Gender, Sovereignty, and the Discourse of Rights in Native Women’s Activism

In 1876, the Canadian Parliament amended the 1868 Indian Act to establish patrilinealism as the criterion for determining Indian status and all commensurate rights of Indian peoples to participate in band government, have access to band services and programs, and live on the reserves. In 1983 and 1985, several different kinds of Indian women’s constituencies and their allies secured constitutional and legislative amendments that partially reversed the 1876 criterion.

The amendments were not passed easily. Male-dominated band councils and Indian organizations protested vehemently against the women and their allies. They were accused of being complicit with a long history of colonization and racism that imposed, often violently, non-Indian principles and institutions on Indian peoples. This history was represented as being furthered by the women’s appeals to civil and human rights laws, and more particularly to feminism, to challenge the constitutionality and human rights compliance of the Indian Act. Demonizing an ideology of rights based on selfish individualism, and damned for being “women’s libbers” out to force Indian peoples into compliance with that ideology (Silman 1987, 178–89), the women and their concerns were dismissed as embodying all things not only non- but anti-Indian. Indian women’s experiences, perspectives, and political agen-
das for legal reform were dismissed as not only irrelevant but dangerous to Indian sovereignty. The dismissals perpetuated sexist ideologies and discriminatory and violent practices against Indian women within Indian communities. In doing so, they normalized and perpetuated an irrelevance of gender and the disenfranchisement of Indian women in Native sovereignty struggles.

Drawing from Native feminist theories and sovereignty studies, this essay examines the 1983 and 1985 amendments and the activism that led to their development and passage as an instance of the coconstitutive relationship of gender and sovereignty. By looking at how the discourse of rights was mobilized from very different contexts to very different ends by various constituencies of Indian men, women, and their allies, this essay modestly opens the conflicts surrounding gender politics and women’s rights in Native sovereignty movements. I hope to provide a forum for thinking about the kinds of social reformations that are needed to bring about social equity between and for men and women in Indian communities—an equity that is an essential aspect of decolonization and social justice for Native peoples in North America.

Of Rights Contingent

The discourse of rights—international, constitutional, civil, Native—deeply informed the Canadian political landscape in which the 1983 and 1985 amendments were developed and passed. Through rights, various kinds of constituencies—immigrant, minority, women, Native—were able to claim an identity, assert its political significance, and articulate agendas for decolonization and social justice. Recognition of a particular identity by Canada and the international community implied the recognition of all associated rights under the law—that is, immigrants to human rights, minorities, and women to constitutional rights, Natives to self-government and territorial integrity. Rights, then, governed the terms of multiple kinds of social relationships among variously situated groups and individuals, implicating such diverse issues as labor, health care, education, jurisdiction, and property.

Indian women mobilized a specific discourse of rights from the intersections of human and civil rights, feminism, and Native sovereignty politics to historicize and define their goals to end gender-based discrimination and vi-
violence within their communities. Rights to equality, made meaningful by the distinctive context of Native/women’s histories of oppression, shaped how Indian women articulated their political perspectives and agendas for legal reform and social change. In a rights framework that was simultaneously about being Native and women, Indian women’s groups contextualized their experiences of oppression within a particularly Indian history of colonialism and racism encapsulated by the Indian Act, strategically aligned themselves as women with feminists and immigrant and minority women in experiences of state-institutionalized discrimination and community-based violence, and asserted their unique collective rights as Indians in equality with Indian men as a matter of traditional, customary law. Rights, then, functioned for Indian women in defining themselves within multiple historical contexts and identities—as racialized Indians, as tribal, as women, as women of color, as feminists, as international and civil rights activists—with real political agendas and concerns. These rights reflected not only the principles of international human rights laws and feminism but Native women’s cultural beliefs about gender equality, interdependence, and rights to self-governance and territories.

Band governments and prominent Indian organizations likewise mobilized a specific discourse of rights from international and constitutional law in efforts to be recognized as sovereigns with all commensurate rights to sovereignty. In terms of rights, they situated themselves within a particular history of colonialism and racism encapsulated by Canadian law (generally) and the Indian Act (in particular). They also aligned themselves with other Native peoples in struggles for rights to sovereignty. These rights reflected human rights principles of self-determination and Native agendas for decolonization and social justice against ongoing structures and practices of colonialism and racism in Canada.

While seeming to speak the same language, Indian women, band governments, and Indian organizations had very different histories, identities, and political agendas at work in their articulation of rights. These differences are at the heart of their political conflicts over the women’s proposed amendments to the 1876 patrilineal criterion. Often constructed as adversative concepts within Native sovereignty struggles and scholarship, gender and sovereignty are there—in those conflicts and in the amendments that resulted. Gender and sovereignty are in fact mutually definitive in consequential ways to the roles, rights, and identities of women and men in Native
The Indian Act System: Structuring Inequalities

The woman, on marriage, must leave her parents’ home and her reserve. She may not own property on the reserve and must dispose of any property she does hold. She may be prevented from inheriting property left to her by her parents. She cannot take any further part in band business. Her children are not recognized as Indian and are therefore denied access to cultural and social amenities of the Indian community. And most punitive of all, she may be prevented from returning to live with her family on the reserve, even if she is in dire need, very ill, a widow, divorced or separated. Finally, her body may not be buried on the reserve with those of her forebears.

—Kathleen Jamieson, Indian Women and the Law in Canada: Citizens Minus (1978)

Canada’s Constitution Act of 1867 assigned “exclusive jurisdiction” to Parliament over “Indians, and Lands reserved for the Indians” (Section 91, 24). Canada’s Indian Act of 1868 enumerated these powers by defining the laws and procedures of band governments as well as the terms of occupancy and use by bands of trust lands or reserves. It commissioned the Department of Indian Affairs and Northern Development (DIAND) to oversee band government operations and the management of reserve lands, resources, housing, and all related program and funding issues such as education and health care. DIAND agents were also given the authority to remove band officials from office if they felt that the officials had demonstrated that they were not qualified to carry out their duties. Generally, this meant that they had been seen drunk in public, were accused of adultery, or had otherwise broken the law or proven themselves to be of “unchristian character.” Related to this, DIAND had full authority over the Indian Registry that listed by band all of those individuals who were Indian according to the Indian Act. Those qualified as Indian had all commensurate rights as band members to vote in band elections, hold office in band government, live in reserve housing, be employed by the bands, and receive band services.

In an 1876 amendment to the Indian Act, “Indian status” was defined by patrilineal descent. Men with status passed on status to the women that they married, and their children; women with status could not. Status women had
status in the band of their fathers until they married, if they did so. If a status woman married a non-status man, she lost status in the band of her birth. If a status woman married a status man, her status would be determined by his band; for example, if she were status Cree and married a status Mohawk, she would become Mohawk. Upon divorce, she would lose status as Mohawk and not be reinstated as Cree. The only way for a non-status woman to (re)gain status was by marriage. Consequently, many status women refused to marry. The only way for children to gain status was if paternity was declared and the father was a status Indian.

Status men could marry non-Indian, non-status, or status women and extend status to them and their children. A status man, irrespective of whom he married, could never lose status based on who he married. A status man could lose status, however, under the Indian Act’s enfranchisement provisions. Status men were automatically enfranchised as Canadian citizens and lost band status if they served in the Canadian military or were educated in a public school. If a status man was married and/or had children and was enfranchised, his wife and children would also lose band status and be made Canadian citizens (Jamieson 1978). A non-status man could not (re)gain status under any circumstance (Sprague 1995).

