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Losing Ground/Standing Ground as We Speak

Land, Nation, and Indigenous Women's Testimony in Canada's Acts of Abocide

Zusammenfassung

Dieser Aufsatz untersucht das ursprüngliche ‚marrying out‘ (= aus dem Status ‚herausheiraten‘) des kanadischen Indian Act sowie die anhaltende Diskriminierung in den jüngsten Gesetzesänderungen von C-31 zu C-3 (2011). Ferner wird das gemeinschaftliche Trauma behandelt, das durch den Sexismus des Bundesgesetzes und seine Folgen für Exogamie, kulturellen Genozid sowie für Land, Wohnraum und andere Ressourcen entsteht. Im Mittelpunkt steht eine Diskussion des Raumes der Differenz zwischen Frauen der First Nations als Zeugen des bzw. gegen den geschlechterspezifischen kulturellen Genozid(s) der Ureinwohner und verschiedener Formen sowohl der Anhörung als auch der ‚Wiedergutmachung‘ durch die kanadische Regierung. Der Aufsatz argumentiert, dass der Aufruf an Frauen der First Nations, als Zeuge aufzutreten, einen ‚Mehrwert‘ für die Interessen der konservativen Regierung Kanadas darstellt sowie dass im wörtlichen und im übertragenen Sinne unmittelbare Folgen für den Familien- und Gemeinschaftsraum in den Gemeinden der kanadischen Ureinwohner entstehen.

Abstract

Bill C-31 (1985) of Canada's Indian Act has been described as the "Abocide Bill": "Like genocide, it [abocide] refers to the extermination of a people; in this case, the extermination not of Indians per se, but of their status as Aboriginal people" (Harry Daniels, Former President, Congress of Aboriginal Peoples). Scrutinizing the original 'marrying out' conditions of the Indian Act and the most recent legislative amendments from C-31 to C-3 (2011), this paper addresses community trauma produced through the sexism of federal law and its implications for exogamy and cultural genocide, as well as for land, housing, and other resources. Centrally, my argument explores the space of difference between First Nations women's witnessing of/against gendered 'Abocide' and various forms of both listening and 'reparation' through policy effected by the Canadian government. Ultimately, my paper discusses how Indigenous women's resistance testimonies are in part being made to function as subaltern sites of dis/articulation appropriated by the state – in both the latter's act of listening

as a refusal to 'hear' and its co-optation of 'attending' as an alibi for action, with acute implications for literal and figurative family and community space across Indigenous communities in Canada.

Résumé

En examinant la disposition initiale de la Loi sur les Indiens, en vertu de laquelle les femmes des Premières Nations qui avaient épousé des non-Indiens perdaient leur statut légal d'Indienne, et la discrimination actuelle qui caractérise les modifications législatives les plus récentes depuis la loi C31 jusqu'à la loi C3 (2011), l'exposé aborde le traumatisme communautaire résultant du sexisme de la législation fédérale et ses implications sur l'exogamie et le génocide culturel, ainsi qu'au niveau du pays, du logement et d'autres ressources. Mon argumentation explore à la base l'espace de différence entre le témoignage des femmes des Premières Nations sur/contre l'abocide fondé sur le genre et les différentes formes d'écoute et de «réparation» du gouvernement canadien. J'avance que l'exhortation des femmes des Premières Nations à «témoigner» crée une «plus-value» pour les intérêts du gouvernement conservateur, avec des conséquences dramatiques pour l'espace familial et communautaire, au sens propre comme au figuré, au sein des communautés Indigènes du Canada.

Any narrative about landscape is necessarily an account of the reciprocal relationships between relatively long-term structural forces and short-term routine practices of individual human agents, as mediated by institutional forms [...]. (Dear/Flusty 2002, 2)

Indigenous claims to land, natural resources, and self-determination threaten to take the open secret of ongoing colonial oppression and reconstitute it as an outright scandal for a self-proclaimed liberal democracy. (Henderson/Wakeham 2009, 4)

While an individual can marry whom he or she chooses [...] such a decision is not made without negatively affecting his or her equal right to pass on status and membership rights to their descendants. This further negatively affects a person's right to culture and to pass on their culture, which is intimately tied to the land, to their descendants.

(Native Women's Association of Canada, "Shadow Report" 2012)

Grounding history: (Neo)imperialism in the Canadian context

It is, of course, not new and yet still imperative to consider the complex interactions between identity, geography, and power, particularly when considering the authority of governments/states over the resources of nations – both their own and those imperialized beyond their various self-appointed centres of control. Indeed, critical historical scholarship has long understood political, religious, and other disputes as imbricated in conflicts over territory. For Indigenous women in Canada, there continues a longstanding battle over territory and resources in contestations over identity – a conflict which falls along deeply-embedded gen-

