Canaries in the Mines of Citizenship: Indian Women in Canada

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Introduction

The power of great ideas to contribute to social change often lies in their resonance for those who struggle for emancipation from conditions they understand to be oppressive and imposed. The concept of citizenship has been transformative of social and political conditions for many who historically lacked political and economic clout.[1] The notion of constitutionalism has profoundly changed the character of political power. The proposition that there are fundamental human rights, the protection of which is a transcendent obligation of political power, has changed what human beings are willing to accept and are likely to require from organized power. These notions—citizenship, constitutionalism, and human rights—are inextricably linked yet historically specific and evolving.[2]

In Canada in the twenty-first century, the majority of people identify as citizens of the state, the human rights of which the government is expected to protect. For the most part, this is the happy norm for Canadians. Yet there are communities within the Canadian state who do not share this understanding or this experience. Among these, Aboriginal

1 T. H. Marshall, "Citizenship and Social Class," in *Class, Citizenship, and Social Development: Essays by T. H. Marshall* (Garden City: Doubleday) 1964, 65-122.
2 Ibid.

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peoples[3] are likely to understand the state as an oppressor that has become economically and politically strong at the direct expense of Aboriginal nations.

Canada has much to be proud of in terms of social justice and political accountability, but it must take responsibility for the fact that Project Canada[4] rests on the foundation of indigenous immiseration through colonization. Acknowledging this implies transforming this foundational relationship from exploitation to a more mutual accommodation which minimally recognizes the fundamental human rights of Aboriginal peoples. First among these is the right *to be*; the right to self-determination. Self-determination is a collective, not an individual right: it requires self-conscious communities who *will* their existence and determine its collective forms. Canada has flirted with this challenge through the various federal policies and programmes aimed at "self-government" for the minority of Aboriginal people living on reserves. However, Canada has been reluctant to commit to a post-colonial relationship with Aboriginal peoples, of restructured federalism and meaningful restitution of land, resources and political power.

In addition, for a minority of Aboriginal people, "self-government" practised as control of band membership has resulted in further human rights abuses. Typically, the minority is a number of women who, for historical legislative reasons prior to 1985, were excluded from band membership and reserve residency because of marriage to non-Indians (or non-status Indians), along with their children. The result is the effective denial to these women of citizenship and of the fundamental human right *to be* in one's community. The abrogation of Indian women's citizenship (both Canadian and First Nation[5]) and of their human rights demonstrates a weakness in the strength of citizenship and human rights for all Canadians. The affected subset of the Aboriginal community is small and, within mainstream Canadian politics, insignificant. Its problems are not a priority for the Canadian state nor for band governments. Rights protection has been most meaningful when it applies to minorities in the face of majority indifference or hostility.

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3 Aboriginal peoples, comprising Indian, Inuit, and Métis people, are recognized in section 35 of the *Constitution Act 1982,* and their "existing Aboriginal and treaty rights" are affirmed. I use the terms Aboriginal and indigenous interchangeably.

4 I use the term "Project Canada" to refer to the state constructed from the colonies by colonial and then settler elites, evolving but firmly grounded on the original and continuing appropriation of indigenous land and resources, and built on racist and sexist practices that create the forms of privilege that dominate the state today.

5 The term First Nations is used by many status Indian communities, and by the Assembly of First Nations, to refer to either *Indian Act* bands, or the historic political and cultural entities that are now fragmented into bands by federal legislation. It is used almost exclusively to refer to Aboriginal communities having status under the *Indian Act*.

Abstract. This article explores the concept of citizenship in relation to certain Aboriginal women, whose membership in First Nations is subject to Canadian federal legislation and First Nations constitutions and membership codes. In the struggle for decolonization, Aboriginal peoples use the language of rights—rights to self-determination, and claims of fundamental human rights. The state has injected its limited policy of "self-government" into this conversation, characterized by the federal government's preference for delegating administrative powers to *Indian Act* bands. Since the 1985 *Indian Act* revisions, bands have been able to control their membership. Where prior to 1985 the federal government implemented sexist, racist legislation determining band membership, now some bands have racist, sexist membership codes. In both cases, the full citizenship capacity of affected Aboriginal women, in either the colonial state or in First Nations, is impaired. The bands in question resist criticism by invoking rights claims and traditional practices; the federal government washes its hands in deference to self-government. The rights claims of affected women are scarcely acknowledged, much less addressed. Meanwhile, their citizenship in both dominant and Aboriginal communities is negotiated with the realities of colonialism, racism and sexism. Their experience demonstrates the limitations of citizenship theory and of Canadian citizenship guarantees.

Résumé. Cet article analyse la signification du concept de citoyenneté pour les femmes autochtones dont l'appartenance aux Premières Nations est soumise à la loi fédérale du Canada et aux constitutions et normes des Premières Nations. Dans leur lutte pour la décolonisation, les peuples autochtones utilisent le langage des droits—droits à l'auto-détermination et revendications des droits humains fondamentaux—. L'État a introduit dans ce débat la notion restreinte « d'autonomie gouvernementale » qui exprime la préférence du gouvernement fédéral pour la dévolution de pouvoirs administratifs aux bandes reconnues par la loi sur les Indiens. Depuis la revision de cette loi, en l985, les règles d'appartenance aux bandes indiennes sont définies par ces dernières. Si avant l985 la législation fédérale déterminant l'appartenance aux bandes indiennes comportait des règles racistes et sexistes, les nouvelles règles d'appartenance établies par les bandes indiennes depuis l985 contiennent également, dans certains cas, des dimensions racistes et sexistes. À l'instar de l'ancienne législation de l'état colonial, la nouvelle législation des Premières Nations limite la capacité des femmes autochtones d'exercer pleinement leur citoyenneté. Les bandes concernées réfutent ces critiques en invoquant leurs traditions et leurs droits. Le gouvernement fédéral invoque la notion « d'autonomie gouvernementale » pour justifier son refus d'intervenir dans ce débat. Les droit réclamés par les femmes autochtones sont peu connus, encore moins pris en considération de telle sorte que leur citoyenneté, au sein de la société dominante et des communautés autochtones, continue d'être négociée dans un contexte marqué par le colonialisme, le racisme et le sexisme. Cette réalité démontre les limites de la théorie de la citoyenneté et des protections accordées la citoyenneté par le Canada.

This article traces some apparently contradictory components of Aboriginal rights, human rights, and citizenship and identity rights, in the context of the contemporary Canadian state. Conceptions of citizenship and of decolonizing practices affirming Aboriginal, human and identity rights can only be developed on the foundation of contemporary practices. That is, theory is not only an argument, but must be relevant to the real world in which individuals and communities exist in circumstances created by history and by power. Taking reality into account, theory ought to prescribe the normative ideals to which we variously aspire, and from which reality deviates most significantly for individuals and

communities who have less power than those who drive social, economic and political practices. While certain values must be embedded in any politics for resolution, the primary objective here is to establish the significance and intransigence of the problem, not to develop the theoretical framework and political strategy for resolution.