The status provisions had a considerable and pervasive impact on Indian peoples. Although the Indian Act defined band government and established the reserves in a seeming affirmation of band rights to self-government and territories, it was designed with the explicit intent of assimilating Indians into Canadian society as hard-working, tax-paying, Christian citizens. It anticipated the eventual and total dissolution of band governments and trust lands. As with all assimilation policies, it was based on an inherently racist and sexist assumption that Indian governance, epistemologies and beliefs, and gender roles were irrelevant and invalid, even dangerous impediments to progress. But in the process of undermining Indian law, land tenure, economics, cultural beliefs, and social relationships in the name of integration, the Indian Act and assimilation policies more generally ended up reproducing the social conditions of subordination and dependence that they promised to end since Indians were quite unwelcome in areas off-reserve.

Some of the most troubling consequences of the act were in the corrosion and devaluation, however uneven and inconsistent, of Indian women’s inclusive participation within Indian governance, economics, and cultural life. This may seem an obvious intent and effect of the Indian Act, and its ideolog-
ical predecessors in federal programs of “Christianization” and “civilization” that sought to make men heads of households and women subservient (Berger 1997). But the difficult issues to understand are in how patriarchal, heterosexist, and homophobic ideologies came to characterize Indian attitudes and practices (Nicholas 1994) and how these attitudes and practices came to define the social conditions of oppression within Indian social and interpersonal relations.

The important conceptual challenge in understanding the impact of these ideologies on Indian peoples is the refusal of a social evolutionary framework in which Indian societies are mapped onto a historical trajectory from the utopic pristine to the tragically contaminated. Two things are true instead.

First, the Indian Act’s provisions for status did not create gender-based inequalities or sexism within Indian communities. The provisions represented and perpetuated a much longer process of social formation in which Indian men’s political, economic, and cultural roles and responsibilities were elevated and empowered while those of Indian women were devalued. Within this process, sexist ideologies and practices were normalized and not “for the first time”—patriarchy, sexism, and homophobia within Indian communities being much older than 1876. However, in conjunction with an entire social structure defined by colonialism, capitalism, Christianity, heteronormativity, and racism, gender inequalities, sexisms, and bigotries of various kinds had come to define Indian social and interpersonal relations by 1876 in consequential and lasting ways.

Second, the painful, confusing, and uneven adoption of these practices and attitudes by Indians is incredibly disconnected from their cultural histories, oral traditions, beliefs, and practices. Generally speaking, the majority of Indian societies were organized matrilineally. Gender norms were informed by a “separate but equal” value of the place of men, women, and other gendered identities within the community. Opportunities for Indian women and other gendered peoples in governance, ceremonial life, and trade afforded them a relatively public, empowered position within their bands and as diplomats and traders with others (Klein and Ackerman 1995).

These social relations and the cultural beliefs on which they were based were most directly targeted by colonization efforts, from the period of early missionization through assimilation. The systematic undermining of everything related to Indian cultural beliefs about gender took its toll on the structure of Indian societies, specifically social and interpersonal relations.
But even as Indian women’s and other gendered people’s roles were being maligned and devalued, men’s were not, at least not within the confines of the bands or on the reserves. Although there was certainly much violence and discrimination directed at Indian men within Canada, the social roles and responsibilities of heterosexual Indian men within bands and on the reserves was systematically elevated over that of women and nonheterosexuals by the institutions of Christianity, capitalism, sexism, and homophobia.

The Indian Act’s provisions for status encapsulated this social formation. With little opportunities for political power and economic self-sufficiency off of the reserve, heterosexual, status Indian men were given these opportunities in band government and reserve life. It is hardly surprising that they took advantage or would come to feel empowered and then entitled to these opportunities.

Thus, the provisions for status contributed to the normalization and legitimation of Indian male privilege within band government—land and resource access and use, social benefits and services, and social politics. The consequences of this privilege are embedded within the assumptions and expectations of status Indian men to the privileges that they were entitled to under the law. Status Indian men came to expect to be privileged and to rely on the material benefits of those privileges; over time they found the law “affirmed, legitimated, and protected” their expectations (Harris 1993, 1713). For even though relative to European Canadian men they were altogether disenfranchised and discriminated against as Indians, status Indian men found in the Indian Act system a relative position of power to which they came to feel and legally be entitled.10 This is indicated in the myriad ways that the sexism of male privilege came to characterize band governments and reserve life. For instance, by the 1960s, only 6 percent of elected council chiefs and council members were women; and, certificates of possession, or the legal documents granting status Indians permission to live in reserve housing, were issued by bands and DIAND officials almost exclusively to men (Krosenbrink-Gelissen 1991; Goodwin 2002).

More painful has been the systematic escalation of violence against Indian women.12 In “Stolen Sisters: Discrimination and Violence against Indigenous Women in Canada,” Amnesty International reports that now well over 60 percent of Indian women have had an experience of sexual violence (Amnesty International 2004; Smith 2005). Further, “A shocking 1996 Canadian government statistic reveals that Indigenous women between the ages of 25
and 44, with status under the Indian Act, were five times more likely than all other women of the same age to die as the result of violence” (Amnesty International 2004, 1). Community-based and interracial violence against Indian women indicates a complex social matrix of oppression within and between Indian and non-Indian communities. This violence registers the prevalence of sexist ideologies and practices in band governments and Indian organizations that have chosen to ignore that it is Indian women who are most often the targets (Valencia-Weber and Zuni 1995).

Reclaiming Indian Women as Indian: Amending the Law

When Liberal Party Prime Minister Pierre Trudeau came into office in 1968, he promised Canadians a “just society.” Drawing from international human rights and civil rights movements in North America, Trudeau’s Canada was to be free of all state-sanctioned forms of discrimination on the basis of race, ethnicity, gender, sexuality, class, religion, and national origin. Coordinated by Jean Chrétien, Minister of DIAND, a series of public forums were held to hear Native peoples’ perspectives on their experiences of discrimination and their recommendations for policy reform. Indians who gave testimony spoke almost unilaterally about the need for Canada to honor the terms of existing treaties, initiate negotiations with untreated peoples, settle all land rights violations, and recognize Indian rights to self-government.

Ignoring the testimonies, Trudeau and Chrétien held to their preconceived conviction that the reported problems of poverty and crime on the reserves resulted not from Canada’s violation of treaties, lack of recognition of Native rights, or ill-executed social programs but from the “special” status and benefits that Natives had under the law. They maintained that these laws produced racial segregation and a lack of viable access to housing, education, and jobs, which, in turn, resulted in Natives being excluded from the rights, privileges, and opportunities afforded to all Canadian citizens. Trudeau and Chrétien’s plan for reform was entitled the “Statement of the Government of Canada on Indian Policy” (1969). It proposed the termination of all treaty obligations within five years, the repeal of the Indian Act, the transfer of all DIAND responsibilities to the provinces, and an affirmative action program to encourage employment opportunities in urban areas.

For Native peoples, the plan represented a stark return to a nineteenth-century anti-Indian assimilationist agenda that sought the total dissolution
of band governments and reserves. Native organizations and governments mounted nationwide protests criticizing Trudeau and Chrétien. Within these protests, the National Indian Brotherhood (NIB) emerged as a leading voice because it represented status Indians who were perceived by Parliament, DIAND, and the majority of band governments as those with legitimate, legal claims to Indian status under the Indian Act and so those whose rights were immediately threatened by the proposal.  

