered provisions as consistent with Six

¹⁹ Justice Osler ruled in the Bedard case, "Section 12 (1) (b) of the Act is...inoperative and all acts of the Council Band and of the District Supervisor purporting to be based on the provisions of that section can be of no effect," as quoted in "The Federal Appeal before the Supreme Court of Canada," Attorney General of Canada v. Lavell and Isaac v. Bedard [1973] 38 DLR (3d) 481, 1973 SSC. Copy of transcript obtained from Indian and Northern Affairs Canada, Office of Claims and Historical Research, Ottawa.

²⁰ In her classic study, Conservatism Among the Iroquois at the Six Nations Reserve, (Syracuse: Syracuse University Press, 1994), Annemarie Shimony, remarked upon the lack of support in the community, from both adherents of the Longhouse religion and Christians, for the return and reintegration of women who had "married out." Shimony reported that members of the Longhouse cited an ostensible admonition of their founder and prophet, Handsome Lake, for his followers not to marry outside of their own race. Historically, the Confederacy Council of Chiefs, before it was removed by the Canadian government in 1924, ruled on these situations case by case, for they had wide discretion, often allowing Six Nations people who had fallen on difficult times to come home. Women came back to the reserve with their young children after being separated or abandoned by their husbands. The Confederacy Council of Chiefs complained about the expense they incurred for the children's education, but they paid the costs through Six Nations funds. Supporters of the Confederacy Council, today, remain steadfast in their opposition to the Indian Act, but are not vocal supporters of Six Nations descendants who attempt to gain Indian status and Band membership. They also do not protest the continued discrimination against generations struggling with the legacy of gender discrimination stemming from the Indian Act.

²¹ PAC, RG10, Vol. 2285, File 57,169-1B, Pt. 3. "Protest Against Tragedy of National Extinction," Toronto Star, May 1923.

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Nations history, culture and social norms.²² Many national Indian organizations, including the National Indian Brotherhood, supported the Canadian government and the Band Council's position, as a critical issue of self-determination and First Nations' rights and sovereignty.

The Canadian government appealed both cases against Bedard and Lavell, and they were heard together in Ottawa. In Justice Ritchie's interpretation of the legal issues before the Supreme Court, the crux of the two cases, was that Lavell and Bedard claimed that they were "denied equality before the law by reason of sex." Ritchie put great weight on the historical evolution of the designation of Indians as "distinct from other Canadians." He emphasized that the Indian Act was in Parliament's exclusive sphere of responsibility under the British North America Act. Ritchie argued that contemporary legal arguments and rulings, such as using the Canadian Bill of Rights to render the power of Parliament's mandate and constitutional responsibility over Native peoples as "inoperative and discriminatory," it would not be "sustained." His perception was that the Bill of Rights simply did not implicitly invalidate prior Canadian legislation, particularly when nothing was passed to take its place. By emphasizing the role of the Indian Act as protective legislation, giving Parliament a fiduciary role over Indians as wards, occupying a separate sphere from other Canadians, in a paternalistic tour de force, Ritchie denied that the provisions of equality in the Bill of Rights were ever meant to be applicable to First Nations.²³ In fact, Ritchie specifically stipulated that the phrase "equality before the law"

²² The loss of Indian status and resulting enfranchisement, due to the Indian Act, was once fought bitterly by advocates for the Confederacy Council of Chiefs before they were deposed. Before 1951, an Indian could also lose their status due as a result of training to become a minister, service in the military or through higher education. In accord with its assimilation policy and also, to decrease the number of status Indians and limit costs, the Canadian government offered enfranchisement as an incentive, accompanied by a one-time payout of Band funds. This sometimes resulted in the removal of entire families from the Indian Register and Band lists. Native males made the decision to enfranchise themselves, as well as their wives and children, often without their wives consent or knowledge.

²³ *Attorney General of Canada v. Lavell and Isaac v. Bedard* [1973] 38 D.L.R. (3d) 481, 1973 SSC. Copy of transcript obtained from Indian and Northern Affairs Canada, Office of Claims and Historical Research, Ottawa. The legal arguments from another signal case of the time, *Regina v. Drybones*, were also raised, for it, too, raised

did not imply the broad egalitarian concept invoked by the United States, Fourteenth Amendment, but rather “equality in the administration or application of the law...in the ordinary courts of the land.”²⁴ Therefore, equality in terms of the fairness of a law regarding an individual was not the issue, but the standard applicability of the law to a group. The Indian Act was created to be a uniform policy by the Federal Parliament to deal with Indians and Indians’ land, so as long as it was applied across the board, it did not raise the issue of inequality, according to Justice Ritchie’s reasoning and the majority of the Court. The United Nations Committee on Human Rights would later disavow this reasoning.

Justice Laskin wrote the dissenting opinion in the appeals of Lavell and Bedard. Laskin argued that the most compelling argument in the case was precisely equality before the law and that the principles of the Canadian Bill of Rights were written specifically for such cases of gender inequality. Laskin had written for the majority on another case of discrimination, arguing that the provisions in the Bill of Rights offered “an additional lever to which federal legislation must respond.”²⁵ In his dissent in the Lavell-Bedard case, Laskin argued for dismissal of the government’s appeal: “If, as in Drybones, discrimination by reason of race makes certain statutory provisions inoperative, the same result must follow as to statutory provisions which exhibit discrimination by reason of sex.”²⁶ He argued that the Canadian Bill of Rights was the preeminent statute, before which Federal laws contradicting principles of equality must yield.

the issue of discrimination against natives as a race, in regard to criminalizing intoxication. Ritchie dismissed the parallel, for he argued, the case pertained to behavior off Reserves.

²⁴ Ibid. Justice Ritchie, in his decision on the Lavell/Bedard appeal, rejected an egalitarian interpretation of the phrase, “equality before the law” in the Canadian Bill of Rights, citing Smythe v. The Queen [1971] S.C.R. 680 per Fauteux C.J., pp. 683, 686. Ritchie preferred to interpret the concept as referring to “the rule of law,” as interpreted by Dicey, as “equal subjection of all classes to the ordinary law of the land administered by the ordinary courts” in Stephen’s Commentaries on the Laws of England, 21st ed., Vol. 3, 1950, p. 337.

