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Gender, Race, and Policy: Aboriginal Women and the State in Canada and Australia

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Article abstract

This article examines the history of colonial and national policies towards indigenous peoples in Australia and Canada during the 19th and 20th centuries. It is specifically concerned with the ways in which such legislation affected Aboriginal women. In attempting to provide a comparative assessment of the "statutory subjugation" of Aboriginal women, the article examines the law's definition of identity and band membership; enfranchisement and assimilation; personal autonomy (marriage, divorce, sexuality, motherhood); private and personal property; and political reorganization. It concludes that gender and race were key determinants of government policy in both countries, and that under the Canadian Indian Act and Australian Aboriginal Acts, women, in particular, suffered a great decline in status and severe limitations of autonomy. But the failure of state policies to bring about the complete degradation of Aboriginal women in particular, and Aboriginal peoples in general, suggests that there were forces operating to "destabilize ... hegemonic colonial control." Competing colonial values, collective resistance of Aboriginal societies, and the individual contestations of both colonizer and colonized, in the end, undermined imperial objectives.

Gender, Race, and Policy: Aboriginal Women and the State in Canada and Australia[1]

Ann McGrath and Winona Stevenson

VERY FEW ATTEMPTS have been made to write international comparative studies of the history of colonial and national policies towards indigenous people. In the case of a comparison between Australia and Canada, such studies have the potential to reveal and inform us about shared historical experiences and legacies, their related meanings, differences, and mutual influences. In the history of both nations, the British government and British "settlers" played major roles in the original dispossession of the Aboriginal peoples. Both nations eventually became and continue to be part of the British Commonwealth. British settlers soon numerically

[1]The approach of this chapter was partly accidental. In the initial Conference papers from which this paper emerged, each author focussed upon the study of both representations and subsequent policy towards Aboriginal women. But due to Winona Stevenson's extensive involvement in community issues the following year and the priority she awarded them, she was unable to complete her section of the combined paper. This version was collated by Ann McGrath, and thus contains some opinions and assessments which may be particular rather than shared, but the Canadian sections are all closely based upon Stevenson's excellent conference paper. On the one hand, it would have been fitting to combine, as we first hoped, a comparative historical view of representations in order to consider their relationship to policy making. An expanded version of Ann McGrath's conference paper appears as A. McGrath, "'Modern Stone Age Slavery': Images of Aboriginal Labour and Sexuality," in A. McGrath and K. Saunders with J. Huggins, eds., *Aboriginal Workers* (Sydney 1995). On the other hand, it is 25 years since such studies as C.D. Rowley's breakthrough work on Australian Aboriginal policy, *The Destruction of Aboriginal Society* (Canberra 1970) appeared and the study of policy surely warrants a second visit and reappraisal in the light of subsequent scholarship.

Ann McGrath and Winona Stevenson, "Gender, Race, and Policy: Aboriginal Women and the State in Canada and Australia," *Labour/Le Travail*, 38 (Fall 1996)/*Labour History*, 71 (November 1996), 37-53.

predominated over indigenous people, though in Canada this was complicated by the strong role and presence of the French.

Recent histories of indigenous peoples have focussed upon studies of a cultural, ethnographic kind or upon the ways they were represented by white colonizers. Studies of discriminatory policy, driven by social justice concerns, were the dominant "Aboriginal history" in the 1970s, but by the 1980s these were out of favour because they presented history only "from above." Although the Aboriginal people themselves were marginal to their subject matter, such histories gave the impression they were putty which could be shaped according to the changing whims of white rulers. Nobody asked Aboriginal people what they remembered. Then a new generation of historians began to search for Aboriginal perspectives, turning to oral history, linguistics, anthropological insights, and sociological paradigms such as accommodation, resistance, and retention. Culturally different reactions and perspectives came to be emphasized more. Aboriginal people in Australia and Canada rejected the non-indigenous monopoly on the production of historical texts. In their view, the "appropriation" of their history was another dishonest colonialist act. They started to debate what Aboriginal history should be and who should write it. Some indigenous people received university training in history and subsequently challenged and enriched mainstream history by providing Aboriginal perspectives. A volatile debate continues as to whether non-Aboriginal people have any role to play in Aboriginal history. Amongst Aboriginal people, views vary regarding the best medium for their own history and even what constitutes "authentic Aboriginal history." Many contend that their more traditional historical forms such as song, dance, and stories are more valid than published forms. In colonial contexts, it is obvious that, history, like the very land itself, will continue to be contested ground.[2]

The need for collaborations between indigenous and non-indigenous historians seems the logical way to write about an interactive as well as contentious past. Such partnerships have inherent difficulties, many of which relate to past legacies. In one case, the white author Diane Bell was strongly criticized by a group of Aboriginal female writers, partly because of the educational differences between the two "authors," the publication venue used, the dominant voice, and the topic chosen — that of rape within Aboriginal society.[3] Who really chose the shape of the article?; whose words were they?

In *The Middle Ground*, American historian Richard White explained that his book was only "incidentally" a study of "the staple of the 'old history' — white policy toward Indians." He introduced the volume as the "new Indian history,"

[2]Ann McGrath, *Contested Ground: Australian Aborigines under the British Crown* (Sydney 1995), Ch. 10.

