Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview

BONITA LAWRENCE

The regulation of Native identity has been central to the colonization process in both Canada and the United States. Systems of classification and control enable settler governments to define who is "Indian," and control access to Native land. These regulatory systems have forcibly supplanted traditional Indigenous ways of identifying the self in relation to land and community, functioning discursively to naturalize colonial worldviews. Decolonization, then, must involve deconstructing and reshaping how we understand Indigenous identity.

Framing Native Identity

To be federally recognized as an Indian either in Canada or the United States, an individual must be able to comply with very distinct standards of government regulation. The effect of these regulatory regimes might best be understood in terms of a discourse, in the sense that Foucault used the term—as a way of seeing life that is produced and reproduced by various rules, systems and procedures—forming an entire conceptual territory on which knowledge is produced and shaped (Loomba 1998, 38). The Indian Act in Canada, in this respect, is much more than a body of laws that for over a century have controlled every aspect of Indian life. As a regulatory regime, the Indian Act provides ways of understanding Native identity, organizing a conceptual framework that has shaped contemporary Native life in ways that are now so familiar as to almost seem "natural."

In Canada, few individuals appear to have engaged with the depth of the problem that the Indian Act represents—its overarching nature as a discourse

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of classification, regulation, and control that has indelibly ordered how Native people think of things "Indian." To treat the Indian Act merely as a set of policies to be repealed, or even as a genocidal scheme in which we can simply choose not to believe, belies how a classificatory system produces ways of thinking—a grammar—that embeds itself in every attempt to change it. A similar problem exists in the United States, where federal Indian legislation has shaped American Indian ways of looking at Native identity in highly distinctive ways.

To speak of how pervasively the Indian Act (in Canada) or federal Indian legislation (in the United States) has permeated the ways in which Native peoples think of themselves is not to deny Native people the agency to move beyond its logic. Nor does it suggest that traditional ways of understanding self in relation to other people, and the land, have been entirely effaced. It does, however, suggest that we should think carefully about the various categories of Native identity that have been legally defined under federal laws, and consider the possibility of choosing new paths that might create common goals, rather than pursuing the separate routes to empowerment that "Indian" legislation creates, particularly in Canada. Understanding how colonial governments have regulated Native identity is essential for Native people, in attempting to step away from the colonizing frameworks that have enmeshed our lives, and as we struggle to revive the identities and ways of living that preceded colonization.

In this paper, identity is understood as being neither neutral and passive, nor fixed. While identity is intrinsically an individual issue, it is also relational, juxtaposed with others' identities, with how they see themselves and see others (Steinhouse 1998, 1). In some respects, identity has been seen as something that a person *does*; in other respects, identity is seen as defining what a person *is*. Because identities are embedded in systems of power based on race, class, and gender, identity is a highly political issue, with ramifications for how contemporary and historical collective experience is understood. Identity, in a sense, is about ways of looking at people, about how history is interpreted and negotiated, and about who has the authority to determine a group's identity or authenticity (Clifford 1988, 289, 8).[1] For Native people, individual identity is always being negotiated *in relation to* collective identity, and *in the face of* an external, colonizing society. Bodies of law defining and controlling Indianness have for years distorted and disrupted older Indigenous ways of identifying the self in relation not only to collective identity but also to the land.

Indeed, to speak of Native identity at all in some ways reinforces the notion that the word "Indian" describes a natural category of existence. And yet it is equally clear that the label "Indian" has been an external descriptor, meaningless to the Indigenous peoples of the Americas prior to colonization. As a common identity it was imposed on Indigenous populations when settler governments in North America usurped the right to define Indigenous citizenship, reducing the members of hundreds of extremely different nations, ethnicities,

and language groups to a common raced identity as "Indian." Janice Acoose, for example, has described how being classified by the Canadian government as a status Indian under the Indian Act represented a violation of the rights of her Cree/Metis and Saulteaux cultures to define her as *Nehiowe* or *Nahkawe*, which removed her, in commonsense ways, from any sense of being part of the destiny of her own nation(s) and instead placed her as a powerless and racialized individual at the bottom of the hierarchy of Eurocanadian society (1995, 23). For Indigenous people, to be defined as a race is synonymous with having our Nations dismembered. And yet, the reality is that Native people in Canada and the United States for over a century now have been classified by race and subjected to colonization processes that reduced diverse nations to common experiences of subjugation. Contemporary Native identity therefore exists in an uneasy balance between concepts of generic "Indianness" as a racial identity and of specific "tribal" identity as Indigenous *nationhood*. In general, Native resistance to colonization rejects notions of "pan-Indian" identities that can, at best, only aspire for equality within a settler state framework. For Indigenous people, resisting colonial relations involves a refusal to accept the authority of Canada or the United States as settler states, and a focus on rebuilding the nations that the colonizer has sought to destroy.

While one focus of this paper explores some aspects of how Canadian regulation of Native identity created gendered notions of Indianness, in exploring gender issues I take very seriously the warning of Mohawk scholar Patricia Monture-Angus that for Native women in Canada, "feminism as an ideology remains colonial" (1995, 171). Monture-Angus has noted in particular that the concept of "patriarchy" alone is inadequate for explaining the many levels of violence that Native women face within their communities, and the apparent inability or unwillingness of band governments to make their circumstances a priority (172). I concur with Monture-Angus that we must look more deeply and in a more nuanced manner for an understanding of why certain communities have supported, for example, sexist provisions within the Indian Act, and that to simply regard this issue as one of sexism ignores how constant colonial incursions into Native spaces generate almost unimaginable levels of violence, which includes, but is not restricted to, sexist oppression.

On the other hand, I also agree with writers such as Paula Gunn Allen (Laguna Pueblo) and Janice Acoose (Cree Metis/Saulteaux), who explore how colonization has always been a gendered process, and how the Church in particular has very specifically attacked the social status of Native women as a way of undermining the power of Native societies in general (Allen 1986, Acoose 1995). This issue is central for understanding how gendered regulation of Native identity under the Indian Act has disrupted the viability of Native communities for over a century by forcibly removing tens of thousands of Native women and their descendents from their communities for marrying nonstatus

or non-Native men. The children and grandchildren of these women, today, as urban mixed-race Native people, are struggling to situate themselves with respect to their mothers' and grandmothers' communities within a discourse of Indianness that denies their realities. In the next section I will explore the roots of this problem.

A History of the Indian Act

For over a century, the Indian Act has controlled Canadian Native identity by creating a legal category, that of the "status Indian," which is the only category of Native person to whom a historic nation-to-nation relationship between Canada and the Indigenous peoples is recognized.[2] With this legal category set into place, until recently the only individuals who could consider themselves Indian were those who could prove they were related, through the male line, to individuals who were already status Indians.

A crucial issue to understand here is that without Indian status, and the band membership that goes along with it, Native people are not allowed to live on any land part of an Indian reserve in Canada (unless it is leased to them as an "outsider"). They cannot take part in the life of their own community unless they have Indian status and hence band membership in that community. We can see, then, that the colonial act of establishing legal definitions of Indianness, which excluded vast numbers of Native people from obtaining Indian status, has enabled the Canadian government to remove a significant sector of Native people from the land. By 1985 there were twice as many nonstatus Indians and Metis as status Indians in Canada (Holmes 1987, 13). In essence, by 1985, legislation ensconced in the Indian Act had rendered two-thirds of all Native people in Canada landless.