²⁵ See Curr v. The Queen, 1972 SSC, as quoted in Attorney General of Canada v. Lavell and Isaac v. Bedard [1973] 38 D.L.R. (3d) 481, 1973 SSC.

²⁶ The Queen v. Drybones [1970] S.C.R. 282, 1970 SSC. This case challenged the Indian Act as discriminatory, punishing natives, off the reserve, for intoxication, while not applying the same legal codes against non-Natives.

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Justice Laskin pointed to the gender inequality implicit in statute 12 (1) (b) and concluded that, “no similar disqualification is visited upon an Indian man who marries a non-Indian woman.” Laskin cited Judge Osler’s opinion, at the provincial level, that “there is plainly discrimination by reason of sex with respect to the rights of an individual to the enjoyment of property.”²⁷ Nevertheless, five out of nine judges sided with Justice Ritchie and granted the appeal of the Attorney General of Canada against Lavell, as well as Bedard; the terms of the Canadian Bill of Rights did not apply to Indians. This ruling generated a spotlight on Canadian-Native relations and a scrutiny on the provisions of the Indian Act that ultimately, would not withstand pressure from the international arena and women’s rights, forcing Canada to modify the statute a decade later.

Justice Laskin discerned, in his reasons for dissent in the Lavell-Bedard appeal, a process of “statutory excommunication” inflicted upon Native women who married non-Indian men, as well as their children. He explored the issue in broader terms as the cultural separation of Native women from her society, a fate not visited upon her brother, if he, too, chose to marry a non-Indian. Laskin argued that the Indian Act rendered an “invidious distinction” upon brothers and sisters that amounted to “statutory banishment.”²⁸ This forced separation of an Indian woman from her homeland, relatives, society and cultural life was an injustice that was even carried to the grave, for she could not even be buried on the Reserve, often the place where she was born. As noted in an editorial in the *Montreal Star*, “...the only people who will find the Lavell judgment agreeable are Indian nationalists, concerned to stop intermarriage at any price.”²⁹

²⁷ *Attorney General of Canada v. J. V. Corbiere Lavell, and Richard Isaac et al. v. Yvonne Bedard* [1974] S.C.R., 1349, 1974 SSC. Copy of transcript obtained from Indian and Northern Affairs Canada, Office of Claims and Historical Research, Ottawa.

²⁸ *Ibid.*

²⁹ Philip Slayton, “Indian Act Ruling Illogical,” *Montreal Star*, September 5, 1973.

The cultural ramifications cited by Laskin in his dissent on the Lavell-Bedard case provided the grounds for victory in the next critical case in the struggle for the rights of Native women banished from their homelands. Lovelace v. Canada, pursuant to the International Covenant on Civil and Political Rights on December 29, 1977, was the next battleground on which the war for Native women's equality was fought.

Yet, Ritchie's ruling at the time was welcome news to the Canadian government, which had been supported by groups of Chiefs from Western Canada and several large Indian associations representing the Western Bands. The Western Chiefs vociferously argued that their social organization was based on patriarchy and that the Canadian court must respect their right of self-determination. The Canadian government was in an unenviable position, for there was no unified Native position in regard to the case or statute. Also, the power of the Band Councils was largely in the hands of male leaders, who were not eager to give up their leadership, power or control of their economic resources, to share with women and their families, who sought to return home. The women seeking reinstatement on their former Band's list, were waging a battle against entrenched power at both the national and local level, with just the support of several national Canadian and newly forged Native women's groups.

United Nations Intervention for Human Rights

The next assault on the Indian Act's discrimination against Native women came from the Tobique Reserve in New Brunswick, by a woman named Sandra Lovelace, a Maliseet Indian. Noel Kinsella, a member of the New Brunswick Human Rights Commission, an independent committee of the United Nations, initiated an investigation regarding the protest of married women held at the Band Hall on the Tobique Reserve. He began an inquiry regarding the possible violation of international accords signed by the Canadian government in August 1976.

The most relevant accord was the Optional Protocol of the International Covenant on Civil and Political Rights.³⁰ Article 26 was particularly intriguing, for all parties were entitled to equal protection before the law, without discrimination, specifically mentioning “sex.” Yet, it was Article 27 that would prove to be the most powerful tool in the Lovelace case, for it established the rights of “ethnic, religious, or linguistic minorities...in community with the other members of their group, to enjoy their own culture, to profess their own religion, or to use their own language.”³¹ An individual could pursue such a formal line of inquiry if all other pathways within the national framework had been exhausted. Lovelace simply provided the Human Rights Committee with the text of the Supreme Court decision rendered in the Lavell and Bedard case, as evidence that Canada upheld the legitimacy of the Indian Act, despite the prohibition against discrimination in the Canadian Bill of Rights. A complaint was formally initiated by Sandra Lovelace on December 29, 1977 and submitted to the Human Rights Committee, to determine if Canada’s Indian Act, in particular, 12 (1) (b), constituted discrimination against Native women, in violation of international agreements. The three international accords in place held Canada to high standards of international human rights; any complaints from individuals, as well as groups, were handled, if found to be of merit, by the Human Rights Committee of the United Nations.

The Human Rights Committee accepted the complaint from Ms. Lovelace as admissible, and by July 1978 the wheels of diplomatic protocol began turning.³² The Human Rights Committee formally requested information from Canada regarding the case through the

³⁰ Extract of Minutes, New Brunswick Human Rights Commission, October 17, 1977, Brief within Departmental Library, in Selected Documents in the Matter of Lovelace v. Canada Pursuant to the International Covenant on Civil and Political Rights, (Ottawa: Department of Indian and Northern Affairs and Northern Development, 1984) preface.

³¹ United Nations, Covenant on Civil and Political Rights, and Discrimination against Women under the Indian Act, in *ibid.*, 10.

³² Henri Mazaud (Assistant Director, Division of Human Rights, United Nations), to Sandra Lovelace, September 28, 1978, in *ibid.*, 29.

Secretary-General; Canada had no choice, but to respond.³³ Admitting to the “difficulties that exist with the present Indian Act,” the government promised to introduce legislation to amend it during the next Parliamentary session. Canadian authorities promised consultation with Native communities, but vowed to change the troublesome statute 12 (1) (b), “even if it could not, in the near future, reach an agreement with Indian groups.”³⁴ The Canadian officials quickly backed away from this position, however, citing in their next report to the Human Rights Committee, the wide range of opinion within Indian communities in regard to determining Indian status, Band membership and residency on Indian reserves.