der lines. Aligned with Indigenous scholars like Bonita Lawrence (Mi'kmaw), Sharon McIvor (Lower Nicola Band), Joyce Green (Métis), First Nations Studies (UBC) program alumnus and now graduate scholar Karrmen Crey (Sto:lo), and others, I argue that the Canadian government's claim to establish 'Indian' identity through regulation in the *Indian Act* is fundamental to imperialist Canada's historic project of 'nation-building' violence, anchored in a policy of controlled assimilation and segregation along gendered lineages to limit access to treaty-negotiated space and resources. Understanding how land and home are deeply connected to Indigenous women's 'sense of place' both in terms of self- and community-identification, I take up the most recent return to the legislation of Aboriginal women's oppression and identity regulation in the case of Bill C-3 (2011), a consolidation of the 'Abocide' objectives of earlier legislation (Bill C-31),¹ the contexts, intentions, and impacts of which this paper will centrally address. Concomitantly, I argue, in the ongoing and institutionalized oppression of First Nations women, Aboriginal women's testimonies against the legacy of land and resource theft, indeed, cultural trauma imposed on them through the *Indian Act*, operate as fundamental acts of resistance – as land and culture claims. My work is informed in part by John Allen's contentions in *Lost Geographies of Power* that, while it is important to recognize "the association between power and geography through the odd tall fence, high wall, and exclusionary boundary marker" we must also see, although more difficult, different modalities of power constituted across space and time (2003, 3). It is at once, thus, that the literal geography of Indigenous territory in Canada and the symbolic ground of Indigenous women's testimony become the subjects of this study. Ultimately, my paper explores how, in the current neocolonial condition, Indigenous women's resistance narratives are in part being made to function as subaltern sites of dis/articulation appropriated (in a re-colonization) by the state – in both the latter's act of listening as a refusal to 'hear' and its co-optation of 'attending' as an alibi for action. Performance of the spectacle of trauma in the political theatre is demanded as commodity, consumption of which itself is made to function at once as act and alibi, with little movement toward material intervention in policy and its impacts. There is a lot at stake here. The government largely owns and decides the purposes of reserve space – the 6.5 million acres or so of land reserves (Flanagan/Alcantara/Le Dressay 2011, 3) –

1 The term "Abocide" does not seem to have common currency. It is likely the term originates in a paper by Harry W. Daniels, former President of the Congress of Aboriginal Peoples; certainly, his use of it is the first I can locate. He employs the term to name the 1985 amendment to the *Indian Act*, Bill C-31: "The elders tell us that when faced with a confusing and difficult situation if a name can be put on the problem, then you can deal with it"; he names C-31 the "Abocide Bill", with particular definition of 'Abocide' as the eradication of status for Aboriginal people, which I treat later in this paper. I thank Julian Morelli, Director of Communications at CAP, for re-posting Daniels' original text at http://www.abo-peoples.org/wp-content/uploads/2012/10/Copier_20121003_135617resources.pdf in October 2012.

of varying 'value' if decided in relation to farmability of the land, natural resources, proximity to urban centres, and other factors.

In a vision of territory far removed from the accumulation/profit model of European settlement and its legacy for Canadian policy, Jeannette Armstrong writes of the relationship of land to Indigenous life, knowledge, and being:

All my elders say that it is land that holds all knowledge of life and death and is a constant teacher. It is said in Okanagan that the land constantly speaks. It is constantly communicating. Not to learn its language is to die. (Armstrong 1998, 175-6)

In this epistemology, the land is tied to what we know. Marie Battiste understands Indigenous knowledge as "an extensive and valuable system" (Battiste n.d.) composed of knowledge of and by particular people in particular territories, passed through generations and yet adaptable and dynamic, embedded in deep relations between history and current life. It is composed of roots and routes, culturally-specific maps of meaning tied to cultural histories and contexts (Battiste n.d.). Against this recognition of the deep relations between history and contemporary experience, and the valorization of Indigenous ways of knowing and telling, the government of Canada's epistemes are, one might suggest, considerably more *settled*. For example, in a September 2009 press conference, Canadian Prime Minister Stephen Harper made this statement about the liberal democratic society of the nation:

We are one of the most stable regimes in history. There are very few countries that can say for nearly 150 years they've had the same political system *without any social breakdown, political upheaval or invasion. We are unique in that regard. We also have no history of colonialism.* (quoted by Aaron Wherry, in Henderson/Wakeham 2009, 1; emphasis added)

But contrary to the PM's attempt to erase Canada's colonial history and its legacy of racially-grounded discriminatory policy and action, rooted expressly in government-engendered social breakdown for Indigenous families and communities, the violence perpetuated against Canada's Aboriginal peoples through European colonization and the complexity of its intergenerational effects are increasingly well recognized. Indeed, Canada can be said to have entered the 'age of reconciliation' in the 21st century. But as scholars critical of reconciliation projects have begun to articulate, the acknowledgment of state-generated trauma and the culture of redress can serve particular symbolizing functions that perform a reversal of a state's rhetoric of intention. In our landscape of enduring colonialism, testimony against atrocity is made at once to defer, displace, even to function as

action; the compulsive repetition of the trope of 'hearing' for healing – that is, of inviting experience-testimony and engaging in witness consultation – becomes a further site for performative remedy. It is precisely the rigidity of the system against meaningful change, the government's strategically amnesiac refusal of history, indeed, the state agenda for racial engineering of Indigenous identity and its colonialist 'place-and-space' stakes that are the subjects of this paper, which takes up at once the politics of testimony and economies of space and land in relation to the federal government of Canada's mis/use of Aboriginal women's voices, texts, and bodies.

