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# Elder Brother, the Law of the People, and Contemporary Kinship Practices of Cowessess First Nation Members: Reconceptualizing Kinship in American Indian Studies Research

**ROBERT ALEXANDER INNES**

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## INTRODUCTION

Raymond DeMallie has argued that kinship studies are a significant but often ignored area of research within American Indian studies (AIS), suggesting that AIS scholars' aversion to kinship research has been due to the latter's close association with anthropology. According to DeMallie, kinship studies, with their evolutionary and cultural relativist theories, abstract taxonomies, and endless charts, seem far removed from and irrelevant to AIS scholars and Native communities. Yet, in pointing to examples of the negative impact of kinship breakdown on the Grassy Narrows Ojibwe and the possibility for positive change with the revitalization of the Pine Ridge Lakota kinship unit, or *tiyoshpaye*, DeMallie stated that kinship is "fundamental to every aspect of Native American Studies." Accordingly, he challenged AIS scholars "to explore the richness of the Native American social heritage and find creative ways to build on it for the future."<sup>1</sup>

Few researchers have pursued kinship studies of Native North American people since the 1970s. Instead, researchers have focused on international indigenous people and applied unique approaches to kinship research. Exploring the relationship between gender and kinship or the link between economics and kinship are examples of approaches taken by researchers of international indigenous people.<sup>2</sup> Though few researchers have explored kinship within a Native American context, recent studies of Native American

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identity construction have examined the persistence of distinct cultural identity within contemporary Native American communities, identities that are closely linked to kinship.<sup>3</sup> These studies suggest that ethnic identity is a fluid process. These innovative approaches to kinship research of indigenous people worldwide provide AIS scholars with exciting possibilities for undertaking similar research on Aboriginal people. These studies further point to a need for answering DeMallie's call for more kinship studies in a Native North American context. However, to date no studies like these have been conducted in Canada. How Cowessess First Nation band members have constructed their identities over time, and the link between their identities and notions of kinship, is of prime interest to my study.

In my research I take up DeMallie's challenge by examining the importance of kinship relations in the maintenance and affirmation of individual and collective identity for members of the Cowessess First Nation, located in southeastern Saskatchewan. Specifically, the study examines how Cowessess band members' continued adherence to principles of traditional law regulating kinship has undermined the imposition of the Indian Act's definitions of *Indian* by acknowledging kinship relations to band members who either had not been federally recognized as Indians prior to 1985 or were urban members disconnected from the reserve. This acknowledgment defies the general perception that First Nations people have internalized the legal definition of *Indian* and in the process rendered traditional kinship meaningless. It also questions the accepted idea that conflict is the only possible outcome of any relationship between "old" members and "newly recognized" Indians. The importance of kinship to Cowessess band members blurs the boundaries (as defined by the Indian Act) among status Indians, Bill C-31s, Métis, and nonstatus Indians, thus highlighting the artificiality of those boundaries.

I argue that the attitude of older Cowessess band members toward new members stems from kinship practices that are historically rooted in the traditional law of the people that predates the reserve era and that have persisted since at least the nineteenth century. In the prereserve era, Aboriginal bands in the northern plains were relatively small, kin-based communities that relied on the unity of their members for survival. Band membership was fluid, flexible, and inclusive. There were a variety of ways that individuals or groups of people could become members of a band, but what was of particular importance was that these new members assumed some sort of kinship role with its associated responsibilities. For Cowessess people, these roles were behaviors that were carefully encoded in the traditional stories of the Cree trickster/transformer, or our Elder Brother. Elder Brother stories were "the law of the people" that outlined, among other things, the peoples' social interaction including the incorporation of individuals into a band. Incorporating new band members served to strengthen social, economic, and military alliances with other bands of the same cultural group. However, many bands in the northern plains were multicultural in nature, so the creation and maintenance of alliances cut across cultural and linguistic lines.

The Cowessess First Nation is an example of a multicultural band because its prereserve composition comprises five major cultural groups: the Plains

Cree, Saulteaux, Assiniboine, Métis, and English half-breeds. The total membership of the contemporary band is 3,724, with nearly 80 percent living off reserve. This represents the third largest of seventy-five First Nations in Saskatchewan and the largest in southern Saskatchewan. Band members live throughout the province and in every province and territory in the country, particularly in major urban centers such as Winnipeg, Calgary, Edmonton, Vancouver, Toronto, and Ottawa. However, nearly 1,800 band members reside in the provincial capital of Regina, approximately one and one-half hour drive west of the reserve.<sup>4</sup> Band members have also relocated to several foreign countries. Many of these off-reserve members are men and their wives (and descendants) who first left the reserve in the 1950s. A significant number are also C-31s—that is, women who left the reserve to find employment and/or married nonstatus Indians, and therefore lost their status—who regained their status and had their children's status reinstated.

My study describes how kinship for contemporary Cowessess First Nation band members, in spite of the historical, scholarly, and legal classifications of Aboriginal peoples created and imposed by outsiders, persists to define community identity and interaction based on principles outlined in the Elder Brother stories. Classifying Aboriginal people has had profound impacts on the ways that non-Aboriginal people view Aboriginal people and on how some Aboriginal people view themselves. Cowessess members' interpretations become of great significance in order to understand how contemporary First Nations put into practice their beliefs about kinship roles and responsibilities and demonstrate that these practices and beliefs are rooted in historical cultural values. In addition, this practice confounds the tribally specific histories that tend to extrapolate relations at the band level to relations at the tribal level and, therefore, presents a distorted view of historic Aboriginal societies as distinctly bounded entities.

The first section of this article provides a brief history of the legislation that has defined *Indian* in Canadian law and of the challenges to these definitions that eventually led to the 1985 implementation of Bill C-31, which amended the Indian Act's membership code. The second section outlines the notion of the law of the people conveyed through stories of Elder Brother. The third section links the values found within the stories to kinship patterns practiced by Cowessess members in the early reserve period to the mid-twentieth century. Finally, the last section discusses the findings of interviews with twenty-seven Cowessess band members that show their continued adherence to aspects of their traditional kinship expectations.