The NIB’s mandate crystallized in Harold Cardinal’s *The Unjust Society* (1969). A Cree from Alberta and NIB president when the organization incorporated in 1969, Cardinal argued that the Indian Act provided the only mechanism in Canada for the recognition of the unique legal status and rights of Indian peoples. Consequently, he reasoned, Trudeau and Chrétien were threatening to take away the only means available to Indians to exercise their “sacred rights” as sovereigns (Cardinal 1969, 140). He and the NIB maintained that under no circumstances should the Indian Act or any related statute be amended or repealed and that any attempt to do so was indicative of a kind of throwback nineteenth-century colonialist, assimilationist, and racist effort to undermine Indian rights. Instead, Cardinal and the NIB argued that Parliament and DIAND should be working with band councils to turn over more control of reserve resources and social services in an affirmation of their rights to self-government.

The criticisms of Trudeau and Chrétien’s proposal by the NIB, other Native organizations, and band governments were effective and garnered much media attention and public support. So much so, in fact, that Trudeau and Chrétien quickly withdrew it. Instead, Parliament and DIAND worked to build a relationship with the NIB in a public show of their commitment to Indian rights. They even allocated thousands of dollars to support the NIB and granted them an official advisory role to Parliament and DIAND. The NIB took the role on and succeeded in getting DIAND to begin transferring the administration of education, health care, and other social services to bands.

Responding to the dominance of men within the NIB and band governments and within national debates about Indian rights to self-government instigated by Trudeau and Chrétien’s proposal, several local, reserve-based Indian women’s groups mobilized to assert a role for Indian women within band governance, the debates, and any legal reforms that might result. The two primary groups that emerged were Indian Rights for Indian Women (IRIW) and the Native Women’s Association of Canada (NWAC).  

While
both organized locally for cultural survivance through various programs aimed at revitalization and preservation, they focused nationally on securing a repeal of the status provisions of the Indian Act. This strategy resulted in three separate lawsuits—Lavell v. Canada (1971), Bédard v. Isaac (1972), and Lovelace v. Canada (1981). In each case, the women challenged the constitutionality and human rights’ compliance of the patrilineal criterion for status in order to confront sexist ideologies and practices within band governments and Indian communities.

Jeannette Vivian Corbiere, a Nishnawbe woman from the Wikwemiking Reserve on Manitoulin Island of Ontario, was a founding member of the Ontario Native Women’s Association and one of the elected vice presidents of NWAC. In 1970, she married David Lavell, a non-Indian journalist from Toronto. Almost immediately, she received notice from the local DIAND superintendent that she lost her status by marrying out and was consequently no longer entitled to live on the reserve. In 1971, Lavell filed suit. Her argument was that the Indian Act’s status provisions violated Canada’s Bill of Rights’ prohibition against discrimination on the basis of sex. Judge Grossberg of the Ontario County Court dismissed the case on the grounds that Lavell, despite the loss of her status by marrying out, had acquired full and equal rights with all other Canadian women. As such, he found, Lavell was not deprived of any human rights or personal freedoms contemplated within the Bill of Rights and was actually fairing better than those Indian women who married in. Lavell petitioned to the Federal Court of Appeals and won. The appellate judges found that the Indian Act had resulted in different rights for Indian women than those for Indian men when they married out. They concluded that the status provisions of the Indian Act contravened the Bill of Rights and consequently recommended its repeal.

Meanwhile, Yvonne Bédard followed suit. Bédard, an Iroquois from the Brantford Reserve in Ontario, had married a non-Indian and lived with him off-reserve for six years until they separated, at which time she returned to the reserve to live in the house that she inherited from her mother. In 1971, Bédard was evicted by the Council of the Six Nations Indians, the ruling government of the reserve, although DIAND had informed them that under a 1951 amendment to the Indian Act, bands could make exceptions to the status rules for residency. Making the same argument that Lavell made, Bédard secured an injunction from the Ontario High Court prohibiting her
eviction from the reserve. The Supreme Court granted leave to an appeal. Bédard’s case followed Lavell’s to the Supreme Court (Goodwin 2002).

In the years pending the Supreme Court’s ruling, fierce criticisms of Lavell and Bédard were made within Indian communities (Silman 1987) and by the NIB and band leaders (Jamieson 1978; Holmes 1987; Krosenbrink-Gelissen 1991; Nicholas 1994). Not only Lavell and Bédard but also their diverse supporters were accused of being complicit and even conspiring with the kinds of colonialist, assimilationist, and racist ideologies and political agendas of the Canadian government and DIAND officials aimed at undermining Indian rights to self-government. In disturbing ways that echoed their criticisms of Trudeau and Chrétien’s proposal, Indian men charged the women with being a part of a long history of colonization and racism that imposed, often violently, non-Indian ideologies and institutions on Indian peoples. This history was epitomized by the women’s appeals to civil and human rights laws, and more particularly to feminist movements and principles of gender equality, to challenge the constitutionality and human rights compliance of the Indian Act.

Demonizing an ideology of rights perceived to be based on selfish individualism and personal entitlement, and damned for being “women’s libbers” out to force bands into compliance with this ideology (Fiske 1990, 1993; Krosenbrink-Gelissen 1993; McIvor 1995; Silman 1987), the women and their concerns and experiences of discriminatory and violent sexist practices within their communities (Jamieson 1978; Holmes 1987; Monture-Okanee 1993; Krosenbrink-Gelissen 1994; Goodwin 2002) were dismissed as embodying all things not only non-Indian, anti-Indian. Indian women’s experiences, perspectives, and political agendas for reform were perceived as not only irrelevant but dangerous to Indian sovereignty movements. As the NIB and band governments continued on in their advisory roles with Parliament and DIAND while lobbying against Lavell and Bédard, the exclusion of women and their concerns from national politics and discussions of Indian sovereignty was represented as normal and necessary to the survival of Indian rights (Faith et al. 1991; Chiste 1994; Krosenbrink-Gelissen 1991; Crenshaw 1995).

Throughout, leaders of the NIB and band councils maintained that the Indian Act—the embodiment and guarantor of Indian rights to self-government—was not obligated to conform to either the terms or the principles of Canada’s Bill of Rights. They shored up a definition of self-government that
depended solely on the degree to which bands enjoyed governmental non-interference. The entire Indian Act system was made essential to establishing and protecting band government operations and so the single most important factor in the affirmation of Indian sovereignty. As Cardinal asserted:

We do not want the Indian Act retained because it is a good piece of legislation, it isn’t. It is discriminatory from start to finish. But it is a lever in our hands and an embarrassment to the government, as it should be. . . . We would rather continue to live in bondage under the Indian Act than surrender our sacred rights. (Cardinal 1969, 140)

Thus, any amendment to the Indian Act would completely contravene the means and abilities of bands to exercise their “sacred rights” to self-government under the Indian Act.

Cardinal’s invocation of “sacred rights” within his assertion of band self-government is important. It associates rights, and the character of the bands from which they derive, with a sovereignty that is inherent and immutable. Rights derive not from international or constitutional law but from the character of the bands as integral, historical polities. In other words, the rights are sacred because the bands are sacred. It was an entirely transparent discursive move to make bands — and themselves as representatives of the bands — immune from political reproach. If bands did indeed possess “sacred rights,” then Canada dared not play, even in jest, with the only law that preserved them. Indian women, by implication, were likewise put on notice. By challenging the Indian Act, they were undermining not only the rights of bands but also the sacred character of bands as sovereigns.

