The Indian Act: The Social Engineering of Canada’s First Nations

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ABSTRACT

Canada’s Indian Act has had numerous detrimental effects on First Nations, particularly for Aboriginal women. By enforcing uniform patrilineal descent and property inheritance across Canada, the Act has eroded the mechanisms for the transfer of culture and relegated Aboriginal women, as a class, to a state of poverty beyond that of any other recognizable group in Canada. After numerous challenges, the Indian Act was unanimously ruled discriminatory by a United Nations (UN) committee. The ruling prompted the passing of Bill C-31, which reckons descent bilaterally. This paper discusses how the Indian Act was introduced as part of a deliberate effort to mold the indigenous peoples of Canada into a single population with a European-style economy and trading system, and will demonstrate how it suppressed the perceived threat to this project posed by the influence of Aboriginal women.

Introduction

The relationship between Aboriginals and the Canadian government through time presents an interesting, though disturbing, demonstration of how colonial policies engineer social order. The Indian Act, Canada’s legal scheme for dealing with its Aboriginal population, has had many detrimental consequences because it attempted to mold diverse cultures and populations across Canada to a uniform Euro-Canadian mainstream ideal. Perhaps the most severe has also been the most overlooked: the encoded and strictly observed patrilineal descent forced on First Nations by the Indian Act has generated severe repercussions for First Nations women, their families, and thus for the transmission of knowledge and cultural identity across generations.

The most determined defense of enforced patriliny has come not from the government, but from other First Nations members (Silman 1987:10; Krosenbrink-Gelissen 1991:82). Conversely, the actions of a counter-force of First Nations women brought about the amendment of the Indian Act in the form of Bill C-31. This counter-force may represent re-activated cultural roles of power.
that have lain dormant since the Indian Act’s introduction and its enforced patriliney. This paper examines the Indian Act’s history as a cultural engineering project and its role – reinforced by both Euro-Canadian and Aboriginal actors – in disempowering First Nations women in Canada.

The History of the Indian Act

The Indian Act is a consolidation of earlier legislation, introduced in 1876, with the objective of protecting First Nations people from further encroachment on their lands or theft of their property by colonists (Imai and Hawley 1995:11). The 1876 Act (see Appendix) outlines the following provisions: 1) anyone considered an Indian by descent or by adoption is given status as an Indian and entitled to all rights therein; 2) lands are to be set aside for groups of Indians; 3) the Superintendent-General, an agent of the Canadian government, is to oversee all aspects of the reserve, including membership, finances, and law enforcement; 4) Indians may have their status revoked upon assimilation into the mainstream culture; 5) all descent is followed through the father. A Status man who marries a non-Status woman automatically confers his status onto her, while a Status woman automatically loses her status if she marries a non-Status man (Indian and Northern Affairs Canada 1991). Little recourse was left to those who wished to question the actions of the Superintendent-General (Indian and Northern Affairs Canada 1991), setting up a top-down style of governance on reserves.

In its original form, the Indian Act encodes the disempowerment of Aboriginal women by systematically withholding rights equal to those of Aboriginal men. It was amended in 1951 to allow women to vote and to run for Council or Chief (Krosenbrink-Gelissen 1991:64). The first female Chief elected on a Canadian reserve was Ojibwa Elsie Knott in 1952, the year after the legislation was changed to allow women to run for office; nevertheless, the number of women involved in band politics has remained low (Krosenbrink-Gelissen 1991:64). In 1985, the Indian Act was amended by Bill C-31 to allow women to remain Status Indians after marriage to non-Status men, and to restore status to women and children of women who have lost their status (Indian and Northern Affairs 1991:21).

The Indian Act has had a range of effects on First Nations populations. The band system of government has affected even those with significantly different traditional government systems (Silman 1987:10), such as the hereditary leadership of West Coast Nations like the Tlingit and the Kwakwaka’wakw (McMillan and Yellowhorn 2004:6). Band-elected members occupy a power niche similar to elected members of colonial-descended systems such as Canada’s parliamentary democracy, and jostling for power within the hierarchy is a fact of reserve life across Canada (Silman 1987). This promotes wealth stratification
because band resources are frequently co-opted to serve the interests of elected members of office. Redistribution of wealth has played an important part in many cultures of Canada, and the combination of outlawing certain redistributive systems, like the Potlatch (Klein 1980:94), with the inequity so often attendant on Band politics has meant debilitating poverty for a large portion of the First Nations population (Krosenbrink-Gelissen 1991:65). The patrilineal descent clauses in the Indian Act have meant that the people who ended up in such extreme circumstances were, disproportionately, women.