#### LEGAL DEFINITIONS OF *INDIAN*

The legislative history regulating Canadian First Nations is one of an imposition of a legal standard to determine who would be federally recognized as Indian. This standard has created an artificial boundary between peoples where none previously existed and has created tension and conflict, as various interests debate where that boundary should be drawn. In 1850, prior to the creation of Canada, the colonial government passed two pieces of legislation

that marked the first attempt to define in law who was an Indian.<sup>5</sup> Although the colonial government's objective was ostensibly to establish who could live on First Nations' lands, the acts were really "designed to reinforce the rights of settlers to the entire land by restricting Indians to specific territories within it."<sup>6</sup> The acts, as John Tobias states, "established the precedent that non-Indians determined who was an Indian and that Indians would have no say in the matter."<sup>7</sup>

In 1876, the Canadian government passed An Act to Amend and Consolidate the Laws Respecting Indians, better known by its short title, the Indian Act, 1876. Consisting of one hundred sections, the Indian Act had far-ranging implications on all aspects of First Nations' life including the management of reserve land and resources, the operations and scope of power of band councils, the ways that courts dealt with non-Christian Indians, and alcohol use, and it described the "privileges of Indians." Like the earlier legislation, the Indian Act attempted to redefine kinship patterns of First Nations people by outlining whom the Canadian government would acknowledge as Indian.<sup>8</sup>

The Indian Act underwent many extensive amendments through 1927, with minor amendments in the 1930s, and a major revision in 1951 that sought primarily to accelerate the assimilation process but was also used to control and punish those First Nations individuals who were perceived as undermining federal goals. The effect of these definitions was that some aspects of the traditional kinship patterns were disrupted while others, such as the incorporation of non-Indian men, were made illegal. Women who married non-Indians and their children were legally excluded from band membership and Indian status, a clear violation of traditional kinship systems for many First Nations groups. Section 12(1)(b) of the amended Indian Act of 1952 reinforced the attack of the kinship patterns, as it stated that a "woman who is married to a person who is not an Indian was not entitled to be registered as an Indian."<sup>9</sup> The sexual discrimination of the Indian Act was entrenched in Canadian law until the 1970s, when some First Nations women challenged this membership criterion and sparked a response from on-reserve band members and First Nations leadership.

In the early 1970s, two First Nations women, Jeanette Corbiere Lavell, an Ojibwe originally from Wikwemikong First Nation, and Yvonne Bedard, from the Six Nations Reserve in southern Ontario, launched court actions that claimed that section 12(1)(b) violated the Canadian Bill of Rights based on gender. Both women had lost their Indian status after they married non-Indian men. In 1973, the Supreme Court of Canada ruled against the women asserting that section 12(1)(b) did not breach the Bill of Rights as this section was applied equally to all status Indian women.<sup>10</sup> However, in 1977, Sandra Lovelace, a Maliseet woman from New Brunswick, brought her case to the United Nations Human Rights Committee claiming that Canada had violated the International Covenant on Civil and Political Rights on the grounds of sexual discrimination by preventing her recognition of federal Indian status when she married a non-Indian. The United Nations committee ruled that it could not adjudicate Lovelace's case based on sexual discrimination as she

had married prior to Canada signing the covenant. It did, however, closely examine whether the Indian Act contravened Article 27 of the covenant, which states, "In those states in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." The committee ruled that because Lovelace could no longer live in her community, Canada had breached Article 27 of the International Covenant on Civil and Political Rights by denying her right to access the culture of her community.<sup>11</sup> This ruling was an important factor that compelled the Canadian government to proceed to make changes to the Indian Act.

In 1985, when the Canadian government passed Bill C-31 to amend the membership code of the Indian Act, many First Nations leaders expressed their displeasure. The amendment allowed for those people who had lost their federally recognized Indian status, many of who were women who lost their status upon marrying non-Indians, to regain their status and pass on their status to their children. Comments made in the news media and in parliamentary hearings about the amendment highlight the tension it caused in many communities due to the complex definitions of federal Indian status and band membership, which engendered issues of cultural authenticity, governance, and government funding for First Nations.<sup>12</sup> These issues influenced individual and collective responses to the new members.

### STORY OF ELDER BROTHER AND THE WOLVES

Historically, the Elder Brother stories played a crucial role in detailing the prescribed social interactions of the people. Elder Maria Campbell has said that the Elder Brother stories contained the law of the people.<sup>13</sup> The legal systems of precontact Aboriginal peoples, as James Zion points out, "were based upon the idea of maintaining harmony in the family, the camp, and the community."<sup>14</sup> The failure to follow prescribed regulations could, according to what happens to Elder Brother in the stories, result in severe negative consequences. Conversely, adhering to the positive behavior Elder Brother displays was seen as the ideal that all should attain. An understanding of the stories facilitates an understanding for the incorporation of members into the Cowessess band in the pre- and postreserve periods. The stories are also helpful in gaining insight into contemporary peoples' ability to maintain certain aspects of their kinship roles and responsibilities.

Traditionally, stories, and especially trickster/transformer stories, acted to impart the philosophical ideals upon which Aboriginal societies should function.<sup>15</sup> As Robert Williams Jr. notes, "The stories socialized children and reminded adults of their roles and place within the universe. . . . Indians have long practiced the belief that stories have the power to sustain the many important connections of tribal life."<sup>16</sup> The telling of trickster stories, such as those of Elder Brother, was a means by which to convey Aboriginal philosophical meanings to the people. Elder Brother is a spirit being who has many human characteristics. He can be generous and kind, yet he can also

be selfish and cruel. In a story, if he was kind, he usually met with success; if he was cruel, he often met a disastrous and sometimes humorous end. His adventures and misadventures acted to guide the peoples' social interactions, and because of this he is highly regarded. As Basil Johnston states about the esteem the Ojibwe have of Nanabush, "For his attributes, strong and weak, the Anishnabeg came to love and understand Nanabush. They saw in him themselves. In his conduct was reflected the characters of men and women, young and old. From Nanabush, although he was a paradox, physical and spirit being, doing good and unable to attain it, the Anishnabeg learned."<sup>17</sup>

Elder Brother stories conveyed Cowessess traditional law to its people. These stories functioned as a legal institution. Though this institution was unlike those in other parts of the world, it functioned in the same way. As Zion and Robert Yazzie explain, "When a legal institution articulates a norm or validates a custom, that is 'law.'"<sup>18</sup> The Elder Brother stories explained the rules for expected normative behavior. These ideals were enshrined in the peoples' notion of themselves, with each retelling of Elder Brother stories and with each act that could be attributed to these stories.