The rhetoric was successful. In March 1973, Canada’s Supreme Court found that the provisions for status in the Indian Act were exempt from the Bill of Rights and ruled against Lavell and Bédard. This finding left Indian women with no legal recourse in Canada to challenge the Indian Act’s provisions (Jamieson 1978; Holmes 1987; Silman 1987; Goodwin 2002). As a result, the United Nations’ Human Rights Committee (HRC) agreed to hear a complaint against Canada by Sandra Lovelace, a Maliseet woman from the Tobique Reserve in New Brunswick.

Janet Silman’s (1987) seminal collection of interviews with some of the Maliseet women of the Tobique Reserve shows how commonplace Indian women’s experiences of poverty, domestic violence, and dismal housing conditions had become by the 1960s. The interviews with status and non-
status women spanning three generations repeat incidents of their being kicked out of their homes by male partners claiming rights of occupancy against them; suffering physical and sexual abuse; being forced to live in overcrowded conditions with friends and relatives; being forced to live in debilitated structures and public buildings without water, heat, or proper insulation; and generally being without the financial means to support themselves and their children (Silman 1987, Part 1). These intolerable living conditions brought the women together to organize for change in the spring of 1977, on the specific occasion of a woman and her daughter’s eviction from their home by a temperamental husband/father. Through the women’s strategizing for fair and equal access to housing, they entered the international political arena as they realized (or remembered) that it was the Indian Act’s provisions for status that were being used to justify the discrimination of housing by the DIAND, their council, and status men on the reserve. Reversing these provisions became the main objective of their organizing efforts (Silman 1987, Part 2).

Meeting with indifference at DIAND, opposition by their council, and open hostility at the reserve toward themselves and their children, the women decided to file a complaint against Canada with the HRC in the winter of 1977. Their immediate objective was to compel their own and other band governments to provide them with equal access to housing and social services, including health care, jobs and job training, and education on the reserves. Their long-term goal was to get the provisions for status within the Indian Act repealed. To these ends, they persuaded Lovelace to be the one in whose name the complaint would be filed.

Lovelace had married a non-Indian, moved off of the reserve, and had a son with him. When she divorced and returned with her son, she found that she had lost status and that the band was unwilling to provide her with reserve housing as a non-status Indian. Because her family’s situation was already crowded, she and her son lived in a tent on reserve lands, a particularly brutal situation given New Brunswick winters. In her complaint, Lovelace argued that through the enforcement of the Indian Act’s criteria for status, Canada had discriminated against her rights to live and participate in the community of her birth on the basis of her sex. She claimed the status provisions were in violation of Canada’s Bill of Rights and all relevant UN human rights accords that Canada had entered into as a signatory, including the International Covenant on Civil and Political Rights (Silman 1987, 176; Lovelace 1997, 26–28).
It was not until July 30, 1981, that the HRC was able to render a verdict, having finally received the requested documentation from Parliament and DIAND (Silman 1987, 176). The HRC found Canada in violation of the International Covenant on Civil and Political Rights because the Indian Act denied Lovelace equal treatment under the law. The ruling was felt to be a victory by the Tobique women because it shamed the band council and local DIAND superintendent, who were forced to account for questionable expenditures of federally allocated housing and other funds at Tobique and to address the needs of Indian women and their children. Both issues agitated existing tensions among the women, the band council, and DIAND (Silman 1998, Part 2). But the ruling resulted in slow and incomplete changes at the reserve.

*Lovelace v. Canada* severely embarrassed Canadian officials as Canada was in the process of patriating from England. Had Canada not been so, Parliament would have probably paid only lip service to the HRC’s conclusions. However, being found in violation of international human rights accords in their treatment of Indian women on the occasion of their patriation from the Crown and revision of their Constitution and Bill of Rights produced a unique situation in which Parliament and DIAND felt compelled to save face by pushing the NIB and band governments for an amendment to the Indian Act. This effort ran contrary to the agendas of the NIB and the majority of band governments, which did not want any such amendment as it had come to represent colonial, assimilationist, and racist agendas working to undermine Indian sovereignty. Serious political differences among Parliament, DIAND, the NIB, band governments, and Indian women’s groups and their supporters defined the legal and social contexts in which the amendments to Canada’s Constitution Act of 1982 and the Indian Act via Bill C-31 of 1985 were developed and passed.

These amendments were negotiated within the broader context of a series of First Ministers’ Conferences held in Ottawa, Ontario, from 1983 to 1987. Commissioned by the Constitution Act, the purpose of the conferences was to provide a forum for the enumeration of Section 35(1), which provided that “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.” Incredibly important to defining the parameters of aboriginal and treaty rights in Canada, the conferences were to include participation from the prime minister, first ministers from each of the ten provinces, and invited “representatives of the aboriginal peoples of Canada” (Constitution Act [1982], Section 35[1]a).
Band councils, the NIB, and organizations representing the Inuit and the Métis were invited as “representatives of the aboriginal peoples.” All aboriginal women’s groups were excluded. Two reasons were given. One was that they were “special interest” in membership and mandate, that is, they were not composed of representatives of all aboriginal peoples and were only concerned about “women’s issues.” The second reason was that Parliament and DIAND intended to address “women’s issues” in the process of amending the status provisions of the Indian Act; by implication, the participation of women’s groups in the conferences would be superfluous (Krossenbrink-Gelissen 1991, 2, 148).

While rejecting the government’s position on the need for an amendment to the Indian Act, the NIB and majority of band government leaders agreed with Parliament’s exclusion of Native women’s groups from the conferences. Women and “women’s issues” were negated as irrelevant to the serious political matters of “aboriginal and treaty rights” that the conferences were intended to address.

The dismissiveness by bands and the NIB over the need for the participation of Indian women within the conferences continued a particular intellectual genealogy of sovereignty. As Vine Deloria Jr. (Lakota), Glenn T. Morris (Shawnee), and S. James Anaya and Gerald Taiaiake Alfred (Mohawk) note in their respective works, sovereignty is rooted within European and North American ideologies and practices of colonialism and imperialism (Deloria 1979; Morris 1992; Anaya 1996; Alfred 1999). It was made meaningful within the historical contexts of the theologically inspired efforts of empire building. Through it, powerful nation-states “of the West” claimed rights of conquest over terra nullius and “infidels” in virtually every other part of the world. Ideologically, it was hierarchical, exploitative, and militaristic, and it defined a power that was based in force and a nation that was established by force.

Of course, meanings are never static. While Native peoples have certainly changed what sovereignty means over time, now linked in important ways to human rights principles of self-determination, its ideological origins make it impossible to forget that its significance cannot be assumed and is not innately benign or righteous. Its use is inherently political (Barker 2005).

Nowhere is this more apparent than in the simultaneity of band and NIB assertions of sovereignty, the dismissal of gender issues as irrelevant to matters of self-government, and the negation of the need for Indian women’s
participation within the conferences. Bands and the NIB defined a sovereignty that recalled its nationalist origins and absolutes while reinscribing its masculinist authority both in and as the wholly political (that is, in and as the public). The discursive links were positional and deliberate: they allowed bands to position themselves as sovereigns absolute in relationship to Canada, and of band leaders to represent themselves as masculine rulers in a political sphere that excluded women and femininity. Both positions deflected political and social accountability. Ironically, this sovereignty was embedded within the same ideologies that the bands and NIB were criticizing Canada and Indian women for as inherently colonialist and anti-Indian.