In her landmark book *"Real" Indians and Others* (2004) Bonita Lawrence trenchantly articulates the claims:

[T]he only way in which Indigenous peoples can be permanently severed from their land base is when they no longer exist as peoples. The ongoing regulation of Indigenous peoples' identities is therefore no relic of a more openly colonial era – it is part of the way in which Canada and the United States continue to actively maintain physical control of the land base they claim [...]. (38)

The governing piece of legislation in this operation of identity and resource control is the 1876 *Indian Act*, recognized, since its inception, as a legislative impetus toward (cultural) genocide and which institutionalized gender inequality in Canadian law.² In its patrilineal imposition of European patriarchal values, 'Indian' was understood as man: women and children would follow the condition of husband and father. Across its various permutations and amendments over time, the Act has been described as a form of apartheid law (Crey n.d.). Specifically, with its revision in 1951 and the persistent oppression of women formalized under law,

2 Already prior to this, in 1869 under section 6 of the country's *Act for the Gradual Enfranchisement of Indians*, Native women lost status on marriage to non-Native men; their children also lost status. This patriarchal identity definition is consolidated by the 1876 implementation of the Act: "The term 'Indian' means, First. Any male person of Indian blood reputed to belong to a particular band; Secondly. Any child of such person; Thirdly. Any woman who is or was lawfully married to such person" (section 3 of the 1876 Act, cited in Cannon 2012, 102). This legal recognition of women indistinct from their husbands is not unique to Indigenous experience in Canada. I am grateful to one of the anonymous reviewers of my paper who reminds me of the broad context of Canada's gendered laws in the analogous loss of status as "British subjects" for Canadian women who married non-Canadian men. Under s. 26 of Canada's federal Act Respecting Naturalization and Aliens (1881), a wife's citizenship was determined by her husband's status: "[a] married woman shall, within Canada, be deemed to be a subject of the State of which her husband is for the time being a subject" (Howell 1884, 72). The patriarchal classification of marriage as producing "one person under the law" whereby "the very being or legal existence of the woman is suspended during the marriage" (Blackstone 1764, 442) was greatly advanced by eighteenth-century English judge and political theorist William Blackstone, with devastating repercussions for British and North American women's rights.

the Act's section 12(1)b 'marry out' clause (in effect until 1982/amended 1985) ensured that a woman registered with status under the Act, who married a non-Indian (that is, non-status) man would have her status immediately revoked – along with its attendant entitlements, like the right to reside on her reserve, inherit property there, and be buried in her community, and to collect treaty annuities, among other rights, entitlements, and services negotiated or established by treaty. Because a man's status determined those of his wife and children, a registered Indian male would, conversely, transmit status to his non-Indian wife, and to their children. Clearly, in this imposition of European paternalism and patriarchal values, the costs for Aboriginal women who married out have not only been economic; as a number of women have testified (across the courts, conferences, literatures and art practices, social and other media, and other venues) the worst 'expenses' have been social – familial and communal. 'Cost' must always also be measured in policy/legal impact on relationships between families, community, land, identity, and belongingness.

The violence of these impacts is captured in the testimony of Mary Two-Axe Earley (Haudenosaunee Kanienkehaka Mohawk), a woman who lost status by marrying out and who appropriates the experience of rape as analogy for the 12(1)b violations, both literally and figuratively, of space, place, and person, in her act of witness before Parliament in 1978:³

[W]e are stripped naked of any legal protection and raped by those who would take advantage of the inequities afforded by the Indian Act. Raped because we cannot be buried beside the mothers who bore us and the fathers who begot us [...] we are subject to eviction from

3 I imagine some readers may find Earley's analogy problematic, since experiences of sexual assault are particular and cannot be generalized necessarily to all sexual assault experiences nor universalized to other types of violence – such as the structural violence of discriminatory law which Earley is addressing here. But it is worth noting that beyond persistent legal, systemic injustice, Indigenous women in Canada experience disturbingly disproportionate rates of physical and sexual violence, as documented in various government and, more castigatingly, human rights organizations' accounts. See, for example, Amnesty International's 2004 report, *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada* and its 2009 update, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Indigenous Women in Canada*. The feminist reminder that "the personal is political" is useful here, in recognizing that what appears to be individual brutality against Indigenous women is not separable from state-generated violence; this should be evident not only in the forcible dislocations of married-out Indigenous women from their land and family bases, but also in a long history of government resistance to Indigenous women's claims for recognition of their equality rights, and gross inaction on Canada's missing and murdered Aboriginal women. For the latter especially, again please see both reports, above. I suggest that Earley's use of rape as a rhetorical strategy functions as a critical cue for consideration of the wide-ranging effects of trauma not simply in relation to the issues she specifically enumerates, but in excess of these, as well.

domiciles of our families and expulsion from tribal roles. Because we must forfeit any inheritance of ownership or property [...] Because we are unable to pass our Indianness and the Indian culture that is engendered by a mother to her children [...]. (Cited by McIvor, in Parliament of Canada 2010)

Earley's testimony speaks to deep-seated connections to land and community embedded in Indigenous notions of identity and knowledge. This is, according to several scholars, also a deeply gendered historical connection across many Aboriginal nations. Kathleen Jamieson argues that, in societies like the Haudenosaunee,

[f]emale-led clans held the collective land base for all of the nations of the confederacy. *Removing women, then, was the key to privatizing the land base* [...]. [A] central aspect of the colonization process in Canada would be to break the power of Indigenous women within their nations. (1978, 13; emphasis added)

I do not have scope in this article to fully speak to the insistent and often-frustrated political, legal, and socio-cultural work of Aboriginal women and women's groups to contest this ongoing legalized injury to Aboriginal women, their families, and communities.⁴ But a snapshot of the enduring and brutal attempts of the government to block equality efforts is essential to understand why 'consultation' has become a suspect practice – against a larger context of Aboriginal insistence on the values of storytelling as history, witness-literature as narrative for healing, and of consultation as a process for collaboration. Indeed, consultation is often recognized by Indigenous communities as a requisite intervention against unilateral government aggression and appropriation. And yet, in the repeated histories of how consultation is mis/practiced, we might also come to understand 'conference' as a tactical strategy for action avoidance, a 'speaking' space of unresponsive maneuver.

