

RESEARCH NOTE

BILL C-31 - AN ACT TO AMEND THE INDIAN ACT: NOTES TOWARD A QUALITATIVE ANALYSIS OF LEGISLATED INJUSTICE

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Abstract / Résumé

This paper focuses on the impact of *Bill C-31: An Act to Amend the Indian Act*. It is intended to present the results of some research I conducted in my own community, the Six Nations of Grand River Territory between August to November, 2001 (Cannon, 2004). I am concerned with interview data that addresses such matters as residency by-laws, intermarriage, boundary maintenance struggles and the negotiation of Aboriginal identities. It is my goal to problematize, treat as indispensable and indeed affirm the knowledges I have gathered in relation to *Bill C-31*. I also consider a research program that could work at finding answers to the multiplicity of questions and contradictions introduced by the *Indian Act*.

Le présent article se concentre sur les incidences de *la Loi modifiant la Loi sur les Indiens* (Loi C-31). Il présente les résultats d'une recherche menée par l'auteur dans sa propre collectivité, les Six Nations du territoire de Grand River, entre août et novembre 2001 (Cannon, 2004). L'auteur a collecté des données d'entrevue sur des sujets comme les règlements sur la résidence, les mariages, les luttes pour la démarcation des limites territoriales et la négociation des identités autochtones. L'article vise à cerner les problèmes liés à la Loi C-31 et à mettre de l'avant l'importance des connaissances recueillies au sujet de la Loi C-31. En conclusion, l'auteur examine l'établissement d'un programme de recherche pour trouver des réponses aux questions et aux contradictions multiples qu'a fait naître la *Loi sur les Indiens*.

Introduction

Since receiving royal assent on June 28th 1985, *Bill C-31: An Act to Amend the Indian Act* (S.C. 1985, c.27) has had a profound and sometimes devastating impact on Aboriginal communities across Canada. The legislation itself has led to legal disputes,¹ a host of internal conflicts, and may well lead to intergovernmental conflicts over service delivery and funding responsibilities (Clatworthy, 2003: 87). But what about the formation and transformation of Aboriginal identities (Lawrence, 2003, 2004)? This aspect of the imposed legislation has received lesser attention.

Very little historical research has looked into the negotiation of Aboriginal identities after *An Act to Amend the Indian Act*. This is a peculiar omission given that *Bill C-31* introduced some of the most radical changes in Aboriginal communities. It also stands at great odds with the trend in social science literature to dismantle “the antiquated stereotype of Aboriginal people as passive victims in the era of settlement” and throughout colonization (Brownlie & Kelm, 1994; also Carter, 1999).

To put what I am saying differently, the *Indian Act* and status distinctions need to be examined outside of an oppressor/oppressed dualism that has been common of some academic scholarship. It is difficult to argue the power of the Canadian state as absolute, for example, when many of us have been negotiating the *Indian Act* and Indian status provisions for almost twenty years, and several years beyond. Binary thinking detracts from the way in which Indian status is experienced and negotiated in the everyday social world, and the work that people do—and want to do—in their own communities.² I would like to propose that research involving *Bill C-31* has a great deal to gain by moving beyond binary models of thinking, and by focussing on how status distinctions are negotiated in the everyday social world.

The everyday world has been of great concern to sociologists. According to Dorothy Smith, who develops the historical materialism of Marx before her, the everyday social world is the place where social inquiry ought to begin. The goal of research and sociological inquiry is, thus, to treat as indispensable—and indeed affirm—the knowledges that are held by individuals in the world in which they act, live and know (1990: 52). To do otherwise is to engage in what Smith calls the “ideological practice of sociology”; a process that as she suggests:

[...] ensures that the determinations of our everyday, experienced world remain mysterious by preventing us from making them problems for inquiry. The concept becomes a substitute for reality. It becomes a boundary, a terminus through which inquiry cannot pass. What ought to be ex-

plained is treated as fact or assumption. (ibid: 43)

Smith therefore recommends an approach to inquiry that is very much rooted in the everyday world as people both live and perceive it. In doing so, the work of observation, data collection as well as the dissemination of research and results does not “rewrite the other’s world” or “impose upon it a conceptual framework that extracts from it what fits with ours” (ibid: 25). Rather, “their reality, their variables of experience, must be unconditional datum. It is the place from which inquiry begins” (ibid).