A number of legal scholars have linked traditional narratives, whether stories, songs, or prayers, of Aboriginal peoples to their traditional legal system.<sup>19</sup> For example, Williams points out that "stories are told in tribal life to educate and direct young ones, to maintain the cohesiveness of the group, and to pass on traditional knowledge about the Creator, the seasons, the earth, plants, life, death, and every other subject that is important to the perpetuation of the tribe."<sup>20</sup> John Borrows states that the traditional tribal customary principles "are enunciated in the rich stories, ceremonies, and traditions within First Nations. Stories express the law in Aboriginal communities, since they represent the accumulated wisdom and experience of First Nations conflict resolution."<sup>21</sup> Donald Auger asserts that "the knowledge gained by individuals from story-telling was that of relationships and the importance of maintaining balance and harmony."<sup>22</sup> Stories act to connect our "normative system to our social constructions of reality and to our vision of what the world might be."<sup>23</sup> Robert Cover explains the connection between narratives and law:

No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each Decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live . . . in this normative world, law and narrative are inseparably related . . . every narrative is insistent in its demand for its prescriptive point, its moral.<sup>24</sup>

The Elder Brother stories reflect the moral normative behaviors that Cowessess band members were expected to follow. Through these stories, "their sense of justice and fairness" were prompted.

In 1913, anthropologist Alanson Skinner collected Elder Brother stories

from a number of elders from Cowessess that set the parameters by which Cowessess people were expected to act. The following is a condensed excerpt from a story of Elder Brother and a group of wolves. In the story, Elder Brother is adopted by the wolves and then assumes the accepted kinship roles and responsibilities.

One night some wolves heard Elder Brother singing. The oldest says "I believe that is my eldest brother. He has a good song . . . watch for him, and run and say to him, 'My uncle, what are you saying?'" When the wolves met up with Elder Brother, they told him that their father wanted to meet him. The father asked his elder brother what his song meant. Elder Brother told him and then decided that he would stay with the wolves for a while. Some time later, Elder Brother decided he wanted to leave, but he wanted one of his nephews to go with him. The old wolf allowed his youngest son to leave.

After a dream, Elder Brother addressed the young wolf, "My nephew, never go along the lake-shore. Do not run on the beach." Later, the young wolf was thirsty. Forgetting Elder Brother's instructions, he went to the lake and drank some water. He suddenly became crazy. Elder Brother realized his nephew had gone missing and knew that the White-Lynx had taken him. He tracked White-Lynx and listening to the Sun, shot at his shadow. He was successful on the attempt, but he did not kill him. The White one, though injured escaped. Elder Brother met up with old toad, who was on her way with her medicines to heal White-Lynx. Elder Brother killed and skinned her and put on her skin. He went to White-Lynx, now as the old toad. When he arrived the people said, "Oh, our old grandma is coming again." As the toad, Elder Brother entered the White-Lynx's lodge. Upon entering, he saw the skin of his nephew hanging on a pole. He then saw White-Lynx with an arrow in his side. He had a pipe be filled and then asked everyone to leave. "Now, shut the door. I shall smoke and take out the arrow now, but don't let any one look in." When this was done, Elder Brother walked up to White-Lynx and grabbed the arrow in his hand and pushed it into the Lynx's heart as hard as he could. He then grabbed his nephew's skin and fled, tearing off the toad skin. Once Elder Brother had ensured that he had lost his pursuers, he brought him back to life.<sup>25</sup>

The story outlines a number of prescribed behaviors required in the maintenance of respectful kinship relations with Cowessess people. It highlights the value of inclusion by the facts that although Elder Brother was not related to the wolves, he was adopted into the pack and considered a relative; the younger wolves were expected to address and treat him as an older relative; and he assumed the roles and responsibilities expected of a relative. In the same way he was adopted by the wolves, Elder Brother is permitted to adopt a younger wolf that Elder Brother calls nephew. However, it is when Elder Brother and the young wolf were on their travels that the kinship roles



and responsibilities become more explicit. Elder Brother is responsible for the well-being of the young wolf. When the young wolf goes to the water against the instructions of Elder Brother, the listeners learn that there are negative consequences for not heeding the words of elders. In searching for and rescuing his nephew, Elder Brother fulfilled his responsibility not only to the young wolf but also to his other relative, the old wolf. By entering the White-Lynx's village, Elder Brother exhibits characteristics, such as bravery, daring, and ingenuity, that are important for young males to internalize. These were central tenets of the warrior societies, whose primary duty was to protect and provide for the people. From his story, the kinship obligations for Cowessess people were made clear. The people understood that for the society to be self-perpetuating, it was incumbent that members adhere to the principles of Elder Brother stories.

Elder Brother stories help to explain traditional kinship practices of the prereserve and early reserve periods, when Cowessess people easily incorporated others into their band, including the adoption of white children. However, the assimilation policies of the Canadian government sought to undermine the law of the people, including regulations guiding kinship practices. These attempts were in many respects successful. Yet for many Cowessess people the notions of kinship as epitomized in Elder Brother's behavior continue to exist, demonstrating that the ideals of the traditional law of the people are still implicitly central principles guiding band members' social interactions. The extent to which current Cowessess band members tell Elder Brother stories or even know about them is not certain. However, what is apparent is that the values that are encoded in these stories have persisted from prereserve and early reserve periods to the present.

### THE MULTICULTURAL ETHOS OF THE COWESSESS BAND

In the early reserve period, Louis O'Soup, an important First Nations political leader for nearly forty years, typified the multicultural ethos of the Cowessess band. He was a Cowessess headman during the signing of Treaty Four in 1874, and he later became chief of the band and was notable for lobbying for treaty rights and the economic and social improvement of First Nations people. Though most historians have identified O'Soup as Saulteaux, he was of mixed ancestry. O'Soup's father was Ojibwe/Métis, his mother was Assiniboine, and his wife was Nez Perce.