More con/texts: The conflicts of consultation

Indeed, during key legal challenges in the 1970s by two casualties of the marry-out section, Jeannette Corbiere Lavell (Anishinaabe, Wikwemikong First Nation) and Yvonne Bedard (Haudenosaunee, Six Nations), the women's claims against 12(1)b were contested by the federal government at the Supreme Court of Canada. Further, thirteen Aboriginal groups interceded to oppose the women's petitions, including the perhaps most publicly visible Aboriginal organization, the National Indian Brotherhood, predecessor to the Assembly of First Nations (Froc

4 For a brief but good synopsis, see Rauna Kuokkanen (2012).

2010). The spectre as the Brotherhood identified it was that the Lavell case might understand the then-Canadian Bill of Rights to invalidate the Indian Act – precisely as selected Aboriginal groups were in talks with the government for the Act's broad revision. Ardently opposed to a revision of the Act without consultation and approval from 'inside' by Indians, the Brotherhood successfully negotiated the process of consultation with the federal cabinet in February 1975 – but 'Indian' did not at this time comprise women as a category for inclusion. Through a 'divide-and-conquer' politics, 'Indian rights' were made to seem distinct from 'women's rights'. While the active testimonies of women in the courts were being contested by government petitioners, lawyers, and, too, status Aboriginal groups, consultation was further taking place outside in direct exclusion of gender equality interests – a tactical strategy for substitution. As Andrew Robinson argues, while the government's declared policy, as articulated by every Minister of Indian Affairs since 1974, was to address and end sex discrimination – nevertheless "it also claimed an inability to act *because of its commitment to consult* with Indian organizations" (Robinson 2007, 38; emphasis added). In particular, Minister Ron Basford told the Commons Justice Committee that

[m]aking the discrimination illegal under the human rights bill would be seen as unilateral government action interfering with the Indians [...] and could hurt consultations with the National Indian Brotherhood [...] Indians must eliminate the discrimination themselves through consultation on reform of the Indian Act (cited in Robinson 2007, 38)

– a statement which made it to popular press in May 1977. Against the backdrop of these relations as well as presaging these, the Supreme Court of Canada ruled against the Aboriginal women claimants, deciding in 1973 that 12(1)b posed fair treatment of First Nations women.

Because the government of Canada, supported by its highest court, refused to recognize the rights of Aboriginal women, and because of internal community conflicts established by its colonial authority, the issue of gender justice for Aboriginal women was brought to the international community, to the United Nations Committee on Human Rights. In July 1981, Sandra Lovelace's case, *Lovelace v. Canada*, was decided. Fundamental rights to territory and cultural community were at the heart of the decision: Canada was found in violation of Article 27 of the International Covenant on Civil and Political Rights, breaching both Lovelace's fundamental human right to reside in her cultural community, and the rights of Indian women "to enjoy their own culture [...] religion [and] language" (UNCHR, "Lovelace v. Canada" 1981). In particular, the UNCHR addressed in 13.1 of the decision that

[t]he essence of the present complaint concerns the continuing effect of the Indian Act, in denying Sandra Lovelace legal status as an Indian, in particular because she cannot for this reason claim a legal right to reside where she wishes to, on the Tobique Reserve. [...] In this respect the significant matter is her last claim, that “the major loss to a person ceasing to be Indian is the loss of the cultural benefits of living in an Indian community, the emotional ties to home, family, friends and neighbours, and the loss of identity.” (UNCHR, “Lovelace v. Canada” 1981)

Describing its status on the international scene as an “embarrassment” for the country, the federal government pledged amendment to the Act. 12(1)b was suspended in 1982 – creating a limbo space for women and their equality rights as the government failed to act for three more years, and did so only when the establishment of Section 15 – Canada’s equality rights section in the *Charter of Rights and Freedoms* in effect 1985 – required legal remedy. Andrew Robinson suggests that the Lovelace case actually afforded Canada a narrative of compliance with international human rights aims that served to overwrite the government’s strategy to diminish domestic Aboriginal power, as well as to ultimately de-limit the scope of reform (Robinson 2007, 31). In fact, the C-31 amendment, which came into effect in 1985, assured the re-instatement of gender inequality rather than its removal. Known as ‘the second-generation cut-off rule’ the legislation ensured that the grandchildren of a woman who married out prior to 1985 – unlike the grandchildren of a man – would be ineligible for status and (thus, likely) band membership. This is because C-31 generated a new taxonomic order of value with two classes of registration, 6(1) and 6(2), based on having one or two registered parents. The children of women who married out pre-1985 and had status restored under C-31 were granted 6(2) status, considered by many as ‘half’ or sub-status because 6(2) registrants cannot pass status to their children. The children of men who married out before 1985 retained 6(1) – full – status. Further, as MORN (Mother of Red Nations: Women’s Council of Manitoba) argues, because C-31 established a new class of ‘half status’ Indians rather than generating real equality for Aboriginal women, the escalating fear with C-31 was the disappearance of ‘Indian’ altogether with receding registration and ultimate fulfillment of the government’s assimilation directive – a cultural genocide (MORN 2006). With similar understanding, demographer Stewart Clatworthy predicted in his 2001 report for the office of Indian Affairs and Northern Development that C-31 would ensure that, by “around the end of the fifth generation, no further children will be born with entitlement to Indian registration” (ix). Indeed, C-31 has been named the “Abocide Bill”: “Like genocide, it refers to the extermination of a people; in this case, the extermination not of Indians per se, but of their status as Aboriginal people” (Harry Daniels, Former President, Congress of Aboriginal Peoples [1998]).