Informed by these sets of understandings, there are a number of questions that might be posed about the everyday world of Bill C-31 as well as the experience of status distinctions. What happened in Aboriginal communities, for example, both before and after Bill C-31 was passed? What sets of challenges did this legislation present to communities? How has it reshaped and indeed transformed people’s understanding of Aboriginal identities? These are some of the questions with which I am concerned in this paper based on some of the research I undertook in my home community, the Six Nations of Grand River Territory. I will discuss this research in greater detail in order to develop a more qualitative research program where the matter of legislated injustice through Bill C-31 is concerned. It is my intention to contribute to an existing body of quantitative research (Clatworthy, 1992, 2003a, 2003b) by drawing attention to—and indeed outlining a framework with which to analyze—the more experiential and interpersonal dimensions of Indian legislation.

The Indian Act, Bill C-31 and the Six Nations Haudenosaunee³

The research that I undertook at Six Nations was partly concerned with gathering the thoughts and views of my study participants on matters involving *Bill C-31*. I set out generally to articulate what the *Indian Act* has meant to the people in the community, and to explore how status provisions have been devastating and divisive when it comes to community relationships.

These challenges are an impending reality in Aboriginal communities today—including Six Nations—especially because of the many lives that have been affected by Indian status provisions. It has also required that First Nations steer a delicate balance between the right to decide on band membership (in the interest of protecting both culture and a land base) and the residency entitlements of out-marrying individuals whose spouses may not be status Indians (see Manyfingers, 1986). There is a history here, but it has not yet been documented.

I asked one of my study participants to share his views on striving to reach the balance I've mentioned, and to offer his perspective on the events leading up to *Bill C-31*. He commented on matters as they unfolded on the reserve after *Bill C-31* was passed. He suggested that developments were more pronounced at the national political level and were really sparked by Mary Two Axe Early—a Mohawk woman from Caugnawaga—who spoke out against the sex-discriminatory sections of the *Indian Act*.⁴ He also had the following to say about the development of a band membership code at Six Nations:

[I]n order to have a [band membership] code...we had to have fifty-one percent of the eligible electors vote, and we told them we can't get fifty one-percent of the eligible electors. There are two problems with Six Nations. First of all, we are so large.... People were all over the world, and...you can't find all these people when they are working in all parts of Canada.... The other issue of course is that the Confederacy never did believe in voting on anything dealing with the government itself, so you weren't gonna get those votes either. So our chances of getting fifty one percent of the electors out was just not there, and we tried to explain that to the government but it didn't seem to make any difference. (pgs.2-3, Interview Transcript #2, 13 August 2001, Six Nations Reserve, Ohsweken, ON)

A membership code was not established at Six Nations in 1985 because a 50% plus one vote could not be attained. But this did not prevent the development of a band residency by-law. Of course, this is only one of the many stories across Canada. What about the many other stories involving band membership codes, and what can be learned by thinking about comparatively about these histories?

According to the by-law passed in 1986, only a registered Indian and band member of the Six Nations shall be entitled to reside on the reserve.⁵ The by-law followed on the heels of *An Act to Amend the Indian Act*, and an unsuccessful attempt by council to pass a "band membership code."

The now seventeen year old by-law originally allowed the community to cope with population increases, and the subsequent strain placed on services following *Bill C-31*.⁶ The idea was to protect a shrinking land base—an ever present reality at Six Nations—by requiring that residents of the Six Nations reserve be status Indians and band members (see *Turtle Island News*, January 30th, 2002: 1). The by-law has been at the centre of controversy on more than one occasion; and in each case, it has threatened to divide, alienate and exclude some Grand River

Haudenosaunee.