Rights and duties are the foundation of citizenship. They form the parameters of the citizen's relationship with the polity and with other citizens. For the Aboriginal women in question, their capacity to be fully engaged citizens in the dominant society and Aboriginal communities is delimited by the forces of colonialism, racism and sexism. Their appeals to either federal or certain band governments for restitution of rights denied them have not been successful, as both reject, minimize or ignore their claims and so refuse to welcome them as full citizens. Their experience sheds light on the racist, sexist, practices of the state, the incorporation of these same practices by some band governments, and the limitations of Canadian democracy for responding to the oppression of those who are, by definition, politically inconsequential.

The case of excluded Indian women illustrates the nexus among law and politics; different discourses; and conflicting rights claims against the state. It demonstrates, as well, the dynamics of sexism, racism, colonialism and rights abuses. These women are perhaps the least politically significant constituency in Canada, but their context and their claims illuminate the limits and the capacity of Canadian citizenship. Status Indian women who have had their legitimacy as band members and as authentic Indians undermined by both federal legislation and some political positions of status Indians compel Canadians to flex their imaginations, to grapple with history and with the questions of justice, identity, self-determination and rights claims raised by the multiple identities and locations which comprise both Canadian and First Nations citizenship. The way these tensions are resolved will shape not only the socio-political location of these women, but the scope and content of citizenship for all Canadians. Thus, they are indeed canaries in the conceptual mines of citizenship.

Canadian Citizenship

Citizenship is a fundamental human right.[6] In Canada, the concept of citizenship is derived from the Western liberal politico-philosophical traditions of political emancipation and action in empowered individu-

6 Article 15 of the Universal Declaration of Human Rights declares: "(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his [sic] nationality nor denied the right to change his nationality." Within the meaning of the Declaration, "nationality" means membership in the political institution of the state, not in the socio-cultural construct of "nation."

als. Contemporary notions of citizenship include the reciprocal relationship of citizenship and state rights and obligations; guarantees of liberty from state interference in private life and state guarantees of equality of citizen rights; and community (or solidarity).[7] Notwithstanding the popular mythology of the neutral and inclusive nature of Canadian citizenship, historically, and until recently, it has been exclusionary on class, sex, race and ethnic bases.[8]

Nevertheless, citizenship is often treated by the state as universal and unmediated. That is, (almost) all persons hold citizenship in a state, a status implying a set of rights, duties and relationships. As understood by contemporary international law, citizenship is vested in a rights- and duties-bearing individual located in a state, equal to all other citizens in respect of those rights and duties. The weight of scholarly opinion holds that citizenship is most fully actualized in the conditions of democratic society. Democracy, in turn, is conceptualized as the ability of citizens to participate authentically and freely in public life. Democratic practice is deemed to legitimate government, and includes such activities as voting, seeking political office, organizing and speaking without fear of repression.

While many scholars have paid attention to the significance of the differential social and economic locations and the cultural identities of citizens, a consensus on the conceptual parameters and on the political implications of difference for citizenship practice has yet to emerge.[9] Breaking with the state's historic stance of inclusion in the family of citizens through assimilation into the dominant culture, theorists of differentiated citizenship have made some compelling arguments for the structural inclusion of all citizens into the *body politic* by recognizing their identities and economic, social and cultural locations in politically significant ways. Some of the most compelling contributions are Charles Taylor's notion of deep diversity; James Tully's proposal for

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7 Jane Jenson, "Citizenship and Equity: Variations Across Time and in Space," in Janet Heibert, ed., *Political Ethics: A Canadian Perspective* (Toronto: Dundurn Press, 1991), 195-96, 201. Linda Trimble, "Women, Public Policy and the 'New Right': Facing the Neo-liberal and/or Neo-conservative State," lecture delivered to the University of Regina and the Saskatchewan Institute for Public Policy, November 1999.

8 For example, white women obtained the federal vote in 1919, Indian (Aboriginal) men and women as of 1960; while Indian men and women could not vote in Quebec until 1969. State-sponsored racism has reached far beyond the franchise. See Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press) 1999.

9 Examples of different views may be seen in Avigail Eisenberg, "The Politics of Individual and Group Difference in Canadian Jurisprudence," this JOURNAL 27 (1994), 3-21; Katherine Fierlbeck, "The Ambivalent Potential of Cultural Identity," this JOURNAL 29 (1996), 3-22; and Joyce Green, "The Difference Debate: Reducing Rights to Cultural Flavours," this JOURNAL 33 (2000), 133-44.

mutual recognition of, and by, settler and indigenous communities; Will Kymlicka's search for a theory of differentiated yet unifying citizenship; Iris Young's arguments for universal inclusion based on difference; Anna Yeatman's examination of the specific community bases of individual rights; Linda Trimble's conceptualization of flexible federal structures and inclusive constitutional provisions; and Avigail Eisenberg's effort to find respect for identity-based difference as an alternative to rights hierarchies.[10] However, while these works, which draw almost exclusively on liberal political theory, go some distance to creating the theoretical foundations for an inclusive Canadian citizenship, they do not, and perhaps can not, answer the challenge of the rights of indigenous peoples in relation to settler states.[11] Aboriginality is its own justification: prior occupation to the settler society and political non-dominance both define Aboriginality and underwrite its claim for justice against the imposed socio-political order.[12] Aboriginal rights to self-determination confront the il/legitimacy of the Canadian state in its usurpation of Aboriginal lands, resources and political capacity, in the relational imperatives that flow from that history and the equation of political will and *realpolitik* that drives Canadian-indigenous relations at present.[13]

Even in its most generous formulations, liberal political theory largely justifies the state form and its claims to power over citizens

10 Charles Taylor, *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism* (Montreal: McGill-Queen's University Press, 1993); James Tully, *Strange Multiplicities: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995); Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995); Iris Marion Young, *Throwing Like a Girl and Other Essays in Feminist Philosophy and Social Theory* (Bloomington: Indiana University Press, 1990); Anna Yeatman, *Postmodern Revisionings of the Political* (New York: Routledge, 1994); Linda Trimble, "Beyond Gloom and Doom: Federalism, Citizenship, and Political Change," in Stephen Randall and Roger Gibbins, eds., *Federalism and the New World Order* (Calgary: University of Calgary Press, 1994), 197-211; and Eisenberg, "The Politics of Individual and Group Difference."

11 This challenge, which is to the legitimacy of settler-states, is discussed in Joyce Green, "Towards a Detente with History," *International Journal of Canadian Studies* 12 (1995), 85-105; and in Michael Asch, "From *Calder* to *Van der Peet*: Aboriginal Rights and Canadian Law, 1973-96," in Paul Havemann, ed., *Indigenous Peoples' Rights in Australia, Canada, and New Zealand* (Oxford: Oxford University Press, 1999), 428-46.