The Cowessess band continued the prereserve practice of accepting new members into the band well into the reserve period. Sometime during the 1890s, for example, two men, Wapamouse (also spelled Wapahmoose) and Patrick Redwood, transferred into the band. Wapamouse was a descendant of Chief Wahpemoosetoois, who had signed Treaty Four, and Redwood was a carpenter. Both men married Cowessess women and transferred their band membership to Cowessess from their original bands. Cowessess families adopted a number of Euro-Canadian children. For example, O'Soup, who suffered the loss of three daughters, adopted a boy of Irish descent. The boy's parents had apparently deserted him, and he was left with the priest at the

Qu'Appelle Industrial School, where the adoption was arranged.<sup>26</sup> According to Janice Acoose, O'Soup adopted her paternal grandmother, Madeline, also of Irish descent.<sup>27</sup> Madeline later married the famous Saulteaux long-distance runner Paul Acoose from the neighboring Sakimay First Nation.<sup>28</sup> According to band elders, a number of Cowessess families traveled to Winnipeg around 1905 and adopted up to seven white children, including Mariah Lerat, the mother of Harold Lerat. Harold Lerat is a band elder who in his recently published book confirmed that Gus Pelletier and Annie Two Voice had adopted his mother.<sup>29</sup>

The band also accepted individuals who had either elected to give up their Indian status voluntarily or had transferred to other bands but later decided to reapply to be treaty Indians and band members.<sup>30</sup> For example, Harold Lerat's grandfather's brother, Pierre Lerat, who had married a Métis woman named Cecile Desjarlais, enfranchised and was given \$160 in Métis scrip. He later requested to be a treaty Indian and was allowed back, but with his annuity payments withheld until the scrip money was paid back.<sup>31</sup> Many Métis and half-breeds who had married Cowessess band members applied to be let in to treaty. "Even though there were bureaucrats that did not agree with allowing half-breeds into treaty, the deal ended up that if the half-breeds came back into treaty, their annual treaty money for all members of the family would be held back until the amount paid to them in scrip was recovered."<sup>32</sup>

In the late 1890s, O'Soup transferred to the Pine Creek Indian Reserve near Lake Winnipegosis and lived with Chief Gambler's band.<sup>33</sup> In 1907, he applied to be allowed back at Cowessess. A vote was held in which his application was defeated seventeen to eight. Another vote was passed unanimously in favor of not allowing any more transfers into the band. However, when O'Soup again applied to be allowed back onto the reserve the next year, only one person out of twenty-nine voted against his return.<sup>34</sup> Although there was some animosity against allowing new members into the band, the band nevertheless continued the cultural practice of inclusion from prerreserve times.

According to the Department of Indian Affairs records, Cowessess people continued their long-standing relationship with the Métis, especially with those living in the Métis community of Marieval, well into the postwar years. One elder who was interviewed said that some of her relatives married men from the "Métis side"—referring to the fact that Marieval was on the north side of the Qu'Appelle River, which was the border of the reserve: "My aunts married Métis people. We used to go visit them. My mother and them were close. . . . You see the Métis lived over here on the other side of the [Qu'Appelle] River." One World War II veteran, who grew up in Marieval, described their relations with the Cowessess people during the 1930s as being very close. People from Marieval, he said, would go to the reserve to play baseball, attend church, and join community dances.<sup>35</sup> The persistence of intermarriage between these communities facilitated their close relations. This particular veteran had married a Cowessess woman, and his mother was from Cowessess. The close relationship between Cowessess people and the Métis was facilitated by the fact that the Roman Catholic Church was located on the reserve because many people from both sides of the river were Catholic and faithfully attended mass and other church functions.

The presence of the Roman Catholic Church on Cowessess also acted as a unifying factor with the non-Aboriginal population, as French Canadians and eastern European immigrants attended the church. A possible explanation for the multiethnic nature of the parishioners was the existence of the Ku Klux Klan, which flourished in 1920s Saskatchewan and targeted French Canadian and eastern European immigrants because they did not speak English and were Catholic.<sup>36</sup> With a few notable exceptions, the presence of the newcomers was well received by Cowessess people. In 1921, however, a petition was submitted to the priests to create a separate parish for the Indians and Métis parishioners due to the racist attitudes of some French Canadians. This never occurred, and in 1934 the priests indicated that 5 Polish, 7 French, 34 Métis, and 107 Indian families attended the church on Cowessess.<sup>37</sup> One Cowessess member mentioned that many French Canadian, German, and Métis are buried in the Cowessess cemetery.

### CONTEMPORARY VIEWS OF KINSHIP

In Cowessess First Nation, unlike many other First Nations, little animosity was directed toward new members. Cowessess band members' responses to the amendments reflect the principles of the Elder Brother stories, as many have maintained kinship practices and innovated new ones. The central practices that act to maintain family connections included ways that fulfill responsibilities to family members and community such as family gatherings, in which members, especially children, are reminded of their family histories and their relations; the role of elders in socialization that act to link the past, present, and future; strategies by urban members, for example, living in close proximity to each other; and the way some members defined *family* that ignores biological, racial, and legal classifications imposed by others.

I interviewed twenty-seven Cowessess members living on- and off-reserve about their views of Bill C-31, specifically whether they believed the new membership code to be beneficial for Cowessess. Most felt that allowing relatives to regain their Indian status and secure band membership was good for the band. None of the band members interviewed exhibited the level of animosity toward any individual new member that has reportedly occurred on other First Nations. This is not to say, however, that all participants agreed with all aspects of Bill C-31. Nonetheless, the views of Cowessess people about C-31s demonstrate that the law of the people still resonates with band members.

Many of those interviewed understood why others lost their status. People either voluntarily enfranchised because they believed that they would be better able to provide for their family or because women had married nonstatus Indians. Many recalled the factors that led their families, or people they knew, to lose their status. One respondent outlined the circumstances surrounding his family becoming enfranchised:

At one point our Indian status was taken away from us because our dad thought that we would never ever come back to what he thought was a racist [situation and a] lack of opportunity area to live. And that's

the reason—they were basically looking for other ways to live and to survive. And so they moved off the reserve. Um, there's always been a policy of the Canadian government to assimilate us, to reduce our treaty rights and all that kind of stuff. But back then, you know, there were a number of injustices being done that were very calculating and callous in the way the government treated us. Any women who married a non-Indian man lost her status. For four hundred dollars a head you could sign your family off the reserve and all your rights and benefits as an Indian. And so we did that. My dad did that to us. And so we became at the end of the process in '85, we were then reclassified Bill-C31s because we reapplied to become status Indians. The fact that they took our status away from us made our bodies no less Indian than we ever were. Our bloodline shows that we are very strongly attached to, to Cowessess and that never changes. So it's only the government and the way they, their policies dictate who is and who isn't an Indian. That really is the legal side of how we view our people, but then there's the real view, can't take Indianness away from you, you know.