During my research, for example, a complaint had been filed under the residency by-law against a non-status woman who had resided on reserve for 22 years with her status Indian husband (The Brantford Expositor, 25 January 2002: A1).⁷ An eviction notice had been issued, and the band council had asked that she leave the reserve. In this case, the by-law had been applied to a non-band member—notably, the spouse of a status Indian man. But the terms of the by-law (however “vague” or “uneven” in its application⁸) have not been restricted to non-Indian women who have married Haudenosaunee men. Eleven years ago, in 1991, a woman was given an eviction notice because—unlike her father—she was not a Six Nations band member (see White, 1991a; 1991b; 1991c; 1992).

These are some of the issues confronting modern day Six Nations, as well as countless other First Nations who have been affected by Indian status provisions. They are issues that need to be dealt with—and that are indeed being dealt with—at the community level, though there is very little qualitative detail in the literature about how. I spent a significant portion of my time trying to document some of this in my research. I also asked people to comment on events leading up to Bill C-31.

In fact, I asked one of my respondents to share his recollection of community politics in the time leading up to *Indian Act* amendments. I had hoped to gain further insight into the way in which Bill C-31 issues were negotiated in the community. I also asked if Chief and Council prior to 1985, or others for that matter ever turned a blind eye to non-Native men or non-Indians living on the reserve. The person to whom I posed that question had this to say:

Well, I don't think there is any question. Like I said, there were people living here on the reserve. I mean we can go back to 1885 and it was like that. You can say the very same thing about 1885. (pgs. 5, Interview Transcript #2, 13 August 2001, Six Nations Reserve, Ohsweken, ON)

That people “turned a blind eye” to non-status people living on-reserve is interesting. If this is true of Six Nations—and elsewhere in Canada—then how successful was the *Indian Act* in legislating women who married non-Haudenosaunee men outside of the status collective in the years preceding 1985? What factors influenced the choices that people made in this regard and why?⁹ Finding answers to these types of questions might help show how some people have been able to maintain a past and present relationship with their communities—an identity—despite the *Indian Act* and other state interferences.

All of these questions go unanswered in the history of sex discrimi-

nation, the *Indian Act* and Aboriginal people in Canada, including the Six Nations Territory. Their importance, however, cannot be underestimated in terms of shedding light on how status provisions have been negotiated between status Indians at the Six Nations in the years preceding *Bill C-31*. I want to consider these issues as part of a more qualitative analysis of colonization, identity (trans)formation, and boundary maintenance struggles.

It is also important to acknowledge people's views on the history of sex discrimination and the *Indian Act*. One of the people I asked about this said nothing of community events or forums from 1973 to 1985 (including the renowned case of Yvonne Bedard¹⁰), but rather, spoke of the people, and an elected band council who may have been willing to champion the rights of out-marrying women. This person also spoke of the people and politics involved in helping to secure the rights of women at the national level, and had the following to say:

There was a women's movement that started—if we remember way back to the 80s—and they were looking for women's rights. And it wasn't Indian rights. That's where everybody kinda gets mixed up. It was not Indian women's rights, it was women's rights, period, across the whole spectrum of the whole country. Discrimination against Indian women was just one part of this big package. And there was a lot of discussion on it, and a lot of heated arguments on this issue. (pgs. 4, Interview Transcript #2, 13 August 2001, Six Nations Reserve, Ohsweken, ON)

The difference between "Indian women's rights" and "women's rights" may seem relatively innocuous. But for some people—women *and men*, and I include myself in this category—there is no real way to separate Indian rights from women's rights unless issues that affect people as status Indians are separated from those that affect people on the basis of a woman's "race," marriage and gender. There is no way to distinguish between these issues unless patriarchal and colonial injustices are thought to have taken place apart from one another historically. I was able to explore some of this history, as well as community events preceding *Bill C-31*.