12 The Draft Declaration on the Rights of Indigenous Peoples defines indigeniety in this historically and politically contingent fashion, and asserts the rights that flow from indigenous status.

13 Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: University of British Columbia Press, 2000); Michael Murphy, "Culture and the Courts: A New Direction in Canadian Jurisprudence on Aboriginal Rights?" this Journal 34 (2001), 109-29.

and in relation to other states. Aboriginal resistence to colonialism may use liberal arguments; this is a consequence of the power of the powerful to define the discursive arena and it also demonstrates the frequency of liberal states' violation of their own precepts. Yet, the foundational fact of Aboriginal claims is pre-eminent and antecedent existence in functional societies, which have not been incorporated into colonial states by any mechanism recognized by the colonized nor, often, by the colonizer. Theoretical attempts to explain this argument away, or to frame Aboriginal societies as too different to be conceptualized with liberal concepts such as sovereignty, land ownership and government, function to silence any Aboriginal resistence on the grounds of profound incommensurability.

Canada exists as it does because it was imagined into being in the nineteenth century by corporate and political elites who thought that the autonomous federal state rather than the dependent colonies, and the Westminister structure would best accommodate the significant political and class interests of the day.[14] Initially, citizenship consisted of the limited franchise vested in propertied white men, while others were simply subjects of the Crown. Citizenship was minimalist: the right to vote for a representative; the duties to pay taxes and to obey the laws of the state. Women's status in relation to the state was derivative of their most proximate patriarch: husband, father or nearest male relative. Human rights were not a foundation of political discourse. Indigenous peoples were viewed by the colonial elite as axiomatically subordinate because of deficiencies in culture, morality, politics, economics and other measures of capacity for sovereignty. The dominant identity was attached to membership in the British empire, with the constitutionally recognized but clearly subordinate identity of francophones existing as a negotiated concession to Confederation. Aboriginal identity existed as a minor impediment to be removed by the government, further to its constitutional jurisdiction,[15] from the path of colonial progress.

In short, the state imagined by the founding fathers was nothing like the state that exists today. Now, citizenship is contested: it includes the minimalist rights and duties formula, but is expanded to include relationships within the state between communities, and the state's obligation to pursue for its citizens and communities the ideals articulated in international law to which Canada is signatory, as well as the rights and freedoms contained in the Canadian Charter of Rights

14 Frank Underhill, *The Image of Confederation* (Toronto: Hunter Rose Company for the CBC Learning Systems, 1964), 25; Green, "Towards a Detente with History."

15 Section 91(24) of the *Constitution Act, 1867* gives the federal government jurisdiction over "Indians and lands reserved for the Indians."

and Freedoms. This transformation of concepts and expectations developed as more compelling visions created a social consensus and were translated into structures and processes. As T. H. Marshall observed, the changing social and economic conditions of particular societies produce new expectations of what citizenship implies.[16] This transformation is negotiated among contested visions within the state, within consequences of the dominant imagination made tangible in law and policy.

Section 35 of the 1982 *Constitution Act* identified Aboriginal peoples as holding unspecified Aboriginal and treaty rights in relation to the state. Governments and Aboriginal organisations alike have focused on "self" government as the pre-eminent of these rights. These constitutional initiatives do not, however, reveal or remedy Canada's own colonial relationship to Aboriginal peoples. They do not in any practical fashion democratize political power nor do they reveal or remedy the practices that exclude the vast majority of women and of racialized others from meaningful participation in political and economic life. Canada's question, yet to be answered definitively, is: "what ought to be the basis of unity around which a sovereign political entity can be built?"[17]

Since colonization and the treaty-making period, from the imposition of the first *Indian Act,* indigenous resistance to colonial domination has focused on various formulations of the right of self-determination. Canadian federal and provincial governments have chosen to reconceptualize this as "self-government" which in practice appears to mean self-administration by status Indian bands of limited powers on reserve lands. This formulation applies to a minority of Aboriginal people; it ignores all off-reserve status Indians and all non-status and Métis people.[18] The federal government's preoccupation with *Indian Act* governance is exemplified by the efforts in 2001 of Minister of Indian and Northern Affairs Robert Nault at *Indian Act* consultation, despite being rebuffed by the Assembly of First Nations.[19]

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16 Marshall, "Citizenship and Social Class."

17 Taylor, *Reconciling the Solitudes*, 157.

18 Cairns, *Citizens Plus*.

19 On April 30, 2001, Indian and Northern Affairs Minister Robert Nault launched a national consultative initiative with First Nations communities and leaders, entitled Communities First: First Nations Governance. "This initiative is about providing First Nations people with the opportunity to replace elements of the *Indian Act* which will provide them greater control over how their communities are governed. The goal is to create new legislation that will strengthen First Nation governments, communities and economies": http://www.ainc-inac.gc.ca/nr/prs/m-a2001/2-01143_e.html The AFN's view is that "This initiative . . . does not address the First Nations vision of Governance, self-government, Treaty making or Treaty implementation. The initiative is intended to make First

Excluded Aboriginal Women

The dynamics described above are well demonstrated in the legal and social parameters shaping the notion of "status" and band membership in Indian bands controlling their own membership further to the 1985 *Indian Act* amendments. Since 1869, the Canadian state has imposed its version of patriarchal social forms through the *Indian Act*. Until 1985, the Act identified status patrilineally: upon marriage, the status of Indian women was determined by that of their husbands. Marriage to anyone other than a status Indian caused these women to lose status and, with it, access to rights, programmes[20] and to reserve residency: they were involuntarily excluded from their communities. This was applied consistently, in that any woman marrying a status Indian man took her husband's status, resulting in a population of non-native women holding status. Following the 1985 amendments, bands could create their own membership codes. Some bands chose to incorporate the pre-1985 sexist provisions as part of their codes, and, contrary to the view of the Royal Commission on Aboriginal Peoples, some added to this "blood quantum" criteria that are fundamentally racist.[21]

The 1985 amendments also permitted women who had lost status, and their children, to apply to regain it. As of July 1999, 234 of the 610 bands had assumed control of membership, and nearly 133,000 persons had applied for status.[22] Some bands have refused to accept these reinstated people—"C-31s"—as band members, and three Alberta bands launched a court challenge to the legislative amendment,[23] charging that it was unconstitutional and violated their Section 35 rights in the

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Nations' governments into municipal-style governments (this is not nation rebuilding). . . . The federal initiative is about increasing First Nations' accountability to the federal government, while at the same time reducing the federal government's own liabilities, obligations and responsibilities to First Nations" (http://www.afn.ca/Programs/Governance/FederalGovernmentGovernanceAct.htm).

20 Even federal programmes designated for Indians are in some cases unavailable to them. For example, where the Department of Indian Affairs has devolved control of postsecondary education to bands or groups of bands, access to funding for postsecondary education is tied to band membership. Those on the the Department's Indian Register but not on a band list cannot access this programme without recognition by a band.