Certainly, the results of MORN's 2004-05 impact study of the effects of C-31 indicate a devastating record of damage – of internalized oppression and lateral violence characterized by “multi-generational trauma and its impact on community wellness, resiliency, and culture.” Significantly, the failure of the Conservative government of Canada to match funding to membership expansion meant that the numbers of women and families entitled to return to the reserve under the new bill were overwhelmingly larger than the numbers able to do so; competition over severely limited resources fostered resentment of C-31 returnees within communities. This was fueled by C-31's separation of status (under the responsibility of the federal government) from band membership. Reinstated women were automatically granted status as well as band membership (which, in relation to the latter, could involve the right to live on reserve and be part of the band political system – right to hold office and vote in elections, among other entitlements) but in terms of band membership their children were in some cases not; this meant some women could return to the reserve but not their offspring. This division within Aboriginal communities must be understood in relation to the federal government's funding policies: while bands can determine their own membership, the government provides monies to bands only for status Indians. The off-loading of Ottawa's responsibility for residency onto the communities themselves, ostensibly in the aim of establishing more internal autonomy for the bands, created further divide-and-conquer effects. As Robinson argues, this problem could hardly appear “inadvertent” on the government's part since the problems of belonging, hierarchy, and resource were presented before the House in repeated testimony by the National Action Committee on the Status of Women, the Native Council of Canada, and the Quebec Native Women's Association (Robinson 2007, 43). As Sally Weaver notes, clearly the economic implications of justice shifted any intention based on “principle” to “pragmatic financing” (qtd. in Robinson 2007, 39) – and infighting displaced anger from the warranted source of the turmoil: the Canadian government's divisive politics and refusal of appropriate resource allocation. Women and communities have borne the burden of these decisions; the history here appears a war over territory and resources. This is why a rhetoric of ‘consultation’ fuels the frustration of Aboriginal women witnesses to sanctioned inequality: they have been testifying to trauma for scores of decades, and the compulsive return to ‘conference’ is a repetition of the policies as politics of violence.

Further evidence to how government commitment to consultation has operated to exclude Aboriginal women from their rights to land and community and the implications for identity these entail is evident in the case of Sharon McIvor, member of the Lower Nicola First Nation, law professor, human rights activist, and feminist, and the Native Women's Association of Canada. The case was brought before the Supreme Court of Canada, in *NWAC v. Canada* at the apex of constitutional talks between the government and Aboriginal organizations in the early

1990s. Providing CAD ten million in funding for consultative participation, the federal government identified four national Aboriginal organizations as members – none of whom specifically bespoke representation for Aboriginal women, and all of whom, as Kerri Froc argues, demonstrated both animosity toward NWAC and failure to support Aboriginal women's issues (Froc 2010). NWAC argued that 'consensus' could not be properly achieved through negotiations with the male-dominated national Aboriginal organization partners, since concerns and issues relevant to Aboriginal women would not be represented – a violation, NWAC argued, of women's rights under section 15 ensuring sex equality in the Charter. The Supreme Court of Canada ruled against the claimants. As Froc contends

[b]y framing the freedom of expression issue as whether NWAC had a 'special' right to a speaking platform, and the equality issue as exclusively one of determining whether NWAC could prove the other groups were 'male dominated', the Court fragmented considerations of patriarchy from those of racism and colonization, distorting the synergistic effect of the systems of oppression and reinforcing colonial ideology. (Froc 2010)

The history I have traced above proffers a requisite context for understanding McIvor's statement of address before the Parliament of Canada in April 2010 in relation to the most recent changes (C-3 proposed 2010; in effect by 2011) regarding Aboriginal women's equality rights under the law and the stakes for reserve and other rights, and also for further understanding the relationships between reconciliation rhetoric and the larger geographies of material capital and, indeed, legal claims to identity. McIvor, as a woman who had lost status by marrying out – and whose descendants would be impacted by the residual discrimination of C-31 – initiated her response to the 1985 C-31 amendment already in its delivery by 1987; decision was finally reached in June 2007 when the B.C. Supreme Court ruled C-31 unconstitutional. Madam Justice Ross declared that

[t]he evidence of the plaintiffs is that the inability to be registered with full 6(1)(a) status because of the sex of one's parents or grandparents is insulting and hurtful and implies that one's female ancestors are deficient or less Indian than their male contemporaries. The implication is that one's lineage is inferior. The implication for an Indian woman is that she is inferior, less worthy of recognition. (Cited in Barker 2008)

But the federal government appealed the B.C. Court ruling. The case was scheduled before the B.C. Court of Appeal about four months after the federal government's residential schools apology.