This longtime reserve resident, now living in the urban area, outlined the impact that Bill C-31 had on the band:

Well, Cowessess, we always had a big membership. We always knew that we don't know most of our people. I guess we always knew it [Bill C-31] was going to inflate our population, but it probably increased by five to six hundred. The law came in '85, I think, but it wasn't until the beginning of the nineties that Cowessess membership starting increasing really fast. I think the Bill C-31 registrations are done now, at least for what it was intended. But our population probably increases about a hundred every year. We are probably thirty-two hundred now. When I started working for Cowessess eleven years ago, it was probably twenty-two hundred, and then it just jumped. It was all of the applications from Bill C-31. They said it would increase the membership list, and then they said there would be less [funds available for the band from the federal government] going around. But there wasn't enough room for people to stay here [to move back to the reserve; there is a chronic housing and land shortage] anyway.

The divisiveness of Bill C-31 was also reflected in the reaction of the Cowessess First Nation's band council to the implementation of the new amendment. During a band council meeting that I attended in 2003, one counselor proudly proclaimed, "We accepted all C-31s into the band." Another man who was a counselor when Bill C-31 was introduced said that he was originally against the bill because it meant that there might be more new members living on the reserve than "original" members. He also noted that "a lot of these people went out and came back, and a lot of them, I don't know how many, but there were a few who volunteered, then came back again, which I don't think is right." He was particularly against the idea of those who

had voluntarily enfranchised being reinstated, rather than just those women who had lost their status through marriage. Twenty years after the passage of the bill, he seemed to have softened his position. When asked if he thought that allowing the Bill C-31s back into the band was a positive or negative experience, he stated, "I think that's a good thing, then you get to know the people." Then he added, perhaps half-jokingly because he was in his seventies and had been married for many years, "I could have married my cousin and never know it." The disagreement of the council over Bill C-31 reflected the opinions of the band as a whole. These feelings did not go unnoticed by some Bill C-31 members. One Bill C-31 member was quoted in a special online issue of *Windspeaker*, a national Aboriginal newspaper, concerning Bill C-31. He noted that, "If it were up to the bands, I think they would be a bit more discriminatory and I don't think I would have got my status if my band had the choice of choosing who would be a member."<sup>38</sup> However, there is no indication of why he believed the band would not have allowed him to return.

Though Cowessess accepted all their Bill C-31 members, it was not an explicit endorsement of the bill. Cowessess, like most Saskatchewan First Nations, did not implement their own membership codes within the allowed two years after the bill was passed and, therefore, were compelled to follow the code of the Indian Act. If Cowessess had implemented its own membership code, it could have been more inclusive or exclusive than the Indian Act.

Though there were some notable disagreements, the responses of long-standing band members to C-31s were generally positive. However, it must be kept in mind that a significant number of participants were C-31s or had relatives who were C-31s. For example, one reserve resident related how her family was always physically and emotionally close. When she was young, her immediate and extended family lived in a cluster of homes near each other. As they grew older, her family would "have lots of family gatherings. We lived together, we moved to the city together, but now that we are getting older we are settling down back at home and closer together." For her, Bill C-31 had positive ramifications for her relatives. She believed of Bill C-31 that, "Oh, it was a good thing for me because I had a first cousin that signed off the reserve, and with Bill C-31 they got some of their treaty rights back." For this woman, Bill C-31 meant that her close relatives were able to access treaty benefits, including the right to reside on the reserve near her, therefore allowing her to maintain her close familial bonds.

The attitudes of several band members who were interviewed are reflected in the views of these two well-respected community members, who noted that Bill C-31 did not go far enough:

I don't deny the women getting their status back because I don't think it was right that they lost it when an Indian married a white man, and when an Indian married a white woman she gained status. It wasn't right for the woman to lose her status. They draw the line on Bill C-31, so when a woman got her status back she was a Bill C-31 and her children, but not her grandchildren would get their status. Which I don't think is right.

I think it's unfair for the non-Indian women that married Indian men. They became band members and they enjoy benefits that Indian men have, but after '85 these white women, they can't acquire the status of their husbands anymore. So you have families on the reserve who enjoy all of the benefits from being a status Indian on the reserve, and then you have another family with a white woman who enjoys no status, so if something happened to her husband they have nothing.

The first respondent refers to the fact that the children of those reinstated did not receive full status. That is, a reinstated person can pass status to their children, but the children cannot pass on their status on to their own children unless they marry another status Indian.<sup>39</sup> The second respondent refers to a situation in which a white spouse, in this case a woman, marries a band member and resides on the reserve. According to the 1985 amendment to the Indian Act, she would not be entitled to any band membership benefits, no matter how long she lived on the reserve. This woman would have to leave the reserve if her husband should die before her. For this respondent, this undermines cultural kinship practices of Cowessess people. Housing issues, including inheritance of houses, fall under land management. The Cowessess Lands Management Act, which failed ratification, had planned to allow nonmember spouses to continue to live on the reserve after the passing of their member spouse. That these two prominent band members expressed disappointment that all individuals who were considered relatives were not included in Bill C-31 suggests that Cowessess people have retained inclusive notions of kinship held by earlier generations of Cowessess people. It also counters the opposition to Bill C-31 put forth by many First Nations leaders.

This following respondent pointed out that Bill C-31 does not take into account all the possible ways in which people have lost their status.

Well, I will tell you one thing—it almost creates an imbalance between who is Indian and who is not Indian. It upsets me because my ex, I knew her family before I knew her. I was raised with her family but she was taken away and raised in the white world when she was very young. So I didn't know her. We are not related. They had a big family, too, but a lot of their grandkids got taken away. Some of them lost their status. My ex and her sisters were all raised in different homes and one of them lost her status. Some of her sister's kids have status and some don't. Her sister then passed away and orphaned her son. So now what I have is my kids and their first cousin. Their first cousin comes from the same background, an Indian mom and an Indian dad, but he doesn't have status. So now we have two kids, first cousins. My kids have status, but [the cousin] doesn't have status. So he can't count on the reserve when he goes up for school [postsecondary funding]. My daughter is going to school with funding but he can't.

