

COLONIALISM ISN'T THE ONLY OBSTACLE:  
INDIGENOUS PEOPLES & MULTILEVEL GOVERNANCE IN  
CANADA

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## **FIRST WORDS**

It should be impossible to think of multilevel governance simply in terms of federalism or to limit the discussion to those settler governments that comprise the federation (national, provincial/state and local). Yet, most do despite the fact that doing so ignores the existence of Indigenous nations and their structures of governance. This standard also ignores the legacies of colonialism and constitutional imperatives that recognize Indigenous peoples as having a different relationship with the state than (other) citizens and other governments. Thus, discussions pertaining to multilevel governance in settler societies such as Canada, United States and Australia (and arguably even in New Zealand which despite being a unitary system has both colonial and Iwe or tribal governments) need to overcome this intellectual hurdle and begin the process of decolonizing our understanding of multilevel governance.

While there is a tremendous need to bring Indigenous into the discussion of multilevel governance and to put Indigenous women at the forefront of that discussion, there is an even greater need to recognize and understand difference for Indigenous peoples are neither part of settler society nor the settler state. Indigenous governments, Indigenous political movements/organizations (gendered and otherwise) and Indigenous women's attempts to mobilize within the settler state, therefore, have to be understood on their own terms. Indigenous politics is not Canadian politics by any means of the imagination. By and large Indigenous politics is defined primarily by considerations of (de)colonization and Indigenous nationhood such that most demands and aspirations involve internal and external decolonization (within nations and within Canada), recasting the subordinate terms of the relationship between Indigenous nations and the settler state and rebuilding Indigenous nations economically, politically, culturally, linguistically and legally. As such, while Indigenous peoples are intimately tied to the Canadian state through the imposed system of colonial rule (the imposed *Indian Act* band council system of government) and the continuous need to lobby the settler state, for better services and legislative change, they seek to transform this relationship of subordination and reinvigorate Indigenous nations and their nation-to-nation relationship with the state.

That Indigenous politics is defined by the primary considerations of (de)colonization (both the experience of colonialism and the push for decolonization) and nationhood also serves to differentiate Indigenous women's movement(s) with feminist movements of the settler society. Indigenous women's movements are grounded in completely different cultural realities and historical experiences. Indigenous women do not necessarily take the Canadian state, multilevel government or the need to work within it as givens. Indigenous women are often at odds with the Canadian Charter of Rights and Freedoms seeing it as an instrument of colonization and a violation of their collective rights and their cultural values. Simply put, for Indigenous women working with the Canadian state and pursuing change through multilevel governance poses significant challenges. Still, the Canadian state and its system of multilevel governance is a central concern of Indigenous women, perhaps more than in any other form of women's movements as the Canadian governments has the premed ability to dictate Indigenous politics and thus to influence policies and standards of gender equity.

Indigenous women's concerns exist at an intersection of 'feminism' and nationhood, and (de)colonization. This intersection is crucial to grasp why there are complex tensions in how Indigenous women and organizations engage multilevel governance. This may be perceived by some as a competing impetus between solidarity with the goals of self-determination for their communities and the legal protections afforded by the settler state. Yet most Indigenous women do not divide their identities and political goals between gender equity, nationhood and (de)colonization, instead seeing them as congruent. It should be noted, however that this congruency is not without its constant tensions that are manifested both internally and externally. This paper explores the relationship between Indigenous women and multilevel governance in Canada through this lens of congruency (and tension) in identities and political goals defined by the ever-present considerations of (de)colonization, nationhood and gender (both Indigenous and western constructions). It argues that because of these considerations, the history of the relationship, and the imposition of a subordinate system of colonial rule/band government, multilevel governance is a 'mixed bag' for while it has primarily been an obstacle for Indigenous women seeking 'women-friendly' policy it nonetheless has potential.

Before proceeding with this chapter, one must understand that feminism is a matter of great contestation within Indigenous communities. While many have claimed this label others have whole-heartedly rejected it. Though the label of feminist has been rejected by many of those activists and scholars that have viewed Indigenous traditions as being more favourable for women than solutions offered by feminism and/or settler society, this does not mean that these women are not feminists. Rather, they are simply Indigenous feminists. To this end, scholars such as Andrea Smith, Hokulani Aikau and Joyce Green have begun the process of studying and theorizing Indigenous feminism(s) as an inclusive project that is grounded in Indigenous traditions and considerations of nationhood and (de)colonization (Smith 2007; Aikau 2007; Green 2007). Consistent with much of this work and the mobilization strategies of Indigenous women themselves, I will address Indigenous women inclusively, while acknowledging both the divisions within (resulting from the often fractious intersection of nationhood/sovereignty, (de)colonization and feminism) and also that not all Indigenous women are feminists (Indigenous or otherwise).

