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**American Indian Culture and Research Journal**

**Title**

Aboriginal Women and Self-Government: Challenging Leviathan

**Permalink**

<https://escholarship.org/uc/item/77t746hg>

**Journal**

American Indian Culture and Research Journal , 18(3)

**ISSN**

0161-6463

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**Publication Date**

1994-06-01

**DOI**

10.17953

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## Aboriginal Women and Self-Government: Challenging Leviathan

KATHERINE BEATY CHISTE

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Canada's latest attempt at constitutional reform, the 1992 Charlottetown Accord process, saw aboriginal peoples involved in a high-profile debate. Representatives of four national aboriginal organizations were invited to participate in the first ministers' conferences as the prime minister, the premiers, and the territorial leaders attempted to thrash out a constitutional package that would satisfy the province of Quebec. In the end, aboriginal leaders and first ministers reached agreement on constitutional amendments that would have, among other things, recognized aboriginal governments as an undefined "third order of government" within the Canadian state. The Canadian electorate, however, rejected the package in an October 1992 referendum. Aboriginal communities that were enumerated separately (Indian reserves) likewise rejected the deal their national leadership had enthusiastically endorsed; moreover, the most prominent organization for aboriginal women was a key player on the "no" side of the debate. One of the important consequences of the Charlottetown process, therefore, became the advertisement to the general public of the numerous divisions within the Canadian aboriginal community. One of the most difficult questions for outside policy makers, partners, and other interested parties is how to respond to this factionalism.

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## THE CHARLOTTETOWN ACCORD

Among the notable provisions of the Charlottetown Accord was its series of proposals on aboriginal self-government. The accord would have amended the constitution to recognize aboriginal peoples' "inherent right to self-government within Canada." After vigorous debate about the trustworthiness of leaders, the accord also provided that aboriginal governments would be bound by the Charter of Rights and Freedoms, albeit with access to the "notwithstanding" clause.<sup>1</sup> The former proposition—recognition of inherence—represented a major policy shift by provincial and federal governments. The latter proposition—access to the "notwithstanding" clause—was a concession to the argument that the liberal, individualistic values of the charter are inappropriate for aboriginal governments. The recognition that these and other clauses of the accord would have given to aboriginal peoples and governments might have been expected to receive a warm welcome in aboriginal communities. But when it came to a vote, two-thirds of Indians voting on reserve (the only aboriginal group tallied separately) rejected the Charlottetown Accord.<sup>2</sup> Moreover, during the debate over the accord, various segments of the aboriginal community publicly dissented from their leadership's endorsement of the deal.

The leaders of all the aboriginal groups involved in negotiation of the accord—the Assembly of First Nations (AFN), the Native Council of Canada (NCC),<sup>3</sup> the Métis National Council (MNC), and the Inuit Tapirisat of Canada (ITC)<sup>4</sup>—supported the final text. Yet their grassroots constituencies by and large rejected the leaders' position, albeit for varying reasons. The points of contention were many. Some argued that treaty rights would be undermined by the new constitutional arrangement. Some felt that the proposals on self-government did not go far enough toward recognition of aboriginal governmental authority. Other critics took the opposite tack and questioned whether aboriginal communities are "ready" for self-government. Poignant testimony in front of the AFN's "Constitutional Circle" hearings expressed the fears of unfettered leadership. Aboriginal women were particularly vocal in this regard, to the extent of initiating a court challenge to the Charlottetown process itself.

The Native Women's Association of Canada (NWAC) spearheaded the challenge. First, they publicly opposed the AFN's position that aboriginal governments should be shielded from the

charter and claimed that the accord did not contain enough protection for the rights of aboriginal women. NWAC argued that the gender equality guarantee of section 15 is a universal human right that must be respected by aboriginal governments. Without that guarantee, aboriginal women could continue to face gender discrimination from male-dominated band councils and would have little protection against violence and oppression in their communities.

Second, NWAC challenged the AFN's legitimacy as a representative of aboriginal women. Claiming that the AFN does not speak for their constituency, NWAC launched a suit in the Federal Court of Canada to achieve participant status in the constitutional negotiations. Their argument was that by funding the four "male-dominated" organizations but not the women's group, the federal government was acting in a discriminatory manner. Although the court agreed with the NWAC position, the case has been appealed to the Supreme Court.

The roots of the confrontation between the NWAC and the AFN lie in the past and what the NWAC leaders conceive to be the AFN's opposition to their efforts to end sexual discrimination against Indian women via Bill C-31, enacted in Parliament in 1985. Bill C-31, mandated by the equality provision of the charter, provided, among other things, for the restoration of Indian status and band membership to persons who had lost them because of provisions in the Indian Act; these persons quite often were women who had lost Indian status by marrying non-Indians. The AFN opposed the bill as an unwarranted intrusion on band government authority, and many communities were less than eager to share scant resources with returning women and their children. The AFN leadership's opposition at that time to Bill C-31 has left a legacy of mistrust on the part of many aboriginal women.

The Native Women's Association does not, however, speak for all aboriginal women, and some aboriginal women's groups made an effort to distance themselves from NWAC's dispute with the AFN. Métis and Inuit organizations, in particular, portrayed the battle as a problem for Indian women, not Inuit or Métis, and northern groups saw it as a problem for southern women. The divisions that became apparent between different aboriginal women's groups raise a question: Was the opposition of the NWAC to the Charlottetown Accord a gender-based critique, typical of mainstream feminism, about political exclusion, or was it something else?

## THE SOURCES OF DISSENT

There are multiple causes of factionalism at any level of aboriginal organization: differences in ideology, religion, and education; varying blood quantum and kinship factors; nonindigenous barriers created by Canadian political history; and disparate commands of economic resources. The factor of gender has been presented as yet another potential fault line for aboriginal communities. But is it a genuine one? Among the divisions that cross-cut aboriginal communities, there is historically a common ground where factors such as gender, poverty, and loss of Indian status coincide and protective kinship networks have broken down. I believe it is this marginalized faction of aboriginal society that is challenging its own entrenched leadership through the voice of aboriginal women, using mainstream institutions and mainstream rhetoric in the process.