Donald Fleming, a Canadian law professor, advised Sandra Lovelace and helped draft her formal responses to the Canadian government. Lovelace, however, wrote her own critique of Canada’s response to the United Nations committee in plain, forthright language. She took particular umbrage at the Canadian contention that the Indian Act was protective legislation and also, disputed that Native Bands were patrilineal. Lovelace was clearly angry with Canada’s continued consultation with the “All-male National Indian Brotherhood,” the precursor to the Assembly of First Nations, which lobbied against changing the Indian Act, as evidence that her complaint was not taken seriously. Lovelace argued that Canada simply did not want to grant Native women Indian status, who had been removed from the Indian Band lists, because of the increased demand on revenue that would result.³⁵

Fleming ascertained that Canada planned to use the discord among Native groups on these hotly contested issues to block any amendment of the Indian Act. Fleming argued: “Such lack of action could result merely because various groups among the Indian people themselves

³³ United Nations, Human Rights Committee, Decision on Admissibility, Optional Protocol of the International Covenant on Civil and Political Rights, 7th sess., 1979, in *ibid.*, 35.

³⁴ The Permanent Mission of Canada to the United Nations, 1979, in *ibid.*, 38.

³⁵ Sandra Lovelace, handwritten commentary on Canadian government’s response to the Human Rights Committee, Additional Information and Observations, Part A, *ibid.*, 55-68.

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have a vested interest in maintaining the status quo and denying to other Indians their proper rights and privileges.”³⁶ It was Canada’s responsibility, not Native groups, Fleming insisted, to adhere to the international accord that the Canadian government had signed, whether or not Native groups concurred in the decision. Justly so, both Fleming and Lovelace argued, for the genesis of the problem was Canadian policy. The gender discrimination wrought by Canadian officials in crafting the statutes of the Indian Act, historically undermined Native cultures and family ties, as well as lines of authority. The Indian Act, Fleming maintained, generated the fractious Native politics, riven by gender-based constituencies and driven by issues of “economic and cultural security,” that were on display in the briefs filed by Indian associations in Canadian courts, in cases like Lavell-Bedard.³⁷

Lovelace appealed to the Human Rights Committee to specify that the Canadian government follow through in its initial promise to amend the statute 12 (1) (b) at the next session of Parliament, to “resolve all past difficulties which have been created” by the law, and finally, to make sure that the new amendment to the Indian Act was drafted in accord with the United Nations Covenant, so the issue of gender discrimination was resolved.³⁸ Unfortunately, the Canadian government did not follow through with this recommendation. The present generations are still suffering from the damage that ensued by the application of this statute to Native culture and society.

³⁶ Donald Fleming (Faculty of Law, University of New Brunswick, Canada) to Jakob Th. Moller, Division of Human Rights, United Nations, letter and report, June 20, 1980, in *ibid.*, 80.

³⁷ Attorney General of Canada v. Lavell and Isaac v. Bedard [1973] 38 D.L.R. (3d) 481, 1973 SSC. Copy of transcript obtained from Indian and Northern Affairs Canada, Office of Claims and Historical Research, Ottawa. Numerous Native rights associations and several women’s rights groups attended this trial and filed legal arguments in the case.

³⁸ Selected Documents in the Matter of Lovelace v. Canada Pursuant to the International Covenant on Civil and Political Rights, Brief within Departmental Library, (Ottawa: Indian and Northern Affairs and Northern Development, 1984) 85.

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In response to the queries of the Secretary General, Canadian officials finally revealed that they were considering how to stipulate that Band membership lists were constructed with regard to the international accord Canada was obligated to uphold – to be “non-discriminatory in the areas of sex, religion and family affiliation.”³⁹ This did not come to fruition; the movement for Native self-determination and Band control of membership complicates this process in contemporary Native politics, as we shall see when reviewing Six Nations membership by-laws. Compounding the problem was that when the Canadian Human Rights Act was passed in 1977, the Indian Act was specifically exempted, for the government had promised the National Indian Brotherhood not to amend portions of the Indian Act, pending consultation with Native groups to revise the entire system, under the auspices of a Joint Committee.⁴⁰

The ruling of the Human Rights Committee of the Optional Protocol of the International Covenant on Civil and Political Rights, was issued on July 30, 1981. The Committee maintained, “it is natural” that following the breakup of her marriage, that Sandra Lovelace sought to return to the reserve of her birth and to the Maliseet Band. “Whatever may be the merits of the Indian Act in other respects, it does not seem...that to deny Sandra Lovelace the right to reside on the reserve is reasonable, or necessary to preserve the identity of the tribe.” The Committee ruled that her rights had been violated by Canada, under Article 27 of the Covenant.⁴¹ The international committee on human rights of the United Nations publicly censured Canada for its discrimination against Indian women who were not able to be a part of their own culture; it was truly a victory to savor for generations of Native women denied the simple pleasures of their own cultural heartland.

³⁹ Ibid., 103.

⁴⁰ Ibid., 125.

⁴¹ United Nations, Human Rights Committee, 13th sess., 1981, Communication R. 6/24, submitted by Sandra Lovelace, in *ibid.*, 163-4.

Reform Under Fire

It was obvious that reform of the Indian Act had to be undertaken, but attempts were stalled during the larger struggle over the Canadian Constitution Act. When it was enacted in 1982, Native people emerged with the recognition of treaty rights and under the Charter, a guarantee of equal treatment under the law. There was also a deadline set for all discrimination to be removed from Canadian laws, not in accord with the rights guaranteed in the new Charter, including the Indian Act. Three years after the enactment of the Charter, April 17, 1982, the Canadian government had to expunge the discriminatory provisions from the laws, with the consultation of Native groups.

John C. Munro, Minister of Indian Affairs and Northern Development, set forth the agenda for removal of discrimination in the Indian Act. Munro sketched out the major issues to be resolved, namely, the reinstatement of Native women, who had been stricken from the Indian Band lists, rights of children, as well as the non-Indian spouse, and non-Indian children. An over-arching problem was to decide whether the Federal government or the Band councils would determine status and membership as two distinct categories of Native identity, so delineated for the first time. All of these thorny issues were to be discussed in a politically charged atmosphere in which Native organizations, such as the Assembly of First Nations, were flexing their new power and demanding self-government.

