

**Seeking Alternatives to Bill C-31:
From Cultural Trauma to Cultural Revitalization through
Customary Law**

by

Jo-Anne Fiske and Evelyn George

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ABSTRACT

The authors examine the implications of discourse of paternity policies that arise from the current *Indian Act*. Working with women of three matrilineal First Nations, they explore the emotional, cultural and psychological impact of this policy and the second generation cutoff. Following participatory action research practices, they direct their attention to questions arising within the research process. Specifically, they seek to locate the issues raised by research participants in a national comparative context with respect to the impact of the *Indian Act* on other matrilineal First Nations. More broadly, they offer an overview of the impact of patriarchal colonialism on Indigenous and minority women of matrilineal societies in Asia and Africa. They choose these international comparisons for two reasons. A rich judicial record is found for Africa, which makes comparisons particularly useful with respect to reconciliation of customary law and statutes of the nation state. Second, considerable documentation exists of women's national and international resistance to patriarchal colonialism and studies of current erosion of matrilineal traditions as a result of global economic dynamics.

TABLE OF CONTENTS

ACRONYMS.....	iii
PREFACE.....	iv
EXECUTIVE SUMMARY	v
1. INTRODUCTION	1
2. THE <i>INDIAN ACT</i>	4
Confronting Sexual Discrimination in the <i>Indian Act</i>	8
The <i>Indian Act</i> and Human Rights	12
3. LITERATURE REVIEW	16
Competing Rights	16
Construction of Identity.....	19
Women’s Lives, Women’s Voices	23
4. MATRILINEAL SOCIETIES AND THREATS TO TRADITIONAL PROTECTIONS FOR WOMEN.....	25
5. SOCIAL ORGANIZATON AND LEGAL CULTURES OF THREE MATRILINEAL FIRST NATIONS.....	28
6. THE RESEARCH PROCESS	34
7. LOCATING PARTICIPANTS’ NARRATIVES IN A THEORETICAL FRAMEWORK	38
8. TRAUMATIC IMPACTS OF C-31 ON FIRST NATIONS WOMEN AND THEIR CULTURES	41
Trauma to Culture.....	41
Collective Trauma: Stigmatization and Rejection.....	45
Historic Trauma.....	50
The Possibilities of Legal Redress.....	53
9. MATRILINITY IN CROSS CULTURAL PERSPECTIVE.....	56
Trauma to Culture.....	58
Collective Trauma	59
Legal Interventions	60
Learning from Cross Cultural Studies	63
The Paradigm of Motherhood.....	67

10. CONCLUSIONS AND RECOMMENDATIONS69

BIBLIOGRAPHY70

ACRONYMS

AFN	Assembly of First Nations
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
CHRA	<i>Canadian Human Rights Act</i>
CHRC	Canadian Human Rights Commission
CHRRP	Canadian Human Rights Review Panel
INAC	Indian and Northern Affairs Canada
IRIW	Indian Rights for Indian Women
NGO	Non-governmental organization
NIB	National Indian Brotherhood
NILDAF	Women in Law and Development in Africa
NWAC	Native Women's Association of Canada

PREFACE

Good public policy depends on good policy research. In recognition of this, Status of Women Canada instituted the Policy Research Fund in 1996. It supports independent policy research on issues linked to the public policy agenda and in need of gender-based analysis. Our objective is to enhance public debate on gender equality issues to enable individuals, organizations, policy makers and policy analysts to participate more effectively in the development of policy.

The focus of the research may be on long-term, emerging policy issues or short-term, urgent policy issues that require an analysis of their gender implications. Funding is awarded through an open, competitive call for proposals. A non-governmental, external committee plays a key role in identifying policy research priorities, selecting research proposals for funding and evaluating the final reports.

This policy research paper was proposed and developed under a call for proposals in September 2003, entitled Bill C- 31 – Membership and Status - Unrecognized and Unstated Paternity.

Indian status and band membership affect First Nations people throughout their lives. Both are usually necessary for First Nations people, referred to as Indians under the *Indian Act*, to access social services, economic and health-related benefits for First Nations people, and to share in the duties and benefits of citizenship.

Indian women are more adversely affected by non-registration and non-membership than men, because they are usually the primary caregivers of children. Without proper registration status and membership for themselves and their children, they cannot access schools, post-secondary education, other benefits for the children, adequate housing to accommodate the family, nor can they inherit band property.

Researchers were asked to identify policy alternatives to the present membership and registration requirements of Indians in general, and on unstated paternity issues in particular. The research was required to promote gender equality while recognizing the diversity among First Nations women, and develop policy solutions that take into account the realities of women's lives

Two projects were funded by Status of Women Canada on this theme. The other project examines Indian registration and unrecognized and unstated paternity.

We thank all the researchers for their contribution to the public policy debate.

EXECUTIVE SUMMARY

In 1985, Canada amended the *Indian Act*. Canada justified the amendments on two grounds: to remove sexist discrimination from regulations determining Indian status and to grant greater autonomy to Indian bands with respect to determining membership.

These amendments were immediately challenged. Criteria establishing Indian status did not eliminate sexist discrimination, but merely deferred it from one generation of women to their descendants. Second, the rights of bands to determine membership were in fact constrained. The Act enforced some rules on the bands, namely that bands must restore membership to women who had been stripped of Indian status and band membership through marriage to non-Indian men.

With the 1985 amendments, popularly known as Bill C-31, came new policies. In section 6, Bill C-31 created two classes of registration: 6(1) designates individuals deemed to have two parents with Indian status, while section 6(2) lists individuals with only one registered parent. For women to register their children, they now must disclose the father's identity and prove his Indian status.

Across Canada, Indian women have protested this policy. They object on a number of grounds, not the least of which is the intrusion into their personal lives. Disclosure of paternity can place them in social jeopardy, perhaps endanger them, and at the very least cause social conflicts where a man either denies paternity or refuses to acknowledge it to state authorities.

The patrilineal provisions and the privileging of individuals with two registered parents, stand in direct contradiction to the matrilineal principles of identity and membership.

In this study, we address the implications of Bill C-31 and the policy of disclosure of paternity from the perspective of women of three First Nations of central British Columbia: Cheslatta Carrier, Nee Tahi Buhn and Lake Babine. Within these nations, traditions of matrilineal descent and a clan-based organization of authority and obligations are breached by the current *Indian Act*. We locate their experiences and understandings within a comparative context to explore the implications of the current policies for other matrilineal nations across Canada.

This study was guided by the principles of participatory action research. Women holding leadership roles in the three First Nations as elected chiefs and councillors, hereditary chiefs and elders requested the study. They set the broad goals of the study. Their initial goal was twofold: conduct community-based research within their nations regarding present practices and preferences for membership codes founded in customary matrilineal laws and gather comparative information on rules of descent, membership and citizenship rights of matrilineal peoples outside of Canada. Experienced community researchers familiar with the three First Nations were employed. In each First Nation, women were invited to focus groups to discuss the impact of C-31 on themselves, their families and their communities. Confidential interviews with members of each community followed the focus groups using a snowballing technique.

In keeping with participatory action research principles, research goals were modified as the research progressed. Participants, most particularly hereditary clan chiefs and elders, directed researchers' attention to the intergenerational impact of C-31. They articulated a third goal: describe the emotional and mental impact felt by women whose grandchildren are ineligible for status. This led the research into three additional considerations: customary laws with respect to intergenerational adoption, the historic impact of arranged or forced marriages to non-Indian or non-status Indian men, and violations of human rights legislation with respect to disruption of grandmother–grandchildren relations through denial of community residency and ties to the third generation. Community women also requested further understanding of how women of matrilineal societies elsewhere addressed the imposition of patriarchal regimes and foreign legal orders that privilege patrilineal descent. Thinking within a paradigm of social relationships of female kin, the “logic of motherhood” calls into question legal reasoning that considers the male–female dyad as the defining family relationship. To confront the patrilineal/patriarchal colonial legacy the First Nations women’s movement in the 21st century will need to engage in widespread mobilization, reconceptualize citizenship within a paradigm of partnership that empowers women and engage in judicial intervention.

The women participating in this study offered recommendations to redress the social disruptions created by C-31 and to empower women within all First Nations. Their recommendations fall into three themes.

1. Reform the *Indian Act*.

- Repeal section 6 of the Act and replace it with provisions that protect matrilineal descent and eliminate the need for disclosure of paternity.
- Protect the matrilineal, extended family down the generations by empowering grandmothers to transmit Indian status to their grandchildren.
- Recognize and honour customary adoptions as shaped by traditional reciprocal clan relationships.

2. Apply human rights protection.

- First Nations membership codes protect women and children’s civil, social and political rights.
- Protect traditions that enhance and empower women as citizens within their First Nations.

3. Enhance First Nation women’s citizenship.

- Provide federal financial and technical support for local, regional and national organizations.
- Facilitate and strengthen First Nations women’s presence in international arenas fostering women’s rights and political well-being.

1. INTRODUCTION

Colonization of the First Peoples of Canada has had complex and traumatic impacts. These range from distortions of identity, through loss of lands and resources, the imposition of foreign ways of governing what were once independent peoples, to marginalization of women within their home communities. The depth of these impacts is marked by the quest to name and respect the First Peoples now most commonly referred to as Aboriginal, which designates Indian, Inuit and Métis.

Over the past three decades, the Aboriginal peoples registered as status Indians have challenged colonial premises of nationhood and citizenship. Protracted political struggles over the entrenchment of Aboriginal rights in the repatriated Canadian constitution of 1982 led to Indian bands reconstituting themselves as First Nations and reconceptualizing band membership as First Nation citizenship. The National Indian Brotherhood (NIB), the umbrella organization of Indian bands, re-emerged as the Assembly of First Nations (AFN) and asserted its new identity in a continuing struggle to have inherent Aboriginal rights recognized as the foundation of nation-to-nation negotiations for reconfiguring relationships within the Canadian state. During the same period, two women's organizations, Indian Rights for Indian Women (IRIW) and the Native Women's Association of Canada (NWAC) led the fight for amendments to sexually discriminatory provisions in the *Indian Act* and to protect women's equality rights in the *Canadian Charter of Rights and Freedoms*.

This political struggle had mixed consequences for First Nations women. With entrenchment of equality rights in the *Canadian Charter of Rights and Freedoms* in 1982 (which became effective April 17, 1985), Canada was compelled to address sexual discrimination in the *Indian Act*, which was amended inter alia to excise sexist discrimination that determined recognition of Indian status. The amendment, popularly known as Bill C-31, also granted First Nations the right to develop their own membership codes provided the codes receive ministerial approval and meet the regulations of the new bill.

These amendments have created new problems for First Nations women. Conflicts have arisen between women and First Nations leaders over their rights to membership, reserve residence and social services. Although the Act now mandates restoration of status and band membership to women who had married non-Indians, not all First Nations have complied. Nor do some wish to do so. Furthermore, what is known as the second generation cutoff rule exacerbates women's problems of identity, residence and membership. The rule constrains the rights of third generation descendants of reinstated women to band membership, on-reserve property, and other rights and privileges. In consequence of these status inheritance rules, as reinstated women age, they experience alienation from their children categorized as 6(2) status, whose First Nation membership is not protected by C-31. While C-31 provides that non-status, *dependent* children have the right to reside on reserves, no residency provisions are made for adult children whose aging parents become dependent on non-status children and grandchildren.

The patrilineal provisions that underlie the *Indian Act* stand in direct contradiction to the matrilineal principles of identity and First Nations membership that are known throughout central Canada and northern British Columbia. The losses women incurred as a consequence of the earlier provisions whereby women and their minor children experienced involuntary enfranchisement in sexually discriminatory ways have not been redressed by the 1985 amendments that were heralded by the federal government as a corrective measure. Moreover, women have little legal recourse to address their situations. The *Human Rights Act* does not extend to the *Indian Act* and court challenges to date have hardly been encouraging. Indeed, as First Nations scholars have argued, the courts all too often fail to understand or act on Aboriginal principles of law and community and, in particular, fail Aboriginal women.

In this study we address this failure by taking up consideration of the membership provisions on women of three First Nations of central British Columbia: Cheslatta Carrier, Nee Tahi Buhn and Lake Babine, whose traditions of matrilineal descent and a clan-based organization of authority and obligations are breached by the current *Indian Act*. The initial goal was twofold: conduct community-based research within these nations regarding present practices and preferences for membership codes founded in customary matrilineal laws and gather comparative information on rules of descent, membership and citizenship rights of matrilineal peoples of the United States, New Zealand and Australia. As the research progressed, a third goal emerged: describe the emotional and mental impact felt by women whose grandchildren are ineligible for status. This, as we discuss later, led the research into three additional considerations: customary laws with respect to intergenerational adoption, the historic impact of arranged or forced marriages to non-Indian and/or non-status Indian men, and violations of human rights legislation with respect to the disruption of grandmother–grandchildren relations through denial of community residency and ties to the third generation. We came to realize that the initial comparative goals would be addressed best by shifting our focus from our selected areas for comparison to Asia and Africa.

We begin with a brief history of the *Indian Act* and the implications of its sexual discriminatory provisions. We introduce the legal challenges women have raised to remedy discrimination and the role of human rights protections. We then turn to a review of the literature that addresses Bill C-31, which we organize into three main themes: competing rights, construction of identity and women's lived experiences. This is followed by consideration of the particular impact of colonial legislation and state intrusion on matrilineal societies in Canada and the United States.

With the legal, social and political context established, we then turn to our research with the three First Nations. We begin with an overview of the social organization and legal culture of the Cheslatta Carrier, Nee Tahi Buhn and Lake Babine First Nations. We then present our research practices and the theoretical concepts that frame our analysis. Following our analysis of women's narratives, we shift to a comparative study of the impact of state policies on Indigenous matrilineal peoples. We raise questions respecting the relationship between matrilineal descent, social identity and the role of customary law in shaping

community memberships and how Indigenous women have challenged the social and legal disruption of matrilineality. Finally, we close with recommendations for redress from the current registration regime of the *Indian Act* and its attendant policies.

2. THE *INDIAN ACT*

Since 1850, “Indian” has been legally defined by a series of colonial and federal acts that provide legislation governing Aboriginal peoples recognized in law as Indians. In early legislation, the term embraced any person of Indian “birth or blood,” anyone alleged to belong to a specific group of Indians including persons married to Indians or adopted into Indian families (Furi and Wherrett 2003: 2).

From 1857 onward, the concept of “Indianness” and entitlement to registration (i.e., to hold Indian status) has been specifically gendered. Social evolutionary premises constructed “progress” as the movement of Aboriginal men toward “civilization” through mimicking masculine attributes of the colonizing society. Government authorities and Christian missionaries marked individual men (and on rare occasion entire communities) as “civilized” when they acquired private property, formal schooling, military service or employment away from their home communities. Drawing from Eurocentric notions of family and social progress, colonial governments, guided by patriarchal and racist assumptions, placed family authority in the role of a father/husband whose wife was constituted as his dependant. In consequence, the definition of Indian became narrower and, over time, came to privilege descent through the male line.

In 1857, women lost autonomy through the introduction of the notion of enfranchisement. That is, the colonial government stripped status from women married to status Indians, and the children of these marriages, if the husband/father revoked his Indian status. Thus through enfranchisement of their husbands, women were denied any autonomous identity and automatically were classified as non-status Indians with their husbands — often without their knowledge. In keeping with colonial gendered biases, women were not treated as individuals; rather a married woman’s identity derived from her husband.

The *British North America Act* of 1867, now known as the *Constitution Act, 1867*, gave the federal government authority over Indians and their lands. The government understood that to manage these lands it must carefully determine who had rights to them. Thus, in 1869, the federal government used this authority to impose further limits on women and their children. It now denied legal Indian status to women who married men not holding legal status and to the children of these marriages.

In 1876, Canada consolidated colonial acts into the *Indian Act*. From 1876 to 1985, the *Indian Act* continued to discriminate against women by denying them their rights to Indian status by virtue of marriage to a non-Indian. Under section 12(1) (b) the Act specified that a woman automatically was stripped of her Indian rights when she “married out”: she lost the right to residence on reserve land, inheritance of family property and access to services provided by the Department of Indian Affairs. Marriage to a status man of another band forced her to leave her natal community and to have her membership transferred to her husband’s band. Policies regarding voluntary and involuntary enfranchisement of men continued to affect women; at various times they were initiated to rescind the status of

men in exchange for voting rights and property ownership. Status was involuntarily revoked when an Indian earned a university degree, practised medicine or law, or entered the Christian clergy (Furi and Wheritt 2003: 2).

Unlike women, men did not suffer loss of status when marrying out. Rather, their non-Indian wives and children of their mixed marriages acquired status and with it all the benefits of the *Indian Act* and membership in an Indian band. When marrying a woman of another band, the man retained membership in his natal band unless he specifically applied to his wife's band for a transfer.

Until 1951, women also suffered further disadvantages under the Act with respect to participation in community governance; they could neither vote for the elected chief and council nor hold elected office. In 1956, women gained a degree of privacy insofar as amendments to the Act permitted children born out of wedlock to be registered provided they faced no protest. If registration was protested, then the mother needed to prove the father also held Indian status or the children would be removed from the register. A woman and her out-of-wedlock children were jeopardized if she married a non-Indian. Marriage conferred "legitimacy" on children born prior to the marriage and with it came involuntary loss of status in accordance with the husband/father's standing. This practice remained until challenged in the courts in 1982 (Gilbert 1996: 57).

The sexual discrimination women endured afflicted them and their children in a number of ways. Women stripped of their status could never return to reside in their home community, share in collective property of their bands, nor even hold the right to burial on reserve lands. Whether widowed or divorced, they remained non-status. Once designated non-status, women no longer enjoyed rights to resources as protected by the *Indian Act*, for example, fishing and hunting rights. Nor did they have access to the education and health benefits provided to status Indians (Jamieson 1978).

Women who lost status through marriage could only regain status through a successive marriage to a status man. Their daughters might also gain status through marriage to a status man. Under these provisions their sons, of course, could never be registered since men could not gain status through marriage.

In 1981, Canada issued a proclamation that foreshadowed reforms that would come four years later. The proclamation permitted Indian bands to remove themselves from 12(1)(b). This meant women were now free to marry non-Indians without loss of status to themselves or their dependent children. Because each First Nation could decide this issue, Indian women did not have universal access to this provision. Only 19 percent of Indian bands chose to protect women's interests by suspending 12(1)(b) (Lawrence 2004: 61).

The 1985 amendments to the Act are commonly known as Bill C-31. The amendments were brought into force to redress the Act's sexist regulations and to bring the Act in line with the equality provisions of the *Constitution Act, 1982*, which took effect in 1985. Bill C-31 is a complex piece of legislation that is now perceived as creating a conflict between individual rights of registered Indians and the collective rights of the bands to maintain social, cultural,

linguistic and customary legal practices. C-31 provides for First Nations to exercise greater control over life on reserves and to regulate band membership. Several challenges to First Nations' membership regulations and social policies have been brought before the court with mixed results for women. As well, the constitutional right of Canada to regulate band membership has been challenged in a case known as *Sawridge v. Canada*. (This is discussed below.)

The 1985 amendments to the Act took effect on April 17. The Bill safeguarded the status of all who were registered prior to 1985. As a consequence of C-31, status can no longer be removed or gained upon marriage. Voluntary and involuntary enfranchisement came to an end. However, women who acquired status by marriage prior to 1985 retain it and their rights to band membership. Women of the 19 bands who suspended the application of 12(1)(b) remained registered under 6(1)(a), that is without any change in their original status.

Under section 6(1), women who had lost status when they married out are now entitled to reinstatement of their status and are automatically restored as members of their natal band. Their children, having only one registered parent, gained the right to be placed on the Indian Register under section 6(2). Adult children with 6(2) status are not automatically registered in their mother's band. Their membership depends on the membership rules applying to that band. If the band membership is regulated by Indian and Northern Affairs Canada (INAC), their membership is assured. However, under section 10, if the band regulates its own membership, it will regulate the inclusion of individuals registered under 6(2) (Furi and Wherret 2003: 5).

C-31 has not eliminated sexual inequality between girls and boys born to unmarried Indian men and non-Indian women between September 4, 1951 and April 17, 1985. Girls born in these circumstances are now entitled to be registered, but only under section 6(2). Sons born out of marriage to status fathers fare differently. In 1983, in *Martin v. Chapman*, the Supreme Court ruled that "illegitimate" sons could not be treated differently than sons born in wedlock to status fathers. With this ruling, sons born to this combination of parents were entitled to be registered prior to 1985, and thus are now eligible to be registered as 6(1) (Furi and Wherret 2003: 6; Gilbert 1996: 53).

Discrimination with respect to entitlements that come with registration through the *Indian Act* remains a barrier to women's equality within First Nations communities. Section 6(2) of the current *Indian Act* results in the termination of Indian status after two successive generations of intermarriage between status and non-status persons as defined by the Act. Descendants of out-marrying women do not have the same access to status as the descendants of men who married non-Indians. Women who have been reinstated are registered under section 6(1)(c) of the Act. Because their non-Indian male spouses have never acquired status, their children are registered as 6(2) and are prohibited from transferring status to the third generation unless they partner with someone who is also registered.