The roots of the Indian Act go back to the earlier days of colonial encounters between Europeans and Indigenous peoples in the territory now known as Canada. The competing colonial claims for territory and trade rights maintained by both Britain and France in eastern North America for well over a century eventually resulted in a protracted war between these powers waged all over Native territory, with devastating results for the nations inevitably drawn into the conflict. When Britain was proclaimed as victor over France in 1763, it laid claim to much of eastern North America in a context where it lacked any real ability to actually wrest the land from the Native nations who occupied it, or to in any way control how the Nations of these regions would choose to act. Because of this, Britain sought another way to consolidate its imperial position—by structuring formal, constitutional relations with the Native nations on the territories it claimed for itself. The Royal Proclamation of 1763 recognized Aboriginal title to all lands not ceded and acknowledged a nation-to-nation relationship with the Indigenous Nations. Under this policy, the agency charged

with conducting relations with the Native nations, the British Imperial Indian Department, was a foreign office in every sense. Departmental agents could not command—they could use only the diplomatic tools of cajolery, coercion (where possible) and bribery (Milloy 1983, 56). The nation-to-nation relationship was maintained for the entire interval that the British government was responsible for Indian Affairs, from 1763 until 1860. During this interval, however, the white settler population of the Canadian colonies multiplied a hundredfold, and the deliberate introduction of devastating diseases and the use of alcohol among the Indigenous nations of what is now southern Ontario and Quebec led to the widespread decimation of population among the nations in those regions.

In 1850, one of the earliest actions of the newly unified Province of Canada was to pass legislation that allowed for the creation of Indian reserves. This legislation, designed to reinforce the rights of settlers to the entire land base by restricting "Indians" to specific territories within it, for the first time defined, albeit extremely loosely, who should be considered to be an "Indian" (Miller 1989, 109–10). The truly significant feature of this legislation was that a European settler government, an agency with no legislative authority over Indigenous nations, at this point claimed the authority to define who was or was not a member of an Indigenous nation—designated in generic terms as "Indian." The fact that the government of the colony did this suggests that it was anxious to assert its independence from Britain and actualize its nation-building capacity. Canada pushed this assumption of authority further in 1857, when it passed the *Gradual Civilisation Act*, which made provision for the conversion of reserve lands into alienated plots in the hands of men who would cease to be Indian upon enfranchisement. The colony was adopting a policy of paternalistic control and gradual removal of Native people from the path of white settlement, a policy greatly aided when the British Crown transferred control over "Indians" to its Canadian colony in 1860. The "nation-to-nation" relationship was to all intents and purposed abandoned by Canada at that point.

Gender Discrimination in the Indian Act and the Creation of the "NonStatus Indian"

In 1869, the *Gradual Enfranchisement Act* was passed, which stipulated that any Indian woman who married a white man would lose her Indian status and any right to band membership. It was this statute that for the first time created the concepts of "status Indian" and "nonstatus Indian." Prior to this, Canada had kept to a fairly general and nonrestrictive definition of who was an Indian (Miller 1989, 114). Such a loose definition, however, could not allow for the kind of control that could make a person born Native (and her offspring) legally white. In order to do this, "Indianness" had to be codified, to make it a category that could be granted or withheld, according to the needs of the settler society.

As a result, until 1985, the Indian Act removed the Indian status of all Native women who married individuals without Indian status (including nonstatus Canadian Indians and American Indians, as well as white men), and forced them to leave their communities. The same act gave Indian status to white women who married status Indians; this would remain part of the Indian Act until 1985. Loss of status was only one of many statutes that lowered the power of Native women in their societies relative to men.[3] Because of the many ways in which Native women were rendered marginal in their communities, it was extremely difficult for them to challenge the tremendous disempowerment that loss of status represented.

To understand the peculiar manner in which the Indian Act structured intermarriage—by making Indian women legally "white" and white women legally "Indian"—it is important to explore the extent to which regulation of Indianness rested on colonial anxieties about white identity and who would control settler societies. As Ann Stoler has noted, the European settlements that developed on other peoples' lands have generally been obsessed with ways of maintaining colonial control, and of rigidly asserting differences between "Europeans" and "Natives" to develop and maintain white social solidarity and cohesion (1991, 53). The very existence of settler societies is therefore predicated on maintaining racial apartheid, on emphasizing racial difference, white superiority, and "Native" inferiority.

This flies in the face of the actual origins of many white settlements in Canada— which often began with displaced and marginal white men, whose success with trade, and often their very survival, depended on their ability to insinuate themselves into Indigenous societies through intermarriage. The early days of many European colonial settlements in Canada have involved some form of negotiated alliances with local Indigenous communities, often cemented through marriage, and reliance on Native women for survival—which means that the boundaries between who should be considered "European" and who should be considered "Native" (and by what means) have not always been clear.[4] By the mid-nineteenth century, the presence of approximately fifty-three distinct Metis communities in the Great Lakes area alone, whose inhabitants blended Native and European ways of living in highly distinct ways (Royal Commission on Aboriginal Peoples, Vol. 1, Sec. 6.2, 150), was making it difficult for Anglo settlers to maintain clear boundaries between the colonizers and the colonized. Social control was predicated on legally identifying who was "white," who was "Indian," and which children were legitimate progeny; citizens rather than subjugated "Natives" (Stoler 1991, 53). Clearly, if the mixed-race offspring of white men who married Native women were to inherit property, they had to be legally classified as white. Creating the legal category of "status Indian" enabled the settler society to create the fiction of a Native person who was by law no longer Native, whose offspring could be considered white. Because of the racist

patriarchal framework governing white identities, European women who married Native men were considered to have stepped outside the social boundaries of whiteness. They became, officially, status Indians.

The cultural implications of this social engineering process for Native people, where the majority of the 25,000 Indians who lost status and were forced to leave their communities between 1876 and 1985 (Holmes 1987, 8) did so because of gender discrimination in the Indian Act, are extremely significant. Taking into account that for every woman who lost status and had to leave her community, all of her descendants also lost status and for the most part were permanently alienated from Native culture, the scale of cultural genocide caused by gender discrimination becomes massive. Indeed, when Bill C-31 was passed in 1985, there were only 350,000 status Indians left in Canada (Holmes 1987, 8). Because Bill C-31 allowed individuals who had lost status and their children to regain it, approximately 100,000 individuals had regained their status by 1995 (Switzer 1997, 2). But the damage caused, demographically and culturally, by the loss of status of so many Native women for a century prior to 1985, whose grandchildren and great-grandchildren are now no longer recognized—and in many cases no longer identify—as Indian, remain incalculable.

Racial Restrictions in the Indian Act

When Canada passed the Gradual Enfranchisement Act in 1869, a blood quantum requirement was added for the first time to the definition of an Indian. After 1869, the only people eligible to be considered Indian were those who had at least one-quarter Indian blood (Dickason 1992, 251).

With the expansion of Canada into the western regions of the continent, however, officials in the Indian Department, in negotiating treaties with the new Nations they encountered, began the practice of exerting much more stringent controls over who would be accepted as Indian. When the Indian Act was created in 1876, these practices were made explicit. The Act contained a provision that for the first time excluded anybody who was not considered to be "pure Indian" from Indianness. It stated that:

> . . . no half-breed head of a family (except the widow of an Indian, or a half-breed who has already been admitted into a treaty) shall . . . be accounted an Indian, or entitled to be admitted into any Indian treaty. (Canada, Indian Act, Section 3, 1876. R.S.C., 1951, quoted in Waldram 1986, 281)

But who was "Indian" and who was "half-breed?" Ken Coates and William Morrison (1986) have suggested that these distinctions, to a tremendous extent, have been *created* by colonial categories, as well as being regulated by them. The signing of the numbered treaties in Western Canada, and the changes to

the Indian Act that accompanied it, have been crucial to the creation of different categories of Indianness. At the same time, the treaties represent sites where Native people struggled to avoid being divided on the basis of race by colonial policies.[5]

It is, however, important to note that Metis identity, historically, has in some cases been far more than a matter of government classification. Some mixed-blood communities, particularly those that developed in the Great Lakes regions and at Red River, have been extremely culturally distinct and have had different collective histories from Indian bands; they have also asserted their goals and needs as such. Nevertheless, in many instances, the differences between "Indians" and "halfbreeds" have been far less distinct, and divisions between them have been created quite arbitrarily by government classification and regulation of Native identity.