In political science, a *faction* is understood as "any group organized for political ends, which defines itself at least partly by its opposition to some rival group."<sup>5</sup> Factions exist within an organization (such as a community) rather than outside of it and are held together by commonality of purpose rather than rules of membership. Recognition of the destabilizing effect of warring factions in a community was one of the intellectual motivators for theorists such as Hobbes, who prescribed the absolute sovereign Leviathan as an antidote to the human state of nature: "solitary, poor, nasty, brutish, and short."<sup>6</sup>

Leviathan is an appropriate metaphor in the context of Canadian aboriginal politics in two senses. First of all, it is well documented that for more than a century the Department of Indian Affairs acted as an "absolute sovereign" in the lives of aboriginal peoples, failing, however, to alleviate the poverty and brutishness of life with which many were afflicted under its regime. Second, in the discussions over the Charlottetown Accord's provisions for self-government, fears were expressed about the possibility of indigenous "absolute sovereigns" in aboriginal communities, i.e., petty Leviathans unchecked by the Charter of Rights and Freedoms or any other code of ethics, customary or imposed.<sup>7</sup> One way of viewing the quest for aboriginal self-government is as a challenge to overthrow Leviathan, in either an aboriginal or nonaboriginal form.

The political factions for which Leviathan was prescribed as an antidote have been observed in contemporary aboriginal commu-

nities, and the "commonality of purpose" that defines a faction in the aboriginal community context has often been observed as the tie of kinship. Despite the diversity of traditional Indian societies, in contemporary times kinship-linked factionalism is a commonly observed political phenomenon linked to the disruption of traditional political systems and the selective poverty within aboriginal communities.<sup>8</sup>

Many traditional tribal societies have dealt with their environment and ensured their survival by organizing themselves along clan and kinship lines. As Huff describes it,

Tribal societies are vulnerable to the exigency of nature, but this is minimized by utilizing the clan system. A clan is a group of families that usually is responsible for some aspect of tribal life. Each clan has allegiance to the tribe and is responsible for some economic, social, or religious function. This diffused responsibility was a kind of broad-based insurance policy that provided for tribal survival.<sup>9</sup>

But where overall commitment to the well-being of the tribe is lacking, this form of social organization may degenerate into factionalism as tribal members are forced to compete against each other for scarce resources. A recent study of tribal political cultures in the American context has found two outstanding characteristics: a politics of scarcity and a politics of interference, "found in differing degrees on reservations throughout the country."<sup>10</sup> As these authors observe, "economic scarcity, coupled with pronounced loyalty on reservations to the social group, influences the political behavior of tribal leaders."<sup>11</sup> The attempt by tribal leaders to pursue overall community goals faces interference from both external interests and internal factions seeking to affect the outcome of their decisions.

The current decision-making structures of most aboriginal communities in Canada are antithetical to most of their political traditions, as Boldt and Long have pointed out at length.<sup>12</sup> Representative governments and the bureaucratic norms of political neutrality do not mesh well with the values of a small kinship-linked community. The suggestion has been made that, rather than try to suppress the natural tendencies of clans to look after their own, aboriginal governments could incorporate kinship networks into their formal political structures,<sup>13</sup> and there are communities that are actively considering this possibility. But traditional tribal structures of clan responsibility rested on a

roughly egalitarian division of resources among community members.<sup>14</sup> The question, then, is whether a rough egalitarianism prevails today in Canadian aboriginal communities.

Several recent studies suggest that it does not. In many cases, socioeconomic classes have developed to replace formerly egalitarian structures in aboriginal communities. This process has taken place under the aegis of the Department of Indian Affairs (DIAND), the aging Leviathan in aboriginal life. Boldt, for example, describes contemporary Indian societies as consisting of a "two-class social order":

A small, virtually closed, élite class comprising influential landowners, politicians, bureaucrats, and a few entrepreneurs, and a large lower class comprising destitute, dependent, and powerless people.<sup>15</sup>

Boldt attributes this development to DIAND's historical policy of recruiting cooperative Indian families to manage its bureaucracy and conferring special privileges on them; this ruling class has now evolved into a socioeconomic elite.<sup>16</sup>

In another recent book, Wotherspoon and Satzewich also make the point that aboriginal peoples in Canada do not constitute a single socioeconomic class. Writing from the standpoint of political economy, these authors reject the stereotypical view that all aboriginal people fall into an underclass of "permanently unemployed and decrepit" people; rather, they are distributed "across the range of class sites within Canada."<sup>17</sup> The factors of gender and sociolegal status of aboriginal individuals further complicate the picture. The labor market experience of aboriginal women, for example, was found to be closer to the experience of nonaboriginal women than to the experience of aboriginal men.<sup>18</sup> Further distinctions can be made between Indian, Inuit, and Métis in the work force. Wotherspoon and Satzewich also identify an aboriginal elite. They describe the aboriginal bourgeoisie as being in its embryonic stage, very small,<sup>19</sup> but "one of the most dynamic sectors of the aboriginal population" and "one that is able to wield a considerable amount of power and influence."<sup>20</sup> The authors also note the hostility towards this new class from other community members:

Animosities directed to the bourgeoisie and the new and old petite bourgeoisie are reflective of antagonistic class relations; they are not solely an "Indian" phenomenon. Such

conflicts within minority communities are not uncommon and reflect a complex intersection of racism, sexism, and class in the shaping of people's lives.<sup>21</sup>

Another way to analyze socioeconomic relationships in contemporary aboriginal communities is described by Elias as "Marcosian" economics, in which political power is exploited by the unscrupulous for their own private gain.<sup>22</sup> Elias's study of northern Canadian aboriginal communities suggests that cultural change has made their economies "ripe for the emergence of 'Marcosian' economies."<sup>23</sup> He observes that "kinship is still a basic organizing principle in Northern economies" and that members of larger households have a number of economic advantages.<sup>24</sup> Traditionally, a community would have contained primarily close relations among whom gifting and sharing was standard.<sup>25</sup> Today, northern communities are not necessarily interrelated but may consist of several kin groups competing for the same employment and education opportunities, and, as Elias observes, "in the setting of large villages, kinship serves to bind families, but divide communities."<sup>26</sup>

Largely uninvestigated, at least in the scholarly sense, is the extent to which the economic elite of a community is itself kinship linked. The results of studies such as the one by Lopach, Brown, and Clow (1990) suggest that, under conditions of scarcity, the predominant economic players will indeed look after their own first. Also largely unexplored are the interconnections in aboriginal communities between political and economic power: Is Leviathan rich? And if development of socioeconomic class structures—and the opportunity for Marcosian dominion over resources—is indeed becoming a feature of contemporary aboriginal cultures, where, then, do aboriginal women fit in?