[3]J. Larbalestier, "The Politics of Representation: Australian Aboriginal Women and Feminism," *Anthropological Forum*, 6 (1990), 143-57; D. Bell, "A reply from Diane Bell," *Anthropological Forum*, 6 (1990), 158-65.

because it placed Indians at the centre, seeking to understand the reason for their reactions. But also, he wrote, it was a study of Indian-white relations "for I found that no sharp distinctions between Indian and white worlds could be drawn."[4] In his historical vision, the putty melds together rather formlessly, allowing for endless freeform possibilities rather than a set, legalistic arrangement. At a time of cultural resurgence and identity-based politics, a historian would have difficulty finding an indigenous historian who would agree to collaborate in work using the "freeform model." Such a problem did not arise with this chapter, partly because of its focus on imposed policy and upon impact rather than interaction. Such a slant tends to point to the hard-edged binary world of colonizer and colonized which is of more immediate explanatory appeal and utility in contemporary political battles. And as our paper reveals, indigenous policy-making was all about drawing such sharp distinctions. The colonizers devised the legislation while the indigenous people were the ones whose life stories and inner beings subsequently wore its indelible markings. Tarred with their patriarchal inequalities, imperialism and colonialism drew their darkest lines along boundaries of gender.

This essay is a preliminary overview, more ambitious in what it tries to cover than it what it attempts to do with the material, but it does, for the first time, survey and offer some tentative comparisons between indigenous policies in Australia and Canada during the 19th and 20th centuries. It begins with a consideration of the laws which subjugated Aboriginal women, including definitions of identity, citizenship, personal, family, community and political rights, and the policy of assimilation.

The Statutory Subjugation of Aboriginal Women

Missionaries provided the state information about the lives and conditions of Aboriginal people that justified the colonial enterprise and sanctioned the wholesale attack on Aboriginal cultures. Not only did Canadian missionaries provide the ideological rationale for the subjugation of Aboriginal peoples, they had direct input into the development of federal Indian policies. Australian missionaries were also invited to supply expert testimony on Aborigines at government enquiries, from the British Select Committee into Aborigines of 1837 onwards and were influential voices in policy reviews until the 1970s.[5] Australian biologists, ethnolo-

[4]R. White, *The Middle Ground: Indians, empires, and republics in the Great Lakes region, 1650-1815* (Cambridge 1991).

[5]House of Commons, "Select Committee on Aborigines (British Settlements)," *Parliamentary Papers*, no 424, 1837. Here the missionaries emphasized the vices caused by free contact with the "lower classes" of white settlers, especially emphasizing their moral concerns about sexual relations and alcohol. See also R. Broome, *Aboriginal Australians* (Sydney 1982) and J. Woolmington, ed., *Aborigines in Colonial Society: 1788-1850* (North Melbourne 1973).

gists, doctors, and anthropologists also advised Australian governments, but the state made no effort to recruit Aboriginal advice or consult with them.

Between 1876 and 1951, the Canadian federal government imposed a series of regulations intended to impose patriarchy and coerce Aboriginal women to conform to the regiments and edicts demanded by local missionaries and Indian agents. The authority under which the federal government based its coercive powers was the 1867 British North America Act (BNAA). Section 91(24) of the BNAA gave the federal government of Canada exclusive jurisdiction over "Indians, and Lands reserved for Indians." The first piece of legislation passed under this authority in 1868 consolidated all previous regulations concerning Indian status, lands, and revenues, and established the bureaucratic organization of the Indian Department. In 1876 the Indian Act was passed which extended the powers of the state and imposed more stringent regulations affecting all aspects of Indian life and Indian land management. From then on, the process of statutory female subjugation was intensified as new regulations were passed which discriminately undermined the traditional roles, authorities, and autonomy of Aboriginal regulations that directly affected Aboriginal women.

Due to its more regionalized political structures, Australian legislation is more difficult to disentangle. The British Colonial Office shaped the earliest policies, then the several colonial governments, which were federated into six states and the Northern Territory in 1901, held independent jurisdiction over Aboriginal people. While sometimes policies differed regionally, they generally followed similar patterns. Aboriginal matters were managed by police and prison departments, by health departments, and separate offices known variously as Office of Aboriginal Affairs, Native Welfare, and so forth. Colonial development and law dispossessed Aborigines of all their land and most of their economic self-sufficiency, so humanitarians demanded that crown land be set aside for them. Protectionist policies were introduced in most states by the late 19th century, when it was thought Aborigines would soon die out. Ameliorative solutions included blanket and ration handouts, and segregationist containment, with Aboriginal people forcibly moved away from traditional lands to reserves. By the 1950s, policies changed to assimilationist, emphasizing cultural conformity with white Australia, and more spending on housing, education, and welfare for those who complied.

Only after 1967 did the Australian federal government start to widen its powers in respect to Aboriginal policy. Although Commonwealth initiatives, including the work of a separate department of Aboriginal affairs, have increased since the 1970s, when policies of "integration" and "self-determination" were espoused, federal governments remained reluctant to intervene in states issues. This changed dramatically, however, with the 1992 Mabo ruling of the High Court, which resulted in the Keating Labor government drawing up the first national land rights legislation in the Native Title Act (1993).

Prior to the Mabo judgement, Australia had never officially recognized that Aborigines occupied the land prior to white settlement; the land had been colonized on the basis of *terra nullius*, or unoccupied land.[6] There had been no formal negotiations or treaties with Aboriginal people and they therefore had no treaty rights. Any assistance provided was therefore on "humanitarian" grounds defined not as a right but as charity or kindness.