### **AN INDIGENOUS PERSPECTIVE ON FEDERALISM**

For many Indigenous peoples in Canada and beyond, their history with multilevel governance predates colonization as many nations had complex multilevel political systems (both federations and confederations). Indigenous structures of governance not only pre-date the arrival, and introduction, of western-eurocentric structures of governance, but they continued to exist despite colonization. Indigenous governments were officially replaced by band councils when the government of Canada used the Indian Act of 1876 to engage in regime replacement and created the quasi-municipal band council system of government. Despite all odds, many traditional or Indigenous governments continue to exist today and even more are in the process of rebuilding. Thus today there exists both 'official' governments (Indian Act Band Councils, Metis Settlement Governments, self-governing structures such as Nunavut and Sechelt, and tribal and/or other coordinating structures) and 'traditional' governments in many Indigenous communities. It should be noted that while these 'traditional' governments have very limited recognition by other

levels of government (federal, provincial and municipal), it is readily argued that they are nonetheless constitutionally recognized under s. 35 of the Constitution Act, 1982 and are often perceived as the legitimate governments within communities. As such, both types of Indigenous governments are typically involved in multilevel governance – both within Indigenous communities and in their (external) relations with the Canadian settler state.

Notwithstanding traditional governance, for Indigenous peoples in Canada, contemporary multilevel governance involves a complex array of governments and quasi-governmental organizations (such as tribal councils and representative bodies such as the Assembly of First Nations). For the most part, it is really this relationship between state structures (federal, provincial, municipal and to some extent band) and colonialism that defines multilevel governance for Indigenous peoples as such governments are not only the result of colonialism but are themselves agents of, and participants in, colonialism. When viewed in this way, it is easy to understand why Indigenous involvement with the state and with multilevel governance has been defined primarily by considerations of (de)colonization and Indigenous nationhood (Ladner, 2008).

These considerations have long defined Indigenous politics and political agendas. Since the arrival of Europeans in the Americas and the establishment of a settler society, Indigenous peoples have continuously engaged the state. Though the actors involved vary with time, the underlying issues that define Indigenous politics post-colonization have not changed. Indigenous peoples still struggle with colonization. Visions of the future, and attempts to engage the state, mobilize ('national' and 'international' organizations such as the Assembly of First Nations at the local, provincial and federal levels) and create change continue to be predicated on considerations of (de)colonization and nationhood as the goals which have defined and continue to define Indigenous politics.

Considerations of (de)colonization and nationhood are also explicit in the political activism of Indigenous women and in their involvement with the Canadian state to the extent that they define both the movement, the issues and the strategies pursued. But while it is important to understand that Indigenous politics is predicated on or defined by considerations of (de)colonization and nationhood, it is also vital to understand that these underpinnings are very much gendered. As Andrea Smith has argued, colonialism is a gendered enterprise. As history has shown, there is little doubt that Indigenous women have been disproportionately affected by colonialism.<sup>1</sup> There is also little doubt that the sexist policies and attitudes of both state and church, have infiltrated Indigenous communities such that sexism (in all of its physical, policy and doctrinal manifestations) and patriarchy have taken root in Indian country (Smith, 2003; Green, 2007:14-19). Thus, it is important to understand that these same considerations that define Indigenous

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<sup>1</sup> Recognizing that men and other genders have, and continue to, suffer the effects and legacies of colonialism (such as the loss of traditional roles and responsibilities, the destruction of Indigenous political systems and the destruction of Indigenous educational processes and infrastructure), my suggestion of disproportionality should be construed as a statement of difference rather than as an adjudication of the experience of men.

politics, Indigenous political movements and Indigenous engagement of multilevel governance, also serve to both unify and divide Indigenous peoples.