I asked, "So, do they see each other differently?"

No, I don't think so. Like, on the reserve there [are] a lot of kids that were raised on Cowessess that aren't Cowessess band members. And that's so unfair, especially when these are our kids [children of Cowessess band members]. I think that it is in a sense very unfair for families to have one [with status] and one not to have. I think that they miss out on a lot of benefits that they could be entitled to. So that is one way of breaking down the community, cutting them off, then they don't have the support of their community.

His explanation is noteworthy for a number of reasons. First, although it is unclear why his nephew was not eligible to be reinstated, he did highlight a perceived shortcoming of Bill C-31 that not all relatives are necessarily eligible to gain their Indian status. Second, the kinship relationship among him, his children, and his nephew was not altered regardless of legal definitions of *Indian*. Additionally, his narrative pointed to the fact that his nephew's case is not an isolated one. As he noted, there were a number of children raised on the reserve who were not band members, which implies that he believed that there were many people who should be eligible for band membership and Indian status.

One person whom I interviewed was a C-31 who felt that he and other C-31s were discriminated against after regaining status. This person noted that he had had a hard time gaining access to housing since he returned to the reserve. However, he later said that the chief and council often favored their own families, whereas his family was small, with few relatives on the reserve and no family members on the band council.

Another person claimed that some band members were still not in favor of Bill C-31:

There were certain members that didn't like the C-31s. All it was, they were giving the Indian women her rights back that lost her status and her first children. I didn't see anything wrong with that. Where people started to have a problem was where they started coming back and wanting land from other people. That's where there was a problem because there wasn't very much land to be taken and from a Bill C-31 who never knew very much about living on a reserve in the first place.

The notions held by some Cowessess members that Bill C-31 members did not have the requisite knowledge or experience about living on a reserve is somewhat perplexing. Although it is true that there are many C-31s, especially the children of reinstated people, who never lived on the reserve, many C-31s were actually born and raised on the reserve. In addition, many who had lost their status continued for years to visit their relatives on the reserve. However, what really makes this notion puzzling for Cowessess band members is that because there have been Cowessess people migrating to urban areas for more than fifty years, there are at least two generations of families who never lost their status but have never lived on the reserve. In effect, there are many C-31s who would have more knowledge and experience about living on the reserve than some long-standing members.

The following research participant explains the difference between Cowessess people's views about C-31s and other First Nation's views and highlights the traditional view of kinship evinced by many Cowessess members.

It never really made that much of a difference. . . . Other reserves were different than Cowessess [in their treatment of C-31s] where most of their members [other reserves' band members] stay on the reserve, and for them bringing in people who are Bill C-31s created a quite a bit of jealousy. So many [other bands] made a rule that Bill C-31s weren't band members. Cowessess did not do that probably because we are more open than that. In that most of our people live off the reserve. Our people have been marrying other people for a long time, white people included, for generations by now. In that sense, it's [including Bill C-31 people as band members] not anything new. We're a small reserve—they are all Indians. On our reserve, eighty percent of our people leave and marry other people. So in that sense, when Bill C-31 came along you had almost two extremes. Where one was very strict about who were Indians, and the other extreme, maybe people wanted to be inclusive of who their members bring in. So Cowessess would be more on the other extreme of being more accepting. There are some [Cowessess] people who have a hard view of membership, but not the majority.

His explanation acknowledges the historic exogamous marriage practice of Cowessess people, a practice that continues to the present day. It also recognizes the fact that Cowessess people understand that this marriage practice is an accepted cultural trait.

A further example of the inclusionary practices of the contemporary Cowessess First Nation is illustrated by the relationship between the band and its urban members. In response to the large number of band members residing in Regina, Cowessess established an urban office and an urban councillor. The urban office offers a number of programs and services for its Regina members and publishes a newsletter to inform urban members of the important issues, programs, and events. The January 2008 newsletter announced the formation of a youth drum group. The drum group reflects contemporary Cowessess kinship values. The announcement stated that in order to join the group a person had to be a male youth between thirteen and seventeen years old. A youth, according to the announcement, "should be a Cowessess community member, meaning a Band Member or a child of a Band Member." This notion of who is considered a community member is in direct contrast to the definition imposed by the Canadian government through the Indian Act. Also, urban members in Regina were able to vote in band elections prior to the 1999 Supreme Court decision in the *Corbiere* case, which stated that urban band members of all Canadian First Nations have the right to vote in band elections.<sup>40</sup> This is not to say that no tensions exist between urban and reserve residents, but that in general there has been and continues to be a conscious effort to maintain the ties with urban members.



## CONCLUSION

The views of a majority of Cowessess band members' about Bill C-31 and the creation of new members mirrors the values embedded in the Elder Brother stories that convey the traditional law of the people. Though some viewed Bill C-31 as having a negative impact on the band, most saw it as being positive for the band. Many mentioned that they were happy that their relatives were able to regain their status. Many respondents' views were consistent with the United Nations Human Rights Committee decision in *Lovelace*. Many felt, for example, that Bill C-31 did not go far enough because there were C-31 band members who were unable to pass on their status to their children, and therefore the children would be denied access to the culture of their community. In addition, others stated that they felt it was important that those members who were alienated from the reserve be reunited. For those Bill C-31 band members, many mentioned that since their reinstatement they felt a connection to their homeland—a place from where they or their ancestors originated. They also spoke about the importance of attending family reunions held on the reserve. In addition, many of the urban members talked about how they passed on family histories and genealogies in order to ensure that their children understood who they were and from where they came. Though most band members spoke positively about C-31s, it should be noted that the interviews took place nearly twenty years after the passage of Bill C-31, and time may have softened some Cowessess people's view regarding the legislation and the people who had regained their status. However, these interviews demonstrate, in part, that the level of resistance to, and the resentment of, Bill C-31 as expressed by many First Nations leaders was not as evident for most Cowessess First Nation band members.