State regulations that directly affected Aboriginal women in Australia and Canada will be discussed under the following categories: definition of identity and band membership; enfranchisement and assimilation; personal autonomy (marriage, divorce, sexuality, motherhood); private and personal property; and political reorganization.

1. Definition of Identity and Band Membership

Perhaps the most oppressive and controversial legal manoeuvre of the Canadian federal government was to give itself the power to define who was, and who was not, an Indian. As early as 1850 the colonial legislatures took it upon themselves to define Indians but it was not until 1869 that definition by patrilineage was imposed. According to the new definition, a person was defined as an Indian if their father or husband was an Indian. By the stroke of a pen Indian women and their children could be denied their birth right as tribal members depending on whom they married. This provision not only reduced the number of status Indians the government was responsible for, it also imposed European patrilineage, and elevated the power and authority of men at the expense of women. Traditional lineage systems, many of which followed the female line, were unilaterally replaced by patriarchal lineage and Indian women were penalized for marrying outside their tribes. Indian men could marry whomever they chose without losing their status as Indians and their wives, whether they were Aboriginal or not, automatically acquired their husband's status and membership, as did any children of such marriages. The result was a major disruption of traditional kinship systems, matrilineal descent patterns, and matrilocal post-marital residency patterns. Furthermore, it embodied and imposed the principle that Indian women and their children, like European women and their children, would be subject to their fathers and husbands. In 1951 this regulation was made more stringent by denying women the right to band membership and band annuities upon marriage to a non-Indian. Under law, she in fact ceased to be an Indian. This definition remained in effect until revisions were made to the Indian Act in 1985.

Australian colonial legislation also went to great lengths to define who was "Aboriginal" with no regard for indigenous people's opinions, and only since the 1970s were Aborigines given rights to have a say in self-definition. As in the Canadian case, the 1897 Queensland legislation excluded from Aboriginal status

[6]A. Frost, "New South Wales as *terra nullius*: the British denial of Aboriginal land rights," in S. Janson and S. Macintyre, eds., *Through White Eyes* (Sydney 1990).

those women married to a non-Aboriginal man, those in lawful employment or permitted to live away from a reserve.[7]

Whereas male leadership was incorrectly assumed to be the sole form of political authority amongst Aborigines, there was no emphasis on patrilineage in earlier official Australian definitions. This was probably because the lack of treaties diminished the state incentive to limit the numbers entitled to benefits. It was not until the introduction of land rights legislation such as the Northern Territory Land Rights Act (1976) that the question of lineage became problematic. The male bias of anthropology was reflected in advice to the preceding Woodward Commission and in land claims hearings, where the early cases were put together around the assumption that only patrilineal descent was recognized by the Act.[8] The wide interpretations permitted by some well-read Land Commissioners, the employment of female field officers and expert witnesses, as well as feminist insights into anthropology have since enabled some cases of matrilineal descent to be seriously considered. However, the Land Commissioners have all been white males, so that female claimants have been forced into the uncomfortable, and they believe personally dangerous, position of having to publicly reveal secret ceremonies and information forbidden to men. In the Northern Territory, the land councils have remained male dominated as have the authorities concerned with sacred sites. At the higher echelons, this is also the case in land councils in most other states.

Earlier Australian legislation, especially in the first decades of the 20th century, revealed an obsession with a racial rather than band or tribal lineage. Degrees of "racial purity" were categorized in notions of "caste" and "blood" rather than male descent lines. According to personal ancestry, Aborigines were defined as "full-blood," "half-caste," "quadroon," or "octoroon." Sometimes all categories were included in the terms of Aboriginal legislation, at other times they were specifically excluded on the basis of caste, or subject to additional regulations and greater surveillance due to their "white blood." In late 19th century Victoria, lighter skinned Aborigines were the target of "dispersal" policies and, in order to save the public purse, were not permitted to remain on Aboriginal reserves, whereas in Queensland, they were subject to the same strict control as "full-bloods," and not permitted to leave reserves. In the Northern Territory, especially from the 1920s, they were subject to much greater surveillance, usually being removed from Aboriginal communities and not permitted to grow up with their own families.[9]

Racial concerns were heightened by Australia's proximity to Asia and the self-consciousness of being one of few white settler nations in the Pacific region.

[7]H. Reynolds, *Dispossession* (Sydney 1989), 197; *Queensland: The Aboriginals Protection and Restriction of the Sale of Opium Act of 1897* (Brisbane 1897).

[8]For a pivotal discussion of Aboriginal women's traditional social and land relations, see D. Bell, *Daughters of the Dreaming* (Sydney 1983).

[9]See A. Markus, *Governing Savages* (Sydney 1990); A. McGrath, *Born in the Cattle: Aborigines in Cattle Country* (Sydney 1987).