21 The Royal Commission on Aboriginal Peoples wrote that citizenship in First Nations could be based on "parentage, continuing affiliation, self-identification, adoptive status, [or] residence" but "it cannot legitimately depend on genetic characteristics as such" (*Partners in Confederation* [Ottawa: Supply and Services Canada, 1993], 29-30).

22 Andy Doraty, Indian and Northern Affairs Canada, personal communication, July 27, 1999.

23 *Sawridge Band v. Canada* [1995] (Federal Court-Trial); [1997] (Federal Court of Appeal).

Constitution Act, 1982.[24] The obvious tensions include Aboriginal and treaty rights, including the right to self-definition, often framed as membership constructed as citizenship,[25] the fundamental human right of women to equal political treatment and the right to culture and community. Additionally, the Charter requires all laws to apply equally to male and female persons, and Section 35(4) of the *Constitution Act, 1982* recognizes that Aboriginal and treaty rights belong equally to women and to men. There has been little attention paid to how Canadian citizenship configures this issue: the state has never made it a priority to have the full citizenship package apply to Indians, even following the granting of the federal franchise in 1960.

Socio-economic indicators show that Indians have not on any measure enjoyed the fruits of living in the "best country in the world" as evaluated by the United Nations from 1997 to 2000 (but only ninth in 1997 when gender was factored in). But excluded Indian women have, thanks to the intersection of race, class and gender oppressions, been the most marginalized and impoverished of even this marginal group. As the state moves to acknowledge the Aboriginal right of self-government, it shows no willingness to ensure that the right includes, and does not further marginalize, these excluded women. That is, Canadian citizenship rights are passively denied to these women, while band membership, often invoked as First Nations citizenship, is also sometimes denied to them.

Patriarchy and Masculinism

Gender and racism configure citizenship.[26] Despite obtaining the federal franchise in 1919, until the 1947 *Citizenship Act* white women could still lose or gain Canadian citizenship status upon marriage, a patriarchal formula reminiscent of the status provisions of the *Indian Act*. Yet status Indian women and men could not vote in federal elections till 1960, and until 1982, status Indian women who married drew their Indian status (or lack of it) and band affiliation from their husbands, further to section 12(1)(b) of the *Indian Act*.

Patriarchy, the male preferential hierarchy resting on women's subordination, still configures Canadian societies and shapes social relations. Though the social structures grounded in patriarchy have been transformed by social change and by global capitalism, patri-

24 "The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed."

25 See, for example, *Sawridge Band v. Canada.*

26 Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in Cass Sunstein, ed., *Feminism and Political Theory* (Chicago: University of Chicago Press, 1990), 117–42.

archy itself is submerged in a culture of masculinism: still male preferential and often misogynist, but diffused throughout civil society and popular culture rather than resting exclusively in the patriarchal family. The oppression of masculinism lies in the normativeness and coerciveness of political, legal, social and economic systems reflecting and requiring conformity to male dominance and female subordination.[27] Women and men are disciplined to conform in myriad ways, though it is men who have the biggest stake in the maintenance of patriarchy and, more broadly, in masculinism.

A culture in which women are politically, economically and/or socially subordinate to men can be characterized as masculinist: Canada is masculinist. Despite the diversity of indigenous nations, despite the historical valuation of women by many indigenous nations, patriarchy and masculinism are now the norm for the vast majority. Colonial institutions, including the *Indian Act,* the church-run residential schools and then the provincial education system, and mainstream popular culture, taught generations of indigenous youth to incorporate colonial norms, one of the most fundamental of which is patriarchy.

In Canada, to be female and Aboriginal is to be disempowered by the state. Too often, it is also a good predictor of disempowerment by band governments. Appeals to the state for rights-based remedies result in responses to the effect that state-designed ''self'' government will ameliorate the problem (a response which assumes Aboriginal women have no unmediated citizenship claim against the state), while these same appeals often result in strong criticism from bands and Aboriginal lobby organizations to the effect that dissident women are betraying the cause of Aboriginal liberation by invoking colonial, Western, white or feminist analyses and remedies. The threat of expulsion as a mechanism for enforcing conformity is especially powerful in small communities where self-definition is tied to the community's definition.[28] Appeals to band governments and Aboriginal lobby organizations attract responses invoking tradition as legitimation of the status quo, and strategies that generally place women's priorities low on the political agenda. Radicalized, marginalized and excluded Aboriginal women have little support for their critiques of state and band (and Métis) government practices.

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27 See, for example, Catherine MacKinnon, *Towards a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), 160-62; and Linda Trimble, ''Women, Public Policy and the 'New Right','' lecture at the University of Regina and the Saskatchewan Institute for Public Policy, October 1999.

28 Alison Jaggar, ''Globalizing Feminist Ethics,'' *Hypatia* 3 (1998): http://iupjournals.org/hypatia/hyp13-2.html.

The federal government, the Assembly of First Nations and bands (entities which themselves are either recognized by, or are creations of, the *Indian Act*, and are predominantly male-occupied power structures) negotiate the potential or actual location of Indian women, without the participation of the affected women as women. These negotiations determine "status" and its concomitant rights[29] and entitlements to programme benefits,[30] reserve residency and political and social participation on reserves. For a majority of the population under discussion, the reserve also constitutes the locus of "community," within the meaning of Article 27 of the International Covenant on Civil and Political Rights.[31]

"Tradition" has been used to justify and to exculpate practices that are inconsistent with rights guarantees, and is itself a subject of a rights claim as cultural expression. Invoking tradition is a powerful means of resisting colonialism. It is a reclaiming of socio-political structures and processes that nourished nations for untold generations. As Gerald (Taiaiake) Alfred argues, identity, structure and process for indigenous nations are encoded in "traditional forms of social organization"—within traditions.[32] Tradition invokes authenticity of being, despite the continuing occupation of colonial society and its powerful and seductive culture. It is a repository both of cultural knowledge and of power relations. It also creates insularity and a historically defined set of values and validations.[33] This suggests change is difficult, or even illegitimate, and focuses attention on history without the context

29 Pursuant to the Canadian Charter of Rights and Freedoms, section 25, the *Constitution Act, 1982*, section 35, and to all other Charter rights as a consequence of Canadian citizenship, which is itself not unproblematic for some Aboriginal people.

30 Available to the population designated as "status Indians" through the *Indian Act* for the purpose of Department of Indian and Northern Affairs programs such as limited funding for postsecondary education and, on occasion, Secretary of State programs for Aboriginal persons.

31 Article 27 reads: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Canada has already been found in breach of this provision in the case *Re Sandra Lovelace*, United Nations Human Rights Commission 6-50 M 215-51 CANA, in which Lovelace contested her exclusion from her reserve community because of her marriage to a non-native man.

32 Gerald R. Alfred, *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism* (Don Mills: Oxford University Press, 1995), 12. Alfred develops his arguments about tradition further in Taiaiake Alfred, *Peace Power Righteousness: an Indigenous Manifesto* (Don Mills: Oxford University Press, 1999).