One of the women I spoke with at Six Nations, for example, held an entirely unique memory of community initiatives—and of framing the issues—than did some of her counterparts. She even remembered writing of her views in response to a call for people to voice their thoughts and views on the development of a band membership code. She spoke of community objections, and her overall recollection of the mid-1980s in the following excerpt:

You mentioned the C-31 issue, I can remember in 1985 before that legislation was passed, we had this whole process in the community... There was gonna be a ratification vote and all this kinda stuff, and we had this call for submissions, about what do you think and stuff. And I can remember writing my submission and I wrote it as "Just-A-Mom," you know? And I wrote it and said that, you know, "Everyone wants to get even, but if we put this thing through, and we don't let our people who marry off come back here, in two generations we're not gonna be here, hello?" And I didn't even get a response. I mean, I didn't get a thank you, how do you do, or nothing. You know? And people have just gone with the prejudices of the day now. I am hopeful that this is gonna change because we are gonna do ourselves in and it doesn't make any sense. I mean, if you look at a population that's a small population surrounded by a larger population, you are gonna have intermarriage, you know? Traditionally, we had a way of adopting in. Like I said...there was a way of including, and training, and learning, and maintaining the society. But the way it is now, its on a path for destruction. Absolute disintegration, and it just makes me ill. (pgs. 19-20, Interview Transcript #5, 15 November 2001, Six Nations Reserve, Ohsweken, ON)

Some people were opposed to *Bill C-31*; especially the idea of letting people who married off come back to the Six Nations community. But even in the 1980s, some people disagreed with that opposition, and spoke of their ongoing disagreement with those who have gone with the prejudices of the day. Intermarriage is therefore something that continues to affect the entire Six Nations population.

There are likely several other views on matters of intermarriage and the hope of overcoming prejudice across Indian reserves in Canada. Moreover, there are likely several instances of people being adopted into communities through "traditional" means. In seeking policy alternatives it will be necessary to explore the thoughts of Aboriginal people on these and other issues in greater qualitative detail. I was only able to capture one of the more favourable views on intermarriage, but it stood in some contrast to the views of others I interviewed.

In fact, one of the people I interviewed had strong feelings about the intermarriage of Haudenosaunee women. I asked this person to comment on the impact of the *Indian Act* on women in general, and the following exchange took place:

Q: Can you tell me about what kind of impact you see the

Indian Act as having had on women? Like, the status sections that required women to lose their status when they married non-Native men?

A: Well the *Indian Act* required that some people lose status as Indians. There were a series of meetings here at Six Nations in the '70s about that issue. At the time, I made quite a statement about my feelings on women who married non-Native men. At the time, I said that only Indian men and women make Indian children. I still have very strong feelings about Indian women who marry non-Indian men. Everyone has a certain thing that bothers them, and I guess that's probably mine.

Comments such as these are not specific to the Six Nations. They express opposition toward intermarriage, and strong feelings about the making of Indian children. But very little is known about these views across Canada, or in what it takes to make Indian children for that matter. If we are to understand and thereby resolve the current divisions that exist in some communities – they are areas that will require further discussion, debate, and qualitative analysis.

There are a fair number of misunderstandings that will need to be addressed in the research I am proposing. It will be important to establish that Aboriginal women who “married out” have never voluntarily consented to a loss of Indian status. Even if women made so-called “choices” when they “married out,” the consequences were different from that of men’s “choices,” and they did not justify the sex discriminatory sections of the *Indian Act*. Even when women were separated from their husbands or widowed, they could not—under the terms of Canadian law, and after 1951—return to the community (as with Yvonne Bedard). These are issues that have played a part in the formation of Indigenous knowledge and identity, including my own.

Of course, not everyone supported *Indian Act* legislation or even the removal of women from the community for that matter. These are thoughts and views that need to be documented in the qualitative research I am proposing. So too will the practices of those who challenge the hegemony of Indian status, or who “turn a blind eye” on those who are non-Indian and living on reserve, many of whom are expected to do so without adequate resources or funding.