Undaunted by the bands and NIB’s assertion of the irrelevance of women’s rights to self-government, Indian women’s groups and their allies worked to secure a gender equity clause within Section 35 (1) and an Indian Act amendment. The aim was to ensure that any enumeration of “existing aboriginal and treaty rights” would be understood to apply equally to women and men (Krossenbrink-Gelissen 1991, 147–56). With the political momentum of the Lovelace decision behind them, the women garnered public support from Parliament, DIAND, and a range of international and national constituencies for their proposal. However, bands and the NIB stood fast against them. The argument, again, was that any women’s rights qualification of Section 35(1) would undermine true Indian sovereignty. The women were criticized, again, for being anti-Indian and anti-sovereignty by trying to force non-Indian feminist and civil rights ideologies on the bands. As Maliseet elder Shirley Bear remembered, “They even stated. . . . ‘It is our tradition and our culture if we want to discriminate against women” (quoted, Silman 1987, 198–99).

This time, however, the NIB’s and bands’ polemics backfired. Instead of convincing Parliament, DIAND, the courts, and the public on the need to silence the women in the name of affirming Indian rights to sovereignty, government officials began to distance themselves from the NIB and band leaders who were being represented in the press and by multiple civil and human rights organizations as advancing sexist attitudes and discriminatory practices against women. The impact of this representation was reflected immediately in the NIB’s name change. As the annual planning meetings were initiated in 1982 for the First Ministers’ Conferences, “The Brotherhood,” as it had come to be called, changed its name to the Assembly of First Nations (AFN). However, the AFN’s continued rejection of gender and women’s per-
perspectives as irrelevant to matters of self-government failed to deflect government and public concerns about sexism within the organization and band governments. It ended up garnering further support for the women. Therefore, when the first conference took place March 15–16, 1983, at the Ottawa Conference Center, the only two items on the agenda were self-government and gender equality. Accordingly, the first day was devoted to self-government and the second to equality, a program mirrored at the 1984 and 1985 conferences.

Because of opposition from the majority of first ministers, the bands, Inuit, and Métis were not able to gain enough support on their proposal to entrench self-government as an “existing aboriginal and treaty right” (Constitution Act, Section 35[1]); see Krosenbrink-Gelissen 1991, 150). However, they were able to secure the following two enumerations on a Constitutional Accord on Aboriginal Rights that would be signed by the majority of delegates and later ratified: “(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit, and Métis peoples of Canada. (3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired” (Ibid.). These amendments were made with the intent of qualifying who would be considered “aboriginal peoples” for purposes of being covered by Section 35(1) and to allow for the possibility of additional land claims settlements that would need to fall under the same protections as those previously signed.

During the second day of the conference, and representing the diverse solidarities that the women had formed, elected representatives from NWAC spoke through the seats of the Native Council of Canada (NCC) and the provinces of Manitoba, Ontario, New Brunswick, Saskatchewan, and Québec. They maintained that gender equality was a self-government issue and that any true Indian self-government would not have a problem with the traditional principle of equality between men and women.21 They proposed that any amendment to Section 35(1) ought to be made subject to the Charter on Rights and Freedoms of the Constitution Act, which guaranteed equality to all persons living within Canada.22 Through several personal testimonies of their experiences of gender discrimination on the reserves, they made a compelling case that the reinstatement of those who had been unjustly disenfranchised by the Indian Act’s status provisions ought to be explicitly provided for as a constitutional right (Krosenbrink-Gelissen 1991, 152–53; Fiske 1995).
While the Inuit and Métis delegates supported the women’s arguments and their proposals, the AFN and band representatives did not (Krosenbrink-Gelissen 1991, 153–54). The AFN and bands upheld their position that equality would be sufficiently addressed by the affirmation of Indian self-government and that any further discussion of “women’s issues” was irrelevant (Holmes 1987, 6; Krosenbrink-Gelissen 1991, 154). At the end of the second day, an AFN delegate made the following statement at a press conference:

We would like to make it clear that we agree with the women who spoke so forcefully this morning that they have been treated unjustly. The discrimination they suffered was forced upon us through a system imposed by white colonial government through the Indian Act. It was not the result of our traditional laws, and in fact it would not have occurred under our traditional laws. We must make it perfectly clear why we feel so strongly that we must control our own citizenship. . . . The NIB maintains that “equality” does already exist within the traditional “citizenship code” of all First Nations peoples. (Krosenbrink-Gelissen 1991, 154)

The AFN attempted to indict the “white colonial government . . . imposed through the Indian Act” as the source and cause of gender inequalities within Indian communities. In a dizzyingly forgetful argument of their own position with regards to the “sanctity” of the Indian Act, the AFN argued that women were undermining Indian sovereignty by seeking a gender enumeration to Section 35(1) and amendments to the Indian Act that would force non-Indian ideologies on band governments (Holmes 1987, 6). They failed to convince. In a complicated response by Parliament and DIAND, informed by the Lovelace decision and government efforts to distance themselves from the histories of sexism then so firmly associated with the Indian Act, officials supported the women’s proposals for a gender enumeration of Section 35(1). Confronting mounting political pressure, the AFN and majority of band leaders relented. The resulting amendment was added: “(4) Notwithstanding any other provisions of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons” (Constitution Act, Charter on Rights and Freedoms, Section 28).

Lilianne E. Krosenbrink-Gelissen (1991) writes that despite their success in getting the amendment approved, the apparent sexism and political obstinacy of band and AFN representatives toward the women and with regards to women’s rights left the women’s groups and their allies feeling that the
“equality clause” would not have the appropriate force it needed in changing the social conditions on the reserves for Indian women (Krosenbrink-Gelissen 1991, 156). The women, therefore, focused on securing further enumeration of Section 35(1) that would define gender equality as an explicit aboriginal right applying to all other (156). Because of band and AFN opposition, they were not successful. The second conference took place March 8–9, 1984. On the first day, Parliament delegates agreed to delineate “aboriginal rights” by self-government. However, only the first ministers from Manitoba, Ontario, New Brunswick, and Nova Scotia agreed. All other provinces, representing the majority of Canada’s population, rejected the proposal (157).

On the second day of the 1984 conference, gender equity was addressed. NWAC leaders spoke through the seats of the NCC, Ontario, Québec, and New Brunswick. The government made a second proposal based on the recommendations of NWAC and others to enumerate equality as an “existing” right that would cover all other rights. However, the AFN and band representatives objected so strenuously that no agreement could be reached, and the second conference closed without any resolution (158–59).

At some point during or immediately following the 1984 conference, it seems that the AFN realized that they would have to address the matter of gender before they could focus their attentions on securing support for a self-government enumeration of Section 35(1). This change was informed in some measure by pressure from Parliament and DIAND, both of which wanted all discrimination of Indian women removed from federal statute before the Constitution Act’s Charter on Rights and Freedoms became law on April 17, 1985. Because Section 35(1) had been successfully enumerated to affirm gender equality, they pushed aboriginal organizations and bands for cooperation in getting an amendment to the Indian Act passed before April 17, 1985 (156–64).

In response to this pressure, the AFN began to work toward a compromise with NWAC. They invited NWAC to a Special Legislative Assembly in Edmonton, Alberta, in May 1984. The result was called the Edmonton Resolution, a joint resolution that affirmed the AFN’s support of NWAC’s proposal to remove the patrilineal requirement for status from the Indian Act and reinstate all women and their children who had lost their status or had never had it recognized as a result of its enforcement. For NWAC, the “first-generation cut-off rule” was a much compromised measure. They conceded to AFN fears that opening up the registries to everyone who had ever lost or been denied status as a result of the Indian Act had the potential of severely and negatively af-
fecting band governments and their land rights. In exchange of the AFN’s support of NWAC’s efforts to secure an Indian Act amendment, NWAC agreed to support the AFN’s efforts to secure an enumeration of Section 35(1) that would affirm aboriginal rights to self-government.3

The third conference took place April 2–3, 1985. The third, and final two conferences in 1986 and 1987, ended without any enumeration on self-government. Once joined, aboriginal peoples presented a strong case to the assembly but faced an equally strong resistance from the provinces to secure self-government as an “existing right” (Hawkes 1985, 28; Krosenbrink-Gelissen 1991, 190).