Munro charged a House of Commons Standing Committee on Indian Affairs, chaired by Keith Penner, a Liberal Member of Parliament, to focus on two key issues – development of Indian self-government and removal of “provisions that discriminate against women on the basis

of sex,” in the Indian Act.⁴² The debate of the committee, testimony, consultation with Native and women’s groups, supplemented by their supporting briefs, became known as the Penner Report. Conflicts soon emerged between Penner’s Committee and the Minister, particularly with regard to the interpretation of the mandate of the committee, the scope of the tasks, the timeline involved for the study and the range and depth of consultation with Native groups. Munro was facing a deadline and needed an exit strategy, neatly packaged in a report, by the time Parliament was back in session. The discrimination issue could not fester, he argued, unresolved, while representatives of First Nations and federal officials debated the meaning and construction of Native self-government. The Assembly of First Nations Chief, David Akenew, countered by explaining that Native groups would be “delighted [emphasis his] to throw out the Indian Act just as soon as their aboriginal and treaty rights are safely secured in the Constitution...”⁴³

The Native Women’s Association of Canada insisted on the reinstatement of Indian women as a first priority: “If Band control of membership means Indian women must suffer under Federal discriminatory legislation for another five or twenty years while you hash out the meaning of Indian government, we will not accept this.”⁴⁴ Native leaders were quick to understand this issue in terms of political leverage they might use against the Canadian government, while sacrificing native women’s rights in the bargain.⁴⁵ Although, Munro voiced a need to consult with a wide range of First Nations groups, the sub-committee to remove

⁴² PAC, RG14, Accession no. 1990-91/119, Box 166, Wallet 1, File 6050-321-I3. House of Commons, Standing Committee on Indian Affairs, Sub-Committee on Indian Women and the Indian Act, 32d Parliament, 1st sess., 1980-82, p. 5.

⁴³ PAC, RG14, Accession no. 1990-91/119, Box 166, Wallet 1, File 6050-321-I3. Testimony of Dr. Dave Ahenakew (National Chief, Assembly of First Nations) on September 8, 1982, House of Commons, Standing Committee on Indian Affairs, Sub-Committee on Indian Women and the Indian Act, 32d Parliament, 1st sess., 1980-82, p. 11.

⁴⁴ PAC, RG14, Accession no. 1990-91/119, Box 166, Wallet 1, File 6050-321-I3. House of Commons, Standing Committee on Indian Affairs, Sub-Committee on Indian Women and the Indian Act, 32d Parliament, 1st sess., 1980-82, p. 10.

⁴⁵ PAC, RG14, Accession no. 1990-91/119, Box 166, Wallet 4, File 6050-321-I3. Discrimination Against Native Women Under the Indian Act, House of Commons, Standing Committee on Indian Affairs, Sub-Committee on Indian Women and the Indian Act, Brief Submitted by the National Association of Women and the Law, 1982, p. 2.

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discrimination precluded extensive hearings, due to time constraints and budgetary concerns, opting to have native organizations submit written briefs to present their views on removing discrimination from the Indian Act. A special sub-committee was appointed with the mandate to remove the discriminatory elements from the Indian Act, issuing its report September 20, 1982, without extensive native input, as noted with asperity and chagrin by the Indian Affairs Minister, John Munro, who assailed the report as “a job half done.” In Munro’s view, it was incumbent upon Parliament to remedy the discriminatory provisions in the Act. He stated: “I believe it would be a failure for our Parliament if we permitted the problem with discrimination in the Indian Act to continue until the courts were forced to play a role.”⁴⁶ This is exactly what is happening once again, in Canada. Unfortunately, the Department of Indian Affairs is poised to revisit this legal issue in 2006, waiting to be targeted in yet another lawsuit, on behalf of the remaining descendants of women who suffered the initial discrimination. Many families have members who are still not restored to status and are not eligible to return home to their reserves.

The Canadian government sought a “quick fix” to deal with a century-long problem of gender discrimination that had become a political embarrassment. The policy formulated as a result of the Penner Report was a critical start, but as we shall see, it failed as a long-range policy to protect Native women and their children, from discrimination, resulting from the Indian Act. The report foundered on the rocks of self-government, a laudable objective, but one that unfortunately, subordinated Native women’s rights to the patriarchal politics of Band councils, for Band membership was judged to be under the purview of Native governments. Although the

⁴⁶ PAC, RG14, Accession no. 1990-91/119, Box 166, Wallet 4, File 6050-321-I3. Notes for remarks by the Hon. John C. Munro (Minister of Indian Affairs and Northern Development) on September 8, 1982, House of Commons, Standing Committee on Indian Affairs, Sub-Committee on Indian Women and the Indian Act, 32d Parliament, 1st sess., 1980-82, pp. 1-3.

Canadian constitution was finally amended in 1983, to guarantee indigenous rights to both men and women, the Indian Act remains in place and is still discriminatory.

Native Patriarchy and Power

Unfortunately, the patriarchal nature of colonial mandates was infused within some First Nations communities, fostering gender discrimination and anti-feminism. Several large Western Native Bands, organized as patriarchies because of indigenous cultural norms, also provided vocal opposition to the Penner Report, as evident from the extensive number of briefs opposing any change in Indian Act membership guidelines.

Moreover, although the Sub-committee and the AFN both viewed Band membership as the cornerstone of self-government, the institutions of Native self-government were still emerging. Lines of power and authority within indigenous institutions were still to be defined, with no guarantee, but a general consensus, that indigenous ideologies would reflect international norms of non-discrimination with regard to race or gender. The import of the Lovelace case was to ensure cultural survival, but there was no clear roadmap, explaining how to achieve that goal. Although Band councils were viewed as key institutions to identify and regulate membership in the long-term movement to self-government, there were no clear guidelines for implementing and instituting the process to regulate and control membership. Moreover, central questions about whether indigenous institutions of self-government, such as Band councils, would be held to international standards of non-discrimination were not addressed specifically, only vaguely alluded to in the hearings.

Professor Douglas Sanders argued during hearings before the House that, "...it would seem obvious that the tribes or Bands are in a better position than Parliament or the courts will

ever be to determine the criteria that will best ensure tribal survival.”⁴⁷ Perhaps, but what was the incentive for Indian communities, often led by male-dominated, politically invested Band Councils, to open up their membership to include more individuals, who would only increase competition for scarce resources and land? Further, the lessons of the colonial regime are unwittingly inculcated in the consciousness of the colonized – namely, the power and gender relations of the Canadian society are reflected in the norms and forms of indigenous communities.