33 Edward Said, *Culture and Imperialism* (New York: Random House, 1994).

of historical contingency. The consequent hostility to change and the fetishism of tradition can lead to rigidity and irrelevance. Invoking "tradition" is insufficient to insulate any society's practices from criticism but especially from auto-criticism suggesting oppressions infringe upon the rights of its members as understood by those members. The retreat to essentialism does not serve the project of liberation from either colonialism or patriarchy.

Rights and Traditions

Clearly there are tensions between a universal Canadian citizenship and indigenous nationalisms flowing from history and from resistence to the colonizing Canadian state. Indigenous nationalism is the claim of Aboriginal nations that their right of self-determination has been violated by the Canadian state, coupled with a search for a contemporary expression of that right.[34] Contained within this analysis is the proposition that indigenous nations have always identified and incorporated their members—their citizens—as part of the exercise of self-determination. Resisting the colonial state includes reclaiming self-defined autonomy. Thus a demand by some indigenous nationalists and at least one lobby organization, the Assembly of First Nations,[35] that indigenous governments not be subject to the universalising and arguably colonial norms in the Canadian Charter of Rights and Freedoms.

There are conflicting rights claims and claims of subordination between some Aboriginal women and all Aboriginal nations. The rights abuses claimed by the former result from colonial imposition and Canadian racism and sexism, from the internalizing of colonial practices by some Aboriginal people, organizations and administrations, and because of sexist practices of some Aboriginal cultures. The rights abuses claimed by the latter are consequent to colonialism and racism, and also, for women, to Canadian practices of sexism. Some indigenous women allege rights violations by indigenous agents (including governments and bureaucrats) and demand structural, procedural and attitudinal changes from them. These women also invoke rights protection by the Canadian state against abuses by indigenous agents, especially band council governments.[36] These rights are

34 See, for example, the Assembly of First Nations' discussion of the federal government's current *Indian Act* consultation initiative in relation to nation re-building at http://www.afn.ca/Programs/Governance/FederalGovernmentGovernanceAct.htm.

35 Joyce Green, "Constitutionalising the Patriarchy: Aboriginal Women and Aboriginal Government," *Constitutional Forum* 4 (1993) 110-20.

36 See, for example, several submissions to the Royal Commission on Aboriginal Peoples, such as the Indigenous Women's Collective of Manitoba, April 22, 1992

claimed by individuals, both as human rights of individuals and as identity-related rights impaired by exclusion from the relevant socio-political unit. These rights are affected by the politics of various indigenous and state governments. The rights abuses invoked by indigenous nations and Aboriginal organizations are consequent to state behaviour, and include rights that pre-exist the state (inherent rights) as well as those in relation to the state (constitutional Aboriginal and treaty rights and human rights). These rights are most commonly articulated as practices forming the right of self-determination, a right of peoples that is enjoyed collectively rather than individually.

The rights claims of some women are constructed as undermining the rights claims, embodied in practices, of some Aboriginal governments on behalf of the collectivity. Further, the rights claims of these women are sometimes dismissed as untraditional and, by extension, as deleterious to indigenous liberation. Aboriginal women's human rights, then, are constructed by political discourse as invalid; that is, as "unAboriginal" and contrary to tradition, as well as counter-productive to political and cultural liberation from colonial domination.[37]

A practical example of these theoretical questions may be seen in the case of *Sawridge Band v. Canada*.[38] The plaintiffs contended that C-31 amendments to the *Indian Act* were a violation of their constitutional Aboriginal and treaty rights under section 35 of the *Constitution Act, 1982*, as well infringing on their constitutional right to freedom of association under section 2 of the Charter. They argued that their cultural traditions are consistent with the loss of status to women who "married out" prior to 1985, and, as an Aboriginal tradition, that practice must be immune to the Charter guarantees of sexual equality. The Crown argued that the plaintiffs had no such right to control "citizenship," or alternatively, that any such right had been extinguished. The plaintiffs lost at trial and at the Federal Court of Appeal, but success-

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submission; and testimony by Marilyn Fontaine for the Aboriginal Women's Unity Coalition, who said "it must be understood that Aboriginal women suffer the additional oppression of sexism within our own community . . . our voices as women are for the most part not valued in the male-dominated political structures" (Rudy Paltiel, "Aboriginal women challenge leadership," *Globe and Mail* [Toronto], April 24, 1992).

37 Joyce Green, "Constitutionalising the Patriarchy"; Sally Weaver, "First Nations Women and Government Policy, 1970-92: Discrimination and Conflict," in Sandra Burt, Lorraine Code, and Lindsay Dorney, eds., *Changing Patterns: Women in Canada* (2nd ed.; Toronto: McClelland and Stewart, 1993), 92-150; and Emma LaRocque, "Re-examining Culturally Appropriate Models in Criminal Justice Applications," in Michael Asch, ed, *Aboriginal and Treaty Rights in Canada* (Vancouver: University of British Columbia Press, 1997), 75-96.

38 *Sawridge Band v. Canada*, sent back to trial after a successful argument in June 1997 of a "reasonable apprehension of bias" on the part of Justice Francis Muldoon at appeal.

fully argued that Justice Francis Muldoon's judgment was subject to a "reasonable apprehension of bias." The case returned to the lower court for retrial, and might make its way to the Supreme Court of Canada.

Sawridge is an excellent demonstration of the conflicting arguments, the conflation of terms, and the participation of the colonial and masculinist state, together with male-dominated band councils, in the subordination of some indigenous women. It also reveals the tactical and demonstrably illegitimate use of "tradition" as an instrument of domination. Finally, it shows the irrelevance of these women to both the Crown (on behalf of the state) and the bands. The issues of power, control, economic considerations and competing versions and interpretations of history are played out in *Sawridge* as the plaintiffs seek a declaration of their inherent right to determine band membership as they see fit, without regard to the Canadian Charter of Rights and Freedoms or to international human rights standards.

The nexus of racism and sexism shapes the lives of many indigenous women, not only through colonial history and contemporary politics, but by patriarchy morphed into masculinism. This nexus is manifest in colonial society and incorporated into indigenous societies. It is sometimes suffused within cultural traditions practised by indigenous peoples, and is implicit in indigenous politics both internally and in contestation with the colonial state.[39] This intersecting oppression forms a complex web that constrains a segment of indigenous women from contesting patriarchal oppression within indigenous communities and in the dominant Canadian community, that inhibits them from confronting race oppression in both communities and that privileges a colonial construction of indigenous reality.