Descendants of men who married non-Indians prior to 1985 do not suffer the same legal disabilities, because the acquired status of their wives and children has been protected under section 6(1). This empowers them to transfer status to the succeeding generation. Sons and daughters born to unmarried status men prior to 1985, as indicated above, do not have equal rights with respect to transferring status to their children, because the daughters are constrained by being 6(2) while the sons benefit through protection of 6(1). The legal disabilities women suffer are known as “residual sex discrimination.”

In a further move to control First Nations through regulating Indian status, the federal government introduced the policy requiring mothers to disclose the names of their children’s fathers. Documented proof of the father’s status is required to determine an infant’s registration; if no proof that the father has status is provided, the infant is registered under 6(2) if the mother is 6(1). Of course if the mother is categorized as 6(2), she is unable to register her children unless the listed father is also registered. If the father is not named, the children of a 6(2) mother are not registered. If the parents are both 6(2), the child is registered 6(1), which provides greater possibility of transferring status down the generations.

The demographic implications of the second generation cutoff, as these provisions are known, may be severe. In 2003, Clatworthy reviewed the demographic outcome of this policy for INAC. Clatworthy reported high levels of non-compliance. Overall, he found that from 1985 to 1999, 37,300 births to women holding 6(1) status were registered with unstated paternity. Young mothers, in particular, do not disclose paternity. Thirty percent of births with unreported paternity were born to this age group, with the highest percentage to mothers under 15. Smaller First Nations feel the greatest effects of this practice. Out-marrying is more common, because in small communities of fewer than 100, residents are too closely related to permit high rates of endogamy (marriage within the community).

Clatworthy offered a range of reasons why mothers fail to comply: insufficient knowledge, lack of coherent systems at the local level for conveying information to expectant parents, lack of training for community health nurses to assume obligations to assist in registration procedures, lack of assistance from maternity ward staff, inappropriate deadlines for completing paperwork identifying the father, British Columbia’s requirement that DNA evidence be submitted for proof of paternity when amendments are sought after six years, the costs of amending provincial registration and geographical barriers that prevent fathers being present at the time of birth.

Clatworthy offered no critical evaluation of the effect the policy was having on individual lives and on First Nations’ futures, in particular matrilineal societies whose traditions are violated by patrilineal preferences. He failed to question *why* mothers might not disclose this relationship even if the above impediments might be resolved. Instead, he accepted the policy at face value and concentrated on how to achieve higher levels of compliance through improved bureaucratic procedures and community-level programs to increase awareness of the rules and how to satisfy them.

Non-disclosure of paternity was once a resistance strategy for women who did not wish to be alienated from their children. Before 1985, if a woman did not identify a non-Indian father and no one in her Nation protested, the child was registered. This practice protected a woman's privacy and secured her child's entitlement to be registered. For matrilineal peoples, this practice was consistent with customary practices. Because a clan system can readily integrate children with unnamed fathers, there was no need to identify individual fathers.

Indian and Northern Affairs Canada has not evaluated the impact of the disclosure of paternity policies. We have no understanding of how placing women and children in different categories affects mothers and their families in the long term. Nor has INAC considered meeting the "best interests of the child." The International Convention on the Rights of the Child (ratified by Canada in 1992) requires states to protect children's rights to participate fully in family, cultural and social life. (See Buenafe [1996] for a fuller discussion of the significance for First Nations children.) The United Nations Declaration on the Rights of a Child specifies that racial discrimination is prohibited. Principle 10 states: "The child shall be protected from practices which may foster racial, religious and any other form of discrimination." The refusal of a father to acknowledge paternity or of a mother to disclose paternity in situations threatening her security should not alienate children from their cultural community. To prohibit a child from identifying with and membership in her First Nation of origin violates both the Declaration and the Convention on the Rights of the Child. Nevertheless, INAC has provided no hope that changes will be made to the paternity disclosure policy. The Department does, however, attempt to offer some protection of privacy if disclosure will harm the child and mother. In such cases, INAC will not reveal information on the father in the registry and will treat information on entitlement carefully and confidentially.

Confronting Sexual Discrimination in the *Indian Act*

Aboriginal peoples in Canada never embraced the membership regulations imposed on them by Canada. However, in resistance to the *Indian Act*, the peoples most affected received little public attention. In the 1940s, Canada made efforts to ameliorate some of the oppressive aspects of the Act for women; in its major overhaul of the Act in 1951, women gained the right to vote and run in band council elections. While this was a major concession to recognizing women's rights in line with existing international law, the gendered premises of "Indianness" persisted. Section 12(1)(b), which provided for stripping of status from out-marrying women, became the focus of legal struggles that went as far as the international courts.

In 1969, Jeannette Lavell, who was involuntarily stripped of status when she married a non-Indian, went to court arguing the *Indian Act* violated the *Canadian Bill of Rights*. Lavell lost initially and then was victorious at the appeal court. Her victory was short lived. The case was appealed to the Supreme Court of Canada, which overruled the appellate court (*Lavell v. A.G. Canada, 1974*).

Legal struggles against 12(1)(b) of the Act revealed fundamental sexist principles underlying Canadian judicial reasoning. In its 1973 decision, The Supreme Court of Canada

(*Lavell v. A.G. Canada*) upheld the sovereign power of Parliament to rule who is/is not Indian, and thereby brought to an end Indian women's access to legal redress in Canada. Following this ruling, Canada conceded to First Nations a small measure of authority with the 1981 Governor General's proclamation that permitted exemptions from the discriminatory membership sections.

Within the national context, the issue re-emerged as a political contest between powers seeking to uphold the status quo and women seeking equality and rights within their natal communities. This was partially won when Sandra Lovelace took the issue before the United Nations Committee on Human Rights under the Optional Protocol to the International Covenant on Civil and Political Rights. On July 30, 1981 Canada, which had signed the convention in 1976, was found to violate Indian women's rights "to enjoy their own culture...religion [and] language" (*Lovelace v. Canada, 1981*). The 1985 amendments followed from the international embarrassment of this finding. In its efforts to retain control over Indian status while compromising with First Nations leaders, Canada failed to uphold unequivocally the rights of women who have been reinstated and their descendants who are excluded from their cultural communities by reason of the second generation cutoff.

The complexity of C-31 can be best viewed in light of the court case indexed as *Sawridge Band v. Canada (T.D.)* This case originated in 1986 and remains unresolved. Three Alberta First Nations, Sawridge, Tsuu T'ina and Ermineskin, challenged Canada's right to determine membership as being in violation of section 35 of the Constitution. The plaintiffs argued that "sections 8 to 14.3, both inclusive, of the *Indian Act*, as amended by section 4 of an Act to *Amend the Indian Act*, S.C. 1985, c.27, are inconsistent with the provisions of section 35 of the *Constitution Act*, 1982 to the extent that they infringe or deny the right of Indian bands to determine their own membership and therefore to that extent are of no force or effect." The court in turn asserted that no existing Aboriginal or treaty rights provided Indian bands with the power to control membership. Furthermore, had there been such a right, it would have been extinguished by section 35(4), which provides for equality between women and men. The plaintiffs' claim was dismissed. This delighted women whose rights to reinstated membership in the three nations had been disputed. They experienced their exclusion as discrimination based on gender and birth. However, the First Nations' leaders argued that this was not the case. Rather, their exclusion was grounded in cultural traditions that determined community boundaries. The leaders also argued that the issue at stake was one of self-governance.

In a press release a few days after the judge gave his decision, the late Chief Walter Twinn of Sawridge denounced the decision as "the most anti-Indian pronouncement of recent judicial history" (Native Council of Canada 1995). The plaintiffs' actions, Twinn argued, were neither discriminatory against the women the three First Nations refused to recognize nor against their mixed racial children. Rather, the legal challenge against the Act and the Charter constituted a defence of the inherent and constitutional rights of First Nations to determine citizenship and to uphold customary practices of membership and identity. The plaintiffs also expressed fear that off reserve and newly reinstated members could form a

voting bloc against long-term residents that would shift the economic interests of the status quo (Native Council of Canada 1995). The plaintiffs filed an appeal on September 29, 1995.

The plaintiff's appeal resulted in a ruling that the trial judge's conduct constituted a reasonable apprehension of bias and a new trial was ordered (*Sawridge Band v. Canada* (C.A.) [1997] 3 F.C. 580). In March 2003, the federal court issued a mandatory order to restore band membership to the excluded women. "The plaintiff and the persons on whose behalf she sues, being all the members of the Sawridge Band, are hereby ordered, pending a final resolution of the plaintiff's action, to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band List, with the full rights and privileges enjoyed by all Band members" (*Sawridge Band v. Canada*, [2003] 4 F.C. 748). Canada argued this was necessary to meet the needs of the now elderly women.

Currently, a number of issues respecting evidence are before the courts that will require resolution before the second trial can be heard. The Native Council of Canada, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta and Native Women's Association of Canada (NWAC) are now interveners in the *Sawridge* case. While NWAC shares concern that First Nations, not the federal government, should exercise authority over membership, it does not accept assertions that the *Sawridge* case is free of gender discrimination. The NWAC has long held the view that the equality rights of women and their children must be protected before greater powers pass from Canada to First Nations (McIvor 2004: 13). At present, the Sawridge First Nation is asking that limits be placed on the interveners in this case.

Sawridge established the social and legal context in which women reinstated under C-31 and their descendants contest limitations on their access to band membership and to Indian status. These conditions are particularly troublesome for women whose children and grandchildren are not registered due to the second generation cutoff and who are affected by the policies regulating disclosure of paternity. As Joyce Green (1997; 2000a) pointed out in her study of C-31 and *Sawridge*, women do not share common views on questions of identity and membership. Nor, she argued, will granting First Nations true control over citizenship protect women's equality anymore than federal legislation has done.

In sum, *Sawridge* demonstrates the complex social and legal implications facing women and their First Nations governments. At issue is how to restore women's entitlements to the community and to remove restrictions on their private lives. For some women, the answer appears to lie in seeking fuller protection from domestic and international human rights laws. For others, the answer appears to lie in delicate balancing of traditional laws, sovereignty and human rights protection (McIvor 2004; Green 1997; Bayefsky 1982). Deveaux (2000) suggested three approaches that might resolve the conundrum of competing rights: granting priority to traditional values and practices of cultural groups, placing accepted collective and cultural rights within a framework of international human rights and accepting group rights subject to respect for individual rights and freedoms. She suggested that only the third option would sufficiently safeguard First Nations women in their public and private roles. One can only conclude that seeking redress through any of these measures must be approached with

the knowledge that in the past Canada has not protected First Nations women from discrimination and may not in the future (Green 2001).

Aboriginal women in Canada find themselves in a similar position to Native American women of the United States. Since 1934, when the American government asserted greater intervention into the organization of recognized Indian tribes, tribal governments have wrestled with questions of membership, identity, blood quantum and the application of traditional matrilineal practices (Gould 2001; Anderson 1996). The shift from matrilineal customs to Euro-American patrilineal privilege among the Cherokee over the past centuries, in particular, sparked much controversy regarding women's rights and their protection in customary law (see for example, Perdue 1998, 2003; Strum 2002; Yarbrough 2004). Considerable scholarship now addresses the perceived conflicts between tribal sovereignty and Indian women's rights, and between collective and individual rights respecting the 1978 case *Santa Clara Pueblo v. Martinez*. In 1978, Mrs. Martinez (and her children) was denied membership in the Santa Clara Pueblo, because her husband was a Navajo and therefore an outsider. Since 1939, Santa Clara has determined membership through patrilineal descent. Berger (2004) reviewed the conflicting perspectives arising from assertions that this case denied women's rights in favour of sovereignty. She argued that taking the case to the Supreme Court pre-empted the possibility of internal solutions. Much as Miskimmin (1996) made the argument that cultural continuity can persist in Algonquian and Iroquoian communities fragmented by legal categories, Berger went on to demonstrate that even without legal standing in the community, three generations of the Martinez family lived and socialized within the Santa Clara Pueblo. In this case, the resolution of women's citizenship rights was caught within the context of a federal state eroding tribal sovereignty and making internal determinations difficult and fraught with tense gender relations.

A number of legal scholars address the ways in which the federal American state undermines tribal sovereignty. Gould (2001: 772) reviewed these issues, and found little consensus among tribes seeking to protect sovereignty, culture and identity. He concluded somewhat ambivalently.

The predicament of tribes is race, the problem of deciding who should be an Indian. Even in 2000, eight of ten people who could identify themselves as Indians had roots in more than one ethnicity or race. Within this century, the number will increase to more than nine in ten. For many tribes, perhaps most, the choice to open tribal memberships to persons with multiple origins will not come easily. Some will undoubtedly retain blood quantum requirement to avoid what they perceive as cultural extinction. Others — one hopes most — will reorder their criteria for tribal membership to enroll new multiracial Indians. These tribes will discard the arithmetic of race precisely because they seek to secure the future for their cultures.

In a similar vein, Borrows (2002) rejected limits on citizenship on racialized grounds. Whatever the good intentions might be, he asserted, exclusion based on either blood or descent can too easily lead to racism. Since Aboriginal peoples are more than kin groups, the

solution to the predicament of who is Aboriginal may be found in traditional laws of extending citizenship to non-Aboriginal peoples.

This predicament underlies all efforts of women to secure rights to Indian status and equality within the First Nation from which they descend. The following discussion of human rights appeals illustrates the complications of deciding who should hold the power to decide who shall be an Indian and what rights she shall have in consequence.

The *Indian Act* and Human Rights

When Sandra Lovelace went before the international court, she and women supporting her hoped for a ruling on the gender discrimination in the Act. However, the court did not specifically address issues of gender bias, which remains problematic in the provisions of 6(2), the policy mandating disclosure of paternity, and the rights of reinstated women to equitable treatment by First Nations governments. Aboriginal women's organizations have reported on violations of human rights since the amendments were enacted in 1985. The Quebec Native Women Association reiterated the scope of violations in its response to Bill C-7, a lapsed bill that was intended to define the powers and terms of self-governance (NWAC nd-a). Included in its list of infractions were residency rights, sexual bias in status inheritance rules, the policy mandate to reveal paternity and violations of children's right to live within their cultural community.

Matrilineal First Nations have further issues; the violation of women's rights with respect to status inheritance rules cuts deeply into the fabric of society. Children are born into their mother's clan and through this membership assume roles and responsibilities that tie them to their extended families and to a network of communities that share matrilineal principles and clan organization. Denial of status at the second generation violates the founding principle of society. Lack of residency rights for the third generation disrupts care grandchildren bestow on their grandparents. The cultural opportunities the younger generation need to carry on the traditions that are the source of governance and law are diminished. C-31, therefore, violates the principles of self-determination and the continuity of cultural traditions on which contemporary matrilineal First Nations rely.

The Native Women's Association of Canada has repeatedly called for remedies to sexist discrimination of the Act. It has also drawn attention to discrimination within First Nations governments and has released reports that demonstrate the Act and linked policies violate a number of human rights protections and the constitutional rights accorded Aboriginal women in section 35. In *Aboriginal Rights are Human Rights*, NWAC (nd-b) reviewed international human rights and women's rights principles found in international legislation: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of Discrimination against Women (CEDAW). For NWAC, the solution lies in recognizing Aboriginal rights are the rights of women. National and international human rights conventions need simultaneously to recognize and protect both Aboriginal rights and Aboriginal women's right to enter into that collective without alienation of their individual social, economic and political rights.

The Native Women's association argues that Canada falls far below the standards set by the international community and the conventions Canada adopted for basic human rights protection in its treatment of Aboriginal women. To achieve equality and rights protection, NWAC argues for an Aboriginal charter of rights and freedoms. It proposes five areas of protection: sex equality notwithstanding anything else in the Charter, non-discrimination protections of section 15 of the Charter, protection from violence, equality in the provision of basic human needs, such as housing, and adequate levels of social assistance or security for the family. In the Association's (nd-b: 20) words: "NWAC continues to see the Canadian Charter as an essential safeguard for aboriginal women."

Since 1978, First Nations women have been constrained in their efforts to protest discrimination in the *Indian Act* and its attendant policies of First Nations governance. The stumbling block arose from political negotiations in the 1970s, when NIB responded to the case of *Lavell*. At this juncture, the federal government was proceeding with human rights legislation that would apply to the *Indian Act*. The National Indian Brotherhood desired exemption on the grounds that human acts legislation could eradicate all provisions of the *Indian Act* and thereby erase any protective rights applying to status Indians. To prevent this, the Joint Cabinet/National Indian Brotherhood Committee proposed that the forthcoming rights legislation exempt the Act. Thus, since its inception, the *Canadian Human Rights Act* (CHRA) of 1977 under section 67 specifically exempts the *Indian Act*.

In her 2001 review of the ramifications of this exemption for First Nations women, Wendy Cornet made several key points. First, the scope of the CHRA is limited and in turn has been narrowly interpreted. Therefore the CHRA may not serve women challenging broad equity issues. Second, the application of the CHRA to issues of First Nations has been arbitrary. Third, interpretations have led to the need to consider questions of jurisdiction as the courts have applied the CHRA only to specific provisions of the *Indian Act* or its regulations. In consequence, grievances arising from inequitable access to housing have been exempted, as illustrated by *Laslo v. Gordon Band*, 1996. Here the Canadian Human Rights Commission (CHRC) "found that Gordon Band Council discriminated against Mrs. Sarah Laslo by denying her residential accommodation on grounds prohibited by the *Canadian Human Rights Act*, s. 6, that is, because of her sex, her marital status and the race of her husband." However, with respect to the Jurisdiction of the Tribunal, "[it]found that decisions made by the Gordon Band Council not to allot housing on the reserve to Mrs. Laslo are provided for by s. 20 of the Indian Act."

The outcome of *Laslo* stands in stark contrast to an earlier decision. In June 1995, the CHRC ordered the Montagnais du Lac-Saint-Jean Band Council to pay damages to four reinstated women already living on their reserve who had a moratorium placed on various rights and services pending a membership code. In this instance, the CHRC made a ruling as the action petitioned was not one authorized by the Act but was a policy of the Band Council that stood outside of the powers of the Act.

Although the *Indian Act* has not been subject to the CHRA, the courts have generally concluded that the human rights legislation remains applicable to band council activities

or policies that are not based on the *Indian Act* or regulations under it. These decisions, however, have fallen short of First Nations women's aspirations respecting equality and freedom from discrimination with respect to community governance and federal policies and legislation.

In 2000, the federally appointed Canadian Human Rights Review Panel (CHRRP) made two key recommendations with respect to the CHRA in hopes of offering First Nations women greater protection. They recommended that the section 67 exemption be removed, and an interpretive provision be incorporated in the CHRA that would "ensure that Aboriginal community needs and aspirations are taken into account in interpreting the rights and defenses in [the CHRA] in cases involving employment and services provided by Aboriginal governmental organizations. Such a provision would ensure an appropriate balance between individual rights and...community interests" (CHRRP 2000: 132).

In 2003, the federal government responded by incorporating these recommendations into Bill C-7, proposed legislation to define terms of self-governance. Mary Gusella, then Chief Commissioner of the Canadian Human Rights Commission, and Mr. Kelly Russ, then Commissioner, appeared before the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources to argue that with the passing of the CHRA in 1977, First Nations people living on reserves were denied full access to the human rights complaint system (CHRRP 2000: 1322).

The proposed terms of the First Nations Government Act went further than any existing legislation in proposing protections for First Nations women. The interpretive provision provided that the needs and aspirations of the Aboriginal community affected by a complaint against an Aboriginal governmental organization were to be taken into account in interpreting and applying the CHRA, "to the extent consistent with principles of gender equality," which can be interpreted as an effort to balance community aspirations with women's human rights. Although this bill failed to pass, it demonstrates that First Nations women have made some progress in their campaign to have Canada attend to their complaints and their constitutional rights to equality as protected in section 35(4) of the Constitution.

The CHRC (2005: 23) is still working toward removing section 67 and issued its report to that effect in the fall of 2005. It stated that "concern remains that the Bill C-31 amendments themselves may not pass human rights muster" and urged the government, in consultation with First Nations, the Commission and other relevant bodies, "to review provisions of the *Indian Act* and relevant policies and programs to ensure that they do not conflict with the *Canadian Human Rights Act* and other relevant provisions of domestic and international human rights law."

Across Canada, First Nations individuals are hoping that a legal case, known as *Re Wilson (1954)*, will provide some relief for individuals seeking reinstatement. In this case, Wilson, son of a woman whose name was included in band membership, challenged his exclusion on the ground he could not prove his father's identity. The Alberta District Court determined that undue onus could not be placed on an individual to provide proof of her/his father's

identity. In this case, the court reasoned that Canada was responsible for maintaining appropriate records. Its failure to do so could not impede individuals seeking registration as status Indians. Whether this ruling will have application in contemporary cases where mothers can be represented as failing to comply with policies respecting paternity disclosure remains to be seen. Also unknown as yet is the impact this case may have on First Nations struggling to maintain membership registers in the face of insufficient training and resources (Clatworthy 2003). There have been, however, extensive studies of the early impact of C-31 and its legal implications as First Nations and women negotiated tensions in establishing rights and protection of identity.

3. LITERATURE REVIEW

Two decades have passed since the *Indian Act* was amended by Bill C-31. In this time, the Bill has been challenged as unconstitutional, has provided little legal relief for women, and has divided families and communities by legislating identity based on gender discrimination. From the year of its implementation through to the present, various branches and agencies of the federal government have commissioned a range of studies to track its impact on communities, government funding programs, and residency preferences of the reinstated individuals (e.g., Holmes 1987; Canada 1990). In consequence, Bill C-31 and its ramifications have been addressed in a growing body of literature that explores its origins, legal meanings and interpretations, and social consequences. Legal theorists have debated constitutional ramifications, women have related their personal experiences, and activists have campaigned for remedies to human rights violations. The following review of the literature takes up three themes: competing rights, construction of identity and women's personal experiences with C-31.