The process of differentiating between "Indians" and "halfbreeds" did not necessarily conform either to actual racial blood quantum or to individual self-identification. In the fifty-year interval during which the treaties numbered one to eleven were negotiated with Native bands across Western Canada and the subarctic, treaty commissioners in each location set up tables where potential "halfbreeds" were to present themselves, individual by individual, to be judged by white officials as to *what* they were. In a context where racial mixing was frequently difficult to determine, factors such as lifestyle, language, and residence were employed (Waldram 1986, 281). Individuals who were considered to be living "like Indians" were taken into treaty, while those who had at some point hauled supplies for the Hudson Bay Company, and as a result knew some English, were registered as "halfbreeds"—in each case regardless of ancestry.[6] Thus ascribed, an individual became, irrevocably, Indian or halfbreed (as did their descendants). If Indian, one's name was included on the band list as someone who came under the treaty; if halfbreed, one was (in theory) given a certificate ("scrip") entitling the person to fee simple title to 160 acres of land, or money to the value of $160 (amounts of land and cash fluctuated, depending on whether the individual was an adult or head of a family, and in which region this took place). It was the Canadian government's policy that by accepting scrip, Metis people relinquished their Aboriginal rights to their territories, a deviation from Aboriginal policy that the government rationalized by asserting that the Metis were not Aboriginal people (Harrison 1985, 73). Many Native families who were away when registration was first carried out never made treaty lists and ended up being classified by default as halfbreeds. Indeed, whole bands who were absent during treaty signing similarly lost any chance of acquiring Indian status and became, de facto, "halfbreed" communities (Holmes 1987, 4). In other parts of Canada, where the treaties did not expressly separate "halfbreeds" from "Indians" in the way that the numbered treaties in Western Canada did, such individuals were usually considered to be "nonstatus Indians."

Even after the treaties were signed, the government frequently sought to "winnow out" from Indianness all who could be claimed to be Metis.[7] In rare cases, individuals known to be half or three-quarters Indian and were said to be following "an Indian way of life"who were destitute and prevented from living off the land because they had to observe the same game regulations as whites, were allowed to be taken into treaty (and therefore obtained Aboriginal harvesting rights). This was the case particularly during the 1930s in areas of Treaty Eight and Treaty Eleven, when over 160 individuals formerly counted as halfbreeds became treaty Indians (Coates and Morrison 1986, 259).

The later numbered treaties perhaps demonstrate the most glaring contradictions between the government's rigid classifications of "halfbreed" and "Treaty Indian" and how people actually saw themselves. Mixed-race Native people who lived along the northern Mackenzie River and in the Yukon have never differentiated themselves from Native communities. However, the flurry of prospecting in the Mackenzie valley during the Klondike gold rush convinced the government to negotiate Treaty Eight in 1899 with the Native peoples of the southern Mackenzie Basin. At that point, anybody deemed to be "halfbreed" was separated out and offered scrip rather than treaty. With the discovery of oil at Norman Wells, Treaty Eleven was signed in 1921, with a similar effect. The numbered treaties were thus crucial to the project of forcibly identifying and segregating "halfbreeds" from "Indians," regardless of how individuals saw themselves.

In the Yukon, meanwhile, where no treaties were signed, fewer distinctions existed between those who were mixed-race and those who were not. The churches, however, attempted to separate mixed-race Native people from Native communities and categorize them as whites, regardless of how the white society ostracized and rejected them. The introduction of the Welfare State after World War II forced a more standardized classification of race on families in the north (Coates and Morrison 1986, 260).

Implications of Indian Act Divisions

If the preceding history clarifies anything, it is that in Canada, both "Indian" and "Metis" identities have been shaped to a phenomenal extent by discriminatory legislation under the Indian Act. In this sense, to view these groups as they now organize themselves at present—as the products of entirely different histories and the bearers of entirely different destinies—belies the common origins of both groups, as members of Aboriginal nations who faced the pressures of colonization in different ways, or who were classified in different ways by colonial legislation. Focusing solely on contemporary differences between treaty Indians and Metis, without any exploration of what both groups have in common, at this point seems to conform too closely to the logic of the Indian

Act. It would seem more useful to understand contemporary Metis identity less as an issue of *inherent* cultural difference due to racial mixing and being the product of a "Red River" heritage than as an issue of being nonstatus and historically excluded from legal rights and access to land because of the relentless rigidity with which racial categories were created and maintained under the Indian Act. Because of the struggle of Metis people to have their distinct nationhood recognized, in order to gain legal rights as Aboriginal people, this statement should not be interpreted as challenging Metis claims to cultural distinctiveness. In this view, treaty Indians and the Metis—like status and nonstatus Indians in general—represent two very distinct sides of a common history, where one side, the Metis, have been forcibly externalized from Indianness, deprived of their rights as Aboriginal peoples, and given little option but to pursue an entirely separate path to empowerment.

The fact remains, however, that while many of the divisions between these groups were created and imposed by the Indian Act in a relatively artificial manner, they have nevertheless become very real differences in experiences of Nativeness. Even in subarctic communities, where cultural differences between "Metis" and "Indian" populations have been relatively minor, the superimposition of a legal definition of "Indian" status has effectively divided populations. When individuals on either side of the legal boundary are treated differently in most of the daily aspects of life, being "treaty Indian" or "Metis" begins to signify increasingly different identities (Waldram 1986, 286–87). Metis and treaty Indian communities, which often exist side by side in northern regions, are required to access different sources of funding, and to organize from different constituent bases in order to improve the quality of life in their communities. These organizational differences then take on a life of their own and force communities that once saw themselves as one unit into different paths of development (Waldram 1986, 290–93). Far worse divisions have developed in regions where Metis and Indian communities have been defined by the Indian Act as separate and different for well over a century. These divisions can truly be said to have been naturalized, to the extent that contemporary struggles to renegotiate Native identity still rigidly maintain distinctions on the basis of Indian status.[8]

It is important to emphasize that status Indians are not being simply "brainwashed" by the logic of the Indian Act into accepting these colonial categories as natural. Real, tangible benefits—including an increased chance of a community's cultural survival—accrue to those communities who are able to prove their eligibility for reserve status under the Indian Act.[9] However, some communities, particularly those who challenged the constitutionality of Bill C-31 and opposed having women whose status had been reinstated or their children becoming band members again, insist on clinging to definitions of Indianness

created by the federal government *as an expression of their sovereignty*, not only because the divisions empower them at the expense of other Native people, but also because changes to government definitions of Indianness violate deeply internalized ways of understanding Native identity.