At the community level and in much of the literature in Indigenous politics, federalism is generally understood as a threat or an opposing force to the realization of the demands and aspirations of Indigenous peoples. This is because of its association with colonialism and how all levels of the Canadian government assist in the continued maintenance of the colonial relationship and colonial institutions. It was the federal government that attempted to legislate Indigenous governments out of existence and implemented the Indian Act system of administration. Although federal legislation perpetuates this system today, all Canadian governments maintain the system by permitting only limited delegated administrative responsibilities (no governing responsibilities are shared as federal, provincial and territorial governments occupy all areas of jurisdiction), denying self-determination, controlling all land and resources (including the fraction designated as reserves), controlling all programming on reserves, and by denying services on reserve (jurisdictional disputes between federal and provincial governments typically result in policy and service vacuums such as in the delivery of provincial health services on reserve). In any case, engaging in multilevel governance has always been viewed as somewhat of a necessity in the dismantling of the colonial state (the recreation of Canada as a post-colonial state), decolonization and a renewal of nationhood (both Canadian and Indigenous).

### **INDIGENOUS, GENDER & FEDERALISM**

While federalism is typically viewed as an obstacle in addressing Indigenous demands and aspirations and their defining considerations of (de)colonization and nationhood, engagement with colonial governments and involvement in multilevel governance has also been viewed as essential for Indigenous women. While many Indigenous women view Indigenous nations (and thus local government) as being the best place to address their concerns, others vehemently disagree. Such disagreements run much deeper than the debates over which venue is the best place to achieve positively gendered change. They are deeply rooted in the oft troubled relationship between considerations of nationhood, (de)colonization and the gendered disconnect between contemporary realities and Indigenous traditions.

Though women have not fared well under the colonial structures of oppression and domination associated with the Indian Act, many scholars have raised questions as to whether the situation would improve with increased local control and decolonization (Nahane 1992). This is because as Joyce Green reminds,

Colonialism is closely tied to racism and sexism. These twin phenomena exist in the context of colonial society, directed at Indigenous people, but they have also been internalized by some Indigenous political cultures in ways that are oppressive to Indigenous women. Liberation is framed by some as a decolonization discourse, which draws on traditional culture and political mechanisms. It is conceptualized as totally Indigenous in character, while also honouring women in their gendered and acculturated contexts. But Indigenous

liberation theory, like so many other movements and theories, has not been attentive to the gendered way in which colonial oppression and racism function for men and women, or to the inherent and adopted sexism that some communities manifest (Green 2007, 22-23).

Others, citing 'feminism' as an Indigenous tradition and/or explaining the way in which women exist at the centre and are honoured in Indigenous traditions have argued that despite colonization, local governments are best hope for Indigenous women to rid themselves of the racism and sexism that resulted from colonization. To that end, while the contemporary is rife with violence, inequality, and mistreatment, this state of internalized colonialism can be overcome by reclaiming tradition (Monture-Angus 1995, 179). It is as Turpel-Lafond suggests, we need to rebuild our own houses which have been ravaged by patriarchy, and which have been weakened through paternalism. This is one important task that lays ahead for us – one which we have begun. However, our house also must be rebuilt with First Nations men. It cannot be done alone (Turpel 1993,190).

These longstanding debates continue within communities, within organizations and between scholars. The reason for such heated debates between Indigenous women over the value of engaging non-Indigenous governments to create change for realities of Indigenous women and to promote gendered equality is a questioning of Indigenous traditions in light of contemporary realities. Simply put, can Indigenous traditions overcome the institutionalization of patriarchy within communities or are outside ideas, tools and legislative assistance needed? Viewed from another perspective, is it more advantageous to engage gender politics at the local level or through other levels of government? Does the choice of political venue impede or create obstacles for 'women friendly' change? Just as importantly, for Indigenous peoples, does the choice of political venue impede or create obstacles for addressing (de)colonization and nationhood?

To fully understand these debates, one has to understand that gender within an Indigenous context has a completely different meaning. One has to understand that gender has been colonized and that colonialism itself has been gendered. To understand that gender has been colonized (to some degree or partially) one has to understand that Indigenous peoples had (and may still have) a completely different understanding of, and experience with, gender than their colonizer. Many nations speak of inclusive and transformative understandings of gender as either genderless or multi-gendered (a recognition of sexual diversity) or of an understanding of gender grounded in inclusion, respect and honour. In any case, it is important to acknowledge that the position of women in Indigenous society was (by and large) quite unlike that of European women at the time of contact.