Competing Rights

Following a series of legal challenges to the *Indian Act* in the 1970s, which failed to secure rights for women who had lost their Indian status, controversy emerged regarding the rights of status Indian women to equal treatment. This controversy was conceptualized in two ways: as sexual discrimination residing in the *Indian Act* that could be remedied by amending the Act to provide the same rights to men and women (Jamieson 1978; Two Axe Early 1981) and as a conflict between the special position of Indians guaranteed in the *Indian Act* and "normal civil rights." In this debate, women's rights were not seen as being able to co-exist with the protections offered by the *Indian Act*. Indeed, women agitating for their rights were seen as a threat to community solidarity. For example, Whyte (1974: 41) went so far as to argue that if the civil rights women were requesting were granted, the result would be "cultural genocide."

This critical legal debate, now worded as conflict between collective and individual rights, continues with respect to C-31 and the rights of First Nations to self-determination. The arguments respecting conflicting rights have dominated scholarly debates for three decades (Alberta Native Council of Canada 1985; AFN 1985; Bear 1991; Fiske 1999; Green 1985, 1997; Holmes 1987; Manyfingers 1986; MacDonald 1986; McIvor 1995a,b, 1999, 2004; Sanders 1975, 1984; Turpel 1989). Collective rights are seen as threatened by individual rights as construed by the *Constitution Act*, 1982, sections 15, 28, 25 and 35. Sections 15 and 28, which protect individuals' rights to equality, are seen as conflicting with Aboriginal and treaty rights as provided for in section 25, which explicitly stands to protect against any abrogation or derogation that might arise through conflicting charter provisions.

The debate that has positioned women's rights as being in conflict with the inherent and constitutional rights of First Nations to self-determined citizenship has generated a plethora of legal, sociological and anthropological studies respecting traditional marital practices (Montour 1987; Stevenson 1999; Jones 1984; Weaver 1974) and implications of recognizing

marital property rights on reserve lands (Bartlett 1986; Sanders 1985; Cornet 2002). Questions respecting constitutional powers and rights of self-governance have been raised and remain unresolved (Cassidy 1988a,b; Isaac and Maloughney 1992; Moss 1990), as scholars debate the potential ramifications of court challenges that C-31 is unconstitutional (Green 1997).

It is important to note that the debate on matrimonial property rights focusses on individual access to private property. It does not address collective property. In matrilineal societies, clans or other kinship units held property collectively. Women, variously labelled as matriarchs, clan mothers, hereditary chiefs or by other terms of honour and distinction, had access to and control over the distribution of property. Fishing, hunting and gathering, and horticulture in the past formed the core of the economy. Women shared in their access to these resources with male and female members of their clans (Anderson 1991; Brown 1970; Daly 2005; Fiske and Patrick 2000; Klein 1995; Montour 1987). Among many nations, for example, Carrier, Gitzksan and Tlingit of the west coast, the wife shared in resource use in her husband's clan (Daly 2005; Fiske and Patrick 2000). As with other civil and political rights, the *Indian Act* interfered with women's individual and collective rights in relation to land. Among western matrilineal societies, for example, women were often denied rights to register resource interests with provincial land authorities as well as through the *Indian Act*.

The studies cited above have all demonstrated that women's security and social and political status are linked to property rights. Denial of women's customary, collective property rights is linked to external erosion of traditional laws. The intrusion of the *Indian Act* property regime that favours male ownership (through certificates of possession) on reserve lands on the one hand, and male rights to resource territories (such as trap lines or fishing sites) off reserve on the other is consistent with other governmental colonial practices that uphold patrilineal advantage and patriarchal authority.

Given the double-edged nature of colonial intrusion into women's collective and individual property rights, solutions are not easy to identify. For some, resolution of the question of women's rights resides in Charter protection and in national and international human rights law. The Native Women's Association of Canada and several First Nations legal scholars argue that the *Human Rights Act* and the Charter must be brought to bear on protection of First Nations women (McIvor 1995b, 1999; Nahanee 1993, 1997; Bayefsky 1982). Other First Nations legal scholars, including Monture Angus (1995) and Turpel (1989), opposed their position. The former fear women will be seriously disadvantaged by excluding First Nations governance from these human rights provisions. They suggested women will continue to be denied rights to citizenship, to protection of matrimonial property and to other freedoms protected by national and international law (Nahanee 1993; 1997). Legal scholars link human rights protection to social and psychological implications for women's well-being with respect to personal security (Blumer 1993).

In her overview of women's legal struggles to achieve sexual equality, and in her own legal challenge for Charter protection, McIvor contended that section 6 of the 1985 Act violates the Charter, sections 15 and 28 (*McIvor v. Canada*). She implicitly located her challenge in participatory politics and sought redress against the alienation of reinstated women and their

children and grandchildren from participating in decision making (2004: 103). She seeks the right of Aboriginal women to participate in processes that determine community rules and the distribution of resources and opportunities (McIvor 2004: 111). McIvor saw fundamental human rights of Aboriginal women as being protected by section 35(1) of the *Constitution Act, 1982* and by the federal fiduciary trust responsibility of Canada. She suggested that the Court is obliged to consider women's traditional roles as well as contemporary ones in interpreting Aboriginal women's civil and political rights as Aboriginal and treaty rights (1999: 172). Her goal is to ensure that community rights are shared by all. To meet this goal, women, and where appropriate their organizations, must be fully engaged in determining self-government rights at the band, tribal, regional and federal levels (McIvor 1999: 180).

McIvor's views were not shared by Monture Angus and Turpel. The latter two pointed to the failure of constitutional rights to protect Canadian women at large and to advance women's struggles for political, social and political equity. For Turpel (1989), the solution lies in creation of an Aboriginal charter grounded in traditional principles that honour feminine principles, in particular maternal reverence. Monture Angus (1999) looked to traditions of responsibility as the way to define self-government and women's roles within the Mohawk nation.

The controversy over competing rights generated considerable conflict between the AFN and NWAC. In the 1980s, as Krosenbrink-Gelissen illustrated (1991), NWAC sought reconciliation with the AFN (and its precursor the NIB) by adopting a discourse of traditional motherhood and a praxis of feminine collectivity based on cultural traditions. This however failed to achieve any substantial resolution of the conflicts over struggles for sexual equality *after* 1985 within First Nations communities or for parity political representation to and recognition from Canada (Krosenbrink-Gelissen 1991; Fiske 1999).

The rift continues with a persisting focus on competing rights and the fear that restoration of status to women under C-31 will undermine cultural uniqueness and sovereignty. Little attention is paid to the underlying gendered assumptions of nationhood that shape this controversy. The AFN, and the NIB before it, has not questioned the conception of nationhood as masculine nor the repercussions this has for women seeking participatory citizenship (Fiske 1999). Lawrence (2004: 69) neatly summed up the ramifications of the competing rights debates (2004: 69).

[I]t is telling that many Native people regard Bill C-31, and not prior versions of the Indian Act, as the root of the problem. Identity legislation in the Indian Act has functioned so completely — and yet so apparently invisibly — along gendered lines that at present the rewriting of Indian identity under Bill C-31 in ways that target men as well as women are viewed as intense violations of sovereignty, while the gendered violations of sovereignty that occurred in successive Indian Acts since 1869 have been virtually normalized as the problems of individual women.

McIvor (2004) stressed that the challenges First Nations women face will not be overcome by isolated action. Collective action is needed at the local, regional, national and

international levels. Legal cases that have had major impacts on INAC policies have been supported by national organizations such as the IRIW and NWAC. The affiliation of local and national organizations, as McIvor (2004) pointed out, is essential to achieving women's political rights.

Construction of Identity

To name an individual or group of individuals as "Bill C-31" in contradistinction to other status Indians is a common misnomer. In fact, the legislation passed in 1985 with respect to registration of First Nations individuals as "Indians" covers all persons so entitled thus making all status persons C-31. Nonetheless, this pervasive practice of categorizing individuals, in particular women, on this basis exists not only within communities of Aboriginal peoples but also within scholarly works, government documents and social commentary. An underlying premise of much of the legal and social scientific literature is that women who do not reside in First Nations reserve communities and/or who marry and have children with non-First Nations partners constitute a threat to community solidarity by virtue of cultural difference (Alfred, cited in Barnsley 2000; Alfred 1995; Whyte 1974; Macklem 2001).

Many have argued that aboriginality is a state of being that cannot be eradicated by colonization and modernization. But women who "marry out" are constructed differently. Whether they reside for long or short periods off the reserve, in nearby communities or in more distant urban centres, they are viewed as having "lost" cultural oneness with their natal communities. Community members, lawyers and academics have constituted this perceived difference as a threat to the integrity of First Nations communities located on reserve lands. Individuals whose status has been restored over the past 20 years are now being seen as a special interest group who do not share the common interests of the reserve populations. In the words of Schouls (2003: xii), the regulations by which Canada assigns Indian status constructs "the 100,000 plus status Indians recently reinstated under Bill C-31 most of whom do not live in reserve communities" as a distinct category marked by "specific and often unique political aspirations."

Employing an approach that commingles identification and relational pluralism, Schouls (2003) argued that Aboriginal identity is not threatened by individuals' multiplicity of experiences, including off reserve residency, or by overlapping identities arising from marriage and engagement in culturally and socially diverse networks. Rather, he argued that Aboriginal identity is multifaceted, and Aboriginal women's struggles for equality contribute to — not undermine — community strength and cultural vibrancy. From the perspective of relational pluralism, therefore, the reinstatement of women through Bill C-31, to the extent that women are not constrained as a minority within reserve communities, is potentially positive. Since these women have choices respecting their identity, they bring to their natal communities complex, rich resources grounded in multifaceted identities and broad experiences.

Schouls advanced his argument to counter what he labelled the “difference” approach asserted by Patrick Macklem and others. Macklem (2001: 5) argued for constitutional protection of interests associated with what he termed “indigenous difference” on the basis of Aboriginal rights and on the grounds that this will ameliorate substantive inequalities facing Aboriginal people. However, he distinguished between Aboriginal peoples according to the socio-legal categorization under the *Indian Act* and their place of residence. From Macklem’s perspective, reinstated women do not share the interests of “indigenous difference” with members of their natal community. In contradistinction, they emerge as cultural “others,” variously labelled “newcomers” or “new members” who by virtue of their numbers “dramatically threaten interests associated with indigenous difference” (Macklem 2001: 229).

Macklem (2001: 226), however, posed a contradiction. Despite denouncing the terms of Bill C-31 that allow for reinstatement of members who have not dwelled within the reserve community, he described the same communities as desiring social cohesion based on family and kinship, which presumably would be a gesture to include, not exclude, kin who had lived apart for either long or short periods. He also asserted the need for courts to provide the widest margin in considering Aboriginal cultural difference. Macklem (2001: 169) argued for “conceptual elasticity” to recognize

that Aboriginal people are not locked into particular cultures but instead express plural cultural allegiances; they also assimilate, break cultural bonds, and change cultural allegiances over time...[while] Aboriginal cultures undergo dramatic transformations in response to internal and external circumstances and developments.

Surely this would mean First Nations should accept not fear reinstatement of women and their children. Nonetheless, Macklem (2001: 232) advocated against Bill C-31 on the grounds that constitutional protection of interests deriving from indigenous difference must take priority over Charter guarantees of equality and individualism. Like many who wrote before him, Macklem saw Bill C-31 as having created a conflict between Charter rights and the interests of indigenous difference which, in turn, is taken by the state as justification for incursions into the core interests of indigenous difference.

While it is clear that law is constitutive of identity, focussing solely on boundaries created by legal mandate is insufficient. What is needed is an understanding of how legal categories affect social relations through which women respond to these identities. In recent years, scholars and clinical psychologists have located issues of identity and the formation of the self as central to understanding — and appreciating — social difference and diversity. Two arguments have come to bear on this matter. One argues that our sense of self is essentially fragmented. Through her agency, a woman is able to respond to and even subvert the system that seeks to contain her by rearranging these fragments in creative and self-sustaining ways. In contradistinction, the other argues that to be healthy, the self needs to be coherent. Clinical psychologists, working with clients who suffer from traumatic abuses, find that the fragmented self experiences “torment” (Layton 1995: 110). Clinical psychology questions the position of sociologists and political scientist, such as Schouls (2003), who argue for

relational pluralism and notions of choice in identity. As we see below, women who participated in this study presented experiences consistent with the claims of clinical psychologist Lynne Layton (1995: 118) that “a sense of identity and agency are crucial components of the ability to be good both to the self and to others.”

A proposed solution to social and legal tensions erupting around membership and identity has been to view First Nations as nations not communities or bands. This specific shift in perspective brings to the fore discussion of how citizenship might be conceptualized. Returning to Gould (2001), who argued that the “arithmetic of race” be abandoned, the solution may lie in positioning First Nations as political units. Like other political units, First Nations would be free to determine citizenship without hindrance. For women, this could mean protection of Charter rights, whether through an Aboriginal charter or via the Canadian Charter. Green (2001) and McIvor (2004) both explored possibilities that might open to women should First Nations be granted such authority. They envisioned the possibilities of creating governing processes that provided for participatory governance that fully engaged women in all levels of decision making. Within such a framework of participatory citizenship, women would participate equally with men in establishing membership rules and would be empowered to defend themselves against discriminatory and humiliation policies, such as requirements for disclosure of paternity.

In part, the discordance between governing bodies of reserve communities and organizations of non-resident members lies in the shifting demographics. Daniels (nd) offered the following figures. Because of Bill C-31, 174,000 additional individuals have been registered. About 106,000 of these have been registrations by reinstatement. The rest are from births after 1985. Whereas prior to 1985 the majority of persons registered as status Indians resided on reserves, currently the majority reside off reserve. From 1984 to 1996, the off reserve population of status Indians rose by 156 percent. During the same period, the on-reserve increase was only 42 percent. There are now some 256,000 status Indians living off reserve in Canada, at least half of whom were reinstated through C-31 or are children born since April 17, 1985. The politics of home communities may now be tied to a non-resident vote, which may include voting blocs in distant urban centres or in nearby communities that are perceived by on-reserve leaders as troublesome and even dangerous (Macklem 2001).

The debate on the rights of First Nations to determine citizenship continues to resonate with scholars and political leaders. But it has been pushed to second place by an issue now experienced as more urgent: the second generation cutoff rule and its implications for declining status Indian population (Clatworthy 2005). This issue was not overlooked at the time the Act was amended (Holmes 1987; Jamieson 1986). However, with the passing of time the ensuing disruption of community membership and family relations has become more evident (Moss 1997). Many view the consequences of the second generation cutoff rule as a new assimilation policy. Creation of a large off-reserve non-status population threatens the extinction of Aboriginal peoples as a distinct legal category bearing inherent and constitutional rights. In short, the limits placed on transmission of status are experienced as an act of genocide. Daniels (nd), who labelled this “abocide,” asserted that reinstatement rates are now falling. As fewer new births are eligible for registration, a status population

decline will soon occur. The United Anishaabeg Councils (1999: 2) predicted that within 100 years “the final status Indian birth is forecast to take place.”

The anxiety expressed by First Nations peoples respecting population loss within First Nations reserve communities is not supported by statistical projections offered by Clatworthy (2003). He estimated that because of Bill C-31 the population entitled to Indian registration will increase for the next 50 years. He predicted that on-reserve populations will increase for about 65 years, while off-reserve increases will last only for about 20 years (Clatworthy 2001).

The difficulty with these data, however, is that the loss of population in consequence of the second generation cutoff is neither recorded now nor projected into the future. Children of a single parent with 6(2) categorization who does not register a status co-parent, either 6(1) or 6(2), are not recorded. Therefore, the net loss to the status population in consequence of the second generation cutoff and the requirement to name the father is not tabulated. Clatworthy estimated that in 2000 one percent of births on reserves were not eligible for registration and projected that this will increase to 13 percent by 2021, whereas the percent of ineligible births off reserves will grow from 21 to 48 percent in the same period.

In 2005, Clatworthy once again reviewed projections of future status populations on and off reserves. He predicted a rise in registered individuals entitled to membership over the next 45 years, with a decline within 75 years. Within 75 years, he projected a rise in registered non-members (p. 26). He reminded us that future registrations will vary with the frequency of what he called “exogamous parenting” or mixed parenting. Fertility and mortality rates are likely to change over the years, which will affect the future population. Clatworthy offered seven categories of membership codes: *Indian Act*, Indian equivalent, excluding those without acquired rights as of June 28, 1987, one-parent rules, one parent excluding those without acquired rights as of June 28, 1987, two-parent rules, 50 percent blood quantum, and 25 percent blood quantum. For each category, he found quite different scenarios for 2077. For example, at one end of the spectrum, he foresaw First Nations applying section 6 as having only two sub-groups of survivors and descendants: registered members and non-registered non-members. By contrast, at the other end of the scale, he projected that First Nations applying a one parent rule, excluding those without rights acquired as of June 28, 1987 will find their population divided into six sub-groups: registered members with 6(1) status, non-registered members with 6(1) status, registered members with 6(2) status, non-members with 6(2) status, non-registered members and non-registered non-members (p. 20).

Without reform of the current *Indian Act* powers to determine status, the extent to which registered individuals will enjoy membership will rely entirely on two factors in relation to one another: the rate at which individuals marry out in conjunction with the degree of restriction encoded in membership rules. The complex and varied consequences of this mix of rules will likely foster debates respecting identity, membership and citizenship long into the future. In the process, women are as likely to experience fraught relations and emotional heartache as they do now.

Women's Lives, Women's Voices

As the literature on C-31 has grown, it has become more diverse. Testimonials on the impact of the former *Indian Act's* membership regulations, specifically 12(1)(b), comprise one genre of work. In 1979, Indian Rights for Indian Women, then a national organization advocating for reform of the *Indian Act*, addressed the emotional impacts of involuntary enfranchisement. *Enough is Enough* by Janet Silman (1987) gave the stories of the Tobique women whose protests against 12(1)(b) and on-reserve sexism led to the 1979 march to Ottawa and Sandra Lovelace's appeal to international law a year later. As women became reinstated under the terms of C-31, they entered a new era of discrimination. Personal narratives of this experience are found in contributions to Beth Brant's *I'll Sing 'till the Day I Die* (1995). As new organizations of Aboriginal women have formed, they too have addressed the issues of emotional estrangement and disruption of family and community relations (Huntley 1999). Their concerns include access to benefits and the implications of increased governing powers in consequence of Bill C-49, *First Nations Land Management Act*, potential decline of on-reserve status populations due to restrictive membership codes, the potential for governing councils to violate human rights, and the alienation of families from their communities of origin (McIvor 2004).

Susanne Miskimmin (1996) offered a more positive view of the situation for women who retain community ties. She argued that academics, in particular Krosenbrink-Gelissen and Fiske, overstated the power of Bill C-31 to disrupt women's lives and community coherence. Her research with Algonquian and Iroquoian communities showed that women do maintain cultural ties and are accepted as members of the cultural community. Her work indicated that women can successfully negotiate their identity. Their children and grandchildren will be embraced by their mothers' communities if they too can demonstrate cultural knowledge and continuing community ties. However, there are community leaders and First Nations scholars who speak against integration and find women to be more responsible than men to marry within the status community to sustain the registered population (Alfred 1995; Alfred, cited by Barnsely 2000).

Working with an urban population, Lawrence (2004: 55) found the struggle for identity to be more significant than other issues.

It is the personal and cultural losses of losing status that Indian women have most frequently spoken about. Some of the costs have included being made unable to participate with family and relatives, being culturally different and often socially rejected within white society, being unable to access cultural programs for their children, and finally not even being able to be buried with other family members on the reserve. The extent of the penalties and lack of compensation for losses suffered has made the forced enfranchisement of Indian women "retribution and not restitution."

In sum, the literature concerning Bill C-31 and its aftermath is diverse. It covers critical legal debates respecting rights and entitlements, and the ongoing sexual discrimination of the *Indian Act*. Despite this range of work by community leaders, national organizations and

legal and social science scholars, significant issues experienced within First Nations communities have yet to be addressed in a comprehensive fashion. Three pressing issues have been overlooked by this dominant trend of analysis: traumatic impacts of 6(2) designations on individuals and First Nations, discrimination experienced by maternal grandmothers who through customary adoption become single mothers in the eyes of INAC, and social and economic impacts on women as community memberships face future decline through restrictions on status membership as defined by patriarchal regulations.

To best understand these three issues, it is first necessary to consider the shifting social, power and legal dynamics within matrilineal societies as they grapple with changing relations with the federal states of Canada and the United States. As the review of the *Indian Act* and secondary literature on C-31 shows, Canada has not considered questions of the collective matrilineal/maternal rights of First Nations women. This is of grave concern given the number of First Nations that have traditionally organized according to matrilineal descent. Matrilineal First Nations are found across Canada, but most particularly in Ontario, Quebec and British Columbia. Matrilineal organization was once highly developed in numerous tribes in the United States and remains the principle for membership in many today.