Redefining Indianness Under Bill C-31

Until 1985, section 12(1)(b) of the Indian Act discriminated against Indian women by stripping them and their descendants of their Indian status if they married a man without Indian status. Under Section 12(2), "illegitimate" children of status Indian women could also lose status if the alleged father was known to not be a status Indian and if the child's status as an Indian was "protested" by the Indian Agent. Section 12(1)(a)(iv), known as the "double mother" clause, removed status from children when they reached the age of 21 if their mother and paternal grandmother did not have status before marriage (Holmes 1987, 4).[10] Given the accelerating gender discrimination in the Indian Act created by the modifications of 1951, Native women in Canada struggled for the next thirty years to challenge the gender discrimination that so shaped their lives, in the face of incredible opposition. By 1971, Jeannette Corbiere Lavell and Yvonne Bedard, two Native women who had both lost their status for marrying white men, challenged the discriminatory sections of the Indian Act in court. The Supreme Court, however, ruled that the Indian Act did not discriminate against Indian women who married non-Indian men because in losing their status they gained the legal rights of white women. It was not until Sandra Lovelace, a Maliseet woman from Tobique, New Brunswick, took her case to the United Nations Human Rights Committee that Canada was forced to address this issue. In 1981, she won the case, and Canada was found to be in violation of the International Covenant on Political and Civil Rights. The government at this point stated its intention to amend the discriminatory sections of the Indian Act. After significant consultation and proposed changes, Bill C-31, An Act to Amend the Indian Act, was passed in 1985.

It is important to recognize that the sometimes violent[11] opposition that these women faced was not simply a function of Native sexism. In 1969 the Canadian government had released the *White Paper*, which proposed to end the separate status of Native peoples within Canada. This marked a turning point in Native politics, as bands rallied to resist this attempt by the federal government to simply legislate away its historical relationship with Native peoples (Miller 1989, 225–34). Protecting status Indian rights has been a central concern of status Indian organizations since then. When Native women approached the government to have the Indian Act changed, the government continually refused, claiming that it was only responding to the wishes of Indian people (who had

rallied to resist the *White Paper*). Meanwhile, male-dominated organizations, whose membership was not affected by Section 12(1)(b) of the Indian Act, saw it as more dangerous to risk tampering with the Indian Act than it was to bring about justice for Native women. This is yet another example of how the inequalities created between Native people by the Indian Act have made resistance difficult—as those who are empowered by the inequalities attack those who are oppressed by them, or leave them to struggle alone.

Bill C-31 separated Indian status and band membership, created new divisions among Indians with respect to who can pass their status on to their children, and made it impossible for nonstatus women to regain status through marriage. As a result of the bill, approximately 100,000 Native women and their children have received Indian status.[12] However, although Bill C-31 officially brought the Indian Act into compliance with international human rights standards, it has still managed to maintain divisions among Native people along the basis of gender and blood quantum, largely through not addressing past injustices.[13]

The reactions of a number of First Nations to changes to the Indian Act under Bill C-31 have been profoundly negative. Some bands have mounted legal challenges to the bill's validity. Others appear to have made this bill the occasion to assert their sovereignty by insisting on their right to decide which former community members, if any, should be reinstated as band members. While this issue is of paramount importance to any community's right to self-determination, it is telling that many Native people regard Bill C-31, and not the Indian Act, as the root of the problem.[14]

While it is a reality that many bands' resources were temporarily overloaded by the massive increase in band membership in their communities, the majority of individuals reinstated under Bill C-31 were the children of women who had lost their status, who did not plan to return to their Native community of origin. The numbers are revealing of the sheer numbers of individuals affected by loss of status:

> Of the more than 600 bands in Canada, a total of 79, or 13 per cent, face a potential population increase of more than 100 per cent. The majority, 379 bands, or 62 per cent, face membership increases of between 10 and 30 per cent. The Native Council of Canada conducted a random survey of Indians affected by Bill C-31, and less than one-half of those surveyed wanted to return to the band. Of those, about 70 per cent wanted band membership so they could regain some of their culture, not to go home to live on the reserve (*Windspeaker*, March 1996, 6).

A central issue shaping the response to Bill C-31, however, is the manner in which it has become an accepted aspect of Native identity that if Native

women marry white men they *should* forfeit their right, and their children's right, to be band members and to live in the community—while it is considered perfectly all right for Native men to have married white women without ever having their rights to band membership or community residency challenged. While this internalized sexism has shaped who is considered to have "validly" lost their "Indianness," perhaps a bigger issue is the fact that the existence of Native people whose status has been reinstated but who did not grow up in Native culture has stricken a deep chord of unease in Native communities. It is worthwhile considering that it is this anxiety over the implications of "opening up" Native identity in directions that the community will be unable to control, rather than solely an issue of sexism that may be at the heart of the unwillingness of some on-reserve Indians to redress past injustices in reinstating Bill C-31 Indians as band members. Blatant sexism, however, continues to be an issue in some communities.[15]

After over a century of gender discrimination under the Indian Act, the idea that it is somehow acceptable for Native women to lose status for marrying nonstatus or non-Native men has become a normalized aspect of Native life in many communities. As a result, the very notion of which Native people should even be considered to *be* "mixed-blood" is highly shaped by gender. The family histories of on-reserve Native people have routinely included the presence of white women married to Native men, as well as (in some cases) the children of Native women who had babies by white men but were not married to them. These experiences have not been seen, or theorized, as "mixed-blood" experiences. The children of these unions have been considered to be Indian, and have never had to leave their communities. Indian reserves, particularly those adjacent to white settlements, may have grown progressively mixed-blood under these circumstances—but they have not been *called* mixed-blood communities, and on-reserve mixed-blood families have therefore not been externalized *as* mixed-blood people. It has been the children of Native mothers and white or Metis fathers who have been forced to become urban Indians, and who, in their Native communities of origin, are currently being regarded as outsiders because they *have* been labeled as "not being Indian" (implicitly because they are mixed-blood and grew up urban). Gender has thus been crucial to determining not only who has been able to stay in Native communities, but who has been called "mixed-blood" and externalized as such. In this respect, gender discrimination in the Indian Act has shaped what we think about who is Native, who is "mixed-blood," and who is entitled to access to Indian land. These beliefs are only rendered more powerful by the strongly protectionist attitudes towards preserving Native culture as it is lived on reserves at present, where outsiders may be seen as profoundly threatening to community identity.

American Discourses of Indianness

It is impossible to fully grasp the arbitrary nature of the distinctions created by the Indian Act has created among Native people in Canada without taking into account the bigger picture of how other colonial regimes have created different methods of classifying and regulating Native identity. Below, I will briefly explore the system devised by the American government to control American Indian identity during the nation-building process in the United States.

At the time of American Independence, the newly created United States was relatively weak with respect to the Native nations, and in any case was anxious to demonstrate its "civilized" nature to the international arena. The new republic therefore officially recognized that the land belonged to the Native nations through the Northwest Ordinance of 1787 (Hirschfelder and Kreipe de Montano 1993, 3–10). The nation-to-nation relationship, regulated by treaties, lasted until the new nation-state was firmly established as a sovereign nation. Federal recognition of Native sovereignty was definitively abrogated in 1831, when the Supreme Court, during a decision on two cases (*Cherokee Nation v. Georgia* and *Worcester v. Georgia*), ruled that Native American tribes were "domestic dependent nations" within the United States (Hirschfelder and Kreipe de Montano 1993, 44). Thereafter, with the removal of most of the eastern Nations to territories west of the Mississippi, the United States was able to consolidate its eastern territories and begin another phase of westward expansion. A treaty-making relationship was maintained, however, until 1871—at which point, the federal government had ratified 372 treaties with over 100 different Native nations (Hirschfelder and Kreipe de Montano 1993, 53). From the 1860s, America's policy of Manifest Destiny—its determination to rule the southern half of the continent from the Atlantic to the Pacific—was instituted through open warfare, until the western Nations had been "pacified" by the 1890s (Churchill 1995, 29–31).