Unlike European women, Indigenous women were considered persons, most often they were the owners of matrimonial property, the intermediaries between men and 'power' (in a non-western sense), the ones who brought the sacred ceremonies and political order to the nations, and were not confined by an absolute gender division as many pursued more masculine roles as warriors, hunters and leaders. Thus Indigenous understandings of gender ground entirely different political, social, philosophical, economic and spiritual systems, practices and traditions the result of which as Smith has argued, are Indigenous political traditions that call for the inclusion of all

and are predicated on ideas of inter-relatedness and responsibility rather than the legitimization of power (in a western sense) and violence (Smith 2006, 94).

Turning attention back to the gendered and colonial realities of today means acknowledging an extreme disconnect with tradition because as Smith has argued there has been a normalization of state and individualized violence, sexism, heteronormativity and racism (Smith 2006). As to Verna St. Denis suggests,

... the overwhelming majority of Aboriginal people have gone through some degree of socialization into Christianity as well as incorporation into the patriarchic capitalist political economy and education system, and are therefore subject to western ideologies of gender identities and relationships (St. Denis 2007, 41).

Still, colonization is not complete by any means and many individuals and communities simultaneously manifest competing cultural identities and understandings of gender. While the breadth and depth of this internalization of colonialism is debatable, the existence of these competitive ideas is critical to understanding the contemporary political visions, strategies and pursuits of Indigenous women. The mere existence of competing cultural identities and understandings of gender which ground Indigenous voice and vision also serve to divide Indigenous women. At issue is the intersection or correlation between gender and considerations of (de)colonization and nationhood and whether the mere existence of gender neutral and/or gender positive traditions are enough to overcome the current disconnect and the masculinist ideas that now seem to dominate discourses of (de)colonization and nationhood.

It is both this correlation and current state of disconnect that defines the politics of Indigenous women today. This explains the division and fraction among politically engaged Indigenous women and the manner in which they engage with multilevel governance. That is to say, by and large, the political mobilization of Indigenous women has been defined by considerations of (de)colonization and nationhood, Indigenous traditions (particularly understandings of gender) and the current state of disconnect between tradition and the masculinist ideas that dominate discourses of nationhood and (de)colonization. Such considerations and the current state of disconnect explain the division, fraction and disconnect among politically engaged Indigenous women. The fissures within Indigenous gender politics represent a debate over the presumed incompatibility of Indigenous sovereignty, nationalism and women's rights or feminism (Indigenous or whitestream) or more specifically, whether it will positively affect gender equity.

In simple terms, though women have not fared well under the colonial structures of oppression and domination associated with the policies of the federal government, many scholars have raised questions as to whether the situation would improve by: enhancing local government (be that self-administration, self-government or the implementation of an Indigenous constitutional order); enhancing or even returning to tradition (for instance, Indigenous law, Indigenous political systems and spirituality); or, by protecting rights and pursuing change through established political processes of the settler-state (Nahane 1992; Turpel 1989-90; Monture-Angus 1995; Green 2007). Far from being a mere philosophical or academic debate, this divide defines Indigenous politics today and is demonstrative of the manner in which considerations of nationhood, (de)colonization and the disconnect between tradition and the masculinization of

politics become manifested in contemporary political debates, discourses and strategies for mobilization and change.

### **DEVELOPING WOMEN-FRIENDLY POLICIES: MATRIMONIAL PROPERTY**

The debate over federalism and the debate over its existence as an obstacle among Indigenous women is very much tied to and defined by the debates among Indigenous women over the use of tradition as a foundation for decolonization, rebuilding nations and addressing the rights and (in)equality of women. This is most readily observed as it relates to the existing lack of matrimonial property law on reserve and debates over potential solutions. Summarizing the issue at hand, NWAC states:

In 1986, the Supreme Court of Canada rules that provincial and territorial laws regarding matrimonial real property do not apply to reserve land. This gap in the law has had serious consequences, because when a marriage or relationship ends, there is no law that Aboriginal couples who live on reserve can use to help them solve this dispute.

This gap also means that women who are experiencing violence, or who have become widowed, may lose their homes on the reserve. As a result, the law harms Aboriginal women and children much more than it does Aboriginal men (NWAC March 4 2008).