First Nations women, facing this legitimized project of material disempowerment and political silencing, found themselves in their own subclass right at the bottom of the national economic hierarchy (Silman 1987:10; Research Branch, P.R.E., Inuit and Indian Affairs Program 1979:31; Krosenbrink-Gelissen 1991:61).

Women’s Relationship to the Indian Act

To find themselves systematically stripped of legal power must have seemed strange to First Nations women, particularly those who came from matrilineal societies. A telling example of this abrupt transition is the Eastern North American group of Iroquoian-speaking nations, who now make up the Haudenosaunee, or Six Nations. The Haudenosaunee confederacy was organized as a state society with a deeply entrenched matrifocal and matrilineal kinship system at the time of European contact (Grumet 1980:90; McMillan and Yellowhorn 2004; Prezzano 1997:90; Bilharz 1995:101–04). Ethnohistorical sources report conflicting versions of the roles women played in Iroquois politics and leadership at and following European contact: some viewed Iroquois women as “the inferior, the dependant, the servant of man” (Morgan, qtd. in Bilharz 1995:102), while others gave a very different account of women’s power. In 1724, Lafitau wrote:

Nothing is more real, however, than the women’s superiority. It is they who really maintain the tribe . . . In them resides all the real authority: the lands, the fields, and all their harvest belong to them; they are the soul of the councils, the arbiter of peace and war . . . they arrange the marriages; the children are under their authority; and the order of succession is founded on their blood. (Lafitau, qtd. in Prezzano 1997:90).

Several East Coast groups, including the Maliseet and Mi’kmaq, also have traditional clan and kinship structures, similar to those of the Iroquois (Grumet 1980:43–59), in which women had the power both to establish and remove
hereditary leaders (Grumet 1980:90). Interestingly, in each of these disparate matrilineal societies, a common feature is a preference for male leaders despite the reported bias in favour of female council.

Even in some patrilineal societies, such as that of the Tlingit of the West Coast (McMillan and Yellowhorn 2004:6), women historically occupied positions of significant status. Tlingit informants revealed that traditional women’s status vis-à-vis their male counterparts was shaped by something much like machismo: women ought not to be too compliant with their husbands’ wishes or do too much work, lest they be perceived as weak by others (Klein 1995:32). Women in Tlingit society were also considered inherently better with money than men, and were therefore central to the Tlingit economy (Klein 1995:35). Thus, while the legal, social, and economic status of women varied strongly among Canada’s Aboriginal societies at contact, the systematic androcentrism of the Indian Act caused widespread disruption to the well-developed social systems which preceded it.

The colonial mindset of the British in developing the Indian Act was not malicious so much as it was misguidedly ‘paternal’ (Miller 2000:317–18), religiously oriented (Krosenbrink-Gelissen 1991:44), and economically self-interested (Emberly 2001:69–70). The European ideal of the white woman lifted up from the drudgery of savagery was deeply imbedded in the minds of religious practitioners, law-makers, and traders from England (Markowitz 2001:389–414). Paradoxically, Europeans felt that the freedom of white women lay in passivity and servility: only in civilized society could femininity be distinct from the aggressive, powerful masculine ideal (Markowitz 2001:391). Women of Aboriginal cultures, participating in their societies and bearing a burden of labour equivalent or exceeding that of the men, were perceived as underprivileged by Europeans (Emberly 2001:64). Missionaries played a large part in introducing the idea of male dominance, encouraging men to demand sexual rights of their partners, and to meet resistance with violence (Krosenbrink-Gelissen 1991:44). European traders complained when women had a say in bargain-making and sought to trade only with men (Klein 1995:35). Finally, virtually all laws enacted concerning First Nations people assumed patricentrism and patrilineality, acknowledging women only where their marital status or sexual conduct were prescribed (Indian and Northern Affairs Canada 1991).

Emberly suggests that this type of colonization, which targets gender roles and kinship, proceeds, in Foucauldian terms, because “the family is the interchange of sexuality and alliance” (2001:69). Indeed, the newly formed Canadian government, consisting largely of trappers, traders, and British aristocrats (Miller 2000:174–96), perceived serious barriers to their society’s development if gender roles were not restructured to be more conducive to
European-style economies. Specifically, this meant restructuring kin groups and power dynamics therein. Emberly writes that:

Control over the distribution of goods and wealth in the family economy and the domination of the father over female reproduction and sexuality are two conditions that had to be met if colonial governance was to succeed in aligning the interests of the familial political sphere with those of the colonial state . . . In order to achieve the hegemony of biopower, men must first gain control over women’s bodies and the signification of female sexual difference, a difference defined solely in terms of its meaning for reproduction, fertility, and population control—in Foucault’s terms, the “species body.” (Emberly 2001:70–71)