During the 1985 conference, Parliament expedited the process for an amendment to the Indian Act with the support of the AFN and women’s groups (Holmes 1987, 7; Krosenbrink-Gelissen 1991, 159–60; Sanders 1983). The House of Commons Standing Committee on Indian Affairs held five weeks of public hearings in February and March to work out the specific provisions for Bill C-31. The bill was submitted to Parliament and given the Royal Assent on June 28. It took effect retroactively to April 17 in order to bring the Indian Act into compliance with the charter (Green 1985; Moss 1990; Sprague 1995).

Bill C-31 essentially provided for a “first-generation cut-off rule” for reinstatement. Those women who had lost their status as a result of marrying out, and their children, as well as those who had been automatically enfranchised as Canadian citizens, could apply to have their status reinstated.24 As Joan Holmes observes in a study commissioned by the Canadian Advisory Council on the Status of Women, about 60 percent of those registered by 1987 were first-time applicants; 40 percent were reinstatements of those who had lost their status by marrying out or enfranchisement, with the vast majority of these applications being submitted by women (Holmes 1987, 14–15; see also Manitoba Aboriginal and Northern Affairs 2000). According to DIAND’s Indian Registry, as of December 31, 2002, there are 704,851 status Indians in Canada.25 About 17 percent are those reinstated under the terms of Bill C-31 and about 60 percent live off-reserve (Furi and Wherrett 1996).

The bill also allowed bands to assume control of their own membership codes, with the effect of separating DIAND’s Indian Registry (which maintains a record of status Indians) and band registries (which records members of bands). Individuals applying for reinstatement also have to apply for band membership, as one does not secure the other.
As of 2002, 253 of 614 bands had established membership codes of their own. In a 2000 study by Manitoba Aboriginal and Northern Affairs (MANA), 15 percent of bands had adopted criteria for membership with some form of unlimited one-parent inheritance, 11 percent with restrictive two-parent inheritance rules, and 5 percent with some form of a blood quantum criterion (MANA 2000).

Not all of those who have applied to be registered as status Indians under Bill C-31 have wanted to return to the reserves. Many have families, jobs, and educational opportunities off-reserve but have desired formal status “so that they will have a recognized link with their band, and be able to return if their circumstances change, when they retire, or for burial. It is also important to them that their children have rights as band members” (Holmes 1987, 18).

The lack of interest in returning or moving to the reserves was and is owing to the intense political conflicts over “Bill C-31s” (the name given to women who have been reinstated under the amendment). Since 1985, a few bands have stopped providing services to non-status Indians and have refused to extend those same services to newly registered women and their children: “Women have been denied fishing licenses; their children have been refused admittance to reserve schools; medical services have been denied; and bands have refused to grant construction permits or permission to sell land to reinstated women” (Holmes 1987, 19).

Six bands in Alberta—Sawbridge, Sturgeon Lake, Ermineskin, Enoch, Sarcee, and Blackfoot—challenged Bill C-31 in the Supreme Court, arguing that the bill was in conflict with the Constitution’s protection of “existing aboriginal and treaty rights” because, by obligating membership codes to conform to Canada’s Bill of Rights, it denied the rights of bands to determine their own laws as an act of self-government (Holmes 1987, 21). The Supreme Court reminded the bands that Bill C-31 allowed them to maintain their own registries of members and upheld the constitutionality of the human and civil rights principles on which the bill was based. However, the challenge illustrates how divisive issues about women’s rights and the relationship of women’s rights to concepts of self-government remain within Indian communities (Faith et al. 1991).

From Rights to Reformation

Indian women, band governments, and Indian organizations articulated very different kinds of rights for themselves in working to achieve their different
political ideas about and goals for sovereignty. The rights that resulted reflected deep political and cultural conflicts within Indian communities over issues of culture, identity, and tradition, particularly over what was considered to be traditional when it comes to women’s roles and responsibilities. Oftentimes, within these conflicts, rights proxied for tradition. So that, the political debates over women’s rights were simultaneously about the terms and social conditions of tradition. That is, debates over the kinds of rights Indian women and Indian men had as Indians were simultaneously debates about what traditions—what cultures and identities—were considered authentically Indian. So that, Indian women’s assertions of their rights to everything from reserve housing and employment to full participation in band governance and national politics were an attempt to reclaim a particular kind of tradition that valued women’s “separate but equal” place in Indian communities and politics. This countered the assertion of many Indian men, particularly those in band government and national Indian organizations, who wanted to claim a tradition that justified the exclusion of Indian women and the negation of gender issues within sovereignty politics. Men who wanted, in other words, to affirm the privileges of men in reserve, band, and national politics.

The rights that resulted from these different political perspectives and agendas reflected a conflicted social matrix of sexism within Indian communities. Therein, Indian women were disenfranchised and dismissed, their concerns represented as politically irrelevant and even dangerous to Indian self-government and territorial integrity. Indian sovereignty was defined likewise in troubling and troubled ways—as an absolute, as wholly unchallengeable, as sacred, as hyper-masculinist, with Indian men representing themselves as final authorities over Indian politics, both politically and culturally. The effect of such representations was that existing, exploitative relations of power between Indian women and Indian men were perpetuated as culturally authentic and integral, even traditional and certainly necessary to Indian sovereignty.

Patricia A. Monture (Mohawk) analyzes what she calls the “gender silence” within Canada’s Supreme Court cases mitigating the application of the Constitution’s Section 35(1). She asks:

When your goal is protecting Aboriginal and treaty rights in a legal system that is not your own, do you choose to silence issues of gender difference if
giving voice to your gendered cultural differences might further jeopardize (as in Van der Peet) your claim to Aboriginal and treaty rights? Do you ignore the place of your women for the sake of securing recognition of your claims to governance and land (as in Delgamuukw)? (Monture 2004, 53)²⁷

Monture argues that these questions are a result of the colonialism of Canadian law. I would insist further that the questions are not merely a legacy of colonialism but that it is exactly the discourse that constructs gender and sovereignty as conceptual or political opposites that is at the heart of the problem. The argument that a choice has to be made between securing women’s rights or Indian sovereignty has rationalized Indian women’s disenfranchisement and disempowerment within Indian communities. The idea that by affirming Indian women’s rights to equality, Indian sovereignty is irrevocably undermined affirms a sexism in Indian social formations that is not merely a residue of the colonial past but an agent of social relationships today.

Monture focuses her analysis of Supreme Court judgments on “the consequences of not taking gender into account in decisions that focus on First Nations governance and land relationships” (Monture 2004, 52). For her, this failure results from a lack of understanding about the centrality of gender in Native law, such as the fact that women had central roles within traditional forms of governance and agriculture. But gender is not silent or disappeared within these judgments. Rather, gender is made to appear in particular ways that reaffirms the sexist ideologies and practices that have established and maintained existing relations of power between Indian men and Indian women on the one hand, and between Indians and Canada on the other hand. In other words, because gender and sovereignty are co-constitutive, gender is a definitive aspect of the concepts, debates, arbitrations, and agendas of sovereignty even if Indian women are not a category of the discussion. Gender is always present, even if Indian women are silenced by insult or reduced to be proverbial audience members in the public forums of political debate.