Kinship ties have been, and continue to be, in DeMallie's words, "fundamental" to members of the Cowessess First Nation. I have attempted to link the traditional "law of the people" to contemporary Cowessess band members' interactions in a way to answer DeMallie's challenge for American Indian studies scholars to apply kinship in a relevant and creative manner. The "law of the people" prescribed the expected normative behavior for Cowessess band members, including regulating kinship patterns, and was conveyed through the stories of Elder Brother. With the implementation of the Indian Act, the traditional "law of the people" was undermined as band membership became much more rigid because specific guidelines and procedures were required in order to gain and retain membership. Nevertheless, some First Nations, such as Cowessess, were able to preserve certain aspects of their historically inclusive membership practices within the confines of the restrictive measures imposed by the Indian Act, which allowed them to sustain the band's multicultural nature and has served as a mechanism for the physical, mental, and emotional survival of its members. The contemporary kinship patterns ensure that band members' collective identity as Cowessess people also survives. Cowessess peoples' attitudes are shaped within the context of family/kinship connections, not by externally defined tribal or cultural affiliations. A person's family name places that person within the familial reserve context. This is not to say that cultural affiliation is

totally ignored, but that it is not the primary identifier that connects people, not in the way that family/kinship does. For Cowessess, family/kinship ties are of greater importance for identity than place of residence, gender, cultural affiliation, or notions of race. As Cowessess Elder Harold Lerat states, the inclusive attitude of most band members in the past and in the present shows that “whether Indian, Metis, or white, it didn’t matter,” demonstrating that the principles of the law of the people and Elder Brother still resonate with and guide interactions of Cowessess First Nation band members.

## NOTES

1. Raymond DeMallie, “Kinship: The Foundation for Native American Society,” in *Studying Native America: Problems and Prospects*, ed. Russell Thornton (Madison: University of Wisconsin, 1998), 350.

2. Thomas Hakansson, “The Detachability of Women: Gender and Kinship in Processes of Socioeconomic Change among the Gusil of Kenya,” *American Ethnologist* 21, no. 3 (1994): 516–38; Kevin Birth, “‘Most of Us Are Family Some of the Time’: Interracial Unions and Transracial Kinship in Eastern Trinidad,” *American Ethnologist* 24, no. 3 (1997): 585–601; Cornelia Ann Kammerer, “Descent, Alliance, and Political Order among Akha,” *American Ethnologist* 25, no. 4 (1998): 659–75; Edward Lowe, “A Widow, a Child, and Two Languages: Exploring Kinship and Attachment in Chuuk,” *American Anthropologist* 104, no. 1 (2002): 123–37; Soo Ho Choi, “Land Is Thicker Than Blood: Revisiting ‘Kinship Paternalism’ in a Peasant Village in South Korea,” *Journal of Anthropological Research* 56 (2000): 349–63; Doug Jones, “Group Nepotism and Human Kinship,” *Current Anthropology* 42, no. 5 (2000): 779; Diane Austin-Broos, “Places, Practices, and Things: The Articulation of Arrente Kinship with Welfare and Work,” *American Ethnologist* 30, no. 1 (2003): 118.

3. Loretta Fowler, *Shared Symbols, Contested Meanings: Gros Ventre Culture and History, 1778–1984* (Ithaca, NY, and London: Cornell University Press, 1987); Alexandra Harmon, *Indians in the Making: Ethnic Relations and Indians Identities around Puget Sound* (Los Angeles: University of California Press, 1998); Martha Knack, *Boundaries Between: Southern Paiute, 1775–1995* (Lincoln: University of Nebraska Press, 2001).

4. The population is as of December 2008. See Department of Indian Affairs and Northern Development Web site, [http://pse5-esd5.ainc-inac.gc.ca/fnp/Main/Search/FNRegPopulation.aspx?BAND\\_NUMBER=361&lang=eng](http://pse5-esd5.ainc-inac.gc.ca/fnp/Main/Search/FNRegPopulation.aspx?BAND_NUMBER=361&lang=eng) (accessed 7 June 2010). The Regina population is not official but is an estimate of some of the band members to whom I have spoken. For further information on the band’s composition see Robert Alexander Innes, “The Importance of Family Ties to Members of Cowessess First Nation” (PhD diss., University of Arizona, 2007). However, according to the Cities and Environment Unit, Dalhousie University, which is involved in community planning with Cowessess, there are 1,000 band members residing in Regina, representing 11% of the total First Nation population in that city.

5. The acts were *An Act for the Better Protection of the Lands and Property of Indians in Lower Canada* and *An Act for the Protection of the Indian in Upper Canada from Imposition, and the Property Occupied or Enjoyed by them from Trespassing and Injury*. For more information about these acts see Diedre A. Desmarais, “The Native Women’s Association’s Struggle to Secure Gender Equality Rights within the Canadian Constitution”

(master's thesis, University of Regina, 1998); Harpa K. Isfeld, "Who and What Is a Canadian Indian? The Impact of Bill C-31 upon Demographic and Epidemiologic Measure of Registered Indian Population of Manitoba" (master's thesis, University of Manitoba, 1997); Kathleen Jamieson, "Sex Discrimination and the Indian Act," in *Arduous Journey: Canadian Indians and Decolonization*, ed. J. Rick Ponting (Toronto: McClelland and Stewart, 1986), 112–36; Bonita Lawrence, *"Real" Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood* (Vancouver: University of British Columbia Press, 1999); J. R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 2000); Jennifer Lynn Shade, "Traditional Methods of Determining Tribal Membership" (master's thesis, University of Victoria, 2002); John Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," in *As Long as the Sun Shines and Water Flows: A Reader in Canadian Native Studies*, ed. Ian A. L. Getty and Antoine S. Lussier (Vancouver: University of British Columbia Press, 1983), 39–55.

6. Lawrence, *"Real" Indians and Others*, 51. See also Jamieson, "Sex Discrimination and the Indian Act."

7. Tobias, "Protection, Civilization, Assimilation," 41–42.

8. Sharon Venne, *Indian Acts and Amendments 1868–1975: An Indexed Collection* (Saskatoon: University of Saskatchewan, Native Law Centre, 1981), 24.

9. *Ibid.*, 361–62.

10. *Attorney-General of Canada v. Lavell* [1974] S.C.R. 1349.