4. MATRILINEAL SOCIETIES AND THREATS TO TRADITIONAL PROTECTIONS FOR WOMEN

Traditionally, most matrilineal societies were organized into clans. Women held positions of honour, influence and authority. Female leaders were variously known as clan mothers, chiefs or by similar titles. Before colonial disruption, women in matrilineal societies participated in decision making, shared rights to resources with male clan members, and benefited from the protection and co-operation of their matrilineal kinship networks. Georges Sioui (1999: 120 ff; see also Anderson 1991), writing of the Huron-Wendat, described the ways in which matrilineal kinship ties ensured gender equality. Because women were supported within matrilineal kinship networks, they did not need the protection of a single man. Imposition of patrilineal descent in the 19th century destroyed women's freedoms and caused imbalance in the society. Similar descriptions have been offered of other matrilineal peoples in Canada and the United States: the Carrier (Fiske 1987), Iroquoian (Brown 1970, but see Bilharz 1995 for a different experience for Seneca Women) and Tlingit (Klein 1995).

In Canada, as in the United States, colonial forces sought to undermine women's lives by displacing them from positions of power and influence. Matrilineal societies were pressured to accept patrilineal structures of authority, inheritance, property rights and membership. In Canada, the *Indian Act* was used to efface matrilineal governing structures and replace them with elected governance, which before 1951 was restricted to a male electorate. In the United States, similar strategies were introduced by the Bureau of Indian Affairs from time to time, but most particularly in the 1930s.

Transformation of matrilineal societies was neither a simple process nor a uniform one. Further, scholars do not agree on how to interpret the impact of the colonial state or the colonial economy. Feminist ethno-historians have argued that as early as the 17th century in Eastern North America and as late as the 19th century in the west, matrilineal rights were eroded as claims to private property rights by in-marriage men intruded into tribal ways. With private property, came patrilineal privileges and male-dominated governance, ostensibly to staunch the flow of property from Indian wives to white husbands (Fiske 1987; Brown 1970; Anderson 1991; Devens 1992). Theda Perdue (2003) presented a different scenario in the American Southeast. She argued that with initial colonial settlement, Europeans sought to be integrated into Indian societies, and often were through marriage, adoption or, as in the case of the Cherokee, vowing allegiance to the government. However, by the 19th century, the Cherokee introduced new marriage laws to control women as they "had the ability to create new, legitimate members of Cherokee society through reproduction and marriage" (Yarbrough 2004: 385).

Women resisted imposition of patrilineal property and descent. Grandmothers found themselves alienated from their communities and forced off their lands (Dussias 1999; Berger 1997; Bilharz 1995). The success of their resistance varies. Berger (1997) summarized the impact of non-Indian law in the United States. Among the Pamunkey,

the tribe of Pocahontas, white husbands are prohibited from living on reservation lands and women who marry out are forced to abandon tribal land. Similarly, the Cachil Dehe Band of Wintun Indians of California expels women who marry non-Indians. The women automatically lose membership and have to leave the community within 90 days of marriage. Before 1993, Hopi of Arizona automatically included children whose parents were both Hopi or whose mother was Hopi and whose father was not. Children with a Hopi father and non-Hopi mother were admitted by a majority vote.

The Pueblo of Laguna in New Mexico automatically enroll children of women regardless of marital status, but only the children of married men. The Kialegee also follow matrilineal law: a woman's children are enrolled regardless of the father's status, but children of Kialegee men and non-Kialegee women have to apply to council for a majority vote (Berger 1997: 51-53). Standing Rock demands disclosure of paternity before children of consensual unions can be registered for tribal status (Medicine 1993: 128). Matrilineal law does not necessarily protect women. Mohawk women divided by the international boundary are jeopardized by the *Indian Act* on the one hand and state laws on the other. In 1928, a woman of the St. Regis Mohawk lost the right to pass land to her grandchildren, because she had resided in Canada for a period of time (Medicine 1993).

Today, the Mohawk nation of Kahnawake has endorsed strict criteria for membership. Leaders have expressed opposition to C-31 and the reinstatement of women, arguing the law expelled them and they ought not to be allowed back (Alfred 1995: 122). Alfred described a shift in Kahnawake thinking, from a traditional practice of adopting outsiders into the society to a "highly selective and closed set of criteria for membership" intended to prevent "destruction of the Indian Race through saturation by non-Indians" (Alfred 1995: 163-4). The community is now committed to eviction of non-Indian residents, a moratorium on mixed marriages and membership based on "a biological measurement." This means that members must prove a minimum 50 percent quantum of Native blood. Since 1981, members who marry out are stripped of all legal, economic and political rights as a Mohawk of Kahnawake (Alfred 1995: 169). The intent of these rules is to protect culture and a sense of unique identity but to challenge the power of Canada by refusing to comply with C-31. The consequence is to argue that matrilineal principles impose greater constraints on women with respect to marriage and reproduction as women carry the greater obligations to the community. In this context, women are pressured to choose partners within their community and to comply with political expectations and principles of personal conduct that constrain their freedom.

The position of the matrilineal Kahnawake, with the emphasis on race stands in sharp contrast to the more recent terms of citizenship of the Nisga'a Nation. The matrilineal Nisga'a of British Columbia ratified a self-governing treaty with Canada and British Columbia. Under the final agreement, Chapter 20, Nisga'a set out rules of citizenship that confer rights within the Nation but do not extend to the rights and privileges of Indian status as recognized by the *Indian Act*. Nisga'a distinguish between participants and citizens, and have eligibility criteria for Aboriginal and non-Aboriginal individuals. Citizenship eligibility follows the mother's line. An individual is entitled to be a Nisga'a participant if she/he is of Nisga'a ancestry and her/his mother was born into one of the Nisga'a tribes. Descendants and adopted children of

an individual meeting these criteria are also entitled to be enrolled. An Aboriginal individual married to a Nisga'a participant is also entitled to citizenship if she/he has been adopted or taken in by one of the four Nisga'a tribes before witnesses. That is, the individual has been accepted at a settlement or stone moving feast. Non-Aboriginal individuals who are Canadian citizens or permanent residents may also qualify if they were a member of an Indian band before May 11, 2000, ordinarily reside on Nisga'a land or married a Nisga'a participant and were adopted or taken in by one of the Nisga'a tribes in accordance with traditional laws, Ayuukhl Nisga'a.

The eligibility criteria of the Nisga'a honour matrilineal ways and do not pressure women to find a partner within the nation. Children of Nisga'a men are eligible when they trace their father's links back to a female ancestor born into a Nisga'a tribe. There is no demand that women disclose paternity to register their children as members of the Nisga'a nation. However, Nisga'a citizenship does not confer Indian status and leaves the issue of disclosure of paternity for Indian status unresolved. Nisga'a citizens who fail to meet the criteria of the *Indian Act*, may enjoy fewer privileges than the citizens who do carry status.

In light of the shifting nature of power, and the constant thrust of Canada and the United States to constrain sovereignty even while giving lip service to it, Beatrice Medicine (1993) argued that Indigenous women are caught in a triple bind of customary beliefs and law, state (or provincial) law and federal law. This triple bind is marked by continuous conflict over the question as to whether First Nations should assert themselves as political entities with inherent rights or as distinct cultural entities bounded by racial distinction. Within this context, women find themselves seeking court affirmation of customary adoptions and matrilineal descent even as they negotiate conflicts that arise from male-privileged views of tradition and state-imposed male councils (LaRocque 1997). This issue drives women in this study to press for changes in legislation and policy. As set out later, they seek redress from the state-imposed regulations that invade their privacy by turning to traditional law. Yet they also recognize the fragility of this position and seek protection of domestic and international human rights.

5. SOCIAL ORGANIZATION AND LEGAL CULTURES OF THREE MATRILINEAL FIRST NATIONS

From time immemorial people sharing common linguistic origins (Athapaskan language family) and social, cultural and economic foundations have inhabited the central interior of British Columbia. Labelled “Carrier” by Europeans, the First Nations of this region were linked to the north, south, east and west through trading partnerships and governing practices celebrated in feasting ceremonies known today as the *balhats*, or potlatch. Lake Babine First Nation is the largest of the region with membership of approximately 2,200. Its largest reserve community is now a suburb of the Burns Lake village. The nation’s traditional lands are centred on Lake Babine and are managed as they have been in the past, by hereditary chiefs who lead the four matrilineal clans. Cheslatta Carrier First Nation lies to the south of Burns Lake village and is much smaller with only 296 members. Nee Tahi Buhn is smaller again; 132 are registered members. A neighbour to Cheslatta, Nee Tahi Buhn has a small reserve community lying south of Burns Lake. Considerable distances separate the First Nations communities from one another and from the larger dominant communities. Travel can be difficult and unpredictable due to poor weather conditions, reliance on lake ferries and the use of secondary highways and forestry roads. Each condition makes it difficult for women and their families who cannot live on or near their natal community.

The three First Nations come together through the *balhats* on a regular basis. Infrequently, they will join in *balhats* that draw together all the nations in the central interior to consider political issues of common importance. Individuals are linked to neighbouring communities and nearby First Nations through intermarriage, extended families and clan affiliations. The summer harvesting of salmon attracts non-resident members home to share the harvest and cultural celebrations. This is an important moment for women to share in social activities and to teach traditions to younger generations.

Even as the foundation of First Nation women’s identities are confused by the *Indian Act* regime, which persists in dislocating women and children, the traditional social, cultural and legal practices of the three First Nations provide clarity and stability. Nee Tahi Buhn, Cheslatta and Lake Babine First Nations are organized according to matrilineal principles. In each nation, as with neighbouring nations, descent is traced through women. Rather than having her identity subordinated to her husband or father’s, and therefore subject to change over her life span as required by the *Indian Act*, in the traditions of her people a woman is the foundation of national identity. It is through women the clans are regenerated. Clan leaders, who are hereditary chiefs, rise to their position through matrilineal kin ties. As a member of the mother’s clan, an individual knows her/his personal identity, is taught lifelong obligations of responsibilities to others, and learns expressions of generosity and respect, the principle values that underlie the honoured teachings and wisdom that have been laid down from the beginning.

Customary laws emerge and are sustained and given meaning over time through social and cultural changes. Customary laws are defined as selected, time-honoured practices and institutions are evoked to settle disputes and regulate such matters as land tenure and

resource access, succession to leadership offices, group membership, adoption, residence rights, home ownership and inheritance of personal properties, and to define intercommunity etiquette and social protocol. Contemporary notions of customary law do not, indeed cannot, unequivocally replicate laws of a distant past, unmarked by Euro-Canadian intrusion. Thus, customary law represents evolving practices legitimated by attributions to tradition or custom and sanctified by reference to historical precedents.

Understanding customary law commonly derives from a close reading of traditional narratives, which take on sacred force and represent a received truth founded in faith and uncontested wisdom. As found in our earlier research (Fiske et al. 2001; Fiske and Patrick 2000), remarkable consistency is found between contemporary oral traditions and narratives recorded over a century ago, suggesting the importance of tradition in shaping contemporary prerogatives and rights. Customary laws upheld in the *balhats* are seen to represent more than a moral relationship; they represent the way things *must* be done.

Customary laws guide membership in the family, clan and community. An individual is raised by both the mother and father's clan that take on reciprocal duties from the time an infant is born to death and after, as both clans honour the deceased in funerary rituals. Through the clan system a child is given multiple ties to the community through affiliation with the clans of the mother and father and the extended family networks linked through the parents' grandparents. In this way, the child can be said to be born into kin relations and to create kin relations, because each clan is related to the other through the child. In the three nations, one often hears the phrase, "we are one big family" and even if past traditions of feasting are not strong today in comparison to the past (as was suggested by participants from Cheslatta), the foundational principles of creating and honouring matrilineal kin ties are celebrated and maintained.

When a woman or couple has no children, or when a child has no parent to provide care, customary laws dictate the processes of adoption. When a child is adopted, this means more than acquiring a nuclear or even an extended family. Adoption places the child within a clan that will be the mother clan, which will stand in relation to an assigned father's clan. If a child is adopted by a single mother, the father's clan is most likely to be recognized as the mother's father's clan. In this way, children do not have "single" parents as they might in a society of nuclear family organization. As one young woman explained:

I know my auntie told me that people never threw their children away. When a child needs a home, then someone in the family always took responsibility. This is what happened to my immediate family. Our parents got killed and although the ministry took us over, our family still did the traditional teaching with us. We still learned to do the gathering for our winter supplies. We still learned our potlatch and the aunts and uncles still taught us the traditional teaching that has been passed on for generations.

Another woman described how her parents adopted family members.

My mom, and dad custom adopted my auntie's girl when auntie passed away. I was born much later, and I always considered my sister as my biological sister. She was not treated any differently. When my late dad's first wife passed on, he married my mother and she automatically adopted my dad's four children and treated them as her own.

Customary adoption may also protect families and clans from dying out. When a family or clan has too few women of child-rearing age, women can be adopted (often into their father's clan) to keep the family or unit clan strong.

Families build ties across three generations as grandparents adopt grandchildren. Ceremonies in the feast hall sanction the adoptions and make them known throughout the immediate community and beyond by incorporating the story of a particular adoption into the clan's oral history and through the presence of the adoptee in the appropriate place within the feast hall. Custom adoption of grandchildren can have several benefits: the child is placed in a home with elders who can offer traditional knowledge and wisdom, elders can look forward to relying on a young adult to care for them in their declining years, and all members of the intergenerational extended family are bound together in ongoing, unbroken reciprocal ties. When children are not adopted, but are apprehended by social services and sent to a home outside the nation, they

are lost to [the] culture, which will forever make them lost souls...like being lost in the wilderness.

Young adults, who return to the community after living in foster care, speak to the struggle to make themselves known to the elders and to learn how to become affiliated in the clan system. When the hurdles have been surmounted, they can then identify themselves by their clan name and by the leaders of their extended families.

Matrilineal clan membership constitutes identity, which is inseparable from traditional lands. In the past, in each nation the traditional lands were inhabited in an annual cycle of subsistence activities; families and clans were tied to the land through matrilineal ancestors. Family and clan leaders cared for the land and through it provided daily subsistence and wealth for the feast hall. Hereditary chiefs of the Lake Babine Nation carry titles that link them directly to specific resource territories. The names endure (indeed some remain unchanged from their first recording by Europeans in 1810). The names or titles are deemed "empty" or "vacant" when a chief passes away, and are "filled" when a new chief is invested into that position. In this way, matrilineal succession sustains national identity, and symbolically and socially reinforces the feminine principles of life's renewal and the perpetuity of the First Nation. Through the chief's titles, use of the resource territories and the feasting ceremonies, clan identity and interclan relations are kept alive. The creation of personhood and individual identity are intimately tied to place and social practices.

The practice of feasting lies at the heart of traditional governance and persists in parallel to elective government as mandated by the *Indian Act*. The social protocols of the feast —

from seating arrangements, to ceremonial dress (whose symbols denote the wearer's clan and father's clan) through to narration of oral history in song and speeches — maintain the framework of customary legal principles and practices. Succession to leadership roles, punishments for personal offences, such as extramarital relations, and more recently revitalization of punitive laws for social and criminal offences are all part of the feasting traditions that take place under the authority of hereditary leaders. Feasts are hosted by a single clan to conduct public business before the community. The guests, who will come from several First Nations in the region, witness the business as the hereditary chiefs guide the speeches, decisions and actions in accordance with customs.

Disruption of the matrilineal lines that sustain the clans threatens the future of the feast, and therefore the future of the basis of governance, law, and ultimately, personhood. Given that matrilineal descent is foundational to cultural identity, one might expect customary laws to define contemporary membership codes. In fact, they do not for the Lake Babine and Nee Tahi Buhn. Both follow the Act. There are several formally stated explanations for this. First, the nations need to restrict membership as effectively as possible to registered members due to their dependence on federal funding. Second, they are engaged in treaty negotiations, and matters of membership and citizenship must be deferred until treaties are signed. Third, a wait and see attitude allows them to evaluate the success of their neighbour to the west, the Nisga'a. Fourth, negotiations with federal governments often fail to bring promised reforms, and it would be imprudent to open membership to larger numbers pending a clearer projection of INAC policies on essential services and the devolution of greater authority to the Nation. Clearly, following the *Indian Act* membership rules does not satisfy women who mourn the loss of children and grandchildren from the community.

The Cheslatta Carrier have adopted a one-parent rule, open to descendants of all original members. If Clatworthy's projections ring true, the Cheslatta First Nation should see membership numbers increasing. Clatworthy (2005: 31) foresaw a steady rise in members with First Nations using one-parent rules for more than 50 years. A slow decline is likely to follow, he suggested, with a considerable drop in registered members by 2077 along with a rise in non-registered members. Lake Babine Nation and Nee Tahi Buhn follow the *Indian Act* rules. If they continue to do so over the next 75 years, they should experience a decline in the registered population, but not for 45 years. The number of survivors and descendants who are ineligible for registration and membership will rise sharply by 2077 to one in three.

Membership codes following the *Indian Act* marginalize women who have reclaimed status through C-31. By marginalizing reinstated members, adherence to section 6 rules threatens the well-being of individuals, families, clans and entire communities. Reinstated members and their descendants, who may or may not have membership or status, are unlikely to reside on reserves. In the homelands of the people, which are contained in what is now known as the Bulkley/Nechako Region of central British Columbia, travel between communities is costly and dangerous. Communities are separated by vast distances, harsh seasonal weather, and poor highway and back road conditions. Summer harvesting of natural food resources draws family members, status and non-status alike, to traditional lakeshore communities (such as Old Fort and Fort Babine on Lake Babine) for an intense period of work and socializing. Young children learn first hand the traditions from their

grandmothers. However, for the non-status child, this richness may be short lived. Unable to inherit property or to share easily in the services funded by Canada, children all too early come to learn the marks of difference inherent in *Indian Act* categorization and distinction.

A 6(2) son of a Lake Babine member grew up away from the homelands, but spent his summers with his mother's family fishing and gathering. He described the struggle of a teenager to find acceptance in the face of an insecure future on reserve lands.

I have been labelled with many names as I was growing up. Names such as whitewash, mixed breed, pretend Indian and Indian for nothing. So, even when people think C-31 does not affect a person's life it does. Finally, today I need some training for millwright and there is not enough funding ...[name of the nation] for all the full status members...never mind that an off reserve 6(2) who also requires educational support.

I would like to build a house at [name of community] but have red tape (raw moose hide) to go through. That is, traditional red tape, such as hereditary land or clan land, one has to understand and know the balhats and clan system in addition to knowing the family line. When Mom married my father she broke the family line in the balhats system. Although there are many issues behind C-31, I feel I'm punished for my mother exercising her freedom of human rights.... I had such a difficult time getting people to accept me or even to fit in.

Disruption of identity development and social dislocation arise from the *Indian Act* in part because of the way government *imagines* family. Eurocentric notions of family privilege a nuclear two-parent unit that has economic independence from extended family members. It assumes identity is fostered through association with one's patrilineal kin. A family is seen as incomplete if two parents are not known to the child and to the community. Hence, section 6 of the *Indian Act* imagines that a child can be "Indian" only through a registered parent. And even as the Act affirms status shall be granted to adopted children, it continues to privilege a two-parent family structure that has shaped the sexual discrimination of the Act since 1876. Thus the Act appears to provide only lip service to custom adoption by constraining transmission of status to the two-parent model. A true acceptance of custom adoption would provide full status to children adopted by customs of reciprocal clan relations.

The image of the patrilineal two-parent family precludes honouring women as mothers and as figures of power in their own right. The matrilineal traditions of the three First Nations — and in fact not only of matrilineal nations but of patrilineal First Nations as well — express respect and reverence for women's power to create life (Redbird 1995). The value of maternal nurturing and wisdom is expressed in multiple ways and women take a central role in governance as traditional and elected leaders, as administrators, service providers in professional, paraprofessional and volunteer roles, and in a myriad of almost invisible ways in family care. While the latter may not be regularly and publicly celebrated, women's caring roles are esteemed. At funerals and feasts, community celebrations and

intercommunity meetings, women are the primary providers and workers. They also sustain family and community through seasonal activities of their foremothers: fishing, hunting, trapping, berry gathering and food preservation. They sustain community and First Nation identity through their arts and crafts, language teaching and related activities within their own communities, their children's schools and in the region at such annual celebrations as National Aboriginal Day. Through multiple roles of responsibility, care and authority, women express their social relations as extensions of maternal roles. Through natural creation of life and social maintenance of community life, "mother" emerges in the collective imagination as a source of power, wisdom and knowledge central to individual, family and community well-being.

As Wendy Cornet (2001: 15-17, 20) argued, the Act must be viewed from the perspective of a gender equality analysis as established by INAC policy. At issue are the negative implications of policy for women in terms of the net effects of the Act and local level decision making by First Nations with respect to band membership and rights and privileges attached to membership. To remedy the violations to matrilineal societies, provision must not only be made to uphold rights to individual equality as set out in the Charter, but also must *create* the context for social cohesion and cultural continuity. Violation of matrilineal customary law disrupts relations between men and women, most particularly in the clan and extended family relations.

Bill C-31 specifically violates the matrilineal principle and the social powers of women that arise from traditional values. Insistence that personal identity be defined through government policies that rely on disclosure of paternity and ideals of nuclear family relations contradict the very foundation of cultural and social continuity. This seems to contradict case law on the rights and authority of First Nations to determine internal matters in accordance with customary law.