Land Allotment and Blood Quantum

The United States did not begin to codify definitions of Indianness until it had managed to assert control over most of its claimed territories—and those definitions were firmly tied to controlling the captive populations (and diminishing the territorial base) of the newly created Indian reservations. Federal blood quantum regulations were instituted at the time of the 1887 Dawes Act, which broke up most of the reservations into individual allotments. The allotment policy, an all-out attack on the collective nature of American Indian life that attempted to force Native people to adapt to concepts of private property, was also a means of appropriating large amounts of the land set aside for reserves under various treaties. The remaining "leftover" land after allotment on each

reservation was "freed up" for white settlement. By the end of the allotment period in 1934 when 100,000 Indians were landless, deprived of over ninety million acres of former reservation land (Hirschfelder and Kreipe de Montano 1993, 22), an official discourse of racial classification had become permanently enshrined in Indian country.

In implementing the Dawes Act, the federal government began the process of dividing "fullbloods" from "mixed-bloods" through a policy of measuring an individual's "blood quantum," and setting standards regulating if and at what point mixed-bloods should be externalized from their nations. These definitions were crucial to the land acquisition project—if mixed-bloods, some of whom were more acculturated to white ways, were considered tribal members, their presence would conceivably add a definitive voice in favour of allotment on each reservation, thereby fulfilling the conditions that three quarters of the adult male population had to agree to allotment before it could be instituted. At the time, mixed-bloods were generally recognized as capable of handling their own affairs, while full-bloods were deemed legally incompetent. By 1906 and 1907, however (a mere twenty years later), the federal government had passed laws providing for the sale of lands of anybody with less than fifty percent blood quantum. Mixed-bloods were thus rendered landless in their communities, as "weak links" in the tribal circle who could be singled out for *additional* land theft.

Proving blood quantum, however, in a context where European methods of record-keeping and classification had been unknown was difficult to do. On some reservations, this resulted in a bizarre series of tests being devised by physical anthropologists, who determined that size of feet, degree of curl in hair, and the extent to which a scratch "reddened" could determine degrees of Indianness (Wilson 1992, 121). More grotesque processes soon developed, whereby the dead bodies of those Native people killed in army massacres were used for "scientific studies," in an attempt to detect "racial purity" (Yellow Bird and Milun 1994, 18).

In later years, the official blood-quantum level determining Indianness was set at twenty-five percent. Tribes have final say in accepting members (although it is not clear how this affects their ability to be funded). At least one tribe allows an individual with proven 1/256 Indian blood to become a member, while others demand one-half blood quantum from the mother's side. Most tribes accept the federal standard of twenty-five percent blood quantum (Wilson 1992, 121).

Federal Recognition of Tribes

The other key aspect of American Indian blood quantum discourse is the notion of "federal recognition" of Indianness, with the corollary that those Indian nations not federally recognized are frequently seen as "extinct" within the

dominant culture. Federal recognition of a tribe means that the U.S. government acknowledges that the tribal nation exists as a unique political entity with a government-to-government relationship to the United States. Some tribes, like the Wampanoag and the Lumbee (many of whom have significantly intermarried with black and white settlers but have maintained an identity as Native peoples) are not federally recognized because they were never at war with the United States and did not sign any treaties. Indeed, many of the tribal groups in the Eastern United States who evaded the army during the times of forced removal have avoided contact with the government since then but have retained their identity; occasionally such groups are recognized by state governments but not by the federal government. Some tribes have had their relationship with the federal government ended by termination, the withdrawal of federal responsibility and services to tribes. And finally, some federally recognized tribes have "unrecognized" components, often composed of traditionalists who continue to live a semi-subsistence existence in great poverty on marginal lands.[16]

In 1978, a "Federal Acknowledgment Project" was created, to deal with the forty-odd tribal groups petitioning for recognition (and a reserve). In some cases, such as the Tunica-Biloxi of Louisiana, the petition was first mounted in 1826 and was finally granted in 1981. As of March 1992 there were 132 groups seeking federal recognition (Hirschfelder and Kreipe de Montano 1993, 39–40). So institutionalized has the discourse of blood quantum become (and the notion of federal recognition that accompanies it), that federally unrecognized tribes are considered officially nonexistent in the dominant culture. The question of federal recognition has remained confused, inextricably linked with the Indian identity issue, itself clouded by popular and scholarly notions of blood quantum, phenotypic appearance, and past treaty relations. Indeed, as Wilson notes, much of contemporary Native American concern about identity, with its mixed-blood/full-blood connotations, stems from attitudes and ideas fostered by the majority white culture (Wilson 1992, 116).

The extent to which the discourse of blood quantum permeates even attempts to critique its effects is considerable. Elizabeth Woody demonstrates this contradiction as she challenges her mother's community's attempt to limit individuals whose blood quantum falls below specific levels from tribal membership while at the same time using the discourse of blood quantum to quantify her racial "pedigree":

> I will remain enrolled at Warm Springs because for five generations my maternal ancestry has been part of the people there. Standards have been set by contemporary tribal governments that may fracture this lineage in the future. If descendants are ineligible for enrollment because of the fragmentation of blood quantum, who will receive the reserved rights of our sovereign

> status? I am 16/32 Navajo—which means my father was a full-blooded Navajo—12/32 Warm Springs, 3/32 other tribes and 1/32 European descent. (1998, 154)

Terry Wilson has also described the difficulties that arise in the regulation of blood quantum:

> In areas such as Oklahoma, where there is much intertribal and interracial marriage, matters can get complicated. I have a friend who describes himself as a "mixed-blood full blood" because his four grandparents are all full bloods but members of different tribes. Record keeping not infrequently stumbles over quantum issues. In one case eight siblings were listed with five different Indian blood percentages, although all shared the same mother and father. A fewyears ago, one of my students related a horror story in which her family's quantum had been reduced to less than one-fourth—on paper. It seems members of a rival family had taken positions at the tribal agency and "lost" the paperwork detailing her family's multi-tribal blood quantum. . . . In Montana, many of my Native American acquaintances were "card-carrying Indians," having miniaturised and laminated their blood quantum certificates, which were drawn from purses or wallets at appropriate or, as it seemed to me, inappropriate times. (1992, 121–23)

Anishinabe author and humorist Gerald Vizenor has challenged the prevalent valorization of "the fullblood" (and denigration of the "the mixed blood") in a playful and bitingly satirical fashion. Throughout his work, Vizenor seeks to challenge the assumption that fullbloodness is *necessarily* equivalent to "traditionalness" and that by seeking to promote higher blood quantum levels one can automatically bring about a return to traditional tribal culture, stating that these beliefs are saturated with dominant culture myths about Indians, and are ultimately detrimental to the survival and flourishing of tribal cultures (Vizenor 1981; Blaeser 1996).

A final consideration to take into account is demographics. Creek/Cherokee Metis academic Ward Churchill has referred to the whole notion of blood quantum as "arithmetical genocide or statistical extermination." He notes that if the blood quantum is set at twenty-five percent, and intermarriage is allowed to proceed as it has for centuries, then eventually Indians will simply be officially defined out of existence:

> . . . in 1900, about half of all Indians in this country were "full-bloods." By 1990, the proportion had shrunk to about twenty percent and is dropping steadily. Among certain populous

> peoples, such as the Chippewas of Minnesota and Wisconsin, only about five percent of all tribal members are full-bloods. A third of all recognised Indians are at the quarter-blood cut-off point. Cherokee demographer Russell Thornton estimates that, given continued imposition of purely racial definitions, Native America as a whole will have disappeared by the year 2080 (1994, 93).