11. *Sandra Lovelace v. Canada*, Communication No. R.6/24 U.N. Doc. Supp. No. 40 (A/36/40) at 166 [1981].

12. Earl Fowler, "FSI Opposes Marriage Law," *Saskatoon StarPhoenix*, 14 September 1981, A3; Earl Fowler, "Legislation Would Restore Rights of Indian Women," *Saskatoon StarPhoenix*, 23 January 1984, A3; Canada. *Standing Committee on Indian Affairs and Northern Development: Respecting Bill C-31, An Act to Amend the Indian Act Minutes of Proceedings and Evidence*. Ottawa, 1985; Canadian Press, "Indian Leaders Warns Gov't That Plan Will Meet Resistance," *Regina Leader Post*, 20 October 1985, A14; Deanna Wuttunee, "Indian Act Amendments—Bill C-31," *Windspeaker*, July 1985, 13; Earl Fowler, "Indian Chiefs: Male Chauvinist Label Unfair," *Saskatoon StarPhoenix*, 16 November 1985, A6; Brian Maracle, host, "Native Women Fight for Equal Rights," *Our Native Land* radio program, Canadian Broadcasting Corporation (original broadcast 2 March 1985), [http://archives.cbc.ca/society/native\\_issues/clips/16040/](http://archives.cbc.ca/society/native_issues/clips/16040/) (accessed 16 February 2006); Earl Fowler, "Indian Will Fight Band Status Issue," *Saskatoon StarPhoenix*, 14 May 1987, A8; Earl Fowler, "Indian Act Changes Will Deprive Many of Benefits: Eramus," *Saskatoon StarPhoenix*, 7 February 1987, A3; Earl Fowler, "Most Indian Bands Will Reject Reinstated Members," *Saskatoon StarPhoenix*, 18 June 1987, A7; Canada. *Standing Committee on Aboriginal Affairs and Northern Development. C-31 Fifth Report*. Ottawa: House of Commons, 1988; Canadian Press, "Sask. Bands Must Enact Laws to Fight Bill C-31: Ahenakew," *Saskatoon StarPhoenix*, 28 January 1988, A7; Marg Ommenney, "Bureaucracy Thwarts Native Women's Rights, Groups Says," *Saskatchewan StarPhoenix*, 27 February 1988, A8; Darren Schuettler, "Indian Act Changes Bring New Problems for Native Women," *Western Producer*, 14 January 1991, 51.

13. Maria Campbell, personal communication.

14. James Zion, "Harmony among the People: Torts and Indian Courts," *Montana Law Review* 45 (1984): 265.

15. Basil Johnston, *Ojibway Heritage* (Toronto: McClelland and Stewart, 1990).
16. Robert Williams Jr., *Linking Arms Together: American Indian Treaty Visions of Love and Peace* (New York: Oxford University Press, 1997), 84.
17. Johnston, *Ojibway Heritage*, 20.
18. James Zion and Robert Yazzie, "Indigenous Law in North American in the Wake of Conquest," *Boston College of International and Comparative Law Review* 20 (1997): 74.
19. Donald J. Auger, "The Northern Ojibwe and Their Family Law" (DJur, York University, 2001); Christina Zuni Cruz, "Tribal Law as Indigenous Social Reality and Separate Consciousness: [Re]incorporating Customs and Traditions into Tribal Law," *Tribal Law Journal* 1, no. 1 (2001): 1–27; William, *Linking Arms Together*; Robert Yazzie, "Life Comes from It: Navajo Justice Concepts," *New Mexico Law Review* 24 (1994): 175–90; Zion and Yazzie, "Indigenous Law."
20. Williams, *Linking Arms Together*, 84.
21. John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002), 14.
22. Auger, "The Northern Ojibwe," 124.
23. Robert Cover, "Forward: Nomos and Narrative," *Harvard Law Review* 97, no. 4 (1983): 10.
24. *Ibid.*, 4–5.
25. Alson Skinner, "Plains Cree Tales," *Journal of American Folklore* 29, no. 113 (1916): 345–46.
26. Sarah Carter, "O'Soup, Louis," in *Dictionary of Canadian Biography Online*, <http://www.biographical.ca/EN?ShowBio.asp?BOLD=41754&query=cowessess> (accessed 4 March 2006).
27. Janice Acoose, *Iskwewak—kah'ki yaw ni wakomakanah: Neither Indian Princesses nor Easy Squaws* (Toronto: Women's Press, 1995), 7
28. Barbara Ziemen, "Run for Acoose," *Saskatchewan Indian* 12, no. 7 (1982): 59–63.
29. Harold Lerat, *Treaty Promises, Indian Reality: Life on a Reserve* (Saskatoon, SK: Purich Publishing, 2005).
30. Enfranchisement, as Patrick Macklem notes, was the "administrative process that provide incentives to [primarily] Indian men to trade their [Indian] status for the right to vote and hold property." *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2001), 228. Any First Nations person deemed capable of assuming the responsibilities of citizenship was no longer considered a ward of the government.
31. Lerat, *Treaty Promises*.
32. *Ibid.*, 91.
33. Carter, "O'Soup, Louis."
34. Lerat, *Treaty Promises*.
35. Robert Alexander Innes, "The Socio-Political Influence of the Second World War Saskatchewan Aboriginal Veterans, 1945–1960" (master's thesis, University of Saskatchewan, 2000).
36. Martin Robin, *Shades of Right: Nativist and Facist Politics in Canada, 1920–1940* (Toronto: University of Toronto Press, 1992); Julian Sher, *White Hoods: Canada's Ku Klux Klan* (Vancouver, BC: New Star Books, 1983).

37. Lerat, *Treaty Promises*.

38. *Windspeaker: Classroom Edition*, Premiere Edition, March, nd, <http://www.ammsa.com/classroom/CLASSIC-31.html> (accessed 23 March 2006).

39. On March 11, 2010, the Canadian government introduced Bill C-3, which will amend the Indian Act to allow children of reinstated persons to pass on their Indian status to their children. See Parliament of Canada, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4470443&Language=E&Mode=1&Parl=40&Ses=3>.

40. *Corbiere v. Canada* (Minister of Indian and Northern Affairs) [1999] 2 S.C.R.