## GENDER AND STATUS IN ABORIGINAL COMMUNITIES

Testimony before the current Royal Commission on Aboriginal Peoples<sup>27</sup> and before several provincial inquiries into aboriginal justice issues provide clear evidence of the plight of many aboriginal women. The socioeconomic changes that have served to marginalize many aboriginal men have also wreaked havoc in the lives of aboriginal women, and a couple of generations of the residential school experience have further distorted relationships



between the sexes. The voices of aboriginal women are increasingly being heard in Canada, but they carry a message different from that of most other Canadian women. Two features distinguish the politics of many aboriginal women from the politics of mainstream Canadian feminists. First, far from rejecting traditional gender roles in their societies, aboriginal women have repeatedly called for a return to traditional ways and the respect with which they once were held in their communities. Testimony before the ongoing Royal Commission has been particularly eloquent in this regard. Second, the substantive changes sought by aboriginal spokeswomen do not focus on the same areas of life as do mainstream feminist aspirations.

Monture-Okanee has discussed the limitations of feminist analysis in its application to aboriginal peoples, concluding that "many Aboriginal women are aware of [the] basic contradiction between their experience and the constructs of feminist thought."<sup>28</sup> The feminist discourse, albeit a varied one, has directed its energies towards social changes that would enable women to participate fully in economics and politics outside of their homes. Aboriginal women, however, typically are seeking a reconstruction of family ties and obligations rather than their deconstruction. As LaFramboise, Heyle, and Ozer observe, "[N]on-Indian feminists emphasize middle-class themes of independence and androgyny whereas Indian women often see their work in the context of their families, their nations, and Sacred Mother Earth."<sup>29</sup> Moreover, the arguments of aboriginal women's groups lack an adversarial approach to the male gender in general, regardless of socioeconomic class; rather, they focus on the currently empowered aboriginal male elite.

It is common in recent testimonials to hear that the current inequities faced by aboriginal women are due to the distorting effect of European colonialism and its introduction of patriarchal structures—in particular, patriarchal political structures that created an aboriginal male elite.<sup>30</sup> For example, the Manitoba Justice Inquiry (focusing on societies in that province) concluded that "Aboriginal men and women were equal in power and each had autonomy within their personal lives . . . . [W]omen were never considered inferior in Aboriginal society until Europeans arrived."<sup>31</sup> Likewise, the Royal Commission summarized the testimony they had heard:

Aboriginal women appearing before the Commission noted that, in Aboriginal society, women had historically been

treated as equals. Many societies were matriarchal, and women were respected and revered as first educators and life carriers. Although women played a domestic role in gathering food and raising children, they were also warriors and sat at the bargaining table—until these roles were destroyed by outside forces coming from European society.<sup>32</sup>

According to this line of argument, European colonialism brought to North America the tradition of inferior status and diminished legal rights for women; the European insistence on dealing “man-to-man” with aboriginal societies served to lessen the importance of their women. Further, Christian missionaries’ promotion of female submissiveness within the nuclear family diminished the ability of extended family networks to protect individual women and their status in the community.

Two recent papers caution about generalizing across North America about traditional gender roles in aboriginal societies or about the effects contact with Europeans had on the status of aboriginal women. Bonvillain looked at gender differences in five traditional aboriginal societies—the Naskapi, the Iroquois, the Plains, the Navajo, and the Inuit—and found egalitarian gender relations in three of the five.<sup>33</sup> Bonvillain defines gender as a social construct underlain and structured by sexual division of labor.<sup>34</sup> She identifies the factors that determine gender role allocation as primary subsistence modes, individual roles within kinship groups, postmarital residence patterns, behavior within households, participation in communitywide activities, and religious belief and practice.<sup>35</sup> Furthermore, Bonvillain observes, all aboriginal societies in North America were affected by colonization:

These societies experienced differences in the time and circumstances of contact, but colonial policies everywhere affected subsistence, sociopolitical organizations and belief systems. Gender relations were concomitantly disrupted, both through directed attacks upon existing sex role plans and through change in other intra-cultural patterns.<sup>36</sup>

Cooper’s analysis of Nishga and Tsimshian women in the nineteenth century focused on changes brought by European fur traders along the coast of British Columbia.<sup>37</sup> She found that the European presence opened up economic opportunities for aboriginal women. While Cooper accepts the argument that in egalitarian aboriginal societies the regime of European traders

and missionaries led to a reduction in the status of women, she disputes that this was the case for hierarchically differentiated aboriginal societies such as those in the Pacific Northwest. These women already exerted control over production and distribution of economic resources, and the development of a capitalist economy offered them further opportunities to create and control wealth—through engagement in the fur trading and, eventually, the salmon-canning industries.<sup>38</sup> Moreover, the doctrines of Christianity failed to inculcate submissive behavior in high-ranked women, nor did the nuclear family become the norm.<sup>39</sup> Cooper concludes that women in these societies were able to retain their status “to a large degree because of their continuing economic importance in their communities.”<sup>40</sup>

A number of similar studies present varying scenarios for changing gender roles in aboriginal societies upon first and subsequent contact with Europeans.<sup>41</sup> In most cases, a crucial point is the degree to which women’s economic contribution to their household and community became marginalized as traditional economies were disrupted and changed. The economic contributions of some men, of course, were likewise decreased, and they also suffered the consequences of powerlessness and marginalization. A call for a return to traditional gender relations is, then, to some extent a call for a return to traditional economic relations in a community and the sociopolitical structures that overlay them. However, as described in the previous section, egalitarian economies do not appear to be typical of most Canadian aboriginal communities today, and the potential is clear for “warring factions” to be forced to squabble over the few economic opportunities available.