How do indigenous women, who find themselves marginalized by the political stances of the governments of their communities and who believe this is an injustice that violates their fundamental human rights, seek justice from a community whose leaders define them as non-community members, and therefore voiceless? Where may such women raise their complaint? To what authority may they appeal? And where is there a legitimate authority that can settle disputes that place rights claims in opposition to each other? First Nations and the Métis Nations claim the right to determine their membership as a fundamental component of governance, a right arguably guaranteed in the Canadian constitution along with the right to be free from sex and other forms of government-sponsored discrimination. Are indigenous governments bound to adhere to the same code of conduct that the constitution demands of provincial and federal governments with

39 See for example, LaRocque, "Re-examining Culturally Appropriate Models."

respect to Canadians? Or, as Mary Ellen Turpel argues, is that code of conduct so thoroughly a product of Western European liberalism that it is a form of cultural imperialism to require its application to indigenous governments?[40]

Human Rights and Self-Determination

International conventions for state behaviour may offer some help in answering these questions. The oppressive potential of state-invoked tradition and of "secular and religious conservatism"[41] was raised by state and nongovernmental organization participants[42] at the 1995 United Nations-sponsored Conference on Women in Beijing. The *Platform for Action* produced by the Conference asserts that states cannot invoke custom, tradition or religious fiat to avoid their obligation to uphold women's rights (as a gender-specific articulation of human rights). The *Beijing Declaration of Indigenous Women* emerged from the same conference, raising issues of "self-determination, land and territories, health, education, human rights violations, violence against women, intellectual property rights, biodiversity, the Human Genome Biodiversity Project and political participation."[43] The *Platform* resulted from high-level political negotiations: the United Nations recognizes 184 states, with hosts of cultural and religious contexts, to say nothing of economic distinctions. The consensus on the obligation of states to affirm women's rights before attending to cultural and religious practices as they relate to women is a testament to the emergence of the preconditions for equal valuation of women.[44] At the historical

40 "The rights paradigm, whether it be articulated in terms of legal or political rights, or through civil conceptions of a consolidated property right, is simply a historically and culturally specific mechanism for the resolution of disputes and the allocation of resources that is different from the procedures used in any of the various Aboriginal cultures" (Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences," in Richard F. Devlin, ed., *Canadian Perspectives on Legal Theory* (Toronto: Emond Montgomery, 1991), 518.

41 Charlotte Bunch, Mallika Dutt and Susana Fried, "Beijing '95: A Global Referendum on the Human Rights of Women," *Canadian Woman Studies* 16 (1996), 9.

42 Some of the nongovernmental organizations were representing Aboriginal women; for example, the National Métis Women of Canada was represented by Marg Friedel, and Inuit leader Mary Sillett prepared a report for Pauktuutit, the Inuit women's organization.

43 Mary Sillett, "Ensuring Indigenous Women's Voices are Heard: The Beijing Declaration of Indigenous Women," *Canadian Woman Studies* 16 (1996), 63.

44 As evidenced by the numbers of signatories to the Convention on the Elimination of all Forms of Discrimination Against Women (Bunch et al., "Beijing '95," 12). Information on the Beijing conference and Canada's role in it from Audrey McLaughlin, MP, Yukon, "Women's Report," Canada, House of Commons, December 1995.

moment when indigenous nations seek international recognition, the global community is approaching consensus both on the right of peoples to self-determination and on the unconditional, inalienable human rights of women.

As states move to acknowledge and remedy the structural problems caused by sex discrimination, and to give priority to eradication of discrimination over preservation of tradition, it would be perverse for indigenous nations to move in the opposite direction. Surely Aboriginal rights are in addition to fundamental human rights, not a replacement for human rights. The international indigenous movement is a political response to the fact of colonial occupation and to the emergence of indigenous nationalism in the "Fourth World."[45] Popularized by the Shuswap political leader George Manual, the term "fourth world" refers to those populations who are Aboriginal in the sense of being precolonial, and who have been "dispossessed within their own countries."[46] Indigenous rights, then, include not only equality rights but rights that accrue by reason of Aboriginality, rights to land and to political power that derives from indigenous pre-existence to the state.[47] These rights, grounded in colonial history, are at root a challenge to the legitimacy of the state, mediated by the political reality that the state is, de facto, the universal contemporary organizing entity and will not be going away any time soon.[48]

Aboriginal rights claims are not a simple request for equality. They are an assertion of primacy grounded in history and in the international norms now universally subscribed to by all but "rogue" or anachronistic states. Indigenous peoples have used the international forum to advance claims to land and political sovereignty and against colonial occupation and the discriminatory and even genocidal practices of settler states since the 1970s.[49] International attention is slowly coming to bear on the question of indigenous peoples, colonization and contemporary political implications. The UN Economic and Social Council's Sub-Commission

45 Richard Mulgan, "Should Indigenous Peoples Have Special Rights?" *Orbis: A Journal of World Affairs* 33 (1989), 259.

46 George Manual and Michael Posluns, *The Fourth World* (Don Mills: Collier Macmillan Canada, 1974) and Peter McFarlane, *Brotherhood to Nationhood: George Manuel and the Making of the Modern Indian Movement* (Toronto: Between the Lines), 1993.

47 Mulgan, "Should Indigenous Peoples Have Special Rights?" 259.

48 Green, "Towards a Detente With History."

49 For example, the World Council of Indigenous Peoples formed in 1975, and was accorded nongovernmental organization status with the United Nations. It was later joined by the International Treaty Council, the Inuit Circumpolar Conference, the James Bay Cree, and other indigenous NGOs. Indigenous peoples raise critical issues in many international forums, such as the 1995 International Women's Conference in Beijing.

on the Prevention of Discrimination and the Protection of Minorities published a report on discrimination against indigenous populations first in 1982. The Working Group on Indigenous Populations has met annually since 1982.[50] Organized under the auspices of the Sub-Commission, the Working Group has involved indigenous peoples extensively, and has developed through this consultation the Draft Declaration on the Rights of Indigenous Peoples,[51] which is in the lengthy process of proceeding through the UN hierarchy to its destination, the General Assembly, for ratification.[52] The Draft Declaration asserts a right to determine citizenship in accordance with custom and traditions. However, this right must be read together with the rest of the document. For example, Article 1 invokes all internationally recognized human rights and fundamental freedoms for indigenous peoples, which includes protection from sex discrimination and racism. Article 8 says that indigenous peoples have the collective and individual right to identity. Article 9 specifies that "Indigenous peoples and individuals" have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. Clearly, different readings of these provisions may suggest different outcomes. Traditions and customs are not neutral in perpetuating power relations. Women in many different cultures contest tradition and cultural practices because they are the instruments of their subordination. As Emma LaRocque put it, "oppression within Native communities is not equally placed."[53]

The Working Group's interim definition of "indigenous peoples" is based on physical anteriority, political non-dominance and conscious commitment to cultural and ethnic preservation. It reads:

> Indigenous populations, communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sections of the societies now prevailing on those territories

50 Mulgan, "Should Indigenous Peoples Have Special Rights?" 261.

51 Even the title of the Working Group is political: in international law, "peoples" is a potent term, while "populations" is less so. The use of the word "populations" is designed to eliminate challenge to the integrity and authority of states. In informal discussion, however, the Working Group refers to itself with "peoples," and the indigenous participants routinely designate their communities as "peoples."