Before addressing further the legal implications of C-31 for women of matrilineal nations, we discuss the research process and follow this with a framework for understanding the women's experiences.

6. THE RESEARCH PROCESS

The three First Nations participating in this study established research protocols and ethical principles that shape their relations with outside researchers. From developing a research proposal, selecting the research team through to reviewing research results, the First Nations take an active role. In this case, the elected chiefs of each Nation provided guidance and received copies of the proposal for review before submission. Once the research was funded, the chiefs and appointed members of their administrative staff engaged in the selection of the community researchers and offered guidance with respect to the final wording of the interview questions. Staff members also participated in organizing the community focus groups; they took an active role in recruiting participants, selecting an appropriate space and advertising the event. The Lake Babine First Nation held meetings in three different communities each of which has particular concerns with respect to membership and the impact of the *Indian Act* on the Nation's future.

The Nations identified two goals for the project: conduct community-based research regarding present practices and preferences for membership codes founded in customary matrilineal laws and gather relevant information on rules of descent, membership and citizenship rights in matrilineal peoples of the United States, New Zealand and Australia. As the research progressed, a third goal emerged: describe the emotional and mental impact felt by women whose grandchildren are ineligible for status. This led the research into three additional considerations: customary laws with respect to intergenerational adoption, the historic impact of arranged or forced marriages to non-Indian and/or non-status Indian men, and violations of human rights legislation with respect to disruption of grandmother/grandchildren relations through denial of community residency and ties to the third generation. As the work unfolded, we shifted our comparative study to Asia and Africa, where we found research on matrilineal societies and intrusions of patrilineal and patrilocal regulations well documented. A rich judicial record is found for Africa, which makes comparisons particularly useful with respect to reconciliation of customary law and statutes of the nation state (Barsh 2004: 103). This record includes precedent-setting cases wherein domestic law was reformed to meet international standards. These cases deal with situations that parallel those mandated by the *Indian Act*. As with *Lovelace* in 1981, the cases we discuss are now recognized as having international significance.

We engaged our research participants in two processes: focus groups and private, confidential interviews. The focus groups were organized by community members and were held in each of the three permanent communities of the Lake Babine Nation and in Nee Tahi Bun. We were unable to hold a meeting with the Cheslatta First Nation, but did interview members individually. In total, 83 participants were engaged in the research. They were selected through a purposeful sampling, by referral from administrative, elected and hereditary leaders, and through voluntary responses to posters announcing the focus groups.

The meetings were held on reserves where possible and where not possible in meeting halls the communities use regularly. The meetings were tape recorded. Throughout, notes were placed on flipcharts for the participants' reference. Private interviews were held at a location

of the participant's choice. Some agreed to be tape recorded, others did not. Family narratives are intensely personal. None can be told without spilling into the narratives of other families with whom the storyteller is linked. The sensitive nature of asking questions about the impact of C-31 and the division of family and community through the distinctions of 6(1), and 6(2) led researchers to adopt flexible approaches to interviewing to best serve the participant's needs. In response to individual participant choices, seven of the interviews were not recorded and their names and names of families did not appear on the documents. Participants indicated if they wished to have the tape recorders turned off when they felt personal details should not be recorded. To protect privacy, the researcher conducting the interview transcribed and edited the tape for private details in keeping with the participant's concerns. The notes and transcripts of the focus groups contain no names and the tapes were destroyed following the transcriptions.

All the researchers were made aware of ethical guidelines set out by the Royal Commission on Aboriginal Peoples and the ethics policies of each of the First Nations. Every member of the research team signed a statement committing to these guidelines, and the research process was reviewed by community administrators to ensure compliance. Finally, the proposal and research questions were submitted for university review to ensure they met standards established therein. The researchers have personal experiences with C-31 either through their own marital relations or through the splintering impact of C-31 on members of their families. Having both intimate experiences with and substantial knowledge of C-31 and its attendant policies was critical to the work of the community researchers. In each community, significant numbers of women were unaware of the terms of C-31 and the impact it is having on their communities. Before each interview, the researcher explained the legislation both in terms of women's rights to status and community membership and with respect to the First Nation's membership codes.

The community research was enriched by the researchers' range of personal knowledge and professional experience. Collectively, the community researchers have decades of experience as social activists, elected councillors, community administrators and social service consultants. Community researchers who are well known in the First Nations communities conducted the interviews and focus groups. All the researchers were experienced in conducting research and drew on this rich background to take different but parallel paths in conducting archival and library research. This work sought links between the women's narratives, precedent-setting court cases and government policies. The researchers also set out to link women's family histories to marriage and birth records as we struggled to illustrate how practices forced upon women in the past have resulted in their marginal position today as a consequence of C-31.

Holding the focus groups was heart wrenching. Much of the information we shared came as a shock to the participants. Very few came to us with a clear understanding of the implications of the second generation cutoff. Nor had most of the women understood the demands of the government respecting declarations of paternity. Women expressed considerable anxiety as they came to the realization that their daughters and granddaughters were being coerced into naming fathers as a condition of their babies' rights to be registered. Even the most general of the questions posed to the participants triggered grief and stress as

they shared stories of their intimate family relations. The suffering and pain participants shared with us marked the turning point of our analysis. We moved beyond our initial concern set by the researchers regarding questions of rights as articulated in the *Canadian Charter of Rights and Freedoms* and the *Human Rights Act* to include the concepts of cultural trauma and collective trauma.

The very nature of the research served to remind participants of their colonized state. As we discuss in detail below, any discussion of family relations and legal categories of identity can only bring to the surface painful memories of the impact of colonial intrusion into women's lives. From complex tales of forced marriages to outsiders that took place a century past through to today's struggles by grandmothers to adopt their grandchildren in customary fashion, the participants laid out a history of colonial intervention into family relations fraught with reminders of the powerlessness of their people, and the women in particular, to control their personal lives. Compassion for the participants and the complex ties that linked the community researchers to the participants shaped the direction of the research as we came to focus on the grandmothers' struggles and their implications for understanding generations of trauma and addressing the complexity of the socio-legal constraints they endure.

It would be an exaggeration to say women expressed consensus on the issues raised in focus groups and interviews. However, it is important to note that none expressed support for section 6 rules of the *Indian Act*. However, arguments that section 6 not be used for determining community membership stressed the dilemma of holding membership without status and the economic implications for the nation. Many women of the Lake Babine Nation felt constrained by the current treaty negotiations in British Columbia. They were hesitant to suggest building a membership without Indian status before treaties could be completed. Again and again, participants expressed the view that the Government of Canada has too much power over the Nation and this confuses the people and divides them from one another.

The researchers developed a short interview guide of seven questions for the semi-structured interviews. The questions asked participants to describe how C-31 affected themselves, their family and their communities, and how the disclosure of paternity rules in particular affected them. They were then asked to describe marriage traditions and membership practices in the clan and community. The interview closed by asking if they thought the traditions would apply today and how they would like the rules and policies of the *Indian Act* to change to end the problems they were experiencing. The guidelines for focus groups covered three issues: the impact of C-31 on the community, the impact of the second generation cutoff on families and the impact of the paternity disclosure policies on women in their families and on family relations.

It was painfully clear throughout the community sessions that women have little choice in voicing and representing their First Nations identity within the frame of government legislation that marks patrilineal descent as the normative family order. Participants felt that the paternity rules were implicitly racist. They viewed the demands that fathers be proven to be "Indian" as implicitly suggesting that unnamed fathers are not Indians. They also

suggested that this demand reflects the same biases as were explicit in 12(1) (b). That is, where ethnic identities are marked by difference in social acceptance and prestige, women benefit by identifying with the privileged group. They found mothers' capacity to shape their children's identity within community relations thwarted.

The women also expressed the view that the Act effectively signals a complicity with ethnocidal practices, as in each successive generation a greater number of children will be refused registration and access to the resources needed to sustain ties with their cultural communities. By restricting registration through controlling rules of marriage in section 6 of the 1985 *Indian Act*, the federal government can limit the number of status Indians for whom it is responsible. However, merely stating the process of anticipated attrition of reserve communities does not get to the heart of the impact of the second generation cutoff rule. The Act intersects with other government policies in shaping identity, thus intruding on family identity. These complications direct us to consider alternative ways of framing participants' stories.

7. LOCATING PARTICIPANTS' NARRATIVES IN A THEORETICAL FRAMEWORK

It is impossible to consider the ramifications of Bill C-31 without also addressing the historical nature of the colonial regime as both racist and sexist in its intent and consequences. The more difficult task is to frame this recognition in ways that will both illustrate the conditions of women's lives and offer the possibility of redress. This requires linking social, cultural and legal implications for women as members of family networks with ties within and beyond defined membership in a First Nation to the intergenerational trauma that is sustained as outside forces impose differing, and often contradictory notions of identity and belonging.

The flow in and out of First Nations reserved lands has implications for personal and collective well-being. This leads us to take up concepts of trauma not only as a personal suffering but collective, historical wounding of the community. The foregoing must be placed within the overarching oppressive legal context that has shaped daily lives and social identity by denying women's collective rights on the one hand, and positioning individual rights in conflict with community rights on the other.

For Aboriginal women in particular, the nature of rights is problematic. For the past two decades, scholars focussed discussion on the idea of "competing" rights as they are enshrined in the Canadian *Constitution Act* of 1982. Parallel to the development of this focus is the emerging scholarship on women's rights as human rights, a dimension of women's struggles for registration as status Indians and for equitable treatment as member citizens of First Nations who may reside on or off reserve lands.

Embedded in the late 20th century discourse of trauma, new perspectives on disruption of intergenerational cultural continuity can be construed within the metaphor of wounding. Psychologists and counsellors use "trauma" to describe individual experiences of abrupt, unanticipated shock. Anthropologists and sociologists use the idea of cultural trauma to speak to slow, insidious disruptions of well-being that are collectively claimed although individually experienced. By labelling this insidious process cultural trauma, human experience is exposed in terms of immediate and delayed suffering and located within specific historical and social contexts.

The idea of cultural trauma is not used uniformly. Here, we apply the notion to three different processes: trauma to culture, collective stigmatization or rejection by one's own culture and historic trauma. Trauma to a culture is experienced collectively. Sztompka (2000) considered the impact of trauma to culture as a mechanism of social change that disrupts the continuity of culture in a rapid and unexpected fashion. He suggested trauma to a culture occurs when social change results in disruption of "the very central assumptions of a culture, or more precisely is interpreted as fundamentally incongruent with the core values, bases of identity, foundations of collective pride etc." (2000: 453). He included in his example the "delegalization of traditional family forms." Thus, C-31, through its imposition of patrilineal identity and its discontinuity of intergenerational membership, constitutes

trauma to a culture, and radically so to matrilineal cultures. In the First Nations of our study, matrilineal principles guide family ties as well as the entire social organization. Each First Nation is tied to ceremonial communities in central British Columbia through the feasting system, which is also known as the potlatch/clan system. One is always born into the mother's clan, and it is through this birthright that individuals participate in their society. Matrilineal clan membership places community members in relation to one another; clans extend throughout the region binding communities together. By virtue of clan membership, individuals are recognized and absorbed into intricate relationships of reciprocal duties and obligations. C-31 violates these principles. Core values of identity are disrupted and individuals placed in confusing roles marked by ambivalent or inconsistent expressions of identity and belonging.

Collective stigmatization or rejection by one's own culture forces individuals away from cultural foundations that should offer coherent expressions of identity. By its very nature, the *Indian Act* sets the terms of this stigmatization. Socio-legal distinctions give rise to social disparities: C-31 has become a state of being. Indian and Northern Affairs Canada commonly refers to persons as "C-31s." In their daily talk, Aboriginal peoples ask such questions as "Who *is* C-31?" Indeed, in our own research this was a continuous expression as researchers and participants alike signalled social distinctions by labelling who was and was not C-31, which communities had residents who were C-31, who had C-31 mothers etc. Stigmatization and rejection are insidious forms of trauma; they reflect the internalization of colonial biases and create doubly marginalized minorities within minorities. In this way, a collective trauma is felt; a shared suffering emerges to mark a common purpose with others who have endured moral and social violation. Identity, contrary to liberal notions of choice and multiple identities, is coercively imposed in negative terms: to *be* C-31 is to be outside full community membership. It is to be displaced, without relocation in any community as a full member.

Historic trauma is first experienced directly as a collective and indirectly in consequence of the meaning the traumatic event carries in historic narratives. Braveheart (1995: 6) defined the term as "collective and compounding emotional and psychic wounding over time.... [it is] multi-generational and is not limited to [an individual's] life span." Historic trauma is experienced across wide networks of people and is transferred through generations as lived experiences of descendants of the original trauma victims are shaped by the past. The intergenerational impact of residential schools is perhaps the best-known example of historic trauma that continues to afflict First Nations communities. Traumatic impact of residential schools has been multiple and complex. At the outset, removal of children to the schools traumatized the children, families and communities. As the practice persisted over decades, residential schools inflicted trauma on cultures as knowledge, language and social practices were disrupted, distorted and denigrated by political powers. The complexity of historic trauma lies in relations of power; identities constituted through the dominating powers' view of the traumatized community force themselves into identity formation. Communities may come to internalize the ensuing racialization and devaluation. We show below that the social and psychological consequences for First Nations individuals whose identity has been subject to either reinstatement to the Indian Register and band membership or classification under 6(2) doubly constitute historic trauma. Bill C-31 emerges from

colonial distortion of identity and belonging, and exists within current cultural disruption that denies individuals access to a coherent cultural from which the wisdom and skills necessary for community survival are drawn. Within this context to be C-31 can erode self-esteem and cause a depression of disenfranchisement whereby one feels alienated and pushed to the margins of community.

Within this framed identity of common political cause, however, one can insert the understanding of collective trauma. To the extent that individuals whose socio-legal status has been directly and indirectly implicated by C-31 share their suffering, seek common redress and attach shared meanings to their categorization, they can be said to experience collective trauma. Through experiencing common emotion, they may come to create new understandings of social responsibility. The process by which C-31 is constituted as a social identity through discourses is political. It seeks to impose social commonality in consequence of a legal process while it simultaneously denies recognition of cultural identity and desired social membership within a culturally constituted nation bounded from others by traditions, territory and consensual recognition of membership. Constituting C-31 as an identity grounded in common political purpose may have its advantages over no recognition at all. Through sharing common experiences as a mark of identity that leads to collective action, the newly constituted group can share the sufferings of others, reciprocate responsibilities and, by achieving a moral stance, expand their boundaries to new members — providing communities emerge that foster political trust and a common sense of belonging.

Nonetheless, being C-31 or losing status because of C-31, does not necessarily lead to a new identity consistent with others having the same experience. The capacity to form a shared consciousness rests on being able to live near to others affected in a like manner and establish close communication across distances. Accepting a new identity also requires a shift from or an adaptation of a pre-existing identity. For First Nations women, this has often meant being labelled “urban Aboriginal women,” a label that in the eyes of some evokes notions of troublemakers who intrude on the home community from afar. Such was the connotation that arose in the struggles that led up to the Supreme Court decisions *Corbiere v. Canada* 1991 (cf Lawrence 2003). Negative perceptions of urban women lie at the heart of ongoing tensions, which have the potential to erupt into intergenerational trauma. Struggles persist between women acting on the desire for community consciousness based on C-31 and those who desire full and meaningful participation as citizens of one’s natal First Nation regardless of the restrictions of C-31 or place of residence.

8. TRAUMATIC IMPACTS OF C-31 ON FIRST NATIONS WOMEN AND THEIR CULTURES

Trauma to Culture

The women of the Lake Babine, Cheslatta and Nee Tahí Buhn First Nations, and members of their families spoke of the same pains and personal dislocations as have been reported in the literature. They addressed questions of geographic and cultural alienation from their home communities, tensions within their families, fear of the second generation cutoff and discriminatory practices. In so doing, they brought forth views and recommendations that seek redress of the situation by turning to traditional practices of community membership and source of identity: matrilineal membership in their clan system and traditional principles of female community leadership.

The most compelling evidence of trauma to the cultures of the three First Nations lies in the imposition of patrilineal rules for transferring status. Matrilineal descent in these nations defines membership. Through the clan system, children were never dependent solely on a nuclear family for nurture and sustenance. All children would have two clans active in their lives. If a father was outside of the community or unknown, the mother's father's clan assumed the paternal obligations to the child. For a girl, this meant women of the father's clan would take an especially close interest in her development and well-being, not only in youth but as she matured and became a mother. Boys also turned to the paternal clan for care and guidance. The roles of the father's clan were formalized in rites of passage and clearly defined obligations reciprocated with the mother's clan. Lake Babine Nation children residing on the reserve continue to be raised in this fashion. At Cheslatta and Nee Tahí Buhn where, according to some participants, the potlatch is not as vigorously practised, community obligations defined through the matriline remain equally important in child rearing and bestowing cultural identity.

Imposition of patrilineal rules of descent disrupted the social order in diverse and compelling ways. Membership, cultural participation and inheritance rights have all been affected. Participants described these impacts as also affecting loss of language as women and children are forced to live off reserve, disruption of traditional order of succession to hereditary chief roles and loss of human resources through attrition of highly skilled and capable individuals who are alienated from the community through a lack of housing for reinstated women. One participant also offered the view that government regulation of personal life led to resentment that erupts into retaliation. As tensions ripple through families and communities, traditional principles of respect and generosity are undermined. Children are cast adrift from their culture when alienated by distance or status. A woman who had experienced this in her childhood stated:

I believe it takes a community to raise a child and without the support and help of the community the child does not learn the culture and the language. As a result these children are lost, confused and end up on the streets.

Another described the long-term cultural impact when traditions of respect are not taught to the young. In response to being asked if traditions are meaningful today, a young woman commented:

I think the traditions still work for us especially for those who follow them strictly. These are the ones who do not get into trouble, because our traditions are based on respect. Respect includes everything from animals to plants. If we base everything on respect, then there would not be anyone feeling they don't belong. All people will belong where they were meant to be. We need to get back to our traditional ways and no government.

In the words of one woman, a leader in her community:

There has been a lot of mistrust, lack of respect, management and control issues. There is a loss of historical identity, language and cultural traditions. Confusion between the Western way of doing things and the Indian way, and at times those two clash, and leaves unnecessary wounds.

She goes on to say that while the matrilineal traditions endure for residents or those living sufficiently close to learn the ways of their people through participation in the *balhats*,

[t]he indirect impact is for individuals coming back from outside the community not prepared and/or having lost touch with their teachings whereby [they try] to introduce protocols and/or principles that do not fit the traditional ways.

Her experience in administration and governance led her to realize

[t]here seems to be a lot of misconceptions as to their entitlements. They seem to think that as leaders, previous leaders, we were responsible for the choices their parents made. Show how they feel that we as a Nation owe them for any possible wrongdoing that happened at the hands of the government.

Her observations are supported by personal experiences of leaders and office workers in a second community. Here the elders are just now feeling the effects of C-31 in their own families and coming to recognize the implications for a nation with fewer than 300 members. Elders pressure their First Nation to include non-registered children in services and to provide homes for reinstated women and their families. Office workers and elected councillors feel the impact as they explain

members who fall under Bill C-31 become...lost in space, because they don't have any benefits. So we are losing our numbers because of Bill C-31, and the ones that are losing don't understand why and get pretty upset, with us because we have no choice but to refuse them services.

Observations of elected leaders and officer workers are reflected in the experiences of women and their children who lost and then regained status and community membership. Individual narratives illustrate the depth of trauma the cultures have experienced as families are divided by regulations of C-31. Women describe being raised outside the community and finding it difficult to return. They experience divisions between cousins as young children in extended families become aware that some of them will have rights to inherit family property while others will not. Within families, some of the women who are cultural leaders do not have status. Other leaders are listed as 6(2) and their children, who are reared in the culture, do not have status. This creates uncertainty for the future of the community. A young girl of a large family whose members are fluent speakers of their language and are skilled in the traditional economic cycle described her anxieties.

As I said my aunties are Bill C-31. There are not in my community, but we go out to our summer village where we are from. It is there that they are in the community. I think they belong to that community and it is there that they practise their traditional skill and their cultural ways. This is good, because they pass the tradition to us. It is in the community that they were taught this tradition. Our traditional ways are being lost and if these women are willing to be in our community and pass these traditional skills on, then this is a good thing.

Her cousin, whose adoptive mother lost and then regained status, shares her feelings. This young girl is raised with a brother who is registered 6(2) while she is 6(1). She realizes all too well the possibility that her family will be further torn asunder by the second generation cutoff rule.

I would like to go to my summer home and not worry that some day that house would be taken away from me or even the following generation of my family. I fear...the effects of Bill C- 31. If my children's children or any of my following generations and wonder if they may not get their education because of C-31. I would like for every Native in the Act of Bill C-31 to be able to live on their homeland despite that they did not choose a Native person to be their partner.

Others in this large extended family are torn with emotion as the aunties come to recognize that their grandchildren are not registered and under the current rules will be unable to inherit property or engage in traditional economic practices, such as netting salmon. Under the rules of the *Indian Act*, customary laws that establish resource use rights through clan membership offer no protection for individuals denied Indian status.