In 2009, the B.C. Court of Appeal delivered agreement with the earlier *Mclvor* victory, but significantly pared down. The Appeal Court found that "the challenged distinctions in the ability to transmit status, although discriminatory on the basis of sex, were largely justified" (Hurley/Simeone 2010). But still it found some sections of C-31 in violation of section 15 of the Charter's protections against sex discrimination requiring legal redress. In response, the government filed for an extension for the remedy – on the grounds of requiring consultation with Aboriginal groups. But, as Betty Ann Lavallée, National Chief of the Congress of Aboriginal Peoples, states, this process of consultation was neither extensive nor satisfactory (Parliament of Canada 2010). And in the absence of such action, the government nevertheless proposed Bill C-3, whose title "Gender Equity in Indian Registration Act" functions as a rhetorical maneuver, since Aboriginal groups recognize C-3 as re-entrenching once again both the legalized oppression of Aboriginal women and government policy for the inevitable eradication of 'Indian' under the law. C-3 distinguishes, like its prejudicial predecessor C-31, between descendance registered across male and female lines, since "[a] grandchild born before 1985 descended from an Indian grandfather would be able to transmit status for one generation longer than those descended from an Indian grandmother" (Canadian Bar Association 2010, 8). C-3 has further inequitable implications for the male and female children of common-law unions. This is because specifically C-3 restores status to individuals who are required to meet all of the following criteria – that is, status is returned only to those individuals

whose mother lost Indian status upon marrying a non-Indian man,
whose father is a non-Indian,
who were born after the mother lost Indian status but before April 17, 1985,
unless the parents married each other prior to that date, and
who had a child with a non-Indian on or after September 4, 1951.
(Hurley and Simeone 2010)

As the National Aboriginal Law Section of the Canadian Bar Association argues, there arises with C-3 a possibility for "family status" discrimination, since some members will only be advanced from section 6(2) to 6(1) ('half' to 'full') status if they have children: "This may affect people whose band membership code denies membership to Indians registered under section 6(2) and also in communities where there is a certain stigma associated with having section 6(2) status rather than section 6(1)" (Canadian Bar Association 2010, 5). Further, Bill C-3 introduces ageism as well as retains sexism in the law, since it provides no remedy for the grandchildren of women born before September 4, 1951 (Union of B.C. Chiefs 2010). Examples of C-3 exclusions based on persistent sex discrimination specifically include grandchildren of status women who parented with but did not marry non-status men, as well as female offspring of status men and non-status women who did not marry, and, as indicated above, grandchildren of women who

married out and who were born prior to September 4, 1951.⁵ As evident in Mclvor's petition before the UNCHR

[f]urther, the proposed amendment will only grant s. 6(2) status, and never s. 6(1)(a) status to the grandchildren of Aboriginal women who married out, notwithstanding that grandchildren born prior to April 17, 1985 to status men who married out are eligible for s. 6(1)(a) status. ("Sharon Mclvor and Jacob Grismer v. Canada" 2010, 30)

The genealogic table in the submission of the National Aboriginal Law Section's response to C-3 maps clearly the residual gender discrimination from C-31 that C-3 entrenches (Canadian Bar Association 2010; see page 9 for chart). Perhaps most importantly, C-3 appears to retain the deeply challenged system of blood quantum of the earlier legislation – historically marked in the 'one quarter' blood rule – if somewhat disguised by marriage and registration management. John Borrows explains:

I am troubled by ideas of aboriginal citizenship that may depend on blood or genealogy to support group membership [...]. Exclusion from citizenship on the basis of blood or ancestry can lead to racism and more subtle forms of discrimination that destroy human dignity. (qtd. in Stockfish 2011)

In this way, the legislation disturbingly repeats C-31's 'Abocide' impetus; Jeannette Corbiere Lavell, now President of the Native Women's Association of Canada, has said of its expected impact: "In two years' time, some of our communities will have no more status Indians [...]. We must recognize our people. It is our role and responsibility, as mothers and as grandmothers, to recognize our children and grandchildren" (qtd. in Stockfish 2011). Again, in terms of land recognition and access to government services, there is a lot at stake in this denial.

The grounds of reconciliation: Whose pitch?

In unilateral conjunction with this proposed, deeply flawed legislation, the federal government invited Aboriginal women to testify as witnesses before Parlia-

5 Mclvor articulates the divisive impact of C-3: "There's a situation where a grandmother married in 1916. She had children in 1917, 1918, 1922, and 1925. She has grandchildren born in 1933, 1943, 1945, 1948, 1950, 1953, 1955, and 1958. That's a factual situation. Under this legislation the children born in 1933, 1943, 1945, 1948, and 1950 are not entitled to registration. Their siblings and cousins born in 1953, 1955, and 1958 are included. So the 1951 date is quite problematic when you've got families that are split like that, some born in the middle to late forties, some born in the middle to late fifties. And that's a factual situation. Those are the factual situations" (Parliament of Canada 2010).

ment in response to the proposal, and pledged an "exploratory process" (Parliament of Canada 2010). The government subsequently ignored the women's testimony.⁶ Indeed, Bill C-3 was presented to the House in March 2010; despite the efforts of Mclvor, NWAC, and the Quebec Native Women's Association, it received royal assent in December 2011. Once again, the statute works to perpetuate rather than rectify legal sexism, with disastrous implications for the 'place-and-space' stakes of Indian identity and the constitutionally entrenched rights of all Canada's peoples.