### CONTEMPORARY GENDER ISSUES

There is little scholarship on contemporary gender relationships in aboriginal communities. Exceptions are LaFramboise, Heyle, and Ozer, and Miller.<sup>42</sup> Miller analyzed the role of women in sixty-two Coast Salish communities of Washington State and British Columbia, as measured by their election to band and tribal councils. He found that in recent years there has been a dramatic increase in the participation of women in the formal structures of Coast Salish politics and that women “do better in smaller tribes, in tribes where there is no disproportionate male income avail-

able, and in tribes with a relatively high degree of institutional completeness."<sup>43</sup> But outside of Miller, as LaFramboise, Heyle, and Ozer point out, "there has been scant research on contemporary Indian women outside of a clinical or pathological perspective."<sup>44</sup>

There is, however, quite a lot of public domain testimony beyond mere collection of socioeconomic indicators, much of it brought to light during the various public hearings mentioned earlier. There is a pattern to the public comments of aboriginal women, and what I am interested in is expressions of the "common interest" of women, if they are to be considered a political faction within their community. A few of the concerns intersect the discourse of mainstream feminism; many of them, as I suggested earlier, do not.<sup>45</sup>

The Royal Commission hearings identified family violence and its consequences as the number one concern for aboriginal women who testified before them.<sup>46</sup> Like many mainstream feminists, these women spoke of family violence as a political matter, and as one that is of greater urgency than any other political issue for aboriginal communities:

Our attempts to convince our elected Aboriginal leadership of the need to treat the issue of violence against Aboriginal women and children as a political concern equal in importance to achieving recognition of our inherent rights and govern ourselves was unsuccessful. In fact, we believe that self-government is not possible without the resolution of violence within Aboriginal communities.<sup>47</sup>

A concern that is parallel to the need to address issues of violence within families is the way in which domestic violence will be addressed. Here, most aboriginal women express different sentiments of justice from those of mainstream or radical feminists; the concern is not punishing but rather healing the abuser in conjunction with the abused. Some also question whether "justice" rather than "harmony" or "healing" is even an appropriate goal.<sup>48</sup> For example, one woman testified before the Royal Commission, "We have to concentrate on the healing of the whole family, not just one individual. In the area of abuse, the victim and the offender, and all of the family members affected by this situation of abuse, must be healed."<sup>49</sup> This testimony generally lacks the kind of gender-based antagonism that is occasionally apparent in radical, if not mainstream, feminism.

The family issues addressed by aboriginal women in various public hearings are a different set from those presented by mainstream feminist groups. In the area of reproductive services, for example, little, if any, mention is made of abortion rights. Rather, women express concern about fetal alcohol syndrome, holistic health care, and traditional birthing practices.<sup>50</sup> In the area of child care, rather than pressing for a national day care program, aboriginal women called for a return to customary adoptions and customary child care, and a rethinking of the practice of placing aboriginal children in nonaboriginal homes.<sup>51</sup>

In the area of economic development, aboriginal women focused on employment opportunities in their communities, which, in many instances, present *sui generis* problems. One concern is the situation of women who were banished from their communities upon marrying non-Indians and who face discrimination and disadvantage in the mainstream work force. Statistics were quoted at one hearing:

Unemployment among off-reserve women was 28 percent, almost triple the national average; the earnings of aboriginal women off reserve were three-quarters of the national average for women; and their families were larger than average.<sup>52</sup>

Another *sui generis* concern is equal access to treaty entitlements and benefits such as education for all aboriginal women in a community; again, the situation is even worse for urban aboriginal women.<sup>53</sup> Overall, this constellation of concerns revolves at a much more modest economic level than do mainstream feminist demands; providing day-care deductions for self-employed lawyers, policing employment equity schemes, or shattering glass ceilings in the corporate world are not part of this dialogue.

Issues of equality likewise have a unique flavor for the primary aboriginal spokeswomen, some of whom have been victims of the inequities wrought upon aboriginal women and children for years by the Indian Act, which denied status and its benefits to women who married non-Indian men. Equality in this context has little to do with gender parity in the dominant society but rather with a more balanced relationship between aboriginal women and men in their own communities. As two Saskatchewan women testifying before the Royal Commission expressed it, "Women as keepers of the culture want to walk beside men in the healing and decision making process, rather than behind or ahead of them."<sup>54</sup>

Mainstream feminism typically approaches politics by calling for gender parity in the electoral processes of municipal, provincial, and federal governments and equal representation in their institutions.<sup>55</sup> The arena of politics in which aboriginal women express a desire for greater involvement is, by and large, not the mainstream one but rather the local governing structures of their communities. Some have been highly critical of the male-dominated chief and council system, expressing the opinion that now is the time to speak out:

Aboriginal women have been reluctant in the past to challenge the positions taken by the leadership out of the perceived need to present a united front to the outside society that oppresses us equally as Aboriginal peoples. However, it must be understood that Aboriginal women suffer the additional oppression of sexism within our community. Not only are we the victims of violence at the hands of Aboriginal men, our voice as women is not valued in the male-dominated political structures.<sup>56</sup>

In one of the discussion papers prepared for the Royal Commission, Monture-Okanee observes,

The goal that we set for ourselves should be to eliminate the disadvantage that women face because it is more profound. It is the greatest of the challenges that face Aboriginal people. By confronting the disadvantage that women face as both women and as Aboriginal, we will also be confronting the discrimination, disadvantage, oppression and dependency faced by our fathers, uncles, brothers, sons, and husbands. We must also accept that in some circumstances it is no longer the descendants of the European settlers that oppress us, but it is Aboriginal men in our communities who now fulfill this role.<sup>57</sup>

The political problem is to ensure accountability of the current political leadership, trapped as it is in processes and structures of governance foreign to many Canadian aboriginal cultures. The liberal, individualistic ideals and underlying norms of behavior that are a feature of representative government find little resonance in the aboriginal communities on which they have been imposed. As Long has pointed out, the resulting political culture is marked by frustration, dissatisfaction, and a lack of leadership accountability.<sup>58</sup> The aberrations that have resulted from the

absence of effective mechanisms to ensure leadership accountability are increasingly being brought to the attention of the general public, through public hearings and the media. In *Canadian Dimension*, Fontaine-Brightstar writes,

All too often oppressed people refuse to address conflicts of abuse of power within their ranks in the interest of maintaining solidarity . . . [but] overcoming internal problems is an essential component of the power struggle for justice and equality.<sup>59</sup>

The lawsuit brought by the Native Women's Association of Canada (NWAC) against the federal government is best viewed as an attempt to redress abuses of power within aboriginal communities against both oppressed females and males.