In other words, the entire legal framework of the Indian Act has been based on ideologies of gender invested in establishing and protecting the status and rights of Indian men over Indian women. It does this even in places not specifically addressed to the status or rights of Indian men and Indian women. So, of course, women’s concerns and activities are not going to
be pronounced. But gender and women have not disappeared from the political or analytical scene; rather, gender and women have been made over to appear irrelevant in the normalization of the privileges, benefits, activities, and voices of status Indian men—so much so that, as Monture so rightly observes, Indian women’s traditional governance roles and agricultural work are not protected under the law as are men’s leadership and hunting and fishing practices. This does not mean that gender is absent; it means that the kind of gendering taking place is one that privileges and benefits the power and activities of men. Women are there, but they and their concerns are just being made over to appear complementary, subordinate, or irrelevant: as if in the provision of band government, Indian women are naturally being provided for; as if in the protection of band reserve rights, women are naturally being protected; as if in the affirmation of hunting and fishing rights, women’s activities are naturally being affirmed.

The forced absorption of Indian women’s experiences, perspectives, and agendas into the interests of status Indian men is exactly why the discourses of rights mobilized by Indian women, band governments, and Indian organizations during the 1983 and 1985 amendments articulated such conflicting notions of gender and sovereignty. They have continued to do so throughout the 1990s in a myriad of other legal cases, including Courtois v. Canada (1991), Native Women’s Association of Canada v. Canada (1992), Sawridge Band v. Canada (1995), Goodswimmer v. Canada (1997), and Corbiere v. Canada (1999). The kind of sovereignty defined by bands and Indian organizations has taken for granted the fact that by entrenching Indian rights to self-government and lands, any possible concern that Indian women might have would obviously be taken care of. When Indian women have emphatically said no and asserted that it would not and has not been that way, band governments and Indian organizations have interpreted that to mean an anti-sovereignty perspective. Because gender has been understood to be subordinate to sovereignty, Indian women have been perceived as putting their own selfish, personal interests before those of the collective.

But Indian women have been saying something entirely different. They have been saying that the structure of inequalities produced by ideologies and practices of sexism are not okay. They have been saying that the normalization of their disenfranchisement is not okay—not okay because it does not reflect Indian cultural beliefs about gender and not okay because it does not
reflect Indian women’s agendas to (re)assume their public, participatory roles within the governance and social life of their communities.

The kind of political cross-talk over gender politics that took place most publicly in the 1983 and 1985 amendments has percolated throughout Canadian Native politics ever since. The main impediment to any lasting legal reform for Native women seems to emerge and function within a discursive divide between gender and sovereignty. This has affected thinking about what rights mean for Native peoples in relation to Canada and the international community as well as the kinds of legal reforms necessary to entrench gender equality for Natives within federal, constitutional, treaty, and band law.

It has often been assumed within Native activism and scholarship that there is a fundamental, almost organic, conflict between individual and collective rights at the heart of these matters (Guerrero 1997). Marie Anna Jaimes Guerrero (Juaneño/Yaqui) argues that individual rights stem from ideologies of individualism defined by and imposed from European and North American colonialism, nationalism, and civil rights. She argues that individual rights, and the individualisms from which they derive, force the inclusion of Natives into a broader category of “American” as minorities or ethnic groups. This forced inclusion erases the unique political status of Native peoples as sovereigns by subsuming Natives as individual citizens with civil rights under the authority of colonial states such as Canada and the United States, where Native political freedoms are measured by individual experiences of civil rights. Guerrero argues that sovereignty, however, defines Native peoples as political collectivities with collective rights to sovereignty. This definition derives from international law and human rights accords that associate “peoples” with all commensurate rights to self-determination (Anaya 1996). Sovereignty and self-determination situate Natives under international law as “collective nonstate entities” (Wilmer 1993, 164) with measurable rights to self-government, territorial integrity, and cultural autonomy (Anaya 1996).

Val Napoleon (Cree/Saulteaux/Dunneza) posits that,

The aboriginal political discourse regarding self-determination would be more useful to communities if it were to incorporate a practical and developed understanding of individual self-determination. In other words, an individual perspective on self-determination could perhaps shift collective self-determination between rhetoric to a meaningful and effective po-
litical project that engages aboriginal peoples and is truly inclusive of aboriginal women. (Napoleon 2005, 31)

Napoleon defines “individual self-determination” by the “freedom” and “autonomy” of individuals to be “self-making” and suggests that “manifestation of a person’s self-determining autonomy is through relationships with others” (36). She argues that the dichotomy between the individual and the collective is false and has been used within Native communities to override the rights of Native women. For her, what is needed is an appreciation of the centrality of the individual to the collective, for the way that they constitute each other, and for a notion of “collective self-determination” that affirms the inclusion of all individuals and their rights to self-definition.

Guerrero’s and Napoleon’s writings open some interesting questions about Native conceptualizations of what it means to be a collective political entity, what defines the individual, what rights are implied by the collective and the individual, and the politics of gender throughout. Guerrero shows how discourses of ethnicity and civil rights have been mobilized to erase the unique political history of Native peoples as sovereigns. What she does not do is trouble her concept of sovereignty.

Since the founding of the United Nations, sovereignty has been associated with the human rights of self-determination as a collective status and set of rights enjoyed by “peoples.” Within international and national politics, Natives have laid claim to their status as “peoples” with all of the legal implications for asserting their collective human rights to sovereignty as self-determination. Can Native groups claim and assert that status and those rights without any obligation to the principles of human rights on which the United Nations and international law is based? Can they assert their rights to self-government and territories under constitutional and federal law without any obligation to the principles of civil rights on which those constitutions are founded?

S. James Anaya (1996) observes that part of the difficulty in political debates over the nature and consequence of Native nationhood and citizenship has been about power, and perhaps more specific, about the power to govern. If the power to govern is located within the nation, the potential is for the affirmation of political and cultural distinction, but the danger is its evolution into totalitarianism. If the power to govern derives from citizens, then it is measured by the degree to which individual citizens enjoy real political,
economic, and cultural freedom, equality, and participation. The discursive inflection of citizenship through ideologies of individualism, with all of the implications it has had for producing a masculine patriotic nationalism, has resulted in a problematic understanding of rights. Rights have assumed the entitlement, privilege, and prominence of men to the subordination of women. It is, after all, the self-made man who has dominated narratives of American politics. Napoleon argues that the individual is a key component of the collective. It is a collective that recognizes this cannot lay claim to a power that is absolute or that operates free of any ethical, moral, or humane obligations. It is grounded in a sense of shared political and cultural affiliation and so responsibility to all individuals within.

In the specific contexts of the 1983 and 1985 amendments, and in subsequent political activism by Native women in Canada, Indian women’s groups such as NWAC did not define women’s rights to equality to the exclusion or negation of the collective rights of their bands to self-government and territorial integrity or to the negation of the rights of Indian men. They asserted that fundamental to the character of their bands were women’s issues and gender because the collective is only as sound as the status and rights of the individuals that comprise it. If the disenfranchisement or exploitation of women defines the collective, or is exercised in the name of the collective, then the collective will perpetuate sexist ideologies and practices.