This struggle against the colonization of consciousness, the internalization of oppression, is one of the most traumatic vestiges of Canadian rule over First Nations people. Long dominated by Indian agents and the patriarchal and dehumanizing Indian Act, even the stalwart resistance of the Confederacy to Canada’s attempt to rule over Six Nations, has not rendered the community impervious to the subtle hegemonic power of internal colonialism. Six Nations people were themselves opposed to the restoration of rights and the inclusion of women and their descendants, who had been banished from the community under the discriminatory provisions of the Indian Act. This further divided families and caused great consternation and sorrow, adding to the sense of loss and alienation that plagues many Native people, both on and off reserves.

The dispute continued to roil the traditionalist communities, as well, many of which are home to adherents of the Longhouse religion. There was a considerable backlash against those women and their descendants, who sought to return.⁴⁸ Discrimination against these Native

⁴⁷ PAC, RG14, Accession no. 1990-91/119, Box 166, Wallet 1, File 6050-321-I3. Testimony of Professor Douglas Sanders, House of Commons, Standing Committee on Indian Affairs, Sub-Committee on Indian Women and the Indian Act, 32d Parliament, 1st sess., 1980-82, p. 11.

⁴⁸ For a detailed analysis on the impact on women who fought for restoration of their rights, see Kathleen Jameison’s text, Indian Women and The Law in Canada: Citizens Minus, published with the support of the Advisory Council on the Status of Women, (Ottawa: Ministry of Supplies and Services, 1978). See also, Gerald Alfred’s study of these issues in the context of Mohawk nationalism, in Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism (Toronto: Oxford University Press, 1995).

women diminished the ranks of women available to lead their families and clans, for if they married outside of their Band, they were ineligible to conduct their ceremonial and familial roles. This was another way the power of Native women was subordinated to undermine the cultural fabric of Native societies. Discrimination turned traditionalists, many of whom were adherents of the Confederacy and the Longhouse religion, against many of their strongest female allies: women who kept their faith, language, and sacred power, long after they were “excommunicated.”

A Road Not Taken: Native Self-Government

Self-government was the major focus of the Penner Report, released in October 1983. Extensive consultation with Native groups across Canada distinguished this Committee’s efforts, in contrast from the hearings on discrimination. The Penner Report on Self-Government strongly advocated that Native Bands identify their own priorities and policies, and move forward to creation of institutions of indigenous self-government. Penner linked the right of self-government by First Nations with control of membership, according to Native criteria, such as clan and cultural affinity. It was envisioned that as the First Nation constructed its own membership code, it could also begin the process of shaping its own form of government. Membership was conceived as a two-tier system, with the Canadian government controlling an Indian Register granting Indian status, the key to entitlements, while Band Councils determined their own membership, land base and residency on reserves.⁴⁹ Roberta Jamieson, who later was elected as a Six Nations chief, served on the committee and she noted that she particularly sought

⁴⁹ Frank Cassidy and Robert L. Bish, *Indian Government: Its Meaning and Practice*, (Halifax, Nova Scotia: Oolichan Books and The Institute for Research on Public Policy, 1989) 61.

⁴⁹ Roberta Jamieson (Former chief, Six Nations Reserve), telephone interview with the author, February 24, 2006.

a report that all parties could support. She felt that they “pushed the envelope” as far as it could go; to reach a consensus for change.⁵⁰

Six Nations Band Council, under Chief Wellington Staats, supported the move toward self-government, as well as strengthening the Band Councils and argued “...the right of any First Nation to control its own membership is to us basic to any consideration of self-government...”⁵¹ The strengthening of Band governments was resisted by Native women’s groups who argued, “...At the present time you would only replace discrimination by the DIA [Department of Indian Affairs] with discrimination by Indian governments, Band governments.”⁵² In contrast, native advocates of self-government sought to decolonize relations with the Canadian government, by empowering community control of membership as a basic tenet of cultural survival and Native identity.

The sweeping, Indian-centered framework and perspective that characterized the Penner report on self-government was largely rejected by the Canadian government, however, for its lack of Federal control and accountability in regard to Native autonomy. Band Councils were to be further developed and reinvigorated instead, in the style of municipal governments.⁵³ The Canadian government’s control over Native affairs was not to be relinquished so easily.

First Nations leaders, such as Ovide Mercredi, expressed resentment over Canada’s continuation of colonial rule, cloaked in the rhetoric of reform, as well as concern for human rights. Mercredi opposed the unilateral imposition of the Canadian Charter of Rights and

⁵⁰ Roberta Jamieson (Former chief, Six Nations Reserve), telephone interview with the author, February 24, 2006.

⁵¹ PAC, RG14, Accession no. 1996-97/193, Box 80, Wallet 3, File 5900-331-11. “Presentation to the Standing Committee on Indian Affairs on Bill C-31,” House of Commons, Standing Committee on Indian Affairs, 33d Parliament, 1st sess., 1985

⁵² PAC, RG14, Accession no. 1990-91/119, Box 166, Wallet 1, File 6050-321-13. Ms. Donna Tyndell (United Native Nations, British Columbia), House of Commons, Standing Committee on Indian Affairs, Sub-Committee on Indian Women and the Indian Act, 32d Parliament, 1st sess., 1980-82, p. 16.

⁵³ Sally Weaver, “Self-Government Policy for Indians 1980-1990: Political Transformation or Symbolic Gesture,” Revised paper delivered to UNESCO Conference, “Migration and the Transformation of Cultures in Canada,” in Calgary, Alberta, October 21-22, 1989 (Ottawa: Department of Indian Affairs and Northern Development) 11.