A number of participants spoke of the conflict between Bill C-31 and local patterns of marriage in remote communities where most residents are related. Generations have been taught that out marriage is necessary to avoid violating social rules governing incest within clans and marriage to close relatives. In consequence, women were often encouraged to marry non-Indians in customary marriages. Communities were unaware of the implications of the *Indian Act* for matrilineal First Nations. As long as the married couple maintained

harmonious relations with the community and the Indian agent failed to intervene, children were registered and integrated fully in their natal community. In some cases, the children were raised by a non-biological father from the community, a practice that placed them beyond intervention by the Indian agent. With this practice, matrilineal descent remained undisrupted and children's birthright in the community unquestioned. In small communities, this is extraordinarily significant. Out-marrying is necessary to avoid marrying kin relations or clan members. As Clatworthy (2001) and others indicated, out marriage and potential loss of future members is highest in communities under 100 members.

Bill C-31 is particularly felt as an assault on customary law. In the cultural tradition of the three First Nations, a grandmother routinely adopts children. Elderly women are the source of wisdom. A child raised by a grandmother is viewed as special, in the eyes of some as a child gifted by the spirits. As adults, these children will be primary caregivers to their aging kin members. If they are denied access to First Nations land and resources, they will not be able to fulfill their traditional obligations in a meaningful way. Without the support from federal funding, small First Nations are unable to provide for their citizens. Denial of status to the third generation in the small communities means the First Nations will not have funds to support children who in the future would be supporting the elders.

This rupture of family is seen as a most serious violation of Aboriginal rights. Community members recall the 1993 court decision, *Casimel and Casimel v. ICBC* that upheld the rights of First Nations to follow customary adoption. However, women report that it has not protected them in ways they expected. In their view, a customary adoption by one adoptive parent should lead to INAC accepting the child as full status. However, they have found that insofar as customary adoption by grandmothers is recognized under C-31, children adopted by widowed grandmothers are denied 6(1) status even when this is the category of the adopting mother. Participants were unable to explain why this was occurring. It appeared to them that adoption by a widowed grandmother is viewed as a one-parent family as no father is registered in these circumstances. In the words of one grandmother,

they [INAC] just don't want our clan system.

When probed, she reiterated that the child would be adopted into a father's clan and she

doesn't need to say anything more.

Women, in particular elders and hereditary chiefs, do not view C-31 in isolation, but in the context of other government interventions into family life. Apprehension of grandchildren by social services is particularly problematic, and this issue dominated all the discussions. Women struggle to keep children in the community. Customary adoption provides social recognition for the children and places them appropriately in family networks and the feasting system. C-31 complicates an already painful struggle. First Nations social service resources are scant. With few trained social workers in remote communities where funding is based on status membership, grandmothers eager to adopt non-status children face unfair barriers.

In these communities, the full intent of Bill C-31 comes as a shock as elders struggle to comprehend the reality facing their families. With their new understanding of government policy, and their nation's application of it, comes the recognition that grandchildren and great-grandchildren are not eligible to inherit lands and cannot pass inheritance rights to future generations.

What is to become of us?

asked one distraught grandmother, a sentiment commonly shared by young and old alike.

Bill C-31 constitutes a trauma to culture as it threatens to reduce the future status population drastically. As women came to recognize their personal grief over the exclusion of their grandchildren they turned to the question: How many of our nations babies are not registered? They asked: Why is the government doing this to us? And they answered their own question in terms of the particularity of racialized gender discrimination. As the women live through the repercussions of C-31, the administrative policy that requires disclosure of paternity causes ongoing anguish. They find the policy contradicts the matrilineal principles they wish to revere and intrudes into their private lives in a way that no other women in Canada face.

When asked how they would like to deal with the crises their First Nations face, the participants were at a loss for words. C-31 is but one of several assaults on their culture that has left First Nations powerless to control their destiny. In keeping with customary law, the women emphatically repeated that the answer must lie in matrilineal membership. Time-honoured recognition of women as family leaders and grandmothers' customary practices of adoption were raised repeatedly as the solution to cultural continuity and family strength.

Collective Trauma: Stigmatization and Rejection

Reinstated women spoke with a common voice regarding their experiences with being C-31. Whether returning home for a short period, seasonally or permanently, they found themselves stigmatized and often rejected. Only a few have had the opportunity to move onto the reserve and become permanent community members living in their own homes. Because the region is sparsely settled and long distances separate off-reserve, "white" communities, reinstated women find it difficult to live near their home communities. Women of the Lake Babine Nation living in Burns Lake are the exception as the largest reserve forms a portion of the village.

The women have come to realize that isolation from reserve communities compounds stigma. Financial and geographical barriers block regular participation in community events. In the words of one young woman, whose father is registered and whose mother is non-native,

you really don't consider yourself Indian.... It is easier to live in urban areas, because on reserve you are discriminated from those that live there.

Echoing her experience, a second woman from the same community described what she had lost in her childhood as a consequence of not having status in her mother's nation.

Because of Bill C-31, I did not gain status until my early teens so I lost out on many things. I lost out on many benefits, because of the patrilineal ways of thinking. I also experienced racism from those who were status who thought that as a Bill C-31 I — we — were infringing on their rights.

A son of a woman who lost status through marriage was fortunate to spend his summers in the fishing village with his extended family. However, he recalled the difficulties his parents faced from economic burdens of medical and dental costs others did not have to carry. Despite these differences, he is now a resident band member and defends the cultural rights defined by the matrilineal lineage against government intrusion.

Community members expressed a range of conflicting views over residential choices of reinstated women. Some felt that rules and resources were needed to aid the women in reestablishing themselves in First Nations lands; others thought reinstated women and young adults registered as 6(2).

I prefer not to live on the reserve, because I know the ones who fall under Bill C-31 rather than move to the reserve move to large urban cities or Prince George, or they move to other provinces and try to find work. They may even find it easier to survive over there with the mainstream, rather than they do at home.... Everyone knows who's who and they might lose out on fishing and hunting. They don't get to have hands on, but they do receive fish and moose...they request it.

These views conflicted with personal experiences of young adults who grew up away from their home communities. Young adults expressed a sense of frustration and social loss, caught between their own desire for community membership and a need they felt to build social ties outside reserve communities in the interests of their children.

Stigmatization and conflicting needs of mothers and children did not deter all the participants in their quest to return home. The desire to live in their home community led these women to endure the ongoing struggle for acceptance. One commented she was

willing to face any situation just to be home.

However, the failure of the government to provide the necessary resources, in particular housing, left the women feeling cheated. Government discrimination had set them apart from their families and communities and compounded the insult by denying them benefits they felt were a right.

Socio-legal divisions that have been created between mothers and children are a constant source of personal and collective trauma. Women who have fought the stigma of not belonging must now guide their children through the same maze of humiliating experiences. In small communities marked by tensions between Aboriginal and non-Aboriginal residents, this is no easy task. Mothers face the dilemma of teaching their children to be proud of their

First Nations culture even as the children come to know that they are different than their on-reserve family and friends.

Just as the residential schools were constituted as an assault on Aboriginal identity and were meant to remold the First Nations people in the image of Euro-Canadians, denial of status to women marrying out was intended to reconstitute their identity. And like the residential schools, the *Indian Act* failed. As stated above, clinical psychologists disagree with sociologists and political scientists who see identity as adaptable to changing public definitions and interpersonal relations. Clinical psychologists have found that developmental traumas not only emerge from childhood sexual trauma, they arise from “the abuses of a racist, sexist, heterosexist society” (Layton 1995: 120; see also Brown 1991). The participants in this study narrated their own and their families experiences of these abuses. A woman from Lake Babine Nation observed the stresses her relatives suffer, because C-31 categorizes family members differently.

I want to be able to live on the reserve and have what rightfully belongs to me. I do not want to be classed differently. Everyone always segregates the First Nations people. This is another example of segregation. We have always wanted to just belong where we come from and the government is always trying to change us.

Another woman who lost status and her right to reserve residency described the devastation felt by her entire family.

At the time I was enfranchised, my mom and dad were very upset that I would not be considered henceforth. Undue stress and misery I'm sure was felt by my whole family. It was bad enough to my family that I was marrying a non-Native (in those days it was almost taboo to marry out of our race), but to lose my status over him was completely devastating to my whole immediate family.... As you are aware, I am living on the reserve now, but when I was not and considered non-Indian, I felt very alone in that old non-Native world. I felt like I did not belong anywhere and yet I had historical roots in the Lake Babine Nation. It was a very disconcerting time for me. I used to long to be able to return home and live next to Mom and Dad.

The impact of disrupted social and cultural relations, and imposed notions of changing identity are felt strongly by women who experienced rejection in their First Nation community and in the mainstream society. Before her reinstatement, a woman recalled that her family

had to live off the reserve in town. Therefore, I grew up across the tracks away from the reserve. We dealt with racism from both non-Natives and Natives. The non-Natives did not like us, because we were Natives and the Natives did not like us, because they thought that we were acting better than them just because we grew up off the reserve.... I know a few that are Bill

C-31 and yes I do think this affects them in a major way. They are not able to learn the culture and the language.

The desire for acceptance is very strong among women and their children who struggle to integrate into cultural life after reinstatement. When they do not feel accepted, they find it hard to practise their tradition. A young woman explained that

to participate in the balhats they need to feel they are accepted [by the entire community].

Questions of identity and the experiences of fragmentation arise as well from government bureaucratic processes that assign numbers on the register and place names in vital statistics records. The son of an out-marrying woman experienced stress at finding he has been registered under two different family names: the non-Native father's surname and his mother's surname. He uses humour to deal with his feelings.

So I got two birth certificates. So maybe you have a split personality you don't know about.

However, his pain surfaced as he reflected on the implications of this.

That could be white on the outside and Native inside, half and half. Half and half is better than nothing.

Thus, he reiterated stereotypes that reflect concerns over fragmented identity. He spoke within the perspective shared by other participants who use terms "full status" and "half status" to label community members whose identity has been defined after registering under section 6.

As this man listened to the researcher interviewing him, he came to recognize the broad significance of C-31 and the struggles of women with respect to their children and grandchildren.

...holy! I didn't know that! Bill C-31 is a lot bigger than just women marrying a white man. It is bigger, it's just what we've been told...when we come into problems with our children is where women are starting to stand up and look into the Bill especially when we're told that "oh yeah, your child is not going to have any part of the status." Your grandchildren, that's when it hurts.

Bill C-31 exacerbates tensions of identity that arise from intermarriage as children of mixed parentage are cast into denigrating categories as C-31ers or "half status" or worse. One young man's experience exemplified this. Although others in the family are registered he is not. Because he "looks white" he is taunted as "white wash." In these circumstances, government imposed definitions of identity do not offer coherence or stability but situate children and adults as victims of culturally imposed trauma that shatters identity and reflects

back to individuals and communities as negative, fragmented images of identity and social well-being. The above speaker saw the solution as government creating a new situation where

everything [is] equal. Like just 'cause a woman marries a white guy you know that doesn't give the government the OK to say "Well you're no longer Native." You were born Native. How could the government, the government come and say "Well you got to be white now 'cause you got married."

Perhaps more damaging than any other disruption of identity was the act of stripping women of their cultural identity on marriage. As Sandra Lovelace proved before the international courts, women and their children were alienated from their ethnic and cultural rights. In the process, there is no doubt that they and their children were stripped of the cultural coherence that is the foundation of stable, healthy identity formation and maintenance. For one family participating in this study, fragmented identity of their mother led to multiple traumas for the entire family. The speaker was born to a mother who lost her status but was eligible to be registered under 6(1) and a non-status father. In this circumstance, the speaker would normally be registered as 6(2). However, she was adopted by a father with status and thus achieved registration as 6(1). Through adoption, the speaker felt she was entitled to live in her mother's natal community and, as a result, has achieved a higher quality of living than any of her sisters. Because her sisters were not adopted, they did not achieve parity in being registered. Without a father on the reserve, they did not feel they could make their home there. During the mother's period of not being registered, she disassociated herself from her nation as she was ineligible for benefits. When her status was restored, there was no housing on the reserve and she could not return. In her daughters' words,

I think my mother kinda found out her benefits were gone...she slowly stopped being dependent on the...Nation for anything, like to the point where she was disability and she was on white welfare instead of coming home to her Native nation to be happier. She stayed in Vancouver and stayed on her disability and I think that the result of her alcoholism causing her death. So because she was Bill C-31 she was unable to come home. Well theoretically she would of come home but she wouldn't have got the benefits the white government was able to provide her because of her status.... Eventually we [the speaker and her sisters] followed Mom to Vancouver and we all didn't survive.... I got two sisters with HIV and I've got two sisters that died of overdosing along with my mother drinking and overdosing, she died herself,... I've got two nieces and a nephew in foster care...they have heart conditions so they are considered disability.

Clearly, the social and cultural alienation of this family led to oppressive situations in which sustaining good mental health became impossible. In a crisis, family members become trapped in negative stereotypes in a complex situation that has been termed "ethnostress." This occurs

when the cultural beliefs or joyful identity of a people are disrupted. It is the negative experience they feel when interacting with members of different cultural groups and themselves. The stress within the individual centres around the self-image and sense of place in the world. Beginning on an individual basis, the effects of the “Ethnostress” phenomena are analyzed and then applied to the collective groups of family, community and nation. (Antone et al. 1986: 7).

Ethnostress carries with it a sense of helplessness and powerlessness, what women describe as “having their hands tied behind their back” as they confront the pain of their families and the future impacts of the second generation cutoff and unstated paternity. Having suffered themselves and watched their children suffer, they worry about the grandchildren to come. The disclosure of paternity mandate will inevitably alienate more of their grandchildren. Stresses of identity, alienation from family and community, and mixed messages of racialization and marginalization are bound to affect the future generations in the same ways as the women and children initially alienated by section 12(1)(b) of the old act and section 6 of the current act.

Women and men alike express a sense of helplessness that spills over from personal anguish to shared feelings. They share the view that their lives are not theirs to live freely. Through seeking to control intimate relations and reproduction, they see the government as not only telling women with whom they should have children, but also constraining communities in how and to whom they pass down tangible and intangible resources and teachings. The impact of the cultural and collective trauma will continue to be felt through the generations as children of today are forced to cope with disruptions in identity in the future. In this way, C-31 will come to resonate as an historic trauma as the direct experiences of racist, sexists and cultural oppression today shape the meaning of personal experiences and identity in the future.

Historic Trauma

Community members are well aware of the historical prejudices against them, because of their matrilineal organization. Patrilineal practices are seen by participants as a deliberate attack on matrilineal peoples that have humiliated women and left First Nations governments powerless to control their destinies and women powerless in their personal lives. The impact of the Act over the past century is not viewed in isolation but within the historical context of colonization by church and government. Categorization of First Nations individuals under C-31 is understood as being interwoven with the traumatic consequences of the residential school and the ongoing dilemma of child apprehension. Participants’ narratives speak to three themes of historic trauma: colonially imposed arranged marriages that stigmatized and forced young women from their families, the forced removal of women who married out and disruption of family ties through the generations as women and men were treated differently upon marriage.

From the time of contact with Europeans in the first decade of the 19th century through to the present, colonial biases have stigmatized matrilineal traditions and the women who

asserted their autonomy and individuality. In the early fur trade years, customary marriages with European men took women from their home communities. All too often, the foreign men did not hold their wives in high regard. Traders are known to have abandoned the women or to have passed the women among themselves as property (Fiske and Patrick 2000: 148-49). While Catholic missionaries were critical of individual abuses by European men, they justified government interventions into family life as a means to undermining matrilineal family formations and the potlatch and clan system. They chastised women whose sexual behaviours and personal actions differed from Catholic expectations of female subordination and chastity, and stigmatized women who refused to abide by missionaries' rules against marital separation. Catholic missionaries and Indian agents also objected to customary forms of adoption and the strategies used by families to ensure collective well-being in ways that may now stigmatize families for their forebears' actions (Fiske and Patrick 2000: 153-155).

These sexist and racist sentiments have influenced present day perceptions of family histories. A family history reveals the impact of racist attitudes toward their foremothers and the social humiliation that arose when impoverished families were manipulated by outsiders. Two generations ago, when a family faced an economic and social crisis, they arranged a marriage between a daughter and a non-Native. Following Bill C-31, her children were able to regain status in the 6(2) category but her grandchildren were denied. Through four generations, this family is doubly traumatized: family members fight to override the stigma associated with the forced marriage and the perception that the bride was "sold" either out of heartless action or from desperate poverty. Now the generations denied status seek to assert their cultural identity through social and economic affiliation within the feasting system and other community ties of reciprocal obligation. However, they carry the sense of being outside and remain anxious for the social and cultural future of their grandchildren.

Under the 1951 *Indian Act*, the forced removal of out-marrying women left communities feeling helpless in the face of government actions. By denying out-marrying women community membership and cultural identity, the *Indian Act* has continuously signalled to First Nations peoples, and matrilineal peoples in particular, disregard, if not contempt, for cultural practices that differ from Euro-Canadian sentiments and values. To the extent that these views have been internalized, they are reflected in community practices and individual sentiments. Thus, community members may hold individual women responsible for their decisions to marry out. Members opposing either reinstatement of out-marrying women or providing services to them will reiterate that the First Nations themselves have no power to redress the current situation. The result is the alienation of out-marrying women's descendants who now feel "punished" for the mother's personal choices as they find themselves unwelcome in the community and denied the benefits their close kin enjoy.

Families suffer from a complex of having been "divided and conquered." Some participants, for example, spoke of family turmoil and personal pain resulting from the sexist biases of the Act. A sister and brother, born to unwed parents, the father a registered Indian, the mother non-Native, now have different entitlements. The brother is 6(1), because his entitlement comes from being registered prior to 1985 when patrilineal rights were bestowed on "illegitimate" sons. The sister is categorized 6(2), because she could only be registered

after 1985 and can claim only one registered parent. Imposed sexist biases leave female kin vulnerable to low esteem and mistrust as they witness their male kin benefiting while they endure feelings of isolation and rejection.

The traumatic impact of C-31 is felt most strongly in the demands for disclosing paternity. Few participants wished to discuss this issue, and those who did were not mothers directly affected by the policy. Grandmothers wept and trembled as they learnt for the first time that grandchildren and great-grandchildren were not and apparently cannot be registered. Many, however, would only speak privately. In the presence of each other, their grief consumed them. Younger women were often too stressed to address the issue in focus groups.

Most troubling is the lack of awareness regarding rules for stating paternity. Some community members shared views put forth by Clatworthy that naivety, ignorance and the complication of registering babies can explain why young mothers are not identifying fathers. But older women were far more concerned about the safety of young mothers, who they thought were remaining silent for important reasons of safety. One woman pointed out that when she was young, women did not speak out and name the father if they were not married. She described teenage mothers raising their babies in an extended family setting, where customary adoption was never questioned. Grandmothers simply took in the baby and “everyone knew” the child was being adopted. To her, disclosing the father’s name breached rules of respect and personal dignity. Silence, not disclosure, she suggested, is the way to respect everyone where naming a father could shame others.

Speaking quietly after one focus group, an elder raised a troubling violation of her culture. Like many others, she accepts principles of reincarnation. She sees the demand to reveal a father as a misunderstanding of life. People “come back” she explained, and we can never be sure that the babies the government refuses are not ones who have “come back” to be with their families. By not registering babies, because their fathers are not named, communities lose continuity through generations.

The impact of unstated paternity constitutes historical trauma. It is shaped by colonial history and shapes, in turn, the future. The policy implicitly reintroduces the historic Euro-Canadian repugnance for matrilineal societies and moral judgments against “illegitimate” births. It reinforces the very biases against “mixed” heritage that resonate in the multiple categorizations listed in section 6 of the *Indian Act*. More specifically, by enforcing patrilineal notions of descent, and implied measures of blood quantum, this rule disregards the very essence of cultural difference. The sacred, social and psychological meanings of birth are swept aside by imposing a universal means by which to construct identity and to constrain defining characteristics of First Nations membership. By dividing families at the time of birth, it inflicts trauma on mothers whose children will be alienated in the future. If carried into the future it will place burdens of proof on the children whose paternity is unstated, creating social distress for those who cannot determine their father’s identity, and for those who can and cannot register in consequence. Knowing the depth of misery felt today as a result of the Act, it is impossible to view a coherent and stable future for children and families divided by unstated paternity. Concern for the future creates genuine and deep anguish across communities of First Nations.

Communities struggle with a sense of having been “divided and conquered” as they confront the emotional conflicts resulting from C-31, and individuals demand that First Nations leaders take action. A member of the Nee Tahi Buhn First Nation described the continuing impact of the *Indian Act* as being a “silent crime.” Community fractures from the initial discrimination of 12(1)(b) in the 1951 Act through to the impact of C-31 on extended family today, she says, have not been addressed publicly by either the government or First Nations leaders. In her eyes, there has been no accountability and without public apologies the community will remain divided. She described the situation today as one in which the Nee Tahi Buhn First Nation is

like two separate bands.... Bill C-31 feel separate. Nee Tahi Buhn is a small band of 128 and we shall see the impacts very heavy in the future generation.

Similarly, a member of the much larger Lake Babine Nation calls for healing of historic wrongs. She contextualized her criticism of the Act within the need to “decolonize people.” In her view

some people are conditioned to this new Indian Act regime] era.... We need to heal from the impacts of colonization, the residential school and child welfare system and look at things holistically, where by we can make informed decisions and move our nations forward in a progressive manner.

She also viewed the need to heal in historical context: First Nations must move beyond the history of government control to a point where they can take their destiny in their own hands and act on their responsibility for future generations.