Empowering Native women means not only extending rights of freedom, equality, and participation to them, or punishing institutions or individuals who discriminate against them. These strategies have proven to fall short of addressing the long-term realities of gender inequality. The 1983 and 1985 amendments, for instance, ended up working as mere additions and not reformations of the law or social conditions in Indian communities. They added women and their children as band members and added gender equality as a legal provision but into a preexisting legal and social structure that remained fundamentally sexist. They failed, therefore, to alter in any substantial way the political, economic, or social roles of Indian women within reserve and urban communities or to (re)empower the gender-based traditions and customs of Indian governance and territorial occupation.

I do not mean to imply that Indian women and their children should not have been reinstated as band members or that gender equality should not be incorporated into every aspect of the law. Rather, the failure of any real substantive transformation of women’s social conditions is reflected in the defini-
tion, investment, and protection of the privileges of status Indian men within band governments and reserve lands and resources. “Additive reforms” cannot and do not change or transform these types of legal structures or social relations, as evidenced by the continued exasperation of Indian women’s groups in Canada at the lack of any real changes in women’s lives in the aftermath of the constitutional amendment of 1983 or post–Bill C-31 of 1985.

Real reformation must involve and result in a radical, affirmative repositioning of the legal and social status of women in respect to men. Men must be partners in this process. They must be willing to give up the assumptions, privileges, and benefits that they have inherited from a system based in sexism; take responsibility in their interpersonal relations for histories of discrimination and violence against women and children; and work to (re)empower women and their children within their communities and families. These are neither easy nor self-evident necessities within a legal system and social network that have worked so hard at subjugating Indian people to the still colonial powers of the state and negating gender as a non-issue and women’s perspectives as irrelevant. The decolonization of Native governance and lands, therefore, must be concurrent. Only as viably self-determining communities will Native peoples be able to revitalize and reform their cultures and relationships with one another.

In sum, it is quite simple what must be done: (1) the affirmative empowerment of women in band government, Indian organizations, and on- and off-reserve communities; (2) the affirmative validation of gender-based traditions and inheritance customs in Indian governance and territorial occupation, including full participatory and property rights for women; and (3) the decolonization of Native governance and lands. The real measure of these affirmations—and women’s and men’s partnerships in them—will be the end of violence and discrimination against women and their children in Indian communities as well as the negation of any legacies of their tolerance in the law or in interpersonal relations. These will prove to be the hardest things ever done.

NOTES

1. Indian, Métis, and Inuit are the three legal categories of aboriginal or First Nation peoples in Canadian law. This essay is focused on the politics of Indian gender and sovereignty. I use the term Native when addressing all three and/or including all Native peoples in what is now Canada.

2. For the proliferation of scholarship on the amendments, begin with Fiske 1995; Grant 1994; Green 1985; Hawkes 1985; Holmes 1987; Jamieson 1978; Krosenbrink-


4. For similar attempts, see Krouse and Howard-Bobiwash 2003, particularly Janovicek 2003.


7. See Crossland (1982) for some provocative interviews with status Indian women who refused to marry for fear of losing status and all commensurate rights to live and participate in reserve life.

8. Under Section 6(2) of the Indian Act, the children of two successive generations of status and non-status parents are not entitled to become status Indians.


10. Another layer of historical context is, of course, the way that the roles and responsibilities of Indian men had been so dramatically transformed by colonial processes. See, for instance, Nicholas (1994), who suggests that Indian men came to identify with patriarchy because of how colonialism had stripped them of their once empowered positions within Indian communities as leaders, traders, and providers.

11. As Goodwin (2002) observes, the consequences of the certificates being issued to men are that women seeking help for themselves and their children at shelters against abusive male partners are often punished by band councils, the women finding themselves evicted from their homes when they return.

12. Very little study or reporting has occurred on violence against other gendered peoples within Indian communities throughout North America.

13. Read about NWAC’s Sisters In Spirit Campaign at http://www.sistersinspirit.ca/.

14. Treaty Indians, particularly organizations representing the Métis, were likewise mobilized into political action by the proposal. Their efforts paralleled those of the NIB’s. See Miller 1991, 233. The NIB had origins in the National Indian Council (NIC), which represented all First Nation peoples in Canada. Apparently, the NIC experienced a period of contention among treaty Indians, Métis, and non-status Indians over the scope of its political objectives. The result was the reforma-
tion of the NIC into the NIB and the Canadian Métis Society (CMS), which later became the Native Council of Canada (NCC), representing non-status Indians and Métis (Miller 1991, 232). Other organizations that had nationwide prominence at the time included the Inuit Tapirisat of Canada (ITC) and the Inuit Committee on National Issues (ICNI), both representing Inuits, and the Métis National Council (MNC), representing Métis.

15. IRIW was incorporated in 1970; NWAC was incorporated in 1974. The Inuit Women’s Association was founded in 1984 to “ensure their input on national issues of concern to aboriginal peoples in Canada, and to ensure their participation in federal policies and programs” (quoted from their Web site at http://www.pauktuutit.ca/, accessed December 11, 2005). The Métis National Council of Women was incorporated in 1992 to address the unique legal and social issues confronting Métis women, including cultural preservation and treaty rights (see their mandate at http://www.metiswomen.ca/, accessed December 11, 2005).

16. The 1951 amendment to the Indian Act permitted bands to issue housing, or permit the continued occupancy of housing, to Indian women who lost status by marrying out. Bands almost never took advantage of the provision (Goodwin 2002).

17. The women found solidarity with multiple configurations of status/non-status, feminist, religious, student, and civil and human rights groups and individuals (see Silman 1987).

18. Bands were often the only employer on the reserves and as time went on became the sole administrator of certain social services and education programs.


20. For an analysis of why women’s issues were substantively central to the debates, see Native Women’s Association of Canada 1992a, 1992b; McIvor 1995.

21. The Maliseet women’s group and women from Québec not affiliated with NWAC were also present at the conference as delegates. Though they differed on the specifics of how the Indian Act ought to be amended, they shared the conviction that equality had to be entrenched within any enumeration of “existing aboriginal and treaty rights” in order to reverse the patterns of discrimination ingrained within band government practices (Silman 1987; Krosenbrink-Gelissen 1991, 152).

22. For analyses of Native women’s rights in the charter, see Nahanee (1993) and Turpel (1989).

23. Their concession was apparently quite controversial, and several women publicly criticized them for giving in too quickly to the AFN (see Krosenbrink-Gelissen 1991, 156–61).

24. The bill did not address several important issues of discrimination within the status provisions. See Holmes 1987; MANA 2000.

25. See DIAND’s Web site for updated information on the number of bands and registered Indians in Canada (www.ainc-inac.gc.ca).

26. What is interesting about these challenges, and something that Indian women’s
groups have not fully addressed, is that several of the bands involved in the suits were traditionally patrilineal. By amending the Indian Act in such a way that no gendered criteria can be used to determine membership, the law restricts the abilities of not only patrilineal but matrilineal bands from codifying criteria that reflect their own gendered traditions. The question becomes whether or not such a restriction is necessary given how entrenched men’s privilege and women’s disenfranchisement has become within band law and reserve politics, and what it means that in the political objectives of many women’s groups cultural revitalization is still very much a part of the mandate.

28. See also cases involving the politics of race, including Raphael v. Montagnais du Lac Saint-Jean Band (1975); Desjarlais v. Piapot Bond No. 75 (1989); Jacobs v. Mohawk Council of Kahnawake (1998).
29. See also Wilkins 2002; Kauanui 2002; Barker 2002.
30. For a fuller analysis of the category of peoples in international law, see Barker 2004.

WORKS CITED


Grant, Agnes. 1994. “Feminism and Aboriginal Culture: One Woman’s View.” Canadian Woman Studies 14 (Spring), 56–57.


160 joanne barker