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Freedoms on indigenous people, for he argued that it was created with no input or understanding of Native cultures. He specifically cited Six Nations Reserve, referring to the removal of the hereditary Confederacy Council in 1924, as an example of insensitivity to indigenous forms of government and gender relations. Although not democratic in a Western sense, the role of women as clan mothers in the selection and removal of chiefs was a key function; women clearly had great power and voice in the institutional framework of the Confederacy. Yet, Canadian officials who removed the Confederacy Council in 1924 targeted and ridiculed the role of women, referring to the Six Nations Council as a “petticoat government.”⁵⁴ Mercredi argued, ironically, “...the government wants to apply the Charter to solve the human rights problems it created when it imposed the Indian Act.” Instead, Confederacy adherents sought to revitalize their form of government to guide their communities in the future according to indigenous principles and cultural values. Mercredi stipulated, “...it has nothing to do with wanting to undermine or diminish women...We want to guard against the destruction of traditional forms of governing ourselves and ways of resolving disputes.”⁵⁵

The Canadian government was moving forward, however, pressing for the legislation to remove the discriminatory provisions of the Indian Act. The measure that emerged under the auspices of the Minister of Indian Affairs and Northern Development, David Crombie, known as Bill C-31, was shaped in the midst of a fractious debate about women’s rights, Native self-government and indigenous cultural survival. Native resistance to its imposition was engendered in large measure by its tincture of colonialism, but also stemmed from a patriarchal mentalite, embedded in First Nations societies. Competition over scarce resources, particularly housing

⁵⁴ PAC, RG10, Volume 2284, File 57,169-1 “Indian Braves Make Demands,” Quebec Chronicle, September 23, 1919.

⁵⁵ Ovide Mercredi and Mary Ellen Turpel, In the Rapids: Navigating the Future of First Nations, (Toronto: Viking, 1993) 97-99.

and land, foreshadowed a backlash against the measure and set the stage for factionalism. A surge of a significant number of members returning to live in Native communities, without a commitment of further resources, exacerbated tensions, as well. By restricting Canada's responsibilities to status Indians, under the two-tier system developed under the auspices of the Penner Committee, the Federal government was distanced from community demands for increased funding and services.⁵⁶

In the set of hearings leading up to the Bill, the elective Council of Six Nations, submitted a stunning graphic depiction of the central problem facing our community, then, as well as today. In Figure 1, the caption denotes the problem in a succinct phrase, "Inequality Remains," describing the failure of the Canadian government and Native Band Councils to address continuing discrimination against women and their descendants at Six Nations Reserve, then and now.⁵⁷ The proposed legislation created for restoration of the rights of women stricken from status and membership by the Indian Act, Bill C-31, still only solved a portion of the problems. The statutes drafted, that eventually would be enacted in Bill C-31 on June 28, 1985, to correct the damage from discriminatory statutes of the Indian Act, would reinstate only the women directly impacted, as well as their first generation of children, who would not be able to transmit Indian status to their children.⁵⁸ The remaining descendants of the women re-instated after Bill C-31, were to be left without status or Band membership.

Both the elective Band Council of Six Nations, headed by Chief Wellington Staats, as well as the Secretary of Six Nations Confederacy Council, Thomas Longboat, filed opposing

⁵⁶ Frank Cassidy and Robert L. Bish, Indian Government: Its Meaning and Practice, (Halifax, Nova Scotia: Oolichan Books and The Institute for Research on Public Policy) 61.

⁵⁷ PAC, RG14, Accession no. 1996-97/193, Box 80, Wallet 3, File 5900-331-II. Example of Inequality from the Six Nations Council, House of Commons, Standing Committee on Indian Affairs, 33d Parliament, 1st sess., 1985.

⁵⁸ Due to the fact that the Constitution Act came into force on April 17, 1985, Bill C-31 came into force on the earlier date.

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comments in regard to the proposed Bill C-31.⁵⁹ In addition, the Haudenosaunee Land Rights Committee, affiliated with the Confederacy, also filed a third statement.⁶⁰ All of these groups represented Six Nations Reserve in some capacity. The Band Council generally supported Bill C-31, but evidenced great concern about the drain upon its resources, given the restoration of several thousand women and their descendants, if they were reinstated with attendant benefits. Staats argued that Six Nations would need at least 10,000 more acres of land and nearly four million dollars, as a minimum, in additional annual funding, to handle approximately 2,500 more members, who would be reinstated.⁶¹ Both the Elective Council and the Confederacy were worried about a provision in the Bill regarding membership in the Band, for the proposed legislation stipulated the consent of a majority of electors, as a step required by the Federal government, in order to gain control of its own membership. Staats noted, “Many of the Band members are adherents of the Iroquois Confederacy, who under no circumstances would have anything to do with an election process set up by the Federal government.”⁶² This was a major stumbling bloc, since voting is an anathema to the Confederacy adherents who never vote in any referendums. The Confederacy representative on the Reserve, Thomas Longboat, argued, “There has never been an election in which the majority of the people have voted. This is not a matter of apathy; the people feel that by voting they would legitimate Canada’s actions in 1924, so they deliberately do not vote.” Longboat accused the Canadian government of once again,

⁵⁹ PAC, RG14, Accession no. 1996-97/193, Box 80, Wallet 3, File 5900-331-II. Chief Wellington Staats (Six Nations Band Council), “Presentation to the Standing Committee on Indian Affairs,” and “Letter to Standing Committee on Indian Affairs from Six Nations Iroquois Confederacy,” Thomas Longboat (Secretary, Six Nations Iroquois Confederacy), House of Commons, Standing Committee on Indian Affairs, 33d Parliament, 1st sess., 1985. PAC, RG14, Accession no. 1996-97/193, Box 80, Wallet 3, File 5900-331-II. “Statement of the Haudenosaunee Respecting Our Exclusive Right to Determine Citizenship/Membership of the Haudenosaunee Confederacy,” Submitted by Terry Doxtator (Coordinator, Land Rights Committee), on behalf of the Grand Council of Chiefs, House of Commons, Standing Committee on Indian Affairs, 33d Parliament, 1st sess., 1985.

⁶¹ PAC, RG14, Accession no. 1996-97/193, Box 80, Wallet 3, File 5900-331-II. Chief Wellington Staats (Six Nations Band Council), “Presentation to the Standing Committee on Indian Affairs,” House of Commons, Standing Committee on Indian Affairs, 33d Parliament, 1st sess., 1985.

⁶² Ibid.

imposing the will of a small minority at Grand River on all Six Nations people, just as it had in 1924. He deplored Canadian political practice that interpreted the lack of votes at Six Nations as compliant assent, rather than rejection of Canadian rule over Six Nations. “We do not recognize that your government has any right to tell us who [we] are...”⁶³ The Haudenosaunee, or the Six Nations Iroquois Confederacy, Grand Council of Chiefs, agreed and further argued, “The Haudenosaunee reserve the exclusive right to determine our own citizenship/membership in accordance with our own laws and supported by International Law.”⁶⁴ The Confederacy claims sovereignty over its constituent nation’s territories, without respect to Canada or the United States, as an aboriginal government established before European colonization of North America.