The effects of these conditions vary by region and cultural contexts, depending on the influence of religious practitioners, the extent of trade, the date and circumstances of first contact with Europeans, and people’s receptivity to new cultural ideals. Krosenbrink-Gelissen (1991) writes that one of the most significant factors in the process of change was the mechanisms for generational transfer of culture and knowledge, to which several colonial policies contributed. Residential schools removed children from their families in their culturally formative years, creating a culture gap, while the number of First Nations people living off-reserve increased steadily. Finally, the Indian Act’s stipulations regarding matrimonial acquisition and loss of Indian status served to exclude many First Nations women from reserves. Despite the dramatic cultural diversity of Canada’s First Nations, women are generally agreed to be the principal transmitters of cultural knowledge and protectors of community cohesion (Armstrong 1989:1; Krosenbrink-Gelissen 1991:92). The Act compelled women who had married non-Status men to leave reserves, thus cutting them off from on-reserve family, friends, and their former roles in disseminating and reaffirming culture. Conversely, white women could gain Indian status by marrying First Nations men. As these women were often home-makers, their children grew up learning predominantly Euro-Canadian values and cultural beliefs. By relegating Aboriginal women to a disadvantaged position, the Indian Act led, directly and indirectly, to a severe loss of cultural ideas and identities across Canada’s First Nations.

The conditions that the Indian Act created for women on reserves cannot be fully appreciated without examining specific social conditions. The status of Aboriginal men as colonization progressed was of concern to the colonial government: as men’s daily lives became increasingly divorced from their traditional roles of hunting, trading, and craftsmanship, their gender was seen as
being threatened or absent (Bilharz 1995:103). In recognition of this, the Indian Act granted hereditary rights only to men, including property belonging to their wives or female kin. Missionaries had been proselytizing the notion of male dominance for centuries. As a result, men on reserves were often violent and hegemonic to their families with no fear of repercussion from local law-enforcement and women living both on- and off-reserve often faced frequent, dramatic physical abuse from their husbands on a regular basis (Krosenbrink-Gelissen 1991:92). On-reserve, women could be legally evicted from their houses along with their children because the certificate of ownership of houses generally was in the name of their male partners. Many opted to endure their spouses’ physical violence and alcoholism rather than be forced into destitution. Aid from band councils was rarely forthcoming. Many informants speak of rough times when their families would have given them help but were so poor themselves that they had nothing to give (Silman 1987). Off-reserve, women who “married out” to white or non-Status men automatically lost their status, and therefore any benefits they might receive from their band. They were barred from inheriting or retaining property on reserve land and from returning to their reserve for anything more than short visits, even if destitute. Their children were ineligible for Indian status, and so the same provisions applied to them—their family, culture, and mother’s home would all be denied them. Divorce was no solution: even if she divorced her husband, an Aboriginal woman’s status was not reinstated (Silman 1987:1–14; Krosenbrink-Gelissen 1991:84–85).

Women’s Challenges to the Indian Act

Awareness of these conditions rose when First Nations people began to rally around the banner of Aboriginal rights, but actions were initially suppressed. The various fronts on which battles were being fought mainly concerned land settlements (Krosenbrink-Gelissen 1991:82), and the members of lobbying organizations were almost exclusively male (e.g., Daniels 1980). In general, they held that the Indian Act, while discriminatory and deeply flawed, was also the only available leverage for dealing with the Canadian government. They therefore did not want to challenge parts of the Act in case the government decided to do away with it entirely, without compensating First Nations people. Women’s concerns were considered secondary, and were largely excluded from bargaining with the Canadian government, as is especially obvious in the White Paper on Indian Policy of 1969 (Krosenbrink-Gelissen 1991:76).

The ability of First Nations men to ignore the concerns of women stands in contrast to the ethnohistoric accounts of women’s power over men’s actions, in politics and in war (Grumet 1980; Krosenbrink-Gelissen 1991). Three main reasons can readily be identified. First, women no longer had the means to
remove men from office: the system of followers garnered through family status and individual wisdom and charisma no longer existed as a means of formal regulation, even though it likely continued to influence sentiment among First Nations people. This meant that, where leaders were restricted in their behaviour by community sanctions in the past, that restrictive force was absent in the new system. Second, where women have been the traditional managers of finances and resources, they have had the power to withhold these resources in cases where they do not approve of others’ actions. This was impossible on the reserves, particularly as they became more Europeanized. The final solution, that of “voting with one’s feet” by leaving, became impossible when people were restricted to reserves. The government stringently enforced their policy of immobility for First Nations people by making many activities illegal for Status Indians off-reserve (Krosenbrink-Gelissen 1991:79). Yet, despite the lack of traditional resources available to First Nations women and the opposition from men in their communities, the Indian Act was challenged, and eventually amended, as a result of women’s efforts.