Churchill also notes that when you take into account the members of the 200-odd Indigenous Nations whose existence continues to be denied by the American government, the Native peoples such as the Juaneno of San Diego who were once recognized by the federal government but were declared "extinct" in the 1970s, and those individuals who now fall below blood quantum levels, the numbers of individuals with a legitimate claim to being American Indians by descent, by culture, or both, rises from the official number of 1.6 million to upwards of 7 million (1994, 94). It is obvious, then, that blood quantum discourse critically controls and shapes the directions American Indians take toward empowerment.

In Canada, for the most part, the imposition of Indian status as a method of controlling Indianness has to a certain extent obscured the fact that the status system, while promoting gender domination, also controls, in a rough way, blood quantum. On the other hand, in the United States, Native identity has been regulated openly through a system of blood quantum. Comparing the "choices" offered by colonial regulation of Indianness—the highly patriarchal system of the Indian Act with its covert regulation of blood quantum, versus the apparently gender-neutral system of blood quantum that is overtly race-based—we see that one system generates high levels of sexism (along with racism), while the other generates high levels of racism (along with the increased fragmentation of Native identity which results when one's heritage is divided into 128 or even 256 "parts" to differentiate between the "parts" that are Native and the "parts" that are not). It is a moot point as to which is more destructive for Native communities. The American system has had the advantage that descent is not legally defined as patrilinial, as in Canada—which at least has enabled traditional matrilinial descent systems to be maintained in some American Indian communities.

With the passing of Bill C-31, a number of Canadian First Nations have adopted new membership codes based on blood quantum rather than "Indian" status. The fact that these communities are essentially exchanging one regulatory regime for another points to the difficulties that Native people are having reconceptualizing Native identity in terms that do not reflect colonial categories.

Reframing Precolonial Identities in a Postcolonial World

It is important to recognize that government discourses of Indianness do not gain their power simply through lying to Native people or "brainwashing" them. It is a far from straightforward matter to rupture the "grammar" of these discourses once they have been put into place. Not the least of the problem is that we still live under conditions of colonization, where it is vital for Native people to practice some sort of boundary maintenance to maintain Indian land in Indian hands—but where traditional forms of regulating who was or who was not a member of a Native society have been deliberately and viciously suppressed. In the interests of survival, communities often find it safer to maintain "the devil they know," embracing colonial frameworks about Native identity because they represent tried and true ways of maintaining boundaries against white society. However, it also points to the extent that the "grammar" of regulatory regimes has shaped how Native identity is conceptualized.

At present, it is probably safe to say that the majority of Native people in Canada share a relatively straightforward notion of Native identity, one that equates being "born Indian" with possessing a relatively homogeneous cultural identity. For over a century the apartheid nature of Canadian life and the rigid controls over Native life exerted through the Indian Act allowed for a fairly cohesive sense of Native identity as a highly distinct, and for the most part reserve-based phenomenon (albeit at the expense of the Native identities of Metis and other nonstatus, or urban-based Native people). The sheer scale of the conflict that developed in many Native communities over the passing of Bill C-31, which redefined Native identity to include the urban mixed-blood children of Native women who had lost their status, demonstrates the extent to which Native people in general tend to fear any "opening up" of the boundaries of Nativeness. A history of colonial control and the reality of ongoing genocide is at the root of this fear on the part of many Native people that to lose collective control over even a colonially shaped Native identity is to lose the last vestiges of Native distinctiveness, the last defense against the colonizing culture that some Native activists refer to as "the Predator."[17] In this resistance to externally imposed change in definitions of Indianness, the role of the Indian Act in actually shaping Native identity over the past century has for the most part been disregarded.

In the United States, American Indian theorists have demonstrated similar fears about blurring the boundaries of Indianness. For example, Cherokee theologian Jace Weaver insists on a relatively straightforward reading of Native identity, even if it involves displacing, presumably for good, the issues faced by the large numbers of urban Native people who are, in a sense, diasporic:

> Putting aside for the moment the diasporic nature of much of modern Native existence, one must nevertheless admit there is something real, concrete and centered in Native existence and identity. Joseph Conrad can become a major figure of English letters and Leopold Sedar Senghor a member of the French Academy, but either one is Indian or one is not. And certain genuine consequences flow from those accidents of birth and culture. (1998, 14)

In a sense, the insistence among many Native people that "an Indian" is a relatively straightforward, homogenous entity, is not surprising. For generations, in both Canada and the United States, a narrow but powerful sense of Native identity has been fueled by the profound gap between the lived experiences of the majority of Native people—who continue to face the reality of brutal racism, poverty, violent death, and struggles with addictions—and the increasingly exclusive intellectual enclaves where most theory on identity is produced. The contradictions between what Lakota writer Philip Deloria has referred to as "a self-focused world of playful cultural hybridity and a social world of struggle, hatred, winners, and losers (with Indians usually numbered among the losers)" (1998, 176) continue to resonate for Native people who attempt to explore more complex and nuanced notions of Native identity.

Moreover, no risk-free space exists in which to explore Native identity. It is not only a matter of the "violence, curiosity, pity and desire" that James Clifford identifies as accompanying the Western intellectual's gaze at those such as Native people silenced in the bourgeois West (1988, 5). The blurring and shifting of cultural boundaries that can occur in white-dominated contexts when Nativeness is theorized not as an authentic essence but as something negotiated and continuously evolving can have dangerous repercussions for Native people in terms of asserting Aboriginal rights. Clifford has explored the example of the Wampanoag Indians of Mashpee who in 1977 were required to prove their identities as Native people in order to pursue their land claim:

> To establish a legal right to sue for lost lands these citizens of modern Massachusetts were asked to demonstrate continuous tribal existence since the seventeenth century. Life in Mashpee had changed dramatically, however, since the first contacts between English Pilgrims at Plymouth and the Massachusett-speaking peoples of the region. Were the plaintiffs of 1977 the "same" Indians? Were they something more than a collection of individuals with varying degrees of Native American ancestry? If they were different from their neighbours, how was their "tribal" difference manifested? During a long, well-publicized trial scores of Indians and whites testified about life in Mashpee. Profes-

> sional historians, anthropologists and sociologists took the stand as expert witnesses. The bitter story of New England Indians was told in minute detail and vehemently debated. In the conflict of interpretations, concepts such as "tribe," culture", "identity," "assimilation," "ethnicity", "politics," and "community" were themselves on trial (1988, 7–8).

In his account of this trial (which the residents of Mashpee lost) Clifford points out that a central issue faced by the Mashpee Indians was the white need for certainty about Indian difference. To be recognized as a group within the Wampanoag Nation, the Mashpee community had to be capable of demonstrating *authenticity* to whites in terms of their Indianness.[18]

The experience of the Wampanoag people at Mashpee is not unique. Most Indigenous land claims within the Americas hinge on the requirement that Indigenous people prove their "primordiality." For example, in the Gitksan/Wet'suwet'en case, the plaintiffs were continuously presented as contemporary interlopers whose claims to Indigenous rights were invalid because they were not "the same" people as their ancestors were—because they held paying jobs, lived in houses, consumed pizza and other European foods, and in general lived contemporary lives (Monet and Skanu'u 1992, 141–69). In such contestations of identity (which are always on white terms), Native people revealed as transgressing the boundaries of so-called authenticity—in their appearance (if mixed-blood), or in possessing any aspect of apparent modernity— are inevitably dismissed as fakes. Attacks on the authenticity of contemporary Indian existence continue to come from white environmentalists and anthropologists who disparage the modernity of contemporary Native existence and use their arguments to campaign for new restrictions on emergent Native rights.[19] Given such high demands from all quarters for so-called "authenticity," to engage openly in work that challenges essentialist views and risks blurring the set boundaries between Native people and non-Natives appears dangerous.