Growing nationalistic feeling before and after federation, coinciding with the heyday of the eugenics movement, gave the issue particular prominence in the first three decades of the 20th century. Due to the masculine nature of the frontier and the patriarchal state's relative success in guarding white women, inter-racial sexual relations usually involved Aboriginal women and white men. But the fathers rarely took responsibility for their offspring. Aboriginal families usually cared for the children, though, as will be elaborated below, the state regularly intervened and took over the role of father.[10] When an Aboriginal woman married a non-Aboriginal man, in most states she could no longer live on an Aboriginal settlement or gain any of the benefits provided for Aboriginal people.[11]

After the already devastating impact of British invasion, the forced relocations on reserves further disrupted traditional political structures of Aboriginal clans. Until the 1970s, Aboriginal people were denied self-management. The few exceptions include the Torres Strait Islanders of far north Queensland and the Cape Barren Islanders of Tasmania. The Torres Strait islanders were considered superior on the racial scale because of their village-based as opposed to hunter-gatherer lifestyle, and the Cape Barren Islanders had also taken up community farming. Descendants of Aboriginal women and sealers achieved considerable freedom, partly due to a lack of specific Aboriginal legislation in that state and the belief that "true" Tasmanian Aborigines were extinct. The fact that they were ignored by past state legislation has left its own legacy of identity and definition problems. Elsewhere, Australian Aboriginal communities were lorded over by government-appointed managers or missionaries. Stranded in state-run institutions, they suffered much intervention into their personal lives. As in Canada, the managers of reserves and other authority figures enforced codes which made Aboriginal women subject to their husband's authority.

2. Enfranchisement and Assimilation

The destruction of tribal organization, cultural transformation, and the eventual assimilation of all Indian peoples was the primary goal of the federal Indian Department in Canada — enfranchisement was the means selected to achieve it. These regulations determined that Indians could be accorded the rights and privileges of Canadian citizenship once they met certain critera used to determine their degree of "civilization." These critera included the ability to read and write in English and French, freedom from debts, and sound moral character, which was attested to by the local minister or Indian Agent. Incentives were offered in the form of individual land grants and a lump sum payment to any Indian who met the

[10]P. Grimshaw, M. Lake, A. McGrath, M. Quartly, *Creating a Nation* (Ringwood 1994), ch. 12.

[11]J. McCorquodale, "Aborigines: A History of Law and Injustice," PhD thesis, University of New England, 1985; Grimshaw, *et al.*, *Creating a Nation*. See Rowley, *The Destruction of Aboriginal Society*.

requirements. Upon enfranchising, the individual was required to give up their Indian status and any claims to reserve lands and band benefits.

Australian Aborigines were in a similar position, though they were not awarded such lucrative incentives. Aborigines "exempted" from the legislation received the right to pensions and wages of other Australians, the right to drink alcohol, vote, and handle their own money. But the price was high; once granted this probationary citizenship, they were not permitted to associate at all with Aboriginal relations, were denied residence on reserves or the few benefits accruing due to Aboriginal status. Any slight transgression against "civilized" ideals, which included visiting relations or sharing a beer with them, would lead to removal of their exempt status, a fine, or prison sentence.[12]

The impact of enfranchisement provisions on Aboriginal women in both Canada and Australia was severe. Prior to the granting of suffrage for white women, only Aboriginal men could be enfranchised. In the case of Indians after the granting of votes to women, the men were given the unilateral authority to enfranchise their dependents — wives and children. Women were officially designated as dependents whose status as Indians could be unilaterally and irrevocably enfranchised by their fathers or husbands. This regulation was a major affront to women's autonomy because women had no authority or recourse if their fathers or husbands "sold" them out of status. It seriously undermined the matrilineal descent rule of many tribes by giving men authority to decide whether or not their families would retain membership in the band. The enfranchisement provisions remained in effect until 1985.

Although Australian Aboriginal men had the right to vote in the colonies of South Australia, New South Wales, Victoria, and Tasmania after the introduction of manhood suffrage in the 1850s, they were rarely informed of this.[13] Women were denied this right until the gradual introduction of women's suffrage from 1894. Under the Commonwealth Constitution of 1901, Aborigines were specifically excluded from being counted in the census and the Commonwealth was excluded from exercising specific powers over them. Although Aborigines with the right to vote in their respective states (as in Canada, usually only those categorized as "civilized") were also entitled to vote federally, this was not well known, and indeed, their rights to vote were gradually eroded and effectively denied by various test cases during the decades of the 20th century.[14] Although a

[12]A. McGrath, "Australian Citizenship, Rights and Aboriginal Women," in R. Howe, ed., *Women and the State* (Bundoora 1993); H. Goodall, "Aboriginal History and the Politics of Information Control," *Journal of the Oral History Association of Australia*, 9 (1987).

[13]P. Stretton and C. Finnimore, "Black fellow citizens: Aborigines and the Commonwealth franchise," *Australian Historical Studies*, 25 (1993), 522.

[14]Stretton and Finnimore, "Black fellow citizens," 521-35. See also Tom Clarke and Brian Galligan, "'Aboriginal Native' and the institutional construction of the Australian citizen 1901-48," *Australian Historical Studies*, 26 (1995), 523-43.