I give voice, here, to Mclvor's testimony opposing Bill C-3 as the successor legislation to the offensive C-31. Her insistence is that the government knew then, as it must know now, how the proposed changes actually reiterate structural gendered inequalities:

But when the act was changed in 1985, parliamentarians knew there was residual discrimination. Crombie's records show that they understood that some of us would still suffer from the residual discrimination [...]. *We knew that it was discriminatory. You, as parliamentarians of the day, knew it was discriminatory, and yet they [sic] forced someone like me to take it through the courts and have the courts decide that it was discriminatory [...].* There are thousands of women and thousands of grandchildren out there who are still looking to have this put right. (Parliament of Canada 2010; emphasis added)

Centrally, Mclvor's act of witness metacritically engages her criticisms of its appropriations, and strikes directly to the heart of the issues of knowledge, action, and impact which must be understood with respect to long-standing policies of harm, and relationships between testimony, the politics of consultation, and compulsive repetition of Canada's raced and gendered history, only part of which

6 This refusal to genuinely hear – as in to meaningfully take up – Indigenous women's testimony is directly addressed in the latest report by NWAC in relation to the horror of ongoing violence in the lives of Indigenous girls and women: "[t]he voices of Aboriginal women and their organizations are still ignored and disrespected, and they are excluded from participation in deliberations about their lives and their deaths. Most recently, the Parliamentary Committee on the Status of Women released its final report on violence against Aboriginal women. The report ignores the testimony given by hundreds of Aboriginal women and Aboriginal women's organizations and it offers no real solutions" (NWAC "Shadow Report" 2012). My criticisms here of the histories of neglect and silencing are not intended to extend to the many organizations of Indigenous groups and individuals endeavouring to participate in consultation and dialogue, including those most recently engaging precisely the "exploratory process" post-C-3. Chief Betty Ann Lavallée, for example, has stated that "[w]e believe that through the exploratory process that's being proposed there will be a fresh breath into the lives of aboriginal peoples in the 'time for honest reconciliation'" (Parliament of Canada 2010). It is rather my point to address the deep-seated gendered history of mis-heeding on the part of Canadian governments in relation to these processes.

I have recounted here. In response to NDP member Jean Crowder's question: "at a minimum, what would you like to see us do?" Mclvor replies:

I want you to respect the honour of the crown and have legislation that treats us and our descendants in a respectful and equal manner, and *not go back to the other people, the other bands, and ask if we should be treated equally. That is offensive, to say the least, to say my rights are subject to somebody else's agreement [...].* It's up to you to do what is right and get rid of that residual discrimination. (Parliament of Canada 2010; emphasis added)

As Gwen Brodsky, Mclvor's legal counsel insists:

[t]here is no consultation required or permissible about rectifying the status registration system [...] [w]e would not do this to any other group of women in the country. It would be discriminatory to go and ask those who disagree with us whether equality is to be the norm in this land. (Parliament of Canada 2010)

But in the record of the session, Conservative Party of Canada member John Duncan (later appointed Minister of Indian Affairs and Northern Development in August 2010, whose department was re-named in 2011 *Aboriginal* Affairs and Northern Development without consultation with Indigenous groups)⁷ expresses a telling concern over the "possible tsunami of cases coming forward as a consequence of Bill C-3." He compulsively returns to the issue of consultation and the Conservative government's insistence on the "exploratory process" as an act of collaboration – inauguration of which would be generated in the passage of the unfair Bill. I quote specifically from one of the Duncan-Mclvor exchanges, which represents, across all their volleys, Duncan's repeated insistence on 'conference', returned by Mclvor's assertion that legal guarantee of fundamental equal rights, as protected under the Charter, does not necessitate that process:

Mr. John Duncan: I'll go back to the exploratory process [...] I'm trying to get to a *buy-in* on the exploratory process, because we've got a lot

7 See Jennifer Ashawasegai's discussion (2011) of the varied responses by Indigenous groups to the Department's new name, including in regard to lack of consultation and the failure of the broad term "Aboriginal" to encapsulate distinct peoples' identities. But while the change in nomenclature has generally been hailed as a positive modification recognizing the government's broader responsibility to Aboriginal peoples including Métis and Inuit groups historically excluded from the legal definition of 'Indian' under the Act, I cannot help but worry there is, too, something disturbing about the eradication of 'Indian' given the abocide implications of government policy treated here.

of people excited about the fact that we're going to set terms of reference through consensus. This is not going to be a process driven by the Department of Indian Affairs; this is going to be one that is driven collaboratively [...]