Three main cases challenged the Indian Act’s discrimination against women. In 1967, Mary Two-Axe Earley, presented her case to the Royal Commission on the Status of Women, marking the first time First Nations women’s rights were brought to light. Ms. Two-Axe Earley was evicted from the Kahnawake reserve and from her inherited property after marrying a white man. In 1971, Jeanette Corbiere Lavell challenged the discriminatory nature of the Indian Act and won. Unfortunately the Canadian Government then appealed to the Supreme Court of Canada, which ruled that the Indian Act was not discriminatory on the basis that the government needed a way of determining band membership. The third case was that of Sandra Lovelace, one of the “Tobique Women,” a group of women activists who occupied the band office on the Tobique Reserve in protest of the living conditions both on and off the reserve. Lovelace then took her case before the UN in 1977, and in 1981, the UN unanimously agreed that the Act was discriminatory and that the Government of Canada was abusing the human rights of First Nations women (Silman 1987; Krosenbrink-Gelissen 1991).

The Tobique Women, from the Mi’kmaq reserve of Tobique in New Brunswick, were the driving force behind the eventual amendment to the Indian Act in the form of Bill C-31 (Silman 1987). The struggle lasted nearly a decade, during which time the women developed numerous strategies to force the government to deal with them. Their first initiative, the occupation of the Tobique band office, lasted a year, during which they endured extreme hardship, violence, threats, apathy to their cause, and racism. To their surprise, their struggle attracted both great interest and support from local and national media. The women quickly learned to use this unexpected support to their advantage: politicians who had
hitherto ignored the situation, now under increasing pressure from a disapproving press, began a painfully slow process of negotiation with the women. Even the tendency of the Royal Canadian Mounted Police (RCMP) to dismiss on-reserve conflicts as “internal affairs” proved advantageous, as, despite frequent calls to remove the women from the Tobique band office, federal officers were reluctant to act. When Lovelace agreed to be a national spokesperson for First Nations women’s rights, the Canadian government was no longer able to ignore their demands (Silman 1987; Krosenbrink-Gelissen 1991).

Conclusion: First Nations Women as Counter-force

The Tobique Women proved not only to be savvy with the media and to be capable of withstanding tremendous physical and psychological pressures, but also to be strategically adept and to work well within a political system not their own in order to achieve their political objectives (Silman 1987). The social engineering that has gone on in First Nations cultures as a result of the Indian Act targeted women’s perceptions of themselves, but women seem to be capable of, and interested in, exerting their own pressures in acts of social engineering. First Nations men have been in a position to demand greater status, in the dominant culture and also within their communities, and have therefore been maneuvering towards culture change that has served their own interests. The Tobique Women are the visible front of a counter-force to this maneuvering, a decisive action to establish a more gender-equal social structure. First Nations women in general are becoming savvier about external political forces, and rather than being a symptom of the dominant culture’s move towards equality as some have claimed (Krosenbrink-Gelissen 1991:65), this proactive approach to culture may equally be seen as a resurgence of women’s traditional political power.

In light of the profound changes in social structure, political systems, and economy that derive from the imposition of the Indian Act, it is doubtful whether Aboriginal gender roles will ever return to the traditional models, even for those nations whose women historically wielded great power. The Euro-Canadian government has indeed achieved certain objectives with the Indian Act—that is, restructuring First Nations social and economic hierarchies according to a model that it sees as more conducive to modern economic conditions. First Nations have provided a large, inexpensive, and easy-to-access work force to the dominant economy (McMillan and Yellowhorn 2004:22–4), and it is probably true that this work force simply would not have been available without first depriving First Nations of their traditional social structures. Deconstructing the Canadian government’s effects would take tremendous effort on the part of First Nations women and men. However, First Nations continue to thrive and expand (McMillan and Yellowhorn 2004:24), and their resourcefulness may yet bring
about healthy new gender structure. As in the past, this cultural restructuring will most likely—perhaps necessarily—be the initiative of women.

Notes

i The term “status” refers to the legal title allotted to any First Nations person entitled to the rights, and subject to the limitations, outlined in the Indian Act, as determined by lineage. The term is usually understood as a shortened version of “Status as an Indian,” but it is not determined by ancestry alone. The Act delineates the necessary pedigree to be considered a Status Indian. Because it separates those allowed to access reserve resources from those not allowed to access reserve resources, “status” has come to represent a kind of privilege, but it was not originally intended as such.

ii The word “reserve” refers to any amount of land that has been set aside by the government for First Nations people to live on.

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