1948 Citizenship Act gave all Australian-born residents citizenship status, this was not effectively true in terms of Aboriginal civil rights. It was only after a strong Aboriginal-led campaign for full citizenship rights that Aborigines gained Australia-wide enfranchisement and the 1967 Referendum is remembered as the turning point.[15]

Citizenship was also enmeshed with different issues, including the right to drink alcohol in pubs and access to other public facilities such as swimming pools. It was intricately tied up with notions of patriarchal authority and power. Unfortunately the combination of dominant models of alcohol consumption and western-style marriage, coupled with extreme economic and social disadvantage, led to oppressive circumstances for Aboriginal women, including greater domestic violence. Consequently the women have often been skeptical of the advantages of "citizenship," equating it with alcohol abuse and male privilege over female and family concerns.[16] State employment regulations concerning Aborigines led employers to avoid paying women by classing them as dependents of the men, even when working for cattle stations or maintaining traditional economic pursuits. As with their Canadian sisters, they therefore became classified in the dependent role anticipated by the state for white women.

3. Personal Autonomy: Marriage, Divorce, Sexuality, Motherhood

The state and the churches in Canada and Australia viewed the personal autonomy of indigenous women as a major threat to the Christian patriarchal order they intended to impose. Accordingly, traditional marriage and mothering patterns, the right of women to divorce (and remarry), and their sexual autonomy came under harsh attack.

Customary marriage practices outside the church were strenuously objected to by Canadian missionaries and Indian Agents. However, there was little the Canadian government could do to impose Christian monogamy because a number of court cases established the validity of customary marriages in common law. Despite the protests of churches, the Indian Department was forced to accept traditional Aboriginal marriages. One of the ways the Department ignored the law, however, was to refuse to acknowledge polygamy. In an attempt to curb it, the Indian Department withheld treaty annuities and band revenues from any persons engaged in polygamous unions. This strategy was generally effective, but the more traditionalist factions merely concealed their polygamous arrangements.

[15]H. Goodall and J. Huggins, "Aboriginal Women are Everywhere," in K. Saunders and R. Evans, eds., *Gender Relations in Australia* (Sydney 1992); F. Bandler, *Turning the Tide: A Personal History of the Federal Council for the Advancement of Aborigines and Torres Strait Islanders* (Canberra 1989).

[16]See J. Atkinson, "Violence in Aboriginal Australia: colonisation and its impact on gender: a discussion paper," unpublished typescript; J.Atkinson, "Violence against Aboriginal women: reconstitution of community law — the way forward," *Aboriginal Law Bulletin*, 2 (1990); McGrath, "Australian Citizenship."

In 1951 the federal Indian Department decided to disregard Canadian common law on customary marriages. The 1951 Indian Act amendments required all marriages to be solemnized legally according to provincial marriage legislation. The only exceptions to this rule applied to the Longhouse marriages of the Iroquois Confederacy (Six Nations) bands. After numerous petitions and much lobbying by the Iroquois, the Department agreed to accept Longhouse customary marriages on two conditions: that the marriages be between members of the Six Nations bands; that the marriages would be recognized only so long as no subsequent marriages occurred. While the customary marriages of other minorities in Canada — the Mennonites, Hutterites, Doukabours, and other religious groups — were accepted and recognized under law, the Indian Act denounced and refused to recognize Indian customary marriages.

The sexual autonomy of indigenous women and their right to divorce were violated by the 1876 Indian Act. Again, annuity and revenue monies were withheld from any woman with "no children, who deserts her husband and lives immorally (ie common law) with another man." This provision was a major blow to indigenous women who always had had the right to divorce and remarry. It was an outright attack on their sexual, marital, and divorce mores and furthered the imposition of Judeo-Christian European values and standards.

A final assault on women's rights to divorce occurred when the federal government imposed federal divorce laws on status Indians. In order to obtain a legal divorce, Indian women were bound by Canadian law which required more burdensome grounds of proof for women than for men. Until the turn of the century Indian and Canadian women had to prove bestiality and adultery while men only had to prove adultery. These grounds for divorce were far more rigid than traditional ones that allowed women to end a marriage if her husband was a poor hunter or due to irreconcilable differences.

Women who had children out of wedlock also came under attack. The Indian Act stipulated that illegitimate children would be excluded from membership in their mothers' band unless the band officials accepted them and agreed to give them equal share in band revenues. The band's acceptance, however, had to be sanctioned by the Superintendent General of Indian Affairs who had absolute power to refuse membership to illegitimate children.

Aboriginal sexuality, but especially women's, was seen as threatening by the first British officials in Australia, and to an extent, this continues to the present day.[17] The traditional nakedness or brief coverings of Australian Aboriginal

[17]A. McGrath, "White Man's Looking Glass," *Australian Historical Studies*, 24 (1990), 189-206. Pat Grimshaw and Andrew May, "'Inducements to the Strong to be Cruel to the Weak': Authoritative White Colonial Male Voices and the Construction of Gender in Koori Society," in N. Grieve and A. Burns, eds., *Australian Women: Contemporary Feminist Thought* (Melbourne, 1994). See also M. Jebb and A. Haebich, "Across the Great Divide: Gender Relations on Australian Frontiers," in Saunders and Evans, *Gender Relations in Australia*.

women and men were outlawed by early colonial legislators, and Aborigines could be forcibly removed from townships if not wearing western-style clothing. They were soon taught to feel shame in the exposure of their bodies and to share western conceptions of the body and sexuality as evil. The prohibitions stressed "from neck to knee," demanding the covering of breasts, which interfered with women's accustomed ease in suckling infants.[18]

As in Canada, Australian missionaries were the first to intervene in traditional marriage arrangements, which involved strict laws regarding kinship and involved a promised marriage system important to inter-clan politics, in which senior women exercised considerable authority. Missionaries organized large group weddings, coupling Christian converts on an *ad hoc* basis. They also tried vigorously, and generally succeeded, in stopping polygamy and the marriage of young women to older men.