In sum, the *Indian Act* and C-31 provisions in particular, must be understood as historic trauma. Generations have directly and indirectly experienced the consequences of government intrusions into community organization, differentiated categories of identity and the sexist application of rights and privileges. Trauma has been inflicted on the cultures of the three First Nations and on individuals who are granted and denied membership within these First Nations. The seriousness of the issue is not under debate; there is a consensus that without resolution of the social and psychological impacts of C-31, harm and suffering will continue. The second generation cutoff and unstated paternity rule threaten the future of small nations as the number of their registered members dwindles. One issue remains: What can be done? What redress can be found that will protect women and children from the onerous regulations of C-31 and restore harmony to communities? For many participants, any future efforts must consider the capacity of customary laws to provide for women and children. They ask if Aboriginal case law, which upholds customary family law, could be evoked to enforce these rights against legislation and dominant legal codes.

The Possibilities of Legal Redress

Participants repeatedly expressed outrage, hurt and grief with respect to the implications of two policies: the way in which customary adoption is recognized and declaration of paternity. Both issues are interwoven with an understanding that the rights of grandmothers

as customarily practised are violated by C-31 and the administrative policies emerging from it. “It is not right” expresses more than a sense of being personally wronged. The expression speaks deeply to how the federal government transgresses ancient traditions that lie at the heart of the three First Nations’ cultural consciousness. In focus groups and in individual discussions, participants raised the possibility of turning to the courts for a remedy to C-31.

Women provided incidents of their descendants being treated differently than the descendants of their male kin who married non-status women. As Sharon McIvor has argued in court, some participants assert C-31 violates s. 35(4), 15 and 28 of the Canadian *Constitution Act 1985 (McIvor v. Canada)*. They also argue that the *Indian Act* ignores protections articulated in CEDAW and other international conventions. With respect to children’s rights, the women pointed out that children must not be denied rights, because their father is unknown to the federal authorities. They pointed out the coercive and intrusive nature of this administrative policy. Repeatedly, they commented that similar discrimination does not apply to Canadian citizenship. One participant directed researchers’ attention to the Human Rights Watch web page and the listings there of countries that breach women’s rights in just this manner. She suggested perhaps First Nations should have Canada posted on this site to inform an international audience of Canada’s failure to uphold human rights law.

Participants also spoke to the issue of common law. Councillors and other leaders of the communities questioned whether the administrative policies are not in violation of the Supreme Court ruling in *Delgamuukw*, which recognizes the rights of Aboriginal peoples to exercise customary family law within their communities. If this is the case, they argued, the policies and the Act must be changed to allow for matrilineal principles of descent that would follow the feasting laws of each First Nation. Other participants also recalled the court case of Francis and Louise Casimel, of the Stellaquo Nation, which is neighbour to and participant in the ceremonial links to the three participating First Nations. In this case (*Casimel v. ICBC*) in 1993 the Appeal Court of British Columbia upheld the customary adoption practices of the Stellaquo First Nation. As John Borrows (2002: 6-7) argued, in reaching this decision, the courts explicitly accepted customary law as a valid legal source. The appeal court incorporated customary adoption laws into common law by asserting that “the status conferred by Aboriginal customary adoptions will be recognized by the courts for the purposes of application of the principles of the common law and the provisions of statute law to the persons whose status is established by customary adoption.”

Although case law has upheld the authority of customary family law, INAC does not recognize the full meaning of customary adoption. Thus, as one male participant found out, being adopted by a grandmother in mid-century is not seen as a valid claim to status under C-31. The Department refused to register him based on documents identifying his birth parents, not on the testimonies that prove his adoption. This appears to be in direct violation to the Supreme Court ruling in *Delgamuukw* and the British Columbia ruling in *Casimel and Casimel v. ICBC*.

Under the matrilineal clan law of the nations, the question of fatherhood does not prevail in the same manner as it does in the patriarchal/patrilineal law complex of Canadian and British common law. In the Lake Babine First Nation, each member is located within the

community through the mother's clan and recognized in relation to the father's clan. Reciprocal obligations bind the two clans together in the care of children on the one hand, and through the obligations of a child to the father's clan on the other. It is neither shameful nor necessarily unusual for a child to have either a father from outside the clan system or to not have a father's identity known to the community. A father born outside the clan system may be affiliated with a clan which then, for all intents and purposes, accepts paternal duties for the child. In the latter case, where no father is known, the mother's father's clan may assume the paternal duties. In this way, every child in the nation has, either through biological or adoptive ties, maternal and paternal clans that provide care throughout life up to and including the final funerary rituals.

From the perspective of the participants, the benefits of customary law are clear: children are full members of the community, a mother's private life is not intruded upon, and questions of race and blood quantum are not relevant. What *is* relevant is the *continuity* of maternal relations and the intergenerational transfer of wisdom and knowledge that sustains family ties, individuals and the culture itself. As the women of Lake Babine Nation have stated before, alternatives to laws, policies and practices of Canada can be, and should be, found within First Nations traditions that protect women. They have argued that innovations to matrilineal traditions, which can integrate reasoned and fair principles and practices from Canadian governance, can provide solutions to current crises of cultural trauma and legal disruption (Fiske et al. 2001).

As First Nations women of central and northern British Columbia confront the ramifications of C-31, they feel isolated from other First Nations women. Most of the participants were not aware of the role regional and national Aboriginal women's groups play in confronting the government. They expressed surprise at learning of international organizations that lobby on behalf of Aboriginal women around the globe and were unaware, for example, that NWAC lobbies before international bodies. This knowledge prompted requests for more information on women's organizations, on how they might join, and what women are doing in other parts of the world. In short, as women came to understand the implications of the second generation cutoff and unstated paternity, they anticipated the need for cross cultural comparison.

In the following section, we address this need by placing their struggle with the *Indian Act* and paternity policies within an international context. Jaimes-Guerrero (2003: 66) spoke of "a global indigenous resistance emerging...; within the Native Feminist and Native Womanist movements that are part of this resistance, Native and indigenous women...are...campaigning for indigenous liberation in life and land struggles." She placed her understanding of this movement within the context of "patriarchal colonialism" an apt term for understanding the roots of European bias against matrilineal practices. We take up the notion of patriarchal colonialism to seek common causal relationships between external forces and disruption of matrilineal social organizations and legal orders in Canada and elsewhere. We set out how Western thought imagines matrilineality as a social/moral order and illustrate the traumatic consequences of this standpoint.

9. MATRILINY IN CROSS CULTURAL PERSPECTIVE

Throughout this project, the research team upheld practices consistent with participatory research. Leaders within the First Nations guided the initial process and oversaw its development. Participants, in particular hereditary chiefs and elders, directed researchers' attention to issues the participants wanted to address. In focus groups and interviews, they reiterated their desire to know what is happening to matrilineal societies elsewhere. They recognize that the fate of matrilineal societies is fragile. From experience they know that when intruding governments change marriage laws and family structures, women lose rights. They also know that, over time, some women have lost rights to clan property (what anthropologists call kin corporate property), and struggle to hold onto traditions that honour and protect them. Participants frequently commented that they viewed patrilineal practices as racist and sexist. Several leaders stressed that knowing how others resist corruption of matrilineal ways could assist them in their own struggles.

In this section, we select a number of cases from India and Africa that illustrate the trauma Indigenous women experience when their matrilineal traditions fall prey to internal and external developments. We link what is happening to economic change. Much has been written about the nature of the global economy and its impact on Indigenous people. Less attention has been paid to Indigenous women's experiences with the patriarchal nature of global capitalism (Jaimes-Geurrero 2003). Massive changes in technology and the growth of corporate capitalism have led to continuous large-scale migrations of male workers. Consumer goods are more readily available throughout the world. Indigenous and minority peoples face increased pressures to integrate into dominant societies and to adapt to the global economy as consumers. International movements of technology, people and consumer goods spawn changes in interpersonal relations and create stresses for matrilineal peoples. In turn, Indigenous and minority women of matrilineal peoples resist what is happening to them. Just as Aboriginal women in Canada have turned to human rights law and debated the value and strength of customary legal traditions, so women elsewhere pursue a number of legal strategies (Kumar 1989; Stivens 1996).

We begin our discussion with a brief comment on Western European viewpoints on patrilineal and matrilineal descent. We then turn to specific cases to illustrate parallel experiences of cultural, collective and historic trauma. From there, we address legal interventions and consider what we can learn from cross-cultural comparison. We close with a discussion of the paradigm of motherhood. First Nations women of Canada and Indigenous women elsewhere offer a range of conceptual and cultural frameworks for understanding their oppression under colonialism and their understanding of pre-contact society. Here we stress presentation of motherhood paradigms as this reflects the primary views of the participants in our study and stands as a keystone paradigm for rebutting external and internal patrilineal impositions upon women's reproductive life.

Historically, "Western" cultures have viewed societies organized by matrilineal descent principles negatively. Biblical traditions, dating from the Old Testament through to the gospels, not only favour patrilineal social organization but also patriarchal values that

subordinate women to male kin and husbands, and see them as social inferiors associated with domestic life not public realms. As a result, patrilineal descent and succession have been the paramount traditions of Western Europe where Christian doctrine has viewed the subordination of women to their husbands within Christian nuclear families as the highest form of social organization. The strongest expression of approbation toward matrilineal societies is found in social evolutionary theory that arose in the latter 19th century (Peletz 1996). Men who became known as the 19th century founding fathers of sociology and anthropology professed an evolutionary scheme that positioned matrilineal societies between early (and no longer extant) promiscuous societies and patrilineal societies, with the latter deemed to have greater moral development. Since matrilineal peoples were outnumbered by patrilineal societies, the social evolutionists concluded they were all doomed to disappear due to “natural” evolutionary progresses. As was the case in Canada, Christian missionaries in Asia and Africa worked to this end as they preached against matrilineal organization and worked with governing powers to impose patrilineal legal codes from Europe (for an African example, see Arnfred 2002).

Influenced by these early theoretical positions, anthropologists continued the debate through the 20th century, arguing as to the perceived “inherent” contradictions between matrilineal family organization, male dominance and authority, and male inheritance of property (see for example Schneider and Gough 1961; Allen 1984; Arnfred 2002). Social evolutionists see matrilineality as a riddle of social organization, because property passes from a man to his sisters’ son(s) rather than to his own children. A central assumption of evolutionary theory has been that reproductive success (i.e., the number of children raised to adulthood) is positively associated with patrilineal descent and the succession of sons to fathers’ property and social position. It is argued that men will be less likely to invest in the well-being of children not their own; thus, matrilineal organization is a contradiction, because men cannot directly transfer wealth and social position to their sons.

The debates as to the values, social paradoxes and moral positioning of women in matrilineal societies continue. However, the focus has changed from abstract male-centred debates to issues relevant to the women themselves: women’s rights and social status, citizenship, women’s roles as keepers and teachers of tradition and intergenerational family coherence, and understanding motherhood as a basis of social power. Ethnographic studies indicate that women in matrilineal societies may enjoy advantages not known to women of patrilineal peoples, for example, control over family property and wealth, greater levels of personal autonomy with respect to intimate relations and marriage, and greater participation in decision making within matrilineal clans and other forms of political organization (see, for example, studies conducted by Carino nd; Davidson 1997; Dyson 1997; Alexander nd; Allen 1984; Sanday 2002).

Matrilineal societies are found throughout the world. The greatest number are in Africa; however, the largest extant matrilineal group are the Minangkabaus people of West Sumatra Indonesia (Sanday 2002). In India, matrilineal societies are also well known. A study of literature shows that since the onset of European colonization of the Americas and areas of Asia and Africa, the spread of the former Islam Empire and more recently other forms of patrilineal Islamification, external powers have either attempted forcefully to eradicate

matrilineality or have indirectly disrupted matrilineal families through economic disruption, legislative interference and mass media. The following discussion shows mental distress is strongly associated with dislocation of women from matrilineal communities. Studies show women oppose disruption of matrilineal practices. The consequences can be understood within terms of cultural trauma as legal and social interventions lead to violence, family disintegration, and loss of social and economic protections for women, all of which are traumatic factors experienced in comparative situations by First Nations women in Canada.

Trauma to Culture

In her review of the conditions of Asian Indigenous women, Carino laid out a number of factors currently undermining matrilineal cultures and causing long-term shock to cultural coherence: prostitution, multinational corporate exploitation of Indigenous lands and resources, forced resettlement, and conversion to Christian and Islam religion.

In Asia, prostitution is a leading factor in social disruption of matrilineal societies. As multinational corporations destroy local economies and displace peoples from traditional lands, women are forced into poverty. In Burma, women fleeing military violence fall prey to sex traffickers who transport them to Thailand, where HIV/AIDS is epidemic. In Taiwan, Amis women have lost control over their lands, resources and community life. Traumatic implications for matrilineal cultures are extreme: the traditional teachers are lost from the home regions at the same time as the cultural honour and reverence for women are undermined. Patriarchal denigration of women's sexuality follows, and insofar as women may experience economic gains, they lose control over personal property and wealth (Carino nd).

Globalization of the economy impinges upon all other aspects of public and private life as new forms of economy and communication lead to rapidly changing social orders, access to foreign cultural expressions, and reduced autonomy of nation states to act in the best interests of citizens. In the context of globalization, matrilineal societies face extensive disruption to customary legal orders that located women's rights within a frame of matrilineal residence, equity and respect, and feminine principles of nurture and sacred endowment. While these practices are being weakened, the infiltration of new economic regimes offers little if anything in compensation: post-industrial forms of production create low-paying, insecure employment opportunities. Massive social disruption is marked by rural to urban migration and dislocation of girls and women from home communities due to an international surge in sex tourism. As corporate property rights erode, an emerging power base that favours men in consumer society decreases Indigenous women's control over property and resources (Carino nd; Arnfred 2002) Loss of economic status among matrilineal societies results in poorer health for women. Whereas in traditional matrilineal societies women enjoyed greater status and personal well-being than women of patrilineal societies (Basu 1993).

The impacts of globalization are universal. Whether it is logging on a large scale on Carrier traditional territory in western Canada or in Indonesia, commercialization of craft production, or the devastation of subsistence economies, the global economy does not

favour matrilineal societies. Rather, global capitalism creates new economies that continuously favour private property regimes at the expense of collective lands held by descent groups. While this will impact all Indigenous women regardless of traditional social organization, women of matrilineal societies are hit particularly hard. In some instances, women are more vulnerable to market exploitation (including the sex trade) as they struggle to fulfill customary obligations to provide for material well-being of others (Carino nd). This stands in contrast to societies where women may depend on husbands or male kin and therefore, to some extent, be protected from market forces.

The Khasi matrilineal tribal peoples of India have been affected by Christian conversion. As in Canada, missionaries opposed women's property rights, inheritance and control over marriage and divorce. Impinging patriarchal views have changed the traditional system. In her study of Khasi women, Das (2001) found disruption of grandmother–grandchild relations as younger women increasingly move to nuclear family situations when they migrate from home communities. Cultural traditions are lost, because grandmothers, who are the traditional guardians and teachers of the culture, can no longer carry out their obligations as they are increasingly alienated from grandchildren due to geographical separation, loss of language and intermarriage — a situation comparable to that now increasingly experienced by First Nations women in Canada.

As intermarriage and migration increase, men exert greater pressure for far-reaching social changes fostered by neighbouring cultures, including ending matrilineal descent and women's property rights in the name of saving Khasi society. In a move reminiscent of the Kahnawake intermarriage moratorium, the Khasi student union has gone so far as to seek legislation that would banish out-marrying women from Khasi life (Laird and Victor 1995). A protest movement, the Syngkhong Rympei Thymmai (which literally means Restructure of Khasi Society) fights for a patrilineal system that would remove traditional inheritance rights of daughters.

African case studies support the generalizations arising from studies in India. Arnfred (2002), writing on matrilineal peoples of Southern Tanzania Mozambique, showed how the deterioration of matriliney and the subsequent eradication of cultural elements of singular importance to women arise with a globalizing economy. Shifts to commercial agriculture bring about the transfer of traditional powers of women to men. In consequence, long-term negative impacts on cultural coherence are emerging.

Traumatic disruption to collective identity and well-being is complex. Commercialization in the globalized market economy makes it difficult for Indigenous women everywhere to retain control over resources, traditional lands and cultural expression. This loss is not only a matter of collective trauma and trauma to culture, but is experienced by individual women as loss of their human rights and as personal misery of psychological and mental trauma.

Collective Trauma

Trauma experienced by individual women overlaps with trauma to the culture and society. In matrilineal societies practising matrilocal residence, mothers benefit from shared child

rearing practices. Children are closely tied to maternal extended families, in particular grandmothers and other women of their grandmothers' generation. Disruption of matrilineal residence causes all three generations personal stress: grandmothers lose bonds with children and opportunities to transfer cultural knowledge and languages, mothers face greater stress in the absence of female kin to assist with child rearing, and children face greater obstacles as they mature and desire to learn and participate in cultural activities. Several studies indicate the extent to which this causes stress and personal dysfunction (Das 2001; Dyson 1997; Eapen and Kodoth 2002; Wadhaw 2004). Other studies point to the link between increasing interpersonal violence and loss of matrilineal privileges for women. As women are dissociated from traditional values, they experience increased pressure to concede to the wishes of their husbands and in-laws, which includes moving from traditional lands to urban, nuclear family arrangements that leave them without social and cultural support (Laird and Victor 1995; Davidson 1997).

Traumatic upheaval is hard to ameliorate as globalization brings new demands on people respecting their labour while destroying kin corporate property and community relations. The Nayar women of Kerala, India, report extreme rates of personal abuse, alcoholism, suicide and other traumas as male biases penetrate all aspects of their lives. As local unemployment grows, men who depart for the oilfields in the Persian Gulf return with relative wealth and patrilineal predilections. Once touted as the model society for women and the crowning achievement of modern development, women of the matrilineal peoples of Kerala now suffer extraordinary high rates of suicide, depression, mental ill health and social and cultural alienation (Wadhaw 2004; Eapen and Kodoth 2002).

Disruption of matrilineal societies and culture arises in situations where cultural influences of patrilineal societies are felt strongly, as is described above for the Khasi. Two journalists writing on the Khasi, and social changes urged by men, argued that outside influences have made the men feel "oppressed." Khasi men view their rights negatively in comparison to the "natural" rights enjoyed by men in patrilineal societies. In consequence, some men feel humiliated and argue that matrilineality is outmoded. Demands for change in conjunction with a globalizing economy imperil traditions that have secured women's well-being and protected them from violence and negative social and economic practices (Laird and Victor 1995).

Throughout Asia and Africa, women and men have turned to the courts to determine the fate of matrilineal customary laws and the rights of women to be protected in international law. The outcomes have been uneven, but in 2005 women won two major victories, both of which have implications for Indigenous women elsewhere.

Legal Interventions

Studies from India and Africa document the pernicious impact of laws and social regulations on matrilineal cultures and women. Laws regulating marriage, divorce, child custody and property rights have infringed upon women who were once protected by matrilineal practices (Arnfred 2002). In Kerala, India no fewer than 20 legal interventions have been made in the past 100 years respecting family, marriage, succession and inheritance and property rights. Each has weakened women's social, cultural and economic well-being as

gender discriminatory laws gradually undermined protections of customary law. Matrilineal extended families were gradually displaced by state laws that “recognized” the conjugal family and favoured patrilineal succession male inheritance. In a situation with parallels to First Nations women’s struggles to sustain collective property rights within matrilineal and rights to matrimonial property, women struggle against legal codes that invest property rights and management privileges in male kin (Eapen and Kodoth 2002).

The absence of family law can be as distressing as legal interventions upholding patrilineal descent and patriarchal powers. In Mozambique, women currently contesting violations of their rights under CEDAW are mobilizing to press for family law that would protect single, unmarried mothers and restore forms of female power that were, and remain, embedded in matrilineal societies of northern Mozambique (Arnfred 2002). Their appeal to CEDAW sends signals to Canadian Aboriginal women that C-31 may violate international law. Mozambique women also protest disclosure of paternity to secure rights for their children.

Efforts to protect women’s land, resource and cultural rights through statutes and legal codes may fail where the emphasis on gender equality is placed on protection of wives. In Tanzania, land rights laws do not necessarily protect women as members of matrilineal clans. Tanzania studies indicate the need for reconsidering how women are conceptualized; matrilineal ties of women in relation to roles and rights as mothers, sisters and daughters need to be balanced against rights of wives vis-à-vis matrimonial property and the lands and resources of their husbands. This situation parallels concerns of First Nations women of Canada who seek protection of family and cultural continuity within understandings of matrilineal property relations and the rights and responsibilities of matrilineal kin.

In 1991, Botswana women won a precedent setting case that was grounded in precisely this argument. It is particularly interesting as the laws revoked have the same social implications as the *Indian Act* and were grounded in the same patrilineal principles. Women of Botswana successfully petitioned the courts to revoke patrilineal rules of citizenship in the 1991 case of *Unity Dow v. Attorney-General of The Republic of Botswana*. In that case, Unity Dow petitioned the Court to declare sections 4 and 13 of the *Citizenship Act 1984*, among others, ultra vires. Dow turned to customary laws of her matrilineal tribe, Tswana.