#### *NATIVE WOMEN'S ASSOCIATION OF CANADA V. CANADA*

The suit was launched in the Federal Court of Canada during the 1992 debate over the Charlottetown Accord. Of particular concern to the NWAC were the accord's provisions on aboriginal self-government and the application of the Charter of Rights and Freedoms to existing and emerging aboriginal governments. The Assembly of First Nations, representing status Indians on reserve, argued that the charter's liberal, individualistic values conflict with aboriginal political traditions and that aboriginal governments should not be bound by the charter; the Native Women's Association took exception to this position.<sup>60</sup>

During the Charlottetown negotiations, aboriginal organizations were given an unprecedented opportunity to articulate their demands in both the public and constitutional forums. The four national political organizations—the Assembly of First Nations, the Native Council of Canada, the Métis National Council, and the Inuit Tapirisat of Canada—participated in the public consultation process; in the end, all four became an active part of the “yes” side in the referendum campaign. The split between the NWAC and the other four groups became apparent in January 1992. At a special assembly of the AFN on women's issues, aboriginal women expressed mistrust of their leadership and of male-dominated aboriginal governments, pointing out, in particular, their leaders' unwillingness to accept women and children back into their

communities under Bill C-31. In February and March, fears continued to be raised, not only by aboriginal women but also by some aboriginal men who had come into conflict with the chief and council system, about the possibility of unlimited autonomy of aboriginal governments.

As constitutional consultations continued, the debate between the NWAC and the AFN began to focus around the charter. Aboriginal women demonstrated outside of constitutional conferences and called for charter application. "We will not accept a regime of self-government without guarantees of basic human rights," declared Gail Stacey-Moore, then leader of the NWAC.<sup>61</sup> Her organization went to the Federal Court of Canada, claiming that the federal government was discriminating against them by funding the four other organizations for constitutional participation but not the NWAC. Their counsel also argued that aboriginal women's freedom of speech was being infringed on by existing arrangements. The NWAC asked that further disbursement of federal funds be prohibited until the NWAC received equal funding and was provided equal rights to participate in constitutional negotiations over the next two years. The Native Council of Canada, the Métis National Council, and the Inuit Tapirisat all intervened in the case, saying that they represented both men and women;<sup>62</sup> the Assembly of First Nations stayed out of the court battle.

The applicants contended that the proposed distribution of funding enabled some of the other organizations to propagate their position that the charter should not apply to aboriginal governments; the NWAC sought funding to argue that it should. The NWAC argued moreover that the federal government's "exhibited historical preference for the views of male-dominated Aboriginal groups" contravened their freedom of expression rights under the charter s.2(b); violated the guarantee in s.35(4) that aboriginal rights are guaranteed equally to men and women; and violated the charter's sex discrimination provision s.15.<sup>63</sup>

The first decision, handed down 30 March 1992, was unsympathetic to the NWAC. Justice Walsh of the federal court identified the issue before the court as follows:

The constitutionality of the said unequal distribution of funds as between male dominated Aboriginal groups and groups representing Aboriginal women, and whether this constituted a breach of the Charter of Rights and Freedoms.<sup>64</sup>



Walsh made it clear that “the issue of alleged unequal and unfair treatment of Aboriginal women by Aboriginal men is not a matter to be considered in the present proceedings.”<sup>65</sup> Justice Walsh noted, “[I]t is primarily the position of the Assembly of First Nations that they fear” that, while the MNC supported retention of the charter, the ITC was willing to consider it, and the NCC’s position was “somewhat more equivocal.”<sup>66</sup> Walsh further noted that the ITC contended that the NWAC did not represent Inuit women and that “in their society women are not disadvantaged and do not contend that they are.”<sup>67</sup> Walsh rejected the NWAC argument that, without equal funding and participation, they were being denied their freedom of speech:

On the facts it is evident that the Native Women’s Association of Canada has had and will continue to have many opportunities to express its views . . . Undoubtedly the more money placed at their disposal the louder their voice could be heard, but it certainly cannot be said that they are being deprived of the right of freedom of speech in contravention of the Charter.<sup>68</sup>

Walsh denied the NWAC application, and the NWAC appealed his decision to the Federal Court of Appeal.

As the Charlottetown consultation process continued, the distance between the NWAC and the AFN widened. In July, the debate again erupted publicly when the women’s group sent letters to the premiers and to Constitutional Affairs Minister Joe Clark, repeating their demand for participant status and criticizing the Charlottetown deal for failing to protect aboriginal women. Specifically, they were critical of the proposition to give aboriginal governments access to s.33 of the charter, which would allow them to operate “notwithstanding” a violation of charter rights and freedoms. The Native Council of Canada reported that it had tried to gain support for the NWAC position but lacked the support of the other organizations, and NCC leadership agreed to defer sexual equality issues until later.

The main feminist group in Canada—the National Action Committee on the Status of Women—entered the fray in support of the NWAC, and the NCC and AFN were moved to defend themselves. The Native Council was reported to be “stung” by the NWAC attack and denied making any attempt

to intimidate NWAC members over their lawsuit. The AFN, for its part, maintained that it had attempted to involve the NWAC in constitutional discussions and accused the organization of reneging on an agreement over the wording of the Charlottetown provisions. Chief Wendy Grant of British Columbia defended the AFN's position and argued that all community members would be protected under the proposed arrangement.

In August, the Federal Court of Appeal ruled in partial favor of the Native Women's Association on the same day that the first ministers reached agreement on the self-government provisions, thereby rendering the decision—in the short term—moot. Justice Mahoney found that the federal government's actions had "restricted the freedom of expression of Aboriginal women in a manner offensive to ss.2(b) and 28 of the charter."<sup>69</sup> The court found the argument based on s.35 "without merit" and the s.15 guarantee of equality before the law to apply to "individuals and not collectives."<sup>70</sup> However, the appeal court reached the conclusion that the Assembly of First Nations "proved to be adverse in interest to Aboriginal Women."<sup>71</sup> The court found that, by funding the AFN, NCC, MNC, and ITC but excluding the NWAC, the federal government "accorded the advocates of male dominated Aboriginal self-governments a preferred position in the exercise of an expressive activity."<sup>72</sup> In the absence of NWAC participation, aboriginal women's interests were not properly represented:

Using the norms of Canadian society as a measure, it is in the interests of Aboriginal women that, if and when they become the subjects of Aboriginal self-governments, they continue to enjoy the protections of the Charter, especially the rights and freedoms guaranteed by ss.15 and 28, or by equivalent provisions entrenched in Aboriginal charters. The interests of Aboriginal women were not represented by the Assembly of First Nations which is strongly of the opinion that the Charter should not apply to Aboriginal self-government, nor by the ambivalence of the Native Council of Canada and the Inuit Tapirisat of Canada on this issue.<sup>73</sup>

This decision, in turn, has been appealed to the Supreme Court of Canada.