Despite Native protest, the long-awaited Bill C-31 was passed. Hailed by Minister David Crombie as a path-breaking solution to a difficult and embarrassing problem, it was designed to render the Indian Act compatible with the Canadian Charter of Rights and Freedoms. It was to restore status to all Indian women who had suffered under the discriminatory provisions of Canadian law and allow Bands to control their own membership. Crombie signaled a new era by selecting Mary Two-Axe Earley, as the first Native woman to have her status restored. Ms. Earley, a Mohawk, who was President of Quebec Indian Rights for Indian Women, lost her status in 1938 and initiated a grass-roots campaign to publicize the suffering of Native women and their families under the Indian Act. Crombie praised her efforts on behalf of human rights

⁶³ PAC, RG14, Accession no. 1996-97/193, Box 80, Wallet 3, File 5900-331-II. “Letter to Standing Committee on Indian Affairs from Six Nations “Iroquois Confederacy,” Thomas Longboat (Secretary, Six Nations Iroquois Confederacy), House of Commons, Standing Committee on Indian Affairs, 33d Parliament, 1st sess., 1985.

⁶⁴ PAC, RG14, Accession no. 1996-97/193, Box 80, Wallet 3, File 5900-331-II. “Statement of the Haudenosaunee Respecting Our Exclusive Right to Determine Citizenship/Membership of the Haudenosaunee Confederacy,” Submitted by Terry Doxtator (Coordinator, Land Rights Committee), on behalf of the Grand Council of Chiefs, House of Commons, Standing Committee on Indian Affairs, 33d Parliament, 1st sess., 1985.

and furnished her with the documentation that she was enrolled as an Indian, on the Registry in his department and a member of her Band.⁶⁵

These two separate lists are key to the continued debates over Indian status, for although the local Band Councils control their own membership, the government of Canada controls the Indian Register, through which Federal entitlements are linked to Indian status. As the Association of Iroquois and Allied Bands, who originally came up with the idea of the split to give Natives control of their membership, correctly pointed out: “The split between status and Band membership will allow the Federal government to limit its obligations and force the Indian communities to bear the costs of redressing the wrongs resulting from the government’s discriminatory legislation.” Not only was the government not providing any funding for restored members, the regulations left many more people out of the process. Specifically, the Association called attention to the “discrimination between generations, against children, against persons who enfranchised involuntarily, against Indians adopted by non-Indian families, and against people who were...through circumstance, never registered as Indians.” This organization deftly pointed to the specter of termination as the most troubling implication for the future of First Nations, as a result of new regulations in the Bill. New restrictions on passing on Indian status was confined to those who had one status parent, if a child was registered for the first time on or after April 17, 1985. As a result, inter-marriage will result in fewer and fewer status Band members, causing a drastic reduction of Native populations, recognized by the Canadian government.⁶⁶ This was, after all, the point of the Indian Act, all along. Duncan Scott, the archetype of the Indian Affairs bureaucrat, intent on civilizing the Natives, made it his personal

⁶⁵ Communiqué, “Mary Two-Axe Earley Regains Indian Status,” Indian and Northern Affairs, Toronto, July 5, 1985.

⁶⁶ PAC, RG 14, Accession no. 96/97/193, Box 80, Wallet 3, File 5900-331-II. “Bill C-31, An Act to Amend the Indian Act,” The Association of Iroquois and Allied Indians, House of Commons, Standing Committee on Indian Affairs, 33d Parliament, 1st sess., 1985, p. 1-7.

goal that ... “there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department.”⁶⁷

Despite the efforts of international tribunals, the Canadian government and Native leaders, Bill C-31 was but an interim solution to grave, structural inequalities suffered by Native people, rather than an affirmation of Native empowerment and self-determination. It was an attempt to right an injustice; for that alone, it is significant. Yet, driven by a Canadian political agenda, rather than a Native consensus, it was created in haste and under pressure, from a sense of shame concerning the mistakes of the past, rather than with a spirit of respect and pride in Native cultures, to embrace a sense of creativity and possibility for the future. Although many women, such as Ms. Two-Axe Earley, regained status and membership, others were not so fortunate. As claims have continued to flow in to the Band Councils and to the Department in Ottawa, Bill C-31 seems to represent less of a solution, than the beginning of a long, protracted, colonial struggle over Native identity. Restrictions on residency have often tightened at the Band level, for Bill C-31 gave Band Councils increased control of their reserve population through by-laws. Justice was not rendered to successive generations of claimants, the descendants of women whose status was restored under Bill C-31, who simply seek to define themselves as Native people and recover their birthright.

Unfortunately, it is too often the members of Native communities themselves who stand in the way of inclusion for their returning members. As there is more competition for scarce resources, many Native communities have unwittingly internalized the lessons of their former colonial masters, reflecting a continuing colonization of consciousness. Rather than fostering greater inclusion, they, too, target and seek exclusion of Indians of mixed ethnicity, practicing

⁶⁷ John Leonard Taylor, “Canadian Indian Policy During the Inter-War Years, 1919-1939,” Ministry of Indian Affairs and Northern Development, Ottawa, 1984, p. 147.

the same racism and sexism they once condemned. Interestingly, a reinvented, reified tradition is often used to rationalize the exclusion of non-status Natives or their families. Persons or families of mixed ancestry, suffer under the divisive and heated, local politics of the reserve. This exclusionary rhetoric is often harnessed to an ideology of Native nationalism and redeployed as a revitalization movement. Some Native Bands, such as the Kahnawake Mohawks, have gone so far as to implement strict criteria linking Band membership and residency to blood quantum, requiring 50% Native blood and placing a moratorium on “mixed marriages.”⁶⁸ So far, Six Nations has not replicated this process. Reiterating an ideology of racial exclusion would damage a spirit of mutuality and respect for other cultures that has existed at Six Nations, from the founding of the community by Joseph Brant. “There were Indians called Six Nations who had scarcely any Iroquois blood...Besides Joseph’s white friends from his war days and those squatters who claimed to have bought land from individual Indians, there were white captives who refused to go home...”⁶⁹ Yet, in 1969, the Six Nations Band Council made an attempt to evict a “white woman,” from living on the Reserve. Although the Federal Court upheld the right of the Band to control residency, the woman was allowed to remain at Six Nations community.⁷⁰ There have been several unresolved cases related to residency; people have always circumvented the restrictions, historically, by claiming that they were simply visiting. It remains to be seen if the Band Council’s mandates to evict individuals based simply on community complaint would be legally enforceable.