And yet, ironically, it is precisely because of the embattled aspect of Native identity—how it is constantly being negotiated in a context of domination—that we need to dare to look in different ways at Native identity. As James Clifford points out, the Western imagination has painted the world as populated by "endangered authenticities," always juxtaposed to modernity, always "going crazy" in the face of the inescapable momentum of "progress" and change (1988, 4–5). Such a viewpoint holds no future for Native people other than as quaint relics occupying an archaic pastoral backwater—or as "the Vanishing American." While this has little to do with how Native people have conceptualized the world traditionally, it is impossible to deny that colonization has had a deep and lasting effect not only on our communities but also on how we see ourselves and the forms of resistance in which we engage. In both Canada

and the United States, Native identity has for generations been legally defined by legislation based on colonialist assumptions about race, Nativeness, and civilization, which are deeply rooted in European modernity. Because of this, it is important for Native people to critically question common-sense notions about "authentic" Nativeness, as well as ways of thinking about nationhood and tradition that suggest that they can emerge unscathed from centuries of colonization and be immediately and easily accessible to us. At the same time, survival *as* Native peoples demands that we challenge the erasure of Indigenous nations by embracing our nationhood and revitalizing our traditions. Indigenous sovereignty, then, must involve the different nations recreating a future truer to their pasts than the intervening colonial frameworks. In this way of thinking, membership in Indigenous nations is something that can, and must, be strategized, clearly articulated, and in some ways reconceptualized.

Summary

In this paper, we have seen that a central aspect of the colonization process has been the development of systems of classification and regulation of Native identity. These systems forcibly supplanted traditional Indigenous ways of anchoring relationships among individuals, their communities, and the land—erasing knowledge of self, culture, and history in the process. Native identity has been categorized and "measured" according to racist and sexist criteria; these categories are then used to divide communities and to deny entitlement to land to certain groups of Native people. For the colonizer, this not only facilitates the theft of Native land but also effectively divides Native opposition to the land theft.

These systems of classifying and regulating Indianness function discursively to naturalize certain ways of understanding Native identity, so that attempts to resist government systems of classification and regulation can all too easily end up replicating colonial divisions in new forms. The process is facilitated by the images of Native people that exist within the colonizing culture; images that have been crucial to the colonization process and that at the same time represent the concrete residue of its history. These racist images assist in normalizing government regulation of Native identity even as they are central to creating its categories.

A difficulty that Native communities across North America must wrestle with centers on the reality of ongoing colonial encroachment—the need for Native communities to assert some sort of boundary marker between their small remaining land base and the white communities around them. Definitions of Indianness in this case are crucial to ascertaining that those who have access to Indian land are genuinely people of Aboriginal heritage. Given the dismantling of traditional institutions of Aboriginal governance, which was one of the

earliest acts of a colonizing government in both Canada and the United States, it is not simply a matter of "brainwashing" that pushes Native communities to wrestle continuously with the different definitions of Indianness provided by the colonizer as some means of providing boundary markers against the colonizing society. Until traditional models of governance have been reclaimed and actualized, Native communities will continue to be plagued with struggles over identity and entitlement barriers. The crucial issue facing Native communities is whether they can break with the "grammar" of government regulatory discourses to reform traditional geopolitical units and alliances without taking colonizer definitions into those recreated forms of Indigenous governance.

Notes

1. This is most apparent in land claims struggles, always argued as interpretations of history, and that therefore involve a contest over meaning, over whose terms will be recognized as meaningful.

2. While the Canadian government in recent years has been forced to recognize Metis people, nonstatus Indians, and the Inuit as Aboriginal people, it bases all its policies on status Indians and only recognizes a fiduciary responsibility (and hence a historic relationship) towards this group. Moreover, the creation of these separate categories of Indigeneity has ensconced a division between "Metis" and "Indians" that has been naturalized as simply reflecting *inherent*, rather than legally-created, difference.

3. The Gradual Enfranchisement Act of 1869 also denied women the right to vote in band council elections—this was not changed until 1951. Furthermore, with this act, women who married Native men from other bands lost their membership in their home communities, as did their children; they became members of their husbands' band, often in complete contradiction to community custom. This act allowed for reserves to be subdivided into lots, and location tickets were allotted to men and women. Women lost their allocations if they married non-Natives; until 1884 married women could not even inherit any portion of their husband's lot after his death. After 1884, widows were allowed to inherit one-third of their husband's lot—if a widow was living with her husband at his time of death and was determined by the Indian Agent to be "of good moral character" (Royal Commission on Aboriginal Peoples, Vol. 4, Sec. 2.3, 28–29). In 1876, the newly created Indian Act prevented Native women from voting in any decisions about surrender of reserve lands.

4. This was particularly the case in Eastern Canada where early French policy, particularly in the Maritimes, hinged on the notion of creating "one French race" in North America through the marriage of French men with Native women. While "frankifying" Native women may have been the goal of the French regime at the time, actual practices suggest that Acadian colonists, marginal men within Europe with relatively fewloyalties to Empire, tended to adapt to Native realities as much more suitable than European ways of living in the new land. Perhaps in response to this apparent cultural ambiguity on the part of many Acadian colonists, which troubled colonial authorities,

"racial" categories began to be hardened by legislation throughout French Canada, particularly in Quebec (Dickason 1985, 28).

5. Treaties One and Two, encompassing southern and central Manitoba, were signed in 1871 with the Saulteaux, Cree, and other nations. The exclusion of Metis people from these two treaties was made law under the Indian Act in 1876 when Manitoba halfbreeds were excluded from being counted as Indians. But Treaty Three, signed in 1873 with the Ojibway of northwestern Ontario, cleared title to the Lake of the Woods district at significantly better terms than the first two treaties. Because "halfbreeds" had been influential in these negotiations, the Ojibway leader Mawedopenais insisted that "halfbreeds" be included in the treaty. As a result, contemporary Metis people in the Rainy River district of Northwestern Ontario are unique in Canada in that they have treaty land as registered Indians. However, when Cree people attempted to have halfbreeds included during the signing of Treaties Four and Six, the response of the Canadian government was to modify the Indian Act in 1880 to specifically exclude "halfbreeds" outside Manitoba from coming under the provisions of the Act, and from any of the treaties (Dickason 1992, 279).

6. This standard used to distinguish "Indians" from "halfbreeds" has in fact been virtually meaningless since its inception, given the fact that at the end of the nineteenth century, most Native people in Canada had already been forced into some sort of transition to farming life or seasonal wage labour; Metisness in this context scarcely signified a loss of "authenticity."

7. In 1879, the Indian Act was amended to enable individuals to withdraw from treaty, to take scrip and be counted as Metis. Because of the widespread destitution on the newly created Indian reserves, and because halfbreed money scrip could immediately be cashed, a rush ensued to leave treaty status on the part of some bands, regardless of ancestry, , until regulations were created to ensure that individuals who "led the mode of life of Indians" were not to be granted discharge from the treaty (Hatt 1986, 197).