As Canada moved closer to a decision on the Charlottetown Accord, the various fault lines in the aboriginal community were

still on display. Leadership of all the national political associations, including Inuit and Métis women leaders, continued to press for the accord's acceptance. Meanwhile, a host of legal, linguistic, and bureaucratic experts tinkered away in private with draft amendments. A final legal text emerged in early October, with revisions designed specifically to address the concerns of the NWAC. An AFN constitutional adviser, Mary Ellen Turpel, defended the final text:

It makes it clear that gender equality prevails, and it applies to aboriginal women. They have an extra gender-equality guarantee, beyond what non-aboriginal women have. And it makes it clear that aboriginal and treaty rights will be protected, but certainly not in a way that would undermine the rights of women.<sup>74</sup>

Some aboriginal women's groups came on board in support of the final version, including the Ontario Native Women's Association and the Inuit Women's Association of Canada. The NWAC continued to object, however, not just to the text but also to the process. The group had also initiated a lawsuit in the federal court asking for an injunction to block the 26 October referendum. Their argument was that, since the NWAC had been excluded from the Charlottetown negotiations, the referendum would be invalid. The federal court, however, ruled their suit a matter of politics rather than law and decided that the referendum would not be a violation of their rights.

The NWAC got the result they wanted when the Canadian electorate rejected the Charlottetown Accord. Status Indians on reserve (the AFN's constituency and the only aboriginal group tallied separately) voted against the Charlottetown Accord by close to a two-thirds margin. But it is open to debate how much the aboriginal rejection of Charlottetown related to the merits of the agreement and how much it resulted from generalized mistrust of the national aboriginal leadership that had supported it or of the local leaders of aboriginal communities. Southern Alberta chiefs, for example, banned polling stations on their reserves, and residents who chose to vote (a small minority) had to vote in nearby nonaboriginal communities. A majority voted no, but many said their vote was a protest against band leadership; local headlines read, "Native Voters Aim at Chiefs" and "Indians Use Accord to Lash Leadership."<sup>75</sup>

## THE NWAC AS A "FACTION"

A number of observations can be made about this episode in Canadian aboriginal political history. First, the Native Women's Association of Canada has succeeded in establishing itself as one of the national aboriginal political players, given further legitimacy by the Federal Court of Appeal decision. For example, the group was invited to the annual premiers' meeting in August 1993 along with the AFN, NCC, MNC, and ITC. In the kaleidoscope of aboriginal political representation, there are now five, not four, national organizations. However, these groups all emerged to prominence through the process of constitutional negotiations, and constitutional negotiations appear to be at an indefinite standstill in Canada in the wake of the Charlottetown defeat, while various levels of government concentrate on their fiscal problems. Whether these organizations can maintain their national prominence in the changed political environment remains to be seen.

Second, the NWAC's use of mainstream Canadian institutions, its employment of mainstream feminist rhetoric, and its alliance with mainstream feminists are quite interesting. Nahanee has explored at length NWAC's employment of the "individualistic feminist perspective" in its argument for charter application to aboriginal governments. She rejects as a false dichotomy the notion that the NWAC's struggle represents a fight between individual and collective rights and points out that aboriginal communities themselves are made up of individuals;<sup>76</sup> Monture-Okanee makes a similar argument.<sup>77</sup> Nahanee points to the Universal Declaration of Human Rights and the Canadian Charter of Rights and Freedoms as seminal documents for aboriginal women activists:

Stripped of equality by patriarchal laws that created "male privilege" as the norm on reserve lands, Indian women have had a tremendous struggle to regain their social position. It was the *Canadian Charter of Rights and Freedoms* that turned around our hopeless struggle.<sup>78</sup>

As to the rights of aboriginal women, Nahanee presents a dichotomy of her own: "What Aboriginal women have shown over the past 18 months is their preparedness to mount a full-scale assault against anyone wishing to deny individual rights and

establish totalitarian regimes."<sup>79</sup> She identifies male-dominated aboriginal governments as the potential totalitarians.

It is clear from the evidence that a significant number of Canadian aboriginal communities are not happy with their leadership. If the NWAC is to be considered one representative of this segment, certain questions have to be answered. As defined earlier, a faction is "any group organized for political ends, which defines itself at least partly by its opposition to some rival group."<sup>80</sup> What, then, is the "end" for which this faction of aboriginal society is organized? What is their "commonality of purpose"? Who is the "rival" whose power they seek to displace? Authors such as Nahanee and Monture-Okanee, and testimony at Royal Commission and aboriginal justice hearings, suggest some answers. The "rival" is easy to identify: the currently entrenched elite of aboriginal communities; in the case of Indian communities, the Leviathans of the chief and council system. As Nahanee points out, reorganization of this entrenched power structure will not be universally welcomed: "[T]here will be those—likely many—who will resist . . . because it means some Chiefs will be out of a job, or will have a new and less powerful job."<sup>81</sup>

The "commonality of purpose" is suggested by testimony summarized earlier in this paper: a reconstruction of aboriginal family and community life, which clearly involves both women and men. This reconstruction would include a holistic healing approach to widespread domestic abuse and equitable distribution of community resources and power among community members, including women and their children affected by Bill C-31. To this end, "retraditionalization" and a return to some sort of traditional values has been suggested as one path by which aboriginal communities can reconstruct themselves:

The extension of traditional care-taking and cultural transmission roles to include activities vital to the continuity of Indian communities within a predominantly non-Indian society . . . represents a major current attempt on the part of Indian women to integrate traditional and contemporary demands.<sup>82</sup>

These authors also observe that retraditionalization efforts by aboriginal women "are often inconsistent with some goals of the current majority-culture women's movement."<sup>83</sup>

As was suggested earlier, a return to traditional domestic and community relations may depend on a return to traditional eco-

conomic practices—if not in the material sense, at least in the distributional sense. Studies have found that aboriginal women traditionally received the most respect and autonomy in societies that were roughly egalitarian in nature.<sup>84</sup> However, evidence suggests that “rough egalitarianism” is not common in contemporary aboriginal communities,<sup>85</sup> and the material basis that underlay formerly egalitarian structures is missing.