The government took a more intrusive role during the 20th century. In most states, marriages between Aborigines and non-Aborigines could not take place without the permission of the Chief Protector of Aborigines or his equivalent. By the 1930s, this was subject to increasing intervention; in Western Australia all marriages involving Aborigines had to be approved by the Commissioner of Native Affairs. The Commissioner had full discretion, but specifically prohibited were marriages involving a "gross disparity of ages," which therefore banned the traditional promised marriage custom where a young woman's first marriage was to a much older man.[19] From the 1900s, Queensland authorities intervened in marriage choices, debarring women from marrying non-Aboriginal men who could not give them a fixed abode, could not support them financially, or appeared in any way "unrespectable."[20]

While Aboriginal traditional marriage was sometimes recognized by Australian states, Christian or legal marriage was considered a sign of greater civilization; it qualified people for exclusion from the restrictive provisions of Aboriginal acts, which meant access to the same citizenship rights as white women. Government policies uniformly sought to impose forcibly the middle-class ideal of the dependent wife onto Aboriginal women, who had previously exercised considerable economic and social autonomy.

Several pieces of Australian state legislation were aimed to curb Aboriginal women's sexual freedom in order to prevent the breeding of more mixed-race

[18]*Western Australia, The Aborigines Protection Act 1886*, section 43 Perth 1886). For example, see T. Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge 1990).

[19]*Western Australia: Aborigines Act Amendment 1936*, section 42 (Perth 1936). Note the accompanying social stigma precluded most of the "respectable" classes from requesting marriage to an Aboriginal woman.

[20]A survey of archival records, especially Queensland State Archives, Northern Protector of Aborigines, A58930.

children. In an unsuccessful effort to prevent free fraternization between white men and women, Aboriginal reserves became "prohibited areas" and supply of alcohol to Aborigines was prohibited. In the Northern Territory and more remote regions of Australia during the 20th century, it was thought that the "coloured" population would swamp the small white population, threatening the national aspirations of White Australia. In the Northern Territory in 1936, cohabitation between white men and Aboriginal women was effectively rendered illegal. It was an offence for a man to cohabit with an Aboriginal woman who was not his wife, and the Chief Protector routinely refused all such marriage requests.[21] Other policies encouraged white men to marry lighter skinned women in order to "breed out colour" and permission was accordingly granted for white men to marry "half-caste" women.

Although divorce was not so conspicuous an issue in Australian legislation, it started to creep into the widening powers of the Directors of Native Affairs from 1940.[22] Missionaries had long promoted and enforced monogamous marriage for life, whereas in traditional Aboriginal life, it was common for women to have a number of different husbands at different times of her life, one or both deciding to go their separate ways. As older men were commonly in polygamous unions, women would also be in co-wife arrangements.

Of great historical significance to the family life of Australian Aborigines were policies relating to the removal and institutionalization of Aboriginal children. These policies were premised on dominant representations of Aboriginal women as unfit mothers. It was merely assumed they must be so on the basis of colonial beliefs in Aboriginal racial inferiority and British superiority. Ethnocentric ideas about correct family structures and norms meant that Aboriginal familial and community practices were not accepted. For example, extended family arrangements, the emphasis on travel and mobility, different patterns of work and food consumption, and liberal attitudes to children's autonomy in Aboriginal communities were equated not only with notions of the "primitive" and the "uncivilized" but as inferior parenting. The legislation of various colonies and later states therefore ranked all Aboriginal children as "neglected" children, rendered illegitimate to the white nation on racial grounds.[23]

The only way for an Aboriginal child to be "uplifted," many policy-makers argued in the era of "protection policy," was by their removal from the "degrading" influences of Aboriginal society. Whilst Aboriginal children were abducted by the earliest white settlers, the practice was tightened up by various policies of the 1910s, 1920s, and 1930s. In New South Wales, about 6000 children were removed from their families between 1883 and 1969; state policies often prevented these "stolen generations" from maintaining contact with their parents and they were

[21] *Northern Territory: Aboriginals Ordinance 1936*; see also McGrath, *Born in the Cattle*, Ch. 5.
[22] *Northern Territory: Native Administration Ordinance 1940.*
[23] Grimshaw, *et al.*, *Creating a Nation*, Ch. 12.

therefore robbed of both love and a sense of belonging. In various Australian states, legislation was implemented to impose state "guardianship" over Aboriginal children. In South Australia from 1911, the Protector of Aborigines was the legal guardian of any child of mixed descent; "half-caste" children as they were called, were subject to state rather than parental authority.[24] All Aboriginal children could therefore be committed to institutions as if neglected children, purely on the basis of Aboriginality, and this soon also applied in New South Wales. As High Court solicitor John McCorquodale concluded, the children were treated "as if they had no parents, and their parents as if they had no children."[25] A similar situation applied in Western Australia, whilst the Northern Territory was more concerned to segregate children of white parentage or descent, known as "half-castes," who were forced to participate in apprenticeship schemes as young workers. Police swooped on parents to remove lighter-skinned children, and they were generally sent to the poor conditions of a "half-caste home" in a distant township such as Alice Springs or Darwin before being forwarded to a white employer. In the 1950s, all Northern Territory Aborigines living a traditional lifestyle were declared wards of the state. Mission-dwelling Aborigines were subject to many cultural intrusions irrespective of caste.