There is no doubt that there exists a need to create women-friendly policy in order to deal with this legislative vacuum. All major Indigenous political organizations (gendered and otherwise) have been arguing this for years. That said, there is great debate in the literature and among Indigenous peoples and governments as to why change is necessary, what constitutes women-friendly policy and what is the way to address this issue. For instance, in framing this issue and the need for intervention, Christopher Alcantara has focused his attention at the community-level and has argued that this legislative vacuum unequally disadvantages women because, “many Canadian Indian reserves are male-oriented and male-dominated. This is important since men have historically been the prime and sole owners of property and, hence benefit from the court’s inability to divide or award an interest in matrimonial property” (Alcantara 2006, 530-531).

While it is true that patriarchy has become deeply imbedded in Indigenous communities and even more true that this is a serious problem for women living in said communities, the Native Women’s Association of Canada has consistently argued that framing the issue in this manner ignores the fact that this situation is the result of federal Indian policy which essentially terminated the legal, political and property rights of women within Indigenous communities. Such a way of framing this issue also negates the possibility that the solution may be found within communities. Indigenous political organizations (gendered and otherwise) have continuously emphasized that this possibility cannot and should not be over looked. While some have chalked this stance up as being a mere defense of masculinist discourses of nationhood and decolonization, the development of this position has also been driven by the shear fact that under the traditional legal and political orders of most Indigenous nations, women were the property owners.



The fears of Indigenous governments and political organizations (gendered and otherwise) were realized with the introduction of Bill C-47, the Family Homes on Reserve and Matrimonial Interests or Rights Act on March 4<sup>th</sup>, 2008 and its reintroduction as Bill C-8 on February 2, 2009 (the Bill died as a result of the dissolution of Parliament on September 7, 2008). Briefly, according to the Act,

All First Nations (with the exception of those First Nations that have matrimonial real property laws under the First Nations Land Management Act or a self-government agreement that includes management of reserve lands) will be subject to the proposed Act's provisional federal rules unless and until such time as they enact their own laws.

The proposed Act is subject to the Charter. To the extent that provisions of the proposed Act are deemed to fall within the scope of the Canadian Human Rights Act, the legislation will be subject to that Act.

The proposed Act will: a) strike a balance between individual and collective rights; b) respect the inalienability of reserve lands; c) be enforceable in a practical manner; and d) result in greater certainty for spouses or common-law partners on reserves concerning the family home and other matrimonial interests or rights. (INAC 2008)

While both the Native Womens Association of Canada and the Assembly of First Nations have lobbied the federal government to fill this legislative gap, neither group is supportive of the federal government's attempt to resolve this issue. Though posed as an attempt to provide Aboriginal women rights under Canadian law, both NWAC and the AFN (among other Indigenous governments and organizations) have been extremely critical of this legislation and have argued that it does not stand to create 'women-friendly' policy. This is because the proposed legislation does not deal with 'systemic problems' of poverty, housing shortages, institutionalized sexism and the internalization of violence that many Indigenous women face in their communities (NWAC March 4 2008).

Thus it has been argued that this blanket prescription modeled on provincial matrimonial property rights regimes, does not respond adequately to the distinctiveness of the reality of reserve life. Due to tremendous housing shortages on reserve and the condition of existing housing which would render a large percentage of houses in most communities inhabitable in other locales, alternative housing is simply not available. This means that someone will still have to leave the community (despite legislation suggesting otherwise). While the interests of women (including non-Aboriginal and/or non-status women) are recognized and interim occupation rights and formulas (50/50) for dividing property provided, the legislation does not respond to the fact that in many cases, women (and children) will still have nowhere to go within the community. More importantly, dividing matrimonial property (50/50) does not account for the fact that most people living on reserve do not have access to funds that would permit them to buy out another's interests. nor does it account for the fact that availability of mortgages on reserve is limited and access is often controlled by the band.

It is easily argued that Bill C-8 will not provide adequate means of protecting and actualizing those rights and interests which it supposedly provides and thus does not remedy gender inequality. It is also easily argued that Bill C-8 negatively affects Indigenous nations. Though

the legislation would permit First Nations to develop their own codes (much like Bill C-31 did), it does not allow First Nations to enact codes enabling the governance of matrimonial property by traditional law (NWAC, June 2007: 9). This is extremely problematic as it fails to respect both sovereignty of First Nations and the demands of Indigenous people with respect to the use of Indigenous law as was commonly articulated in both NWAC and AFN's consultation process (see: NWAC, June 2007, AFN, February 2008).