A key indicator of how aboriginal elites will handle calls for a return to traditional values may prove to be the way in which they respond to one of the most disadvantaged segments of Canadian society: those aboriginal persons marginalized by the unfortunate processes that Bill C-31 was intended to redress. A recent survey by *Native Issues Monthly* of “1993 in Review” identifies the issues surrounding Bill C-31 as being of the most importance to aboriginal women. These issues include reacceptance—political, social, and economic—into their communities. It is the aboriginal political elite that influences, if not controls, band membership and the distribution of resources; aboriginal women affected by the bill have testified that the elite has not always been welcoming to them and their families.

In many cases, already impoverished communities are being asked to share their resources even further and are understandably reluctant. But the most prominent case revolving around Bill C-31 involves some relatively wealthy Indian bands in Alberta—including Senator Walter Twinn’s Sawridge band—who have gone to federal court to block the return of reinstated aboriginal people to their reserves on the grounds that only bands themselves can determine band membership. The case has been proceeding amidst controversy about intimidation of witnesses and accusations that the plaintiffs’ motivations are base ones.<sup>86</sup> As a summary article in *Native Issues Monthly* observed,

Instead of dividing native communities and turning their reserves into privileged fortresses, Twinn and others with such enormous resources would do much better if they focused their effort on pressuring the government to properly resource the influx of C-31 natives.<sup>87</sup>

The famous simile of Felix Cohen comparing American Indians to the miner’s canary, signaling shifts from fresh air to poison gas in the political atmosphere, might also be applied to aboriginal women and their families now seeking a return to their commu-

nities.<sup>88</sup> The testimony of aboriginal women suggests that neither the massive Leviathan of Indian Affairs nor the petty Leviathans of the chief and council system have ameliorated the brutishness and poverty of many of their lives. How the aboriginal elite will respond in the future to this marginalized sector of their society will not only reflect on the health of the aboriginal political atmosphere and its leaders; it is also likely to have a strong impact on outside policy makers, partners, and other interested parties.

### ACKNOWLEDGMENTS

I would like to thank Professors Menno Boldt and J. Anthony Long of the University of Lethbridge for their constructive readings of this paper, as well as the anonymous referees of this journal. I would also like to thank students in the Aboriginal Management Program at the university for their vigorous participation in classroom discussions of gender issues.

### NOTES

1. Section 33, which permits Parliament or provincial legislatures to enact laws "notwithstanding" a conflict with charter rights or freedoms.
2. *Toronto Star*, 28 October 1992.
3. Now the Council of Aboriginal Peoples.
4. Respectively representing status Indians on reserve, nonstatus and urban Indians, prairie Métis, and the Inuit.
5. Roger Scruton, *A Dictionary of Political Thought* (London: Pan Books, 1983), 164.
6. Thomas Hobbes, *Leviathan: Or the Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civil* (1651; New York: Collier Books, 1962), 100.
7. See, for example, "Women Fear Their Communities Will Be Dictatorships," *Vancouver Sun*, 21 January 1992.
8. See, for example, J. Anthony Long, "Political Revitalization in Canadian Native Indian Societies," *Canadian Journal of Political Science* 23: 4 (1990): 751-73; James J. Lopach, Margery Hunter Brown, and Richmond I. Clow, *Tribal Government Today: Politics on Montana Indian Reservations* (Boulder, CO: Westview Press, 1990); and Robert I. Bee, "The Predicament of the Native American Leader: A Second Look," *Human Organization* 49:1 (1990): 56-63.
9. Delores J. Huff, "The Tribal Ethic, the Protestant Ethic, and American Indian Economic Development," in *American Indian Policy and Cultural Values: Conflict and Accommodation*, ed. J.R. Joe (Los Angeles: UCLA American Indian Studies Center, 1986), 77.
10. Lopach, Brown, and Clow, *Tribal Government Today*, 181.

11. Ibid.
12. Menno Boldt and J. Anthony Long, "Tribal Traditions and European-Western Political Ideologies: The Dilemma of Canada's Native Indians," *Canadian Journal of Political Science* 17:3 (1984): 537-53.
13. Long, "Political Revitalization," 772-73.
14. Huff, "The Tribal Ethic," 77.
15. Menno Boldt, *Surviving as Indians: The Challenge of Self-Government* (Toronto: University of Toronto Press, 1993), 124.
16. Ibid., 120-27.
17. Vic Satzewich and Terry Wotherspoon, *First Nations: Race, Class, and Gender Relations* (Scarborough, ON: Nelson Canada, 1993), 51.
18. Ibid., 60-61.
19. The authors quote a study suggesting that the aboriginal bourgeoisie comprises less than 1 percent of the total aboriginal population.
20. Satzewich and Wotherspoon, *First Nations*, 65.
21. Ibid., 71-72.
22. As in Ferdinand Marcos.
23. Peter Douglas Elias, "A Framework for Understanding Northern Economies" (Unpublished paper, 1993), 8.
24. Ibid., 15-16.
25. Ibid., 16.
26. Ibid., 18.
27. A generously funded national panel conducting a broad inquiry into the economic, social, and political issues affecting the lives of aboriginal peoples. The Royal Commission is scheduled to report and make recommendations to the federal government in the mid-1990s.
28. Patricia A. Monture-Okanee, "Reclaiming Justice: Aboriginal Women and Justice Initiatives in the 1990s," in *Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues* (Ottawa: Ministry of Supply and Services, 1993), 117.
29. Teresa D. LaFramboise, Anneliese M. Heyle, and Emily J. Ozer, "Changing and Diverse Roles of Women in American Indian Cultures," *Sex Roles* 22:7/8: 471.
30. I am indebted to Menno Boldt for emphasizing this point to me.
31. A.C. Hamilton and C.M. Sinclair, *Report of the Aboriginal Justice Inquiry of Manitoba*, vol. 1 (Winnipeg: Queen's Printer, 1991), 476.
32. Royal Commission of Aboriginal Peoples (RCAP), *Overview of the First Round* (Ottawa: Minister of Supply and Services, 1992), 27.
33. Nancy Bonvillain, "Gender Relations in Native North America," *American Indian Culture and Research Journal* 13:2 (1989), 1-28.
34. Ibid., 2.
35. Ibid., 3-4.
36. Ibid., 4.
37. Carol Cooper, "Native Women of the Northern Pacific Coast: An Historical Perspective, 1830-1900," *Journal of Canadian Studies* 27:4 (1992-93): 44-75.
38. Ibid., 45.
39. Ibid., 61-67.
40. Ibid., 70.
41. For example, see Patricia C. Albers, "Autonomy and Dependency in the Lives of Dakota Women: A Study in Historical Change," *Review of Radical*