52 Isabelle Schulte-Tenckhoff, "Indigenous Peoples, States, and the Draft Declaration on the Rights of Indigenous Peoples," Frucht Lecture, Department of Anthropology, University of Alberta, March 1, 1996. Also see the wealth of information on the Draft Declaration and the subcommission process at http://www.unhchr.ch/html/menu2/10/c/ind/ind_main.htm.

53 Emma LaRocque, "Relationship of Gender to Issues of Self-Government," unpublished paper, Department of Native Studies, University of Manitoba, 1996, 24.

> or parts of them. They form at present nondominant sectors of society and are determined to preserve, further develop and transmit to future generations their ancestral territories, and their ethnic identity as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.[54]

Today's political contestation by precolonial societies is framed in terms of the right to self-determination. Self-determination has been taken by the international community to be a fundamental right of peoples since its location in the United Nations Charter in 1945[55] and in subsequent covenants.[56] "Peoples," as distinct from "people," hold the right of self-determination and are conceptualized as nations. Nations in international law are generally coterminous with states, though, increasingly, theorists are recognizing the reality that contemporary states are polyethnic and multinational.[57]

Self-determination, in the context of colonized indigenous peoples, is now understood as a qualified right. The coloniser is not expected to "go home" and must be lived with in some political framework. Self-determination is a right implying the capacity for statehood, though not requiring state form. It can be expressed as sovereignty within existing states, as a form of federal association or (though few indigenous peoples prefer such a diluted formula) as a form of local administration within states.[58] In Canada, this "almost certainly" requires federal adaptation for a third order of Aboriginal governance.[59] It also requires acknowledgement in a politically and ethically resonant fashion, such as the Forum for a Post-Colonial Future proposed by Yasmeen Abu-Laban.[60]

Increasingly, common history and shared ethnicity are peripheral to shared political community. When indigenous populations invoke the right to self-determination, then, they invoke their commitment to contemporary existence in a politico-cultural framework informed by

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54 United Nations Economic and Social Council, Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, "Study of the Problem of Discrimination against Indigenous Populations," UN Doc. E/CN.4.Sub.2.1983/21/Add.8, cited by Mulgan, "Should Indigenous Peoples Have Special Rights?" 261.

55 Ibid., 264.

56 For example, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

57 Kymlicka, *Multicultural Citizenship.*

58 Joyce Green, "Options for Achieving Aboriginal Self-Determination," *Policy Options* (March 1997), 13.

59 Alan Cairns, "The Fragmentation of Canadian Citizenship," *Reconfigurations: Canadian Citizenship and Constitutional Change* (Toronto: McClelland and Stewart, 1995), 163.

60 Yasmeen Abu-Laban, "The Future and the Legacy: Globalization and the Canadian Settler State," *Journal of Canadian Studies* 35 (2000-2001), 271.

their Aboriginal national context. Invoking tradition and indigenous national sovereignty, some argue that contemporary liberal democratic norms and laws cannot be applied to indigenous governments. But this position also denies indigenous nations "the opportunity to criticize colonial settlement from the perspective of human rights, or to claim the right to protection as members of disadvantaged minorities,"[61] as both claims rely on the rejected discourse.

Difference and Equality

While democratic society requires a consensus on shared political values, processes and structures, pluralism requires space for difference within these broad parameters.[62] But this pluralism is not infinitely flexible, nor can it encompass all difference: those who invoke cultural values antithetical to liberty and equality (that is, to fundamental human rights) cannot be accommodated.[63] How then are we to take account of the political, cultural and social differences between divergent groups, especially the indigenous in relation to the coloniser, unless there is an ethical standard by which some claims have more significance than others? Avigail Eisenberg has proposed the "difference approach" which privileges identity and related cultural practices.[64] I counter-propose an ethical standard in which the normative value of responsible and contextualized equality is drawn from international standards and implemented in an historically and politically specific context. Similar to Christine Sypnowich, this would take into account the political significance of subordination dictated by forms of identity and by intra-group oppressions, while not precluding an inclusive and emancipatory conceptualization of citizenship.[65]

Respect for fundamental human rights and freedoms, and for other liberating measures in international law, are a contemporary obligation imposed on all political authority. In the context of the "canaries" in question, the fundamental human rights of the excluded women must be guaranteed by the indigenous governments that exist as a matter of right in relation to the colonial state. Both Canada and indigenous governments must respect international law on the funda-

61 Mulgan, "Should Indigenous Peoples Have Special Rights?" 267.

62 Chantal Mouffe, in PLURALT (Plurality and Alterite, a research group based at McMaster University) "On the Itineraries of Democracy: An Interview with Chantal Mouffe," *Studies in Political Economy* 49 (1996), 131-48.

63 Ibid, 136-37.

64 Eisenberg, "The Politics of Individual and Group Difference" and "Diversity and Equality," paper presented at the annual meeting of the Canadian Political Science Association, Laval University, 2001.

65 Christine Sypnowich, "Equality and Nationality," *Politics and Society* 24 (1996), 93-110.

mental human rights of women, and Canada must come to terms with indigenous rights as against colonial interests.

Within cultures and states, boundary maintenance determines membership. Non-members are differentiated by social and legal means. Exclusion,[66] then, is implied in citizenship criteria. Within the "we" community differences from the dominant norm have measurable political and social consequences. It is here that theorists of difference offer the proposition that difference, which is fundamental to identity, is also a defining part of citizenship. In other words, difference is not (merely) in relation to a dominant norm, but is of intrinsic value to the group that shares it, and so attracts protection.[67] But if cultural identity is the primary value for differentiated citizenship, citizenship itself becomes meaningless in terms of relations among individuals and the state, and communities and individuals. The principle of contextual equality, however, can provide a criterion with which to mediate conflicting rights claims.[68]

But difference is not immutable; nor is identity sacrosanct, beyond critique or contestation.[69] Such conceptions of identity are conservative, dependent on unalterable categorization of individuals and of society; they contain the potential for racism dignified as cultural practice. The racial, and therefore racist, construction of authentic membership in community denies the reality that all are contextualized by social relationships and cultural interpretations, not by genetics. Increasingly, communities are flavoured not only by shared origins but by "hybridity": as Edward Said put it, "no one today is purely *one* thing."[70] The Royal Commission on Aboriginal Peoples acknowledged this when it argued that Aboriginal peoples are political not racial groups "which often have mixed compositions and include individuals of varied racial origins."[71]

Constructing politically laden identities as outside the parameters of rights discourse may acknowledge difference, but it also denies transcendence of any particularity by fundamental human rights and trans-cultural solidarities.[72] Yet, subsuming some kinds of difference

66 Or inequality, according to Yasmeen Abu-Laban ("Reconstructing an Inclusive Citizenship for a New Millennium: Globalization, Migration and Difference," *International Politics* 37 [2000], 514-17).