This tendency to tie policy success to both the attainment of gender equality and considerations of (de)colonization and nationhood in this case may lead readers to conclude that these organizations (particularly NWAC) have "defended gender inequality on reserves by arguing that correcting this inequality would have a detrimental effect on their quest for Aboriginal self-government and self-determination" (Alcantara 2006, 91). But this is not a situation of 'either or' and neither NWAC nor AFN (or its Womens Council for that matter) have presented it as such. Relying on its extensive consultation process, and the contributions of its constituent organizations (provincial organizations of native women), NWAC concluded that matrimonial property would be best dealt with at the community level - though possibly not by Indian Act band councils or 'official' local governments.

For NWAC, this is not about putting considerations of sovereignty and (de)colonization before the rights of women nor is it about NWAC's unfettered support for local government - to the best of my knowledge NWAC has never done either. Rather, while it is suggested that local governments might be better able to address community needs and that a blanket approach simply will not work, NWAC's primary reason for suggesting that this be dealt with at the community level is that Indigenous women would be far better served by their own traditions and their own laws. This position was heard time and time again throughout the consultation process and is very much supported by my own research into and knowledge of Indigenous legal traditions for by and large women were the owners of property. As such, there is little question as to why both NWAC and AFN (supported by its Women's Council) support the idea that this issue is best dealt with at the community or for that matter the national (at the level of Indigenous nation) level.

### **MULTILEVEL GOVERNANCE: OPPORTUNITY OR OBSTACLE?**

Here is where the situation becomes interesting, as both NWAC and AFN also support the need for federal action in this area though seeing it as both a necessity and a formidable obstacle. It is necessary because it is federal legislation which 'officially' governs 'Indians and the lands reserved for Indians'. Federal legislation is therefore necessary to create opportunities through the use of delegated responsibilities for communities to govern in this area and hopefully create women-friendly policies. Viewed in another light, this reinforces a situation of colonial rule whereby the governments or band councils established by the federal government for the purpose of providing it with administrative capacity within (once) sovereign nations now exercise only delegated administrative responsibilities. Yet Indigenous women are provided with multiple opportunity structures when seeking change. That multilevel governance provides for political forum shopping is of critical importance and great benefit for Indigenous women promoting 'women-friendly' policy. This is particularly the case in instances where Indigenous governments have been either unwilling to address these issues on their own or unwilling to

support their resolution. As scholars such as Green, Smith and Dick remind, such incidents are not rare (Green 2007; Smith 2006; Dick 2006).

Multilevel governance may provide opportunities for organized Indigenous women to promote women-friendly policies. At the same time, however, multilevel governance may pose significant obstacles for Indigenous women seeking to promote 'women-friendly' policies. For the most part, it is fairly evident and extremely easy to argue that Indigenous politics were 'women-friendly' until the advent of colonization and the introduction of both church and state (both of which still cannot lay claim to being 'women-friendly'). Aside from being responsible for the mere need of 'women-friendly' policies, the federal government has been an obstacle to overcoming this need because it maintains this status quo through federal policies such as the *Indian Act* and its non-recognition of Indigenous sovereignties and legal traditions. It also seems as though it has been federal government that has in and of itself been the obstacle in achieving women-friendly policy for it disallowed and destroyed Indigenous (gender-friendly) political and legal orders and institutionalized patriarchy through the Indian Act provisions for government, property, political rights and membership rights – all of which initially excluded women. The federal government has not been open to addressing the colonial and gendered reality of its policies or to the near crisis state that its past actions have resulted in. Beyond this, the federal government's universal approach is often criticized as being an obstacle because it is incapable of dealing with the particulars of local communities (NWAC 2007) and the real situations that women face in communities.

Considering current debates over matrimonial property law the federal government seems to be limiting the ability of communities to renew Indigenous legal orders in such a way that would create an even more women-friendly policy than that allowed by the federal government's proposed strategy. By refusing to recognize the existence of Indigenous legal and political orders and/or to address their renewal, the federal government has built a roadblock for Indigenous women and Indigenous political organizations (gendered or not) seeking to address both gender issues and the primary considerations of nationhood and (de)colonization. In so doing, the federal government has also created a massive obstacle for those that think that 'women-friendly' policies to deal with issues such as matrimonial property law can best be achieved through Indigenous traditions (and their renewal).

Such an understanding of federalism as both an opportunity and an obstacle has been criticized by a number of Indigenous feminists and their allies for its apparent support of a masculinist discourse of sovereignty and decolonization and for its perceived inconsistencies with past struggles for equality for Indigenous women (Green 2007