*Political Economics* 17:3 (1985): 109–34; Paula Gunn Allen, *The Sacred Hoop* (Boston: Beacon Press, 1986); Marlene Brant Castellano, "Women in Huron and Ojibwa Societies," *Canadian Woman Studies* 10:2&3 (1989): 45–48; Mona Etienne and Eleanor Leacock, eds., *Women and Colonization: Anthropological Perspectives* (New York: Praeger, 1980); Kathryn E. Holland, "Guardians of Tradition and Handmaidens to Change: Women's Roles in Creek Economic and Social Life during the Eighteenth Century," *American Indian Quarterly* 14:3 (1990): 239–58; Jennifer S.H. Brown, *Strangers in Blood: Fur Trade Families in Indian Country* (Vancouver, BC: University of British Columbia Press, 1980); Lisa E. Emmerich, "Right in the Midst of My Own Peoples: Native American Women and the Field Matron Program," *American Indian Quarterly* 15:2 (1991): 201–16; Martha Harroun Foster, "Of Baggage and Bondage," *American Indian Culture and Research Journal* 17:2 (1993): 121–52; Clara Sue Kidwell, "Indian Women as Cultural Mediators," *Ethnohistory* 39:2 (1992): 97–107; Verna Kirkness, "Emerging Native Women," *Canadian Journal of Women and the Law* 2:2 (1988–89): 408–15; and Sylvia Van Kirk, *Many Tender Ties: Women in Fur Trade Society, 1670–1870* (Winnipeg, MB: Watson and Dwyer, 1980).

42. La Framboise, Heyle, and Ozer, "Changing and Diverse Roles of Women"; and Bruce G. Miller, "Women and Politics: Comparative Evidence from the Northwest Coast," *Ethnology* 32 (1992): 367–83.

43. Miller, "Women and Politics," 380.

44. LaFramboise, Heyle, and Ozer, "Changing and Diverse Roles of Women," 456.

45. I am necessarily generalizing about feminist thought. For a standard text outlining the different schools, see Rosemarie Tong, *Feminist Thought* (Boulder, CO: Westview Press, 1989).

46. Royal Commission on Aboriginal Peoples, *Discussion Paper 1: Framing the Issues* (Ottawa: Ministry of Supply and Services, 1992), 12.

47. Marilyn Fontaine-Brightstar, "Breaking the Silence," *Canadian Dimension*, (1992), 5–6.

48. Monture-Okanee, "Reclaiming Justice," 121.

49. Royal Commission on Aboriginal Peoples, *Framing the Issues*, 13.

50. Idem, *Overview of the Second Round* (Ottawa: Ministry of Supply and Services, 1993), 39.

51. *Ibid.*, 39–40.

52. Royal Commission on Aboriginal Peoples, *Overview of the First Round*, 28.

53. Idem, *Overview of the Second Round*, 38.

54. Idem, *Overview of the First Round*, 28.

55. Janine Brodie with Celia Chandler, "Women and the Electoral Process in Canada," in *Women in Canadian Politics: Toward Equity in Representation*, ed. Kathy Megyerg (Toronto: Dundurn Press, 1991), 3–79.

56. Fontaine-Brightstar, "Breaking the Silence," 6.

57. Monture-Okanee, "Reclaiming Justice," 115.

58. Long, "Political Revitalization in Canadian Native Indian Societies," *Canadian Journal of Political Science* 23:4: 751–73.

59. Fontaine-Brightstar, "Breaking the Silence," 5.

60. The following discussion covers events well-documented in the mainstream Canadian media.

61. *Globe and Mail*, 14 March 1992.

62. They were granted intervener status on the grounds that they "had a real interest, offered a different point of view from the parties involved and because they had a financial interest to protect" (*Native Women's Association of Canada v. Canada* [1992], 4 C.N.L.R., 60).
63. *Native Women's Association of Canada v. Canada*, 59.
64. *Ibid.*, 60.
65. *Ibid.*, 62.
66. *Ibid.*, 66.
67. *Ibid.*, 63.
68. *Ibid.*, 67.
69. *Ibid.*, 73.
70. *Ibid.*, 72.
71. *Ibid.*, 73.
72. *Ibid.*, 72.
73. *Ibid.*, 72.
74. *Globe and Mail*, 7 October 1992.
75. *Lethbridge Herald*, 27 October 1992.
76. Teresa Nahanee, "Dancing with a Gorilla: Aboriginal Women, Justice and the Charter," in *Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues* (Ottawa: Minister of Supply and Services, 1993), 370.
77. Monture-Okanee, "Reclaiming Justice," 119.
78. Nahanee, "Dancing with a Gorilla," 372.
79. *Ibid.*, 377.
80. Scruton, *Dictionary of Political Thought*, 164.
81. Nahanee, "Dancing with a Gorilla," 374.
82. LaFramboise, Heyle, and Ozer, "Changing and Diverse Roles of Women," 469.
83. *Ibid.*, 471.
84. Bonvillain, "Gender Relations."
85. Boldt, *Surviving as Indians*; Satzewich and Wotherspoon, *First Nations*.
86. *Windspeaker*, 20 December 1993–2 January 1994.
87. *Native Issues Monthly*, December 1993, 10.
88. Felix Cohen, "The Erosion of Indian Rights, 1950–53: A Case Study in Bureaucracy," *Yale Law Journal*, vol. 62, 390.