67 Eisenberg, "The Politics of Individual and Group Difference."

68 Sypnowich, "Equality and Nationality," 105.

69 Said, *Culture and Imperialism.*

70 Ibid., 336; emphasis in original.

71 Royal Commission on Aboriginal Peoples, "Partners in Confederation," 29-30.

72 Alan Cairns suggests a similar concern in relation to the royal commission's prescription of nation to nation relationship for future Aboriginal-mainstream relations. This, he argues, sustains separate identities at the expense of commonality, and erodes the solidarity component of a common citizenship and, ultimately, the

into a dominant formula means assimilation; it means definition by the hegemon. This can best be contested by separating the notions of national or state identity from citizenship, and refocusing on citizenship as a differentiated relationship between and among individuals and particular communities and the state, expressed through meaningful public engagement in communities and political frameworks shaping Project Canada, continuously seeking equality in ways that are authentic and meaningful to peoples' lives and visions. This requires that Canadians keep conceptual clarity between citizenship—an elastic term that is being stretched past recognition—and Aboriginal rights, which are rights that precede citizenship in the Canadian state and to which the state's citizenship rights are an addition; and which must be expressed in ways that do not violate the human rights of even some Aboriginal persons.

Citizenship, then, is a public relationship practised among members of the state or national polity as well as with the governance structures of polity itself. Pluralistic citizenship is especially feasible in federal jurisdictions in which law defining community and community interests is separated, yet accommodated within one state. Canada and Aboriginal nations are well equipped to accept the challenge of reformulating citizenship as suggested here.

Conclusion

So what is an excluded Indian woman to do? The standard responses to citizen dissatisfaction with an aspect of the political regime include legal challenge, political activism, partisan activity and building new social consensus. Indian women concerned about citizenship and membership issues have tried all of these, but have not yet found the political leverage to have their concerns ranked high by predominantly white or Aboriginal male politicians, mainstream political parties and colonial courts.[73]

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very impetus to make peace with our colonial past and its contemporary consequences (*Citizens Plus*).

73 For example, the organization Indian Rights for Indian Women emerged in the 1960s to fight against *Indian Act* section 12(1)(b); subsequently, the Native Women's Association of Canada (NWAC) emerged and made the *Indian Act* membership provisions its primary agenda item. The infamous 1974 Supreme Court of Canada decision in (*AG v. Lavell* and *Isaac v. Bedard,* SCC [1974] SSCR 1349), upheld sex discrimination as equality provided all Indian women were equally subject to the same discriminatory provisions of the *Indian Act*. Indian women, primarily from the Tobique reserve, marched to Ottawa to protest the sexist exclusion of women from band politics, policy benefits, and band membership. NWAC also advanced an explicitly feminist analysis, insisting that the male-dominated Aboriginal organizations did not take women's views sufficiently into account in the consti-

Law, democratic mainstream politics, and indigenous politics seem unable or unwilling to contend with the issues raised by this problematic minority. Denied band membership, meaningful exercise of Aboriginal and treaty rights and, perhaps most importantly, denied the right to practise identity by living and raising children in their own communities, the affected women and their children are exiled to the dominant society where, thanks to racism, they are seen forever as "Indian."

Nor will the state apply its emerging view of rights in a way that works to the advantage of these women. Rather, the federal government retreats behind its self-serving rhetoric of respect for "self" government, washing its hands of any responsibility to guarantee these women's rights. Meanwhile, *Indian Act* band governments claim to be governments of First Nations, practising a constitutionally recognized Aboriginal and treaty right which includes control of membership or citizenship. The *Sawridge* pleadings suggest some of these invoke colonial sexist practices as constitutionally protected "tradition." In sum, neither the state nor band governments defended these women with rights discourse, though both use it when it suits them. Neither has affirmed their value as human resources to society. Neither guarantees equality of citizenship by taking the steps needed to permit these women to live in a way that honours their identity and values their participation.

Democracy fails these women. Premised on majority rule, and on the theoretical cultural-neutral and gender-neutral citizen and politician, it is unable to ensure their representation in a political system implicitly premised on their sex and ethnic inferiority. Privileging mythical notions of undifferentiated equality, the ideology grounding Canadian democracy is inherently hostile to affirming rights-bearing specificity, especially where Aboriginal rights may result in constitutional and public policy measures that benefit Aboriginal people in ways not available to non-Aboriginal Canadians; that is, where differing kinds of citizenship result. This hostility has been evident in non-Aboriginal opposition to treaty fishing rights and to land and governance rights sustained by the Supreme Court of Canada.[74]

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tutional negotiations around the Charlottetown Accord. NWAC sued for the right of women to have women's organizations participate, and lost. Also during the Charlottetown era, the National Métis Women of Canada emerged to provide a feminist voice in contradistinction to the National Métis Council. Aboriginal organizations and the First Ministers resisted the inclusion of explicitly feminist political organisations, though they had no problem with the de facto masculinist bias of other representatives (Joyce Green, "Exploring Identity and Citizenship: Aboriginal Women, Bill C-31 and the Sawridge Case" [unpublished doctoral dissertation, University of Alberta, 1997], 66-107).

74. *R. v. Marshall*, S.C.C., 1999, (http://www.droit.umontreal.ca/doc/csc-scc/en) and *Delgamuukw v. British Columbia*, S.C.C., 1999 (http://www.droit.umontreal.ca/doc/csc-scc/en).

To date, Canadian law has failed these women, even with rights discourse foregrounded. The *Lavell* case of 1974, eight years prior to the entrenchment of the Canadian Charter of Rights and Freedoms, is infamous for dignifying sex discrimination as non-discrimination in law. The *Sawridge* case 21 years later sought to define Indian women's sexual equality rights out of existence. Lawmakers fail to see that any law affirming these women's rights must affirm them in their specificity—as indigenous women, part of colonized societies, to whom the state is historically an oppressor and only potentially an ally. While the Charter protections from discrimination on the basis of gender have motivated the federal government to eliminate the most egregious forms of legislative discrimination against Indian women, the measures are inadequate and stem from incomplete analyses that ignore the centrality to these women of their Aboriginal identities and rights, and their right to be fully acknowledged as part of their communities.

Yet citizenship may have the capacity to transcend the contradictions and pitfalls of decolonization in conditions defined by liberal and neoliberal ideology and by the *realpolitik* of contemporary Canada. Even though Aboriginal rights constitute a different kind of right belonging only to members of Aboriginal nations, in addition to other citizenship rights enjoyed by all citizens of Canada, in the final analysis, people are not so incommensurable as to not share fundamental and inalienable human rights. All governments are impositions of authority upon those they govern, no matter how democratic or culturally authentic their processes. Authority must be held accountable for protecting the conditions fundamental to our humanity. In addition to human rights, which may be expressed and practised in different culturally specific fashions, Aboriginal rights must also be protected for all Aboriginal women and men.