Ms. Sharon McIvor: I will repeat that we as Indian women and our descendants deserve to be treated equally. *I don't think any amount of consultation will change that, and it shouldn't. You shouldn't have to consult with others to see if I can enjoy my full right to equality.* I understand that the issue of membership and resources in communities and all of that is there, and I understand the need to consult on that, but [not] on status [which is the matter of Bill C-3]. (Parliament of Canada 2010; all emphasis added)

But Duncan cannot or will not hear McIvor's insistence that her right to equal treatment under the law requires no ritual of 'conferr-ance'. The 'capital' extracted here, rather, is the 'surplus value' of a testimony functioning as a mechanism for state control – in, as Rey Chow might say, "the politics of knowledge-as-commodity" (1991, 87). It is not the content of McIvor's testimony but what produces it that serves the state interest. Duncan's neo-liberal response attempts to "buy" an opt-in to the process with assurance that the course will be inclusive: "This is for the Native Women's Association and all kinds of individuals – women from across the board, and so on" (Parliament of Canada 2010). But his is a government, among other largely conservative administrations, that has compulsively, actively, worked against Aboriginal women's rights to full equality; an awkward 'add women and stir' approach cannot fix the already badly damaged record of relation.

In the parliamentary session, liberal member Anita Neville made this statement in response to McIvor's testimony before the House: "What I'm hearing from you is that in all likelihood, should the legislation [that is, C-3] pass as is, Aboriginal women will need another Sharon McIvor of the next generation to take this battle forward so that all women are equal" (Parliament of Canada 2010). Indeed, the era of the "next generation" from these most recent legislative changes of 2010 (proposed) and 2011 (in effect) has already arrived; unable to secure justice or responsibility from the federal government, Sharon McIvor has filed a new/old complaint against Canada through the United Nations Committee on Human Rights November 24, 2010. Canada's response to McIvor's appeal for justice submitted before the UNCHR is as follows:

Canada asks the Committee to find this communication [McIvor's case before the UNCHR] inadmissible. Should the Committee find some aspects of the communication admissible, Canada asks that those aspects be found to be wholly without merit. ("Submission of the Government of Canada" 2011, 39)

In the persistent landscape of differences between government in/action and its rhetoric of collaboration, consultation, reconciliation, and justice in relation to longstanding institutional harms to Canada's Indigenous women, what continues to emerge, precisely in our present moment, is the trauma of suppression produced by the speaking power of the state.

Conclusion: Not just taking, or taking in, but taking up

As I have traced here and as Indigenous scholars have long articulated, Indigenous identity is deeply tied to land and community; repeated government efforts to divide members from the literal and figurative spaces of reserve community by status legislators is deeply embedded in racist and sexist colonial apparatuses. Against the backdrop of various historico-legal contexts and practices across status regulations and amendments in the Act, including the most recent changes executed by Bill C-3, this paper suggests that the discursive terrain of government consultation functions at once as alibi and rhetoric, a speaking space through which social and material effects must be registered in relation to ongoing harms to Indigenous women in particular. Indeed there is much more that needs to be said here, and no time or space to tell it in this text. I evoke, simply, the testimony of Karen Green, Executive Director of the Native Women's Association of Canada, delivered in the House April 2010, on C-3: "So we have to address the issue in terms of: what is the 'right' contingent on, *to be a member of your community*. Is it contingent *on the resources being available?*" (Parliament of Canada 2010, emphasis added). The cultural structures of racism and sexism attached to the exercise of power in government authority are deeply imbricated in economic systems, and claims, and competitions over resources. In 1985, the government's revision of the Act created the possibility for bands to decide their own membership rules, but without proper government resourcing in terms of space, housing, and more, the effect must largely remain one of further exclusion and competition. Ultimately, justice and reparation require that there be no more taking (away) – nor, simply, the performative and consumptive gesture of taking in. What is needed is the material action of taking up – a practice of heeding (an action response born of genuine reception) in place of hearing (as alibi for action) by the Canadian government. I close by citing Leanne Simpson, member of the Nashnaabeg Nation in eastern Ontario:

For reconciliation to be meaningful to Indigenous peoples and for it to be a decolonizing force, it [...] must be grounded in cultural generation and political resurgence. It must support Indigenous nations in regenerating our languages, our oral cultures, our traditions of governance [our land, and more ...]. (2011, 22)

Otherwise, without meaningfully engaged and material response, "reconciliation" remains simply rhetoric, an empty space in the landscape of government and Indigenous relations.

At the very moment this paper goes to press, the Federal Court of Canada has issued a landmark ruling in the case Daniels v. the Queen initiated in 1999 by Harry Daniels and The Congress of Aboriginal Peoples. On January 8, 2013 the Honourable Michael Phelan, refusing status definition based on bloodline or "blood purity," decides that Métis and Non-Status Indians must be recognized with Indian status under Canadian law – with the implication of entitlement to federal benefits attendant with official status. As The Globe and Mail reports, "[h]is ruling cites Nazi Germany and South Africa's apartheid regime as 'two examples of why Canadian law does not emphasize this blood/racial purity concept.'" Jan O'Driscoll, spokesperson for Minister John Duncan, indicates Ottawa will review the judgement to determine its next move – but the paper suggests that "experts believe the case will end up in the Supreme Court of Canada" (<http://www.theglobeandmail.com/news/national/number-of-recognized-aboriginal-people-should-double-court-rules/article7029340/>). CAP National Chief Betty Ann Lavallée calls for PM Harper to accept the ruling and end long-standing discrimination against Canada's off-reserve Indigenous peoples: "It is now time to do the right thing, and move beyond these 13 years of legal battles by accepting this court's decision, rather than appealing and spending even more taxpayer's money" (<http://www.abo-peoples.org/landmark-federal-court-ruling-grants-recognition-to-metis-non-status-indians-in-canada/>). The Court's ruling arrives in the thick of growing national momentum for the Idle No More movement.

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