8. The recent approach taken by the descendants of Chief Papasschase in their efforts to reconstitute their band and recover lost lands are an example of this. The individuals organizing the effort appealed only to status Indian descendents to come forward to make their claim for band status. In doing this, they ignored the descendants of Papasschase who, although Metis, had as much right to be in the band as anybody else. It is unclear, from the outside, whether Metis descendents were being ignored because they were seen as "not Indian" or because their presence could complicate the process of acquiring a reserve and treaty rights according to Indian Act regulations, if the new band accepted members who are not status Indians (Paul 1997, 4). On the other hand, the conflict over entitlement between two groups who both claim to be the descendants of the original Pahpahstayo band is an example where colonial divisions between categories of Indianness have been at least partially rejected. A group calling themselves the Pahpahstayo First Nation announced a land claim for part of South Edmonton in July 1996, stating their intention to reclaim their treaty rights and obtain reserve status. Meanwhile, another group, called the Pahpahstayo Band No. 136, asserts that since all of its members are status Indians, they are eligible to have a land claim and receive compensation from the government. However, this band, which has the support of several other communities, has stated a willingness to accept Bill C-31 status Indians

AND Metis members into their group. They are hoping that the group calling itself Pahpahstayo First Nation will join them. Representatives of the Pahpahstayo Reserve, which occupied 40 square miles of land that is today part of south Edmonton, first signed a treaty in 1877. Nine years after the treaty was signed, however, the individuals residing on the reserve at that time were forcibly removed and discharged from the band as "halfbreeds." The band and reserve ceased to exist at that point. On this basis, some individuals believe that the Pahpahstayo Reserve was a Metis settlement and not an Indian reserve. These individuals believe that Pahpahstayo Band No. 136 members have treaty status only because their ancestors joined other reserves after the Pahpahstayo Band No. 136 was disbanded (Ziervogel 1996, 8).

9. In this light, the fact that Metis people are overwhelmingly urban as compared to status Indians speaks volumes about how the Metis have had no access to programs and services that would preserve their rural communities, and that only 1 percent of Metis people live on lands designated for Aboriginal peoples, as compared to the 36 percent of status Indians who live on land designated as reserves or settlements. In 1991, two-thirds of Metis people (65 percent) lived in urban centres, as compared to slightly less than half of status Indians (Normand 1996, 11–13).

10. The "double mother" clause in particular maintained an unofficial blood quantum of 50 percent among status Indians, as the children of a "half Indian" who married a non-Native lost their status for being only "a quarter Indian," regardless of their gender.

11. These women faced considerable violence, including the Mohawk women in the organization Indian Rights for Indian Women, who were active in the 1960s and were served with eviction notices by their band councils (Jamieson 1979, 170); the Maliseet women from Tobique, who were threatened with arrest by their band administration, were physically beaten up in the streets, and had to endure numerous threats against their families from other community members (Silman 1987, 119–72); and Lavell and Bedard, who were blackballed politically by status Indian organizations. The divisions on the basis of gender created by the Indian Act were reflected in the different Native organizations created to represent status and nonstatus Indians, and the opposite stands the organizations took with Lavell and Bedard. The Native Council of Canada, representing nonstatus Indians, intervened on behalf of the two women; however, the National Indian Brotherhood (now the Assembly of First Nations), representing status Indians, intervened against them.

12. Eighty-six thousand individuals were registered as status Indians under Bill C-31 from 1985 to 1992 (current estimates of the total number of individuals reinstated range between 100,000 and 150,000 people). All of these individuals are to be members of the 633 First Nations presently existing in Canada (Switzer 1997, 2).

13. Because of new restrictions as to how status can be passed on, the ability of the reinstated women to pass their status on to their children is limited to one generation, known as the second-generation cut-off. In certain respects, Bill C-31 continues the "bleeding off" of individuals from legal recognition as Indians by extending new status restrictions to men as well: while nobody now loses status for marrying non-Natives, all Native people now face certain restrictions on their ability to pass status on to their children. Since the nonstatus Indians and Metis people whose ancestors had been

excluded from Indianness because of being designated "halfbreed" (numbering about 600,000 people in the mid-1980s) were not made eligible for registration under the new Indian Act, the legal divisions between status Indians and other Native people, and the phenomenal landlessness of nonstatus and Metis people has been maintained (Holmes 1987, 13). Furthermore, since most of the women who lost status will not be able to pass the status down further than their mixed-race children, restoration of status to one generation of women who lost it has simply deferred Native families' experiences of gender discrimination for a generation, as the grandchildren of these women will once again lose status (further gender discrimination has, however, been stopped). Finally, the central issue for many women who had lost their status—their desire to return to their home communities—was bypassed by the bill by the manner in which it changed band membership criteria to enable bands to develop their own membership codes, often in ways that ended up excluding the very women who had regained their status but who still were not allowed to go home.

14. For example, Maurice Switzer, a newspaper publisher and a member of the Elders Council of the Mississaugas of Rice Lake at Alderville, Ontario, has equated Bill C-31 (but not the entire legislating of Native identity under the Indian Act) with Nazi Germany's racial purity guidelines, and the color classifications of South African apartheid.

15. In July 1997, Gina Russell and Agnes Gendron led a contingent of more than 30 members of Cold Lake First Nation to protest the manner in which their band continues to discriminate not only against Bill C-31 Indians, whom they refuse to reinstate, but against women who married non-status Indians or non-Natives *after* 1985. In a sense, the band is continuing to penalize women who marry nonstatus or non-Native individuals, as if Section 12(1)(b) of the Indian Act still existed (Dumont and De Ryk 1997, 15). The Cold Lake band is doing this in defiance of the changes in the Indian Act under Bill C-31, as some kind of assertion of "sovereignty," in claiming their right to control band membership.

16. An example of this dynamic is the situation of the Seminole Nation in Florida. The Seminole nation, after fighting continuous wars with the United States, was split into two groups—the Seminole Tribe of Florida, who obtained federal recognition in 1957, and a traditionalist group, the Independent Traditional Seminole Nation, composed of about 200 individuals who live off-reserve, do not get access to tribal services, do not participate in tribal government or tribal gaming, and do not collect the monthly dividend check distributed to tribal members. This community officially never capitulated to the government, but their marginal lands are continuously threatened by the state government, which denies that the Independent Traditional Seminole Nation exists because there is a federally-recognized tribe of Seminoles already in existence (Tomas 1996, 11).

17. See Churchill 1995 for one example of looking at colonialism from this perspective.

18. Questions asked of the citizens of Mashpee who testified centered on how often they danced, how often they wore regalia, the degree of ancient cultural lore they were familiar with, and if their jewelry, if they wore any, was "authentic." Indeed, the Mashpee Wampanoag were expected not only to demonstrate stereotypic Indian attributes, but also expected to perform dances, dress in regalia, sing songs, and wear jewelry that had *originated* with the ancient Wampanoag people. Cultural borrowing from other Native

peoples was viewed as evidence of "inauthenticity" and loss of culture. Throughout the trial, the main problem for the people of Mashpee was their absence of markers of stereotypical "Indianness"—particularly the fact that they no longer spoke the Massachusetts language, that many of them looked black, or white, rather than Native, and that they spoke with broad New England accents. More subtle indications of cultural cohesion and maintenance of collective identity were invisible to white eyes who demanded the trappings of Indianness before they would recognize a group as Native. See Clifford (1977, 277–346).

19. Vine Deloria's review of *The Invented Indian: Cultural Fictions and Government Policies* by James Clifton succinctly explores how the apparent modernity of contemporary Native American life is used as a tool of disenfranchisement by those such as Clifton who are characterized by Deloria as being angry and disappointed at Indians for not living up to their childhood fantasies. He also notes that these attacks are often part of a struggle for turf, whereby white academics are invested in maintaining an authoritative voice for themselves as "Indian experts" by demanding the authority to determine who is "authentically" Indian (1988, 67–68).

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