Aboriginal parents thus lost the right to bring up their own children, and of course the children lost the right to grow up amongst their own families and their cultural heritage. Except for Queensland, where a rigid reserve system was imposed throughout the 20th century, in several other Australian states, Aboriginal children of full descent were generally allowed more autonomy than the rigidly controlled "half-castes," who were living testimony of inter-racial sexuality.

4. Private and Personal Property

The Indian Act undermined female authority by denying women the right to possess land. When Indian reserves were established a new form of land ownership was introduced that excluded female ownership. Indian reserves were subdivided for nuclear family use and lots were registered by certificates of possession in the names of male family heads. Apart from widows, women were barred from possessing land.

Another way the Indian Act undermined female household and property rights was through the Wills and Estates regulations. The Indian Department managed the transfer of personal estates upon the death of an Indian. An estate included the location title for an individual parcel of reserve land together with all personal property and chattels. Women were denied the right to hold location titles on reserves and as European notions of family property placed the male head of the household as the actual property owner, under law Indian women did not own personal property. Upon the death of a location title holder, his land, goods, and

[24]McCorquodale, "Aborigines," 4.
[25]McCorquodale, "Aborigines," 4-5.

chattels were transferred to his children, not his widow, on the condition that the children provide for their mothers' maintenance.

This regulation went entirely against the traditions of many horticultural tribes where land was held by women. By placing the responsibility and ownership of land in the hands of the men, traditional female control over the land, and control over the distribution of the products of the land, were seriously undermined. Section 9 of the Indian Act further undermined female authority by placing women under the guardianship of their children which undermined their traditional roles as heads of the household, and in some instances, as Clan Mothers and Matrons.

The government made some concessions in 1884 when an amendment to the Act permitted Indian men to will their estates directly to their widows. However, the Department regulated the inheritance and only allowed widows to receive their deceased husbands property if they were "of good moral character." The moral character of widows was judged by the local minister and Indian Agent. This regulation stayed in its present form until it was dropped from the revised Indian Act of 1951. The Queensland Aboriginals Act of 1939 belatedly enabled children of tribal marriages a right to deceased estates or damages under workers' compensation.[26] Further research is needed to piece together the story across other states.

Except for the land question, the topic of Aboriginal access to goods and property has been neglected. It was assumed that Aborigines traditionally had few possessions and that after white invasion, they all became paupers. While this is largely true, government action ensured that Aborigines remained poor. Policies followed a welfare model, categorizing Aborigines as mendicants. They received an annual blanket and weekly or fortnightly rations of basic western commodities such as flour, sugar, tea, tobacco and a small quantity of meat. Unlike traditional foods, which were collected daily, these rations were supposed to last for a given period, be distributed amongst the "nuclear family," and Aborigines had to present themselves at the same distribution centre to collect them. When they eventually received old age pensions and unemployment benefits after World War II, these were often distributed to men as "family heads," and Aboriginal women complained, saying that they should be paid directly to those caring for the children, which, in their society, is often not men and often not their biological parents with whom they are listed as official "dependents."[27]

Aboriginal wages were generally much lower than non-Aboriginal wages, and spending was strictly regulated and controlled by state bodies. Governments attempted to curb the reciprocal kin-based system of goods distribution. They claimed this was for their "protection" and "uplift," because Aborigines were easily exploited and did not understand the values of thrift and individual savings. Forced government-controlled savings accounts, known as "trust funds," were therefore

[26]McCorquodale, "Aborigines."

[27]Personal observation and D. Bell and P. Ditton, *Law: the Old and the New* (Canberra 1980), 94-8.

established to inculcate such values. In New South Wales, Aboriginal female domestic servants had their meagre pay docked by two shillings a week, though they often never saw the money. After years of service, they often found deductions had been made against it for clothing and other necessities, so it amounted to little.[28] In Queensland and the Northern Territory, trust funds were introduced in the 1910s and proved a windfall to governments. Aborigines had to apply to a policeman or other officer to withdraw funds, and they disapproved any "unwise" expenditure. Aborigines were not permitted to buy prestige items like cars, boats, or in one case, a plane. Consequently the amounts accumulated in government coffers. In Queensland, Aboriginal affairs was almost self-funding, whilst in the Northern Territory the vast unspent savings went into Consolidated Revenue. Virtually no effort was made to pass on unspent money to workers or their families. In the Northern Territory, cattle station managers had the choice of paying their workers in kind, which meant Aborigines had little access to the cash economy or in gaining experience in budgeting.[29] After World War II, missionaries or welfare officers often controlled Aboriginal spending. State interventions continually promoted the notion of women as dependents and men as the "breadwinners," a notion inimical to traditional Aboriginal values.

5. Political Reorganization.

The 1869 Canadian Act dramatically affected the status and authority of Indian women in the political sphere. In its attempt to implement the gradual destruction of tribal government, the state introduced an elected local government system, based on the European municipal model, to replace traditional forms of self-government. Section 10 determined that the new local government would consist of one Chief and one counsellor for each one-hundred band members. Women were totally excluded from voting or running for office and the Superintendent General of Indian Affairs retained the right to veto a band's selection or to depose any elected Indian official for "dishonesty, intemperance, or immorality." In effect, the Indian Act created local puppet governments.