⁶⁸ Gerald R. Alfred, Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism, (Toronto: Oxford University Press, 1995) 165.

⁶⁹ Isabel Thompson Kelsay, Joseph Brant, 1743-1807: Man of Two Worlds, (Syracuse: Syracuse University Press, 1984) 538.

⁷⁰ Taiiaki Alfred, Peace, Power, Righteousness: An Indigenous Manifesto, (Toronto: Oxford University Press, 1999) 72.

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Roberta Jamieson, a former chief, attested to the difficulty and struggle of Six Nations community in coming to terms with the trauma and pain of the colonial legacy, as manifested in the debate over the membership process and residency on the Reserve. Remnants of colonialism beset many Native communities and feelings of disempowerment remain, limiting movement toward the creation of new indigenous institutions. Ms. Jamieson sought to facilitate the growth of the Six Nations community in its exercise of authority and as it sought to hold its leadership accountable. Prior to her tenure, she reported, there had been a lack of transparency and accountability, particularly with regard to spending economic resources on failed economic development. Community members sought to have their questions answered, she maintained, to take responsibility for their own government. After all, she noted, “we’re founders of democracy in the Western world.”⁷¹

Jamieson began her tenure as chief by separating politics and administration, calling for a model for inclusive decision-making; noting that traditional forms of governance included women and children in decision-making. She thought the community had an opportunity to take power and design their own system of government for the twenty-first century; to set forth a model using Six Nations norms, cultural values, methods of law-making and conflict resolution, as well as setting guidelines for membership. Yet, she found she was quickly thrust into a controversy over membership, as debate crystallized around a nexus of identity, race and gender. An ethos of exclusion and insularity developed on the Reserve amid the heightened tensions over C-31 and the pressure brought to bear on the Band Council from the Canadian government. In its wake, the atmosphere was not conducive to moving forward, but to revisiting the conflicts of

⁷¹ Roberta Jamieson (Former chief, Six Nations Reserve), telephone interview with the author, February 24, 2006.

the past, argued in a spirit of distrust. Jamieson noted that people have to believe that they have the power to change.⁷²

Conclusion

Perhaps, the most harmful legacy of colonial rule at Six Nations is not only the damage it has done to the fabric of community life and to its gentle spirit of openness and inclusion, but to its confidence to shape the future. The impact of colonialism has been writ large in Native communities, as demonstrated by the political strife at Six Nations Reserve. As our people struggle with the legacy of patriarchal power, materialism and a sense of strident individualism that has been inculcated in the consciousness of our ancient matriarchal and communal culture, one can still marvel at the solidarity and persistence that has sustained it, thus far. Social ills have cast a long shadow over our community, but the struggle to identify indigenous pathways to social justice continues. The search also must go on to reach across the generations and the political divide between the Confederacy and the elective Council, to put the welfare and sustenance of our community ahead of partisanship and transplanted ideological struggles. Some of the questions we will ponder are difficult, but no more difficult than our leaders have faced and solved in the past. Where are the boundaries of collective vs. individual rights in Native cultures? Is there a paradox signaled by a claim to cultural authenticity in a twenty-first century Native society, engulfed in a Western modernity? Should indigenous communities be held to international standards of human rights, or are there exceptions for the continuation and revitalization of traditional cultures? The questions will be debated in Native communities across Canada as indigenous institutions and governments emerge in the context of a rapidly growing Native population and shrinking resources.

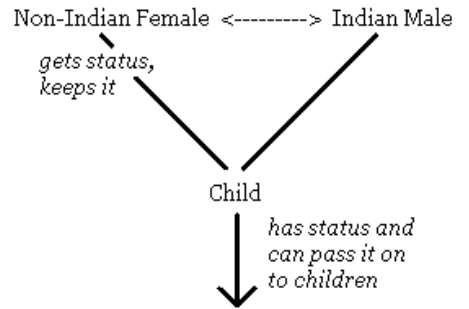
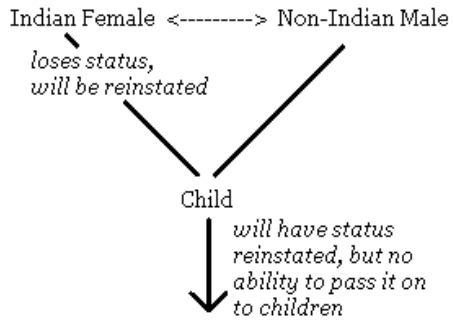
⁷² Roberta Jamieson (Former chief, Six Nations Reserve), telephone interview with the author, February 24, 2006.

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As we listen to our some of own leaders claim legitimacy from an authentic knowledge of tradition, but speak in the Western political language of sovereignty, self-determination and entitlements and use the conceptual framework of the legalistic, patriarchal and materialistic cultures of Western modernity, we will remember and heed the voices of our elders, as well. Using the European language of nationalism to legitimate an eviction of non-members at sundown, from our reserves, does not call to mind the consensus model of decision-making of the Ongwehonwe in the Confederacy, nor the healing ceremonies of the Longhouse. Native ideologies and institutions rooted in our own epistemologies would seem more likely to engage First Nations communities in serious discourse regarding revitalization of our indigenous cultural ethos, forged in a shared optimism for the future of Native people, rather than Euro-Canadian norms and forms.

Once again, in order to establish their Native identity, women may have to turn to the courts and the international justice system simply to establish their Native identity and embrace their culture, free from discrimination. The Department of Indian Affairs and Northern Development is engaged in negotiations with Native leaders, but readying itself for another round of lawsuits. It would be heartening if our own people would take the initiative and welcome the next generations to join their nations, to honor the struggle of those First Nations women, so long excluded by the Indian Act, who finally won their victory against discrimination and can return to the place they have always called home.

Example of Inequality



Inequality remains.

Under Six Nations Band Rules, both children would be dealt with fairly, according to rules of blood quantum, etc.

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