Under section 4, Botswana citizenship was denied to the children of a Botswanian woman, because of her marriage to a foreigner. Section 13 allowed a woman married to a Botswana man to apply for citizenship by naturalization, but it did not offer the same option to the foreign spouse of a Botswana woman. The first child, born out of wedlock, had citizenship as in the case of “illegitimacy” the child follows the mother. The other two children, born to her marriage, were denied citizenship as their father is an American. The case was argued almost exclusively in respect of mother-to-child transmission of citizenship. The majority judgment of the Court of Appeal (which upheld the High Court judgment) was grounded, among other reasons, on the canons of constitutional construction, as well as the provisions of international instruments. Okoye (nd-b) cited Aguda JCA.

The Constitution is the Supreme Law of the Land and it is meant to serve not only this generation but also generations yet unborn. It cannot be allowed to

be a lifeless museum piece; on the other hand, the Courts must continue to breathe life into it from time to time as the occasion may arise to ensure the healthy growth and development of the State through it.... We must not shy away from a basic fact that whilst a particular construction of a Constitutional provision may be able to meet the demands of the society of a certain age such construction may not meet those of a later age.... In the light of the foregoing, therefore, the Constitution must be held not to permit discrimination on grounds of sex, which will be a breach of international law. Therefore Section 4 of the Citizenship Act must be held to be ultra vires the Constitution and must therefore be and is hereby declared null and void.

This case offers an example of the potential of international law to meet the needs of women without abrogating the rights of their Indigenous nations. In fact, the case upheld customary matrilineal law of an Indigenous people. It takes the very issues that First Nations women confront in the *Indian Act* and the policy of disclosing paternity and overrides them in the name of discrimination. The Botswana courts upheld Article 1 of CEDAW, which defines discrimination against women as any distinction, exclusion or restriction based on sex. And in so doing it upheld the rights of children to their social and political rights. The parallels between this case and section 6 of the *Indian Act* are striking. In Botswana, the court affirmed the inheritance of citizenship in the mother-child relationship and found no reasons to protest the need for a dual-parent requirement. Given that the court gave in its reasons for judgment the need to avoid breaching international law, it offers hope to First Nations women seeking remedy based in the same international protections for women and children.

More recently women fighting to protect matrilineal rights celebrated the passage of *The Khasi Social Custom Lineage Act*. The Lineage Act encodes their matrilineal tradition through which children get their mother's clan name and enjoy the privileges of a scheduled tribe under the Constitution. This Act became law in March 2005 having sat on the state governor's desk for seven years. The objective of the Act is twofold: codify matrilineal laws of descent and inheritance, and protect the interests of Khasis from persons making false claims of Khasi identity in order to gain tribal benefits. According to the Act, a Khasi is a person born of a legal marriage, whose parents are or were both Khasis, whose mother is or was a Khasi and the father a non-Khasi and whose father is or was a Khasi and a non-Khasi mother. They should speak the Khasi language, observe and be governed by the matrilineal system of lineage, customs and traditions of the Khasis. The Syngkhong Rympei Thymmai wish children to follow the father's clan. They protest women's right to marry non-tribal individuals and the freedom of a non-tribal husband to conduct business in the Khasi wife's name. Christian and Muslim Khasi also protest protection of matrilineal descent and inheritance (Bhattacharjee 1997).

The international impact of these rulings has not yet been felt. Currently, they are subject of considerable study (Andrews 2000). The cases, and the women engaged in them, have been celebrated worldwide and heralded as leading the way for all women who seek to advance women's rights whether framed as customary rights or as human rights.

Learning from Cross Cultural Studies

Comparative study of patriarchal colonial disruptions of matrilineal societies and their legal remedy is instructive. Cultural and personal trauma recorded in Asian and African societies mirror the suffering and anxieties inflicted through the *Indian Act*. Human rights violations are manifested in complex, interwoven structures of globalization and nation state politics. Breakdown of matrilineal societies weakens corporate property rights and privileges, undermines extended family units and leads to urban migration where women are economically, sexually and psychologically endangered. Such alienation from culture and society and the positioning of women in dire circumstances bereft of legal protection violates human rights protections (Das 2001). Comparatively, in consequence of C-31, women and children are alienated from their birth lands and social/cultural communities and suffer from multiple traumatic experiences that afflict their social, spiritual, cultural and psychological well-being. In fact C-31, once seen to redress the human rights violations protested by Sandra Lovelace, is now revealed to perpetuate the same ethnic and cultural alienation by extending the alienation to the children and grandchildren of the C-31 women.

Comparative study also indicates Indigenous women seek national and international associations that will support their legal and political cause. Indigenous women of India and Africa seek support for Indigenous women's associations at all levels. With resources and networks extending from the local to the global level, Indigenous women can confront the myriad of human rights violations they experience as individuals and as Indigenous peoples whose rights to lands, resources and self-determination have been violated. Women of matrilineal Indigenous peoples struggle to reassert control over their lives and their cultures through appeals to international protection of their human rights.

The studies discussed above demonstrate that the human rights of Indigenous women in Asia, Africa and Canada are being violated. Disruption of matrilineal societies and the consequent suffering of grandmothers and mothers through changing rules of inheritance, membership and political engagement bear stark similarities wherever nation states and globalization intrude into the local economy and family relations. Whether the disruption arises from legislation that demands disclosure of paternity or from intruding social influences, women and children's human rights are violated as sexual equality and social and political rights are ignored. As Carino (nd) indicated in her overview of the conditions in Asia, protection rests in a number of international instruments and conventions: Convention on the Elimination of All Forms of Discrimination against Women, the Nairobi Forward-Looking Strategies for the Advancement of Women, the Beijing Declaration and Platform for Action, the United Nations Charter, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the International Labour Organization. The situation is similar in Africa where additional international conventions have been signed by African states.

In Southern Africa, Mutangadura (2004: 3) argued that women's right to equality is violated when their right to land, "the most fundamental resource" to their livelihood and empowerment, is denied. She cited John Rawls, *The Theory of Justice*, to argue that women's land rights must be included as a "primary" right shaping women's "social basis

of self-respect.” She also showed that patrilineal customary laws that discriminate against women resonate with statutes regulating land ownership and resource access, while matrilineal customs are not upheld in the same fashion. The remedy, she asserted, rests in appealing to the protections of CEDAW.

The case examples she provided for Indigenous women of Africa resonate with the issue of disclosure of paternity and off-reserve residence for reinstated women in Canada. Under both of these provisions, women are being denied access to traditional territories. Children’s rights in Canada are violated, because in the absence of stated paternity, rights to reserve residency and resources ends with adulthood for non-status children. First Nations women and children are denied their rights when First Nations governments cannot, or choose not to, grant residency rights and access to shelter and resources. Similarly across the African continent, women have been mobilized with respect to land rights. Women in Law and Development in Africa (WiLDAF), a multinational African non-government organization (NGO), has adopted the principle “women’s rights as human rights” to educate women throughout the continent about their legal rights, lobby for national legislative reforms and state accountability, and mobilize international support. As Tripp (2001) and Muthien and Crombrink (nd) demonstrated, national and continental-wide mobilization of women has a positive impact on protecting Indigenous women’s human rights. The work of WiLDAF parallels NWAC’s campaign to advance women’s rights as human rights and as Indigenous rights.

Indigenous women appeal to protections of their right to ethnic membership in their cultural community in a manner that protects their dignity and control over social reproduction. They challenge the right of the state to assume control over the definitions of identity and the state’s power to define identity by race and gender (Bushnell 2001). Around the globe women assert their rights as Aboriginal or Indigenous rights that flow from recognition of themselves as members of peoples whose entitlements are recognized in international conventions that protect their civil, political, social and economic rights (Muthien and Crombrink nd). Indigenous women seek a redefinition of themselves as constituted by the rights of Indigenous peoples. This leads to the need to reconceptualize the nature of citizenship as multi-tiered and complex.

Okoye, an African scholar and activist, turned to Yuval-Davis who “defines citizenship as a multi-tiered construct that applies simultaneously to people’s membership in sub-, cross- and supra-national collectivities as well as in states.” Okoye called for a comparative study that considers women’s citizenship “not only in contrast to that of men, but also in relation to women’s affiliation to dominant or subordinate groups, their ethnicity, origin, urban or rural residence, as well as the global and transnational positionings of these citizenships” (Okoye nd -b citing Yuval-Davis 1997).

Understanding citizenship as multi-tiered would allow for recognition of the social, economic and political rights of children to membership within their mothers’ First Nation without necessity of exclusion through the patriline, whether known or not. It would recognize the mobility rights of children of First Nations women categorized as 6(2). As discussed above, a number of Indigenous and feminist scholars analyzing the barriers for

Indigenous women's citizenship favour grounding citizenship in notions of participatory politics that recognize, affirm and empower matrilineal ties and in particular the central force of elder women from whom community stability flows. Such a regime would have the scope to determine citizenship policies that simultaneously protect ethnic nationality and the "personhood" grounded in the right to nationhood.

Through reconceptualizing citizenship, and with it redefining identity, Indigenous women have been moved to argue for new forms of civic relations. Muthien and Crombrink (nd) posited a partnership model that would embrace harmonious ways of thought, living and being. They reminded us that patriarchal modes of domination are not inevitable. More co-operative modes are possible. A partnership model would be grounded in linking rather than in hierarchal forms of ranking. The partnership model could address the needs for participatory politics. In assessing the political context in which C-31 functions, McIvor (2004: 108) noted that women are excluded from decision making that directly affects themselves and their children and grandchildren. She found "poverty, rights, and governance are inextricably linked for Aboriginal women." The remedy for discrimination of C-31 and disclosure of paternity lies in addressing civil inequality (cf Green 2001).

Citizenship models grounded in the power to give life maximize individual potential and take into account women's multiple roles of kinship in the formulation of citizenship and participatory politics. A central feature of shifting to a partnership model is women's capacity to create future generations through women's duty of care. Consistent with this concept of citizenship and governance is the duty of states to protect women and children from violations of their rights as members of Indigenous nations existing within the states. For Aboriginal women of Canada, this means empowering women as citizens in such a way as to protect

their rights as equal persons to be Indians, to pass on their Indian status to their children and grandchildren, to hold property on an equal footing with men, and to participate fully as Aboriginal women where decisions are made about the rules for their communities and the distribution of resources and opportunities. (McIvor 2004: 111).

Understanding women in relation to multiple kin roles is a broader and more favourable legal position for women than one defined through marital relations alone, which constrains protections within legal boundaries of individual rights. As we indicated above, the language of individual rights has been used to discredit women. It is as individuals asserting self-interests that women are seen as a danger to collective rights of Indigenous peoples.

In contradistinction to notions of individual rights, the customary law of many matrilineal peoples provides rights and protections for women through marriage without abrogating rights that devolve from their position in matrilineal kin groups. As daughters, sisters, granddaughters and nieces, women share in corporate property rights and hold common obligations to their kin groups as a whole. As wives, who may live with their husbands, they gain a range of protections that uphold access to resources, residence and diverse social privileges without conflict with their matrilineal rights, privileges or responsibilities.

Nonetheless, customary law may not protect women fully in a changing society. Two dangers are present. First, the courts will rule on the meaning and extent of powers the state may grant to customary legal orders. This was the case with *Casimel and Casimel*. The court was not content to affirm customary adoption practices, but went further to determine who could define the substance of customary law and the scope of jurisdiction. This troubles women who worry that they may seek protection within custom only to find that they have no presence in defining it. Thus, where courts do prevail in affirming customary law, they must do so in such a manner as to empower and protect women not preclude their voices (Fiske 1995).

Some Indigenous women claim their quest for honour, respect and reverence, from within and beyond their cultural community and nation of birth, are culturally distinct from European and North American based feminist struggles for personal equality. They claim cultural difference is grounded in feminine spiritual principles and social reproductive responsibilities and obligations rather than in individual rights. This claim does not necessarily offer women either legal protection or social honour. In Canada and in India, these very claims have been used against women to constrain their reproductive freedoms. As indicated above, in Canada, Gerald Taiaiake Alfred (cited by Barnsley 2000) argued that *because* Mohawk women have a greater “responsibility within the culture regarding the land, there’s more of a responsibility to keep within the culture...in essence the women are more important in the culture and there’s a higher responsibility on them.” Alfred thereby placed greater reproductive constraints on women than men. He upheld legislated exclusion of out-marrying women from the community as he saw them violating their reproductive obligations. He implicitly sanctioned paternity disclosure in his criteria for Mohawk citizenship, which at Kahnawake demands that at least half of one’s family come from Kahnawake in order to gain membership (cited in Barnsley 2000). This position takes the notion of paternity disclosure one step further for it not only places a burden of social alienation on women and children, it claims a customary moral code to reinforce the very historic and cultural traumas introduced by colonialism, which women are seeking to overcome (see also Lawrence 2004: 71).

In India, the Khasi student council used a similar logic when it called for the banishment of out-marrying women along with their children. Thus, matrilineal obligations and responsibilities can be rhetorically deployed to justify patriarchal control and patrilineal descent even while claiming that the process is one of matrilineal descent and membership. International organizations of Indigenous women recognize the dangers in asserting custom as a sole source of cultural and personal protection and therefore seek remedies in having customs that empower and enhance women’s lives and protect reproduction rights placed under the umbrella of international conventions that specifically protect women and children as full members of Indigenous peoples. Such was the finding in the South African case of *S v Baloyi* where the court took into consideration the state’s international obligations, specifically CEDAW, in extending protection from domestic abuse. The Constitutional Court came to see domestic violence as a breach of international human rights protections for women, and had this to say:

All crime has harsh effects on society. What distinguishes domestic violence is its hidden repetitive character and its immediate ripple effects on society, and in particular, on family life. It cuts across class, race, culture and geography, and is all the more pernicious because it is so often hidden and so frequently goes unpunished (Andrews 2000: 343).

This position was upheld in appeal in 2004.

Tanzanian courts followed a similar reasoning in the case of *Ephraim v Pastory*, which found reason to protect women's property rights consistently with international law (Muthien and Combrink nd: 18-19). In this instance, property rights of female clan members were protected. These cases provide direction to international Indigenous women's groups seeking further protections by appeal to international law.

Perhaps the most devastating social change for matrilineal women comes with the intrusion of patriarchal ideologies that redefine motherhood. The experiences of First Nations women find their parallels in other cultures as traditional roles of motherhood are diminished. State-enforced regulations recognizing patrilineal descent in conjunction with male-biased legal practices displace the public positions once held by mothers in matrilineal societies. Removal of maternal relations to the domestic sphere undercuts powers mothers once had over rights and distribution of resources and land. With recognition of paternal descent and conjugal families, women's primary relationship is defined in terms of marriage. As wives, women are placed in a secondary and dependent position viewed by many as the single most disruptive impact of colonial and post colonial regimes (Arnfred 2002; Laird and Victor 1995). As discussed below, struggles to reassert discourses of motherhood into public policy and law are the focus of national and international Indigenous women's groups that seek redress through a human rights perspective.

The Paradigm of Motherhood

As Indigenous women seek to alter their status within their home communities and the nation state, they question concepts of gender equality. They have argued that seeking individual equality with men is neither consistent with their traditional past nor with their visions for the future. Just as NWAC and other Aboriginal women's groups in Canada have asserted a traditional ideology of motherhood, so do Indigenous women of African and Asia. Oyewumi Oyeronke (1997) argued that motherhood is not linked to a subordinate position of being a wife. In her comparative study of family organization in Africa, Amadiume (1987) made a similar argument. She asserted that we must think differently about family relations. The patriarchal model must be questioned. It can no longer be taken as a given from which women need to be protected. The mother/child/sister relationships need to be viewed as the central relationships.

Indigenous women appeal to the right to be able to sustain matrilineal structures of identity. From this flows their appeal for womanhood to be recognized not within the dyadic context of marital rights alone but within motherhood and the essential relations that are formed through biological and social reproduction. As matrilineal kin, women's power *and*

obligations are grounded in their roles as daughters, sisters, mothers and grandmothers (Mountain 2000). Within the matrilineal interweaving of kin roles, women sustain ties to the past through matrilineal descent and create the future through their children and the clan's children by means of being keepers and teachers of knowledge. Hammill (2001) advanced the argument that collective rights (community rights) depend on "granny rights." She argued that in Australian Aborigine communities coping with social dysfunction and lack of care from parents, grandmothers are key to community regeneration.

Thinking within a paradigm of social relationships of female kin, what Amadiume (1987) called the logic of motherhood, questions legal reasoning that considers the male/female dyad as the defining family relationship. Rather than arguing for the rights of women in terms of their individual status, a new legal perspective is needed. This would focus on shifting relationships that bind women through kin relations and reconceptualize motherhood as a source of power. To confront the patrilineal/patriarchal colonial legacy "the African women's movement in the twenty-first century will have to address [their subjugation] at a generic level by various means which will include negotiation, education and enlightenment of women and not least, judicial intervention" (Okoye nd-a).

In sum, Indigenous women in Asia and Africa have confronted the impact of British colonial regimes that set out to destroy their matrilineal family organization and minimize women's freedoms and social privileges. Indigenous women have resisted these intrusions in a number of exemplary ways. They mobilized to press for political and social redress and went before the courts to protest violation of their rights. They successfully called upon constitutional and international law to argue for their rights and to assert that protection of their rights does not undermine Indigenous rights.

10. CONCLUSIONS AND RECOMMENDATIONS

Colonial regimes based on British imperial law have disrupted matrilineal practices. The legacy traumatized cultures and individuals. Despite historic respect for local laws of Indigenous peoples, colonial regimes and their successor states have enacted statutes and policies delegating traditional family forms. This is true of the *Indian Act* and the policy demanding disclosure of paternity. C-31, through its imposition of patrilineal identity and its discontinuity of intergenerational membership, constitutes trauma to a culture, and radically so to matrilineal cultures. Delegation of traditional matrilineal family, and in consequence laws governing the matrilineal clan and feasting system of governance, constitutes a trauma to the culture that has historic significance. The patriarchal biases underlying state intrusion into family life and customary law have been internalized to the point that cultural members are stigmatized and rejected. A shared suffering emerges.

Individuals and communities suffer from lack of social coherence needed for the formation of stable identity. Contrary to liberal notions of choice and multiple identities, stable identity does not form through state-imposed definitions that are coercive and divisive. C-31 has emerged as a negative state of being: to *be* C-31 is to be outside full community membership. C-31 can erode self-esteem and cause a depression of disenfranchisement whereby one feels alienated and pushed to the margins.

As it now stands the *Indian Act* violates the personal dignity of women and, by extension, the rights and dignity of their children and grandchildren. It fails to conform to the Canadian government's mandate to submit all legislation and policies to a gender analysis. The *Indian Act* and its attendant policies violate Canada's international obligations to protect women from all forms of discrimination and to protect children's social, ethnic, cultural and political rights.

Comparative examples show there are viable remedies to these violations. Women of the Lake Babine, Cheslatta and Nee Tahi Buhn offer recommendations that are consistent with the remedies sought — and in some cases successfully achieved — by Indigenous women of Africa and Asia whose situation parallels their own.

1. Participants in this study recommend revoking the power of INAC to determine First Nations citizenship. They call for the removal of section 6 of the Act and an end to disclosure of paternity policies. In the place of the existing powers, they seek government consultations with First Nations to determine the criteria by which individuals would be recognized as Indians by Canada and to ensure these criteria adhere to domestic and human rights protection.
2. Participants seek empowerment of First Nations to define citizenship within the matrilineal principles of descent and inheritance to protect women and their children from the loss of Indian status.

3. Participants call for legal protection within national and international law of traditions that enhance and empower women within their First Nations, while recognizing that innovation is necessary to synthesize traditions with contemporary social, economic and political needs.
4. Participants recommend the federal government, in keeping with domestic case law, recognize and honour customary family law in accordance with human rights laws and conventions. They call for the government to affirm past adoptions by granting status to adults who were adopted before 1985 by grandmothers and other kin who held status, or are eligible for reinstatement. Adoption by one status Indian should suffice for registration.
5. Should Canada persist in distinguishing between full and half status, that is between 6(1) and 6(2), participants recommend that children adopted by custom be granted full status. In keeping with matrilineal traditions, they call upon Canada to recognize customary adoption by widowed grandmothers within First Nations organized into a matrilineal clan system does not place the child in a single-parent family model. Rather the child is associated with two clans, that of the adoptive mother and a father's clan, the members of which take on paternal roles. Thus customary adoption by a widowed grandmother offers the child full membership in the First Nation.
6. In recognition of the specific needs and legal issues of First Nations women participants recommend the federal government provide funds and resources to create local women's organizations and provide resources to link local organizations to larger non-governmental organizations.
7. In recognition of their own isolation from centres of power participants recommend national and regional First Nations women's organizations be appropriately funded to establish strong networks with women of all First Nations. They further recommend ensuring national Aboriginal women's organizations be sufficiently funded to establish international links that would include women of remote First Nations.
8. Participants recommend that children's rights to First Nations citizenship be protected from mandatory disclosure of paternity to uphold their social, economic and political rights. In light of the current policy, they recommend that the Act and all attendant policies be submitted to a review of compliance with international laws to ensure respect for Indigenous, women's, children's and human rights.

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Bill C- 31 – Membership and Status - Unrecognized and Unstated Paternity**

***Seeking Alternatives to Bill C-31: From Cultural Trauma to Cultural Revitalization
through Customary Law***

Jo-Anne Fiske and Evelyn George

Indian Registration: Unrecognized and Unstated Paternity

Michelle M. Mann