The introduction of this male-dominated elective system not only undermined tribal self-government, it also barred women from participating in the local decision-making process. For the Iroquois, for example, this provision effected the breakdown of the traditional Longhouse system because traditional hereditary leadership was traced through the female line, and it was women (Clan Mothers) who selected and deposed leadership. The Chief and council system was eventually

[28]I. Waldren, "Aboriginal women as domestic servants in NSW 1850-1969," BA Honours thesis, University of New South Wales, 1991; H. Goodall, "Saving the children: gender and the colonisation of Aboriginal children in NSW, 1788 to 1900," *Aboriginal Law Bulletin*, 2 (1990).

[29]See R. Evans and J. Scott, "Fallen Amongst Thieves," in McGrath, *et al.*, *Aboriginal Workers*; McGrath, *Born in the Cattle*, *passim*.

adopted by all Indian bands in Canada, but not willingly. The Six Nations Iroquois, for example, refused to accept the elective system until it was imposed by force in 1924. Regardless of how resistant traditional leaders were to the elective system, women were not allowed to participate at any level of local government until 1951.

In Australia, Aboriginal self-government was virtually non-existent on mission and government-owned reserves. Only in the 1970s were local community councils introduced, along the western-style municipal model as in other parts of Australia. Following this model, male Presidents were usually elected, and men formed the majority on most councils. The lack of councils did not enable traditional political systems to function any better, due to the autocratic and intrusive managerial styles adopted by white reserve managers. While most communities embraced the coming of self-management enthusiastically, traditional owners of the respective land were in a more powerful position than outsiders and the lumping together of numerous strange clans in a confined space had created enormous, often unresolvable, tensions. Patriarchal precedents and greater access to cash and alcohol created devastating law and order and health problems. Past educational and cash deprivation led to severe budgetary problems and difficulties obtaining the necessary community facilities and family assistance.

In the 1970s the Australian federal government attempted to create a representative national Aboriginal body along a democratic model. The first attempt, the National Aboriginal Council, lacked real power and was disbanded. In the late 1980s, a wider organization, the Aboriginal and Torres Strait Islander Commission (ATSIC) was set up to replace the white-dominated Department of Aboriginal Affairs. Although several Aboriginal men have sat in state and federal parliaments, few female Aborigines have been elected. The Minister for Aboriginal Affairs has never been an Aboriginal person, always a white man. The leading Aboriginal, Lois O'Donaghue, chaired ATSIC during crucial times, but leaders of the powerful land councils continue to be exclusively male.[30] At a grass-roots level, and also in regard to key positions such as Marcia Langton's appointment to the Chair of the Institute of Aboriginal and Torres Strait Islander Affairs, Aboriginal women do play an increasingly important role.

Conclusion

More intensive research would likely unearth specific examples of exchanges between Australian and Canadian policy makers and senior administrators. Hearsay evidence suggests this but archival evidence is required to prove it.

[30]For an excellent discussion of the impact of western law and governmental structures on Aboriginal women in Central Australia, see Bell and Ditton, *Law: the Old and the New*. See also P. Daylight and M. Johnstone, *Women's Business, Report of the Aboriginal Women's Task Force* (Canberra 1986). See also J. Pettman, "Gendered Knowledges: Aboriginal Women and the Politics of Feminism," in B. Attwood and J. Arnold, eds., *Power, Knowledge and Aborigines* (Bundoora 1992).

The question of Australian and Canadian Aboriginal responses to policy has only been lightly canvassed in this paper. Extensive research might shed light on the impact of Aboriginal reactions or resistance in subsequent policy making. For example, if Aboriginal parents refused to send their children to culturally insensitive or sub-standard schools, new laws simply enforced compulsory attendance. Aboriginal resistance then led to further policy initiatives, including a means of punishing offenders, which led to increased surveillance, the facilitation of child removal, and institutionalization. Resistance was not all one-way: some whites also resisted colonial imperatives and some Aboriginal people, too, resisted some of the laws or social realities of their own societies. The new interactive, culturally intricate and less hierarchically-driven historical analyses challenge the older definitions of resistance and dismantle the predicability of power and powerlessness.

In both Australia and Canada, gender and race were important determinants of government policy. This applied not only in the colonial era but in respect to British Commonwealth nations pursuing colonialistic objectives. Gender and racial theories, patriarchally-based Christian beliefs and missions, the research and advice of male anthropologists, scientists, and others shaped the climate and rationales for colonialistic legislation. While from the 19th century, the "status of women" was used by western societies as the primary index of civilization, the Indian Act and Aboriginal Acts indisputably and perhaps ironically became the tools by which female status and autonomy were undermined and almost destroyed. Potentially, they reduced Aboriginal women towards the condition of her Euro-Canadian counterpart — landless, economically and politically dependent. But the putty did not set. That this imperial ambition failed to be brought to fruition suggests that, beyond the clear-cut government policies centred around race and gender, there were many other forces operating. Competing colonial values and concerns, competing economic interest groups, competing factions and ambitions within and between Aboriginal societies plus the emotions and private contestations of individuals amongst both colonizers and colonized; all created their own destabilizing impacts, essentially undermining the cohesion of hegemonic colonial control and in turn suggesting a transformed set of possibilities.