Setting a Preliminary Research Agenda

In short, the everyday, material significance of Indian status distinctions will require closer consideration in the sociological literature deal-

ing with Aboriginal people. In order to highlight how the *Act* has affected Aboriginal populations, including that of Six Nations, I suggest that further be learned about intermarriage, as well as *the formation, transformation, negotiation, modification and revocation of Aboriginal identities*. There are a number of questions that might help guide this type of analysis.

On what basis, for example, have people objected to intermarriage; and also, to the prospect of "*Bill C-31* people" returning to the reserve? What role does chronic under-funding, limited resources and a shrinking land base play in fostering resentment, and in the need for boundary maintenance struggles? What kinds of policy or legislative change is possible, and how might the state take better responsibility for the "racial" and gendered "divisions" it took part in creating? In general, how are people—female and male—who have acquired *Bill C-31* status socially constructed as a threat to the community? These are questions that have not been addressed in the literature on *C-31*. But there are additional questions as well.

Consider a recent call for papers by the Status of Women Canada on the matter of unstated paternity. In order to register a child under the *Indian Act*, an application for registration must now be made to the Department of Indian and Northern Development (DIAND). If the parents are married, it must be certified that both parents are status Indians, and both of them must provide the necessary signatures. If parents are unmarried, the father of the child must sign a form declaring paternity in order to authorize registration.

If a woman does not wish to name a father, or if the father is unable (or unwilling) to provide the necessary documentation or does not want to take responsibility for the child, the child is registered as having only one Indian parent. High rates of unstated paternity, especially in Manitoba, Saskatchewan and the NWT (Clatworthy, 2003), have caused many children to be registered incorrectly, under section 6(2) of the *Act*, or not even at all.

But *who are the women that refuse to state paternity across Canada, what are their reasons and why?* What kinds of policy research or recommendations could be made to help amend a patriarchal *Indian Act*, or to improve status registration for women (who once held esteemed positions in some communities) across the Canadian provinces? These are some of the research questions I would like to see developed as part of a more qualitative research program that is responsive to, and respectful of community concerns. But the matter of unstated paternity is not the only issue that requires further investigation. Indeed, further research will also be required of band membership codes.

Why were band membership codes that are invidious toward women, or based on both parents being Indian, adopted in Aboriginal communities? How might the state take better responsibility for amending the issues it presented? What are some of the more just and equitable criteria that bands have either discussed or adopted, and how might these act as models for Aboriginal communities who are concerned with the history of sex discrimination toward Aboriginal women? What types of boundary maintenance struggles are taking place among status Indians and Aboriginal communities in Canada, and what can be learned from them?

These are just some of the other qualitative questions that may be of use to Indigenous peoples and policy-makers where issues involving Bill C-31 are concerned. The research itself is timely, and of key interest to government officials, policy makers, Aboriginal communities and Aboriginal administrators in Canada. I feel I am well positioned to undertake this research as a status Indian, and the direct descendant of a woman who lost (and later) acquired Indian status under the *Indian Act*. It is my responsibility as a person of mixed Anglo-Haudenosaunee heritage—and a man who has been affected by *both* patriarchal *and* colonial injustice in the *Indian Act*—to seek amendment and new ways of thinking about and addressing the current crisis of affairs.

Conclusion

By way of conclusion, I have focused on the impact of *Bill C-31: An Act to Amend the Indian Act*. I have intended to present the results of some research I conducted in my own community between August and November, 2001. The interview data I gathered suggests that there are a number of unresolved issues, especially where matters involving residency by-laws, intermarriage, boundary maintenance struggles and the negotiation of Aboriginal identities is concerned.

I have intended to problematize, treat as indispensable and indeed affirm the knowledges I have gathered in relation to *Bill C-31* and the community with which I am most familiar. In doing so, I have hoped to show the importance of gathering the stories of Aboriginal people where discrimination and injustices created by the *Indian Act* are concerned. A qualitative research program could work at finding answers to the multiplicity of questions and contradictions facing Aboriginal communities in Canada today. I have hoped to show the importance of a more qualitative approach to research involving *An Act to Amend the Indian Act* based on my research, notes and recommendations.

Notes

1. The most notable of legal disputes is that of the Sawridge Band v. Canada. For critical comment and review, see Issac (1995), also Moss (1990).
2. I would like to acknowledge Celia Haig-Brown for the critique of binary thinking that I put forth here. In thinking through the idea of Aboriginal people's resistance, she notes: [R]esistance immediately assumes a hierarchy in which one group supposedly dominates while the other is dominated (oppressor/oppressed; mainstream/marginalized; dominant/subordinate). This...makes far too simple the active and dynamic flow which makes up most people's lives. It also feeds the myth of Western domination as absolute...the work of resistance can detract from the work that people want to do within their communities as their gaze is drawn away from home to refocus on a so-called dominant power (Haig-Brown, 2001: 29).
3. The word Haudenosaunee is used here to refer collectively to the Six Nations people, including Mohawk, Onondaga, Seneca, Cayuga, Oneida and Tuscarora who are sometimes referred to in academic literature as "The Iroquois." The term Iroquois itself is seen as unfavourable, and even unflattering to some Six Nations peoples since it is one that derives from the pidgin language used by Basque and Algonkian traders who—following Cartier's route along the St. Lawrence in the late sixteenth century—referred to the Haudenosaunee as "Hilokoa" or "killer people" (Snow, 1994: 2). Haudenosaunee or "People of the Longhouse" is meant to refer to the distinctive houses in which my ancestors once resided.
4. Section 12(1)(b) of the *Indian Act*—the section that required of women to lose Indian status upon marriage to non-Aboriginal men—was long opposed by Aboriginal women in Canada. As early as 1950, Mary Two Axe Early—to whom my study participant makes reference—spoke out against the contentious section (see Silman, 1987: 13). At the time, however, the issue gained little widespread attention because there was no public venue in which to articulate such concerns. In the late 1960s, the hearings of the Royal Commission on the Status of Women provided such a medium and Two Axe Early submitted a brief to the Commission itself (Borrows, 1994: 9). The Commission's report recommended "that the Indian Act be amended to allow an Indian woman upon marriage to a non-Indian to (a) retain her Indian status and (b) transmit her Indian status to her children" (1970: 238).
5. Bands were given two years, until June 28, 1987 to develop their own

- codes, after which control of their membership would come to rest with the Department of Indian Affairs and Northern Development (DIAND). People with Indian status were also entitled to band membership at that time (see Indian and Northern Affairs Canada, 1991: 27-32).
6. Band membership was not automatic under *Bill C-31*. Rather, those who had lost status under the *Indian Act* were required to re-apply to be put back on the band membership list (see Indian and Northern Affairs Canada, 1991: 30).
 7. Six Nations is currently discussing the development of a permit system wherein non-band-members could apply to live on the reserve (see). For additional background and context, also see *Six Nations of the Grand River Band Council v. Pamela Henderson* (1997: 202-207).
 8. As one journalist reported in a local newspaper during the course of my research at Six Nations "non-Natives are evicted only if someone complains.... Complaints can be made on a whim, or as a result of spite or a neighborhood dispute. [At Six Nations] Complaints are handled by Six Nations elected council, which checks the band membership, and if the name is not there, issues an eviction notice. There is no objective, independent group, [sic] to appeal to. There are no exemptions for hardship cases or for persons who have proven themselves assets to the community. And there's no enforcement." (The Brantford Expositor, 25 January 2002: A5).
 9. For an analysis of cases brought before an historic Six Nations council involving band membership and residency, see Noon (1949).
 10. Yvonne Bedard is a Six Nations woman who, in the 1970s, posed an official legal challenge to section 12(1)(b); and the elected Band Council at Six Nations. This case was heard at the Supreme Court level, along with that of Jeanette Corbiere Lavell (an Anishnabe woman from Wikwemikong Unceded Indian Reserve No. 26 on Manitoulin Island in Ontario) who had also lost status under section 12(1)(b). See *Attorney-General of Canada v. Lavell and Bedard*, [1974] 1 S.C.R., also Weaver, 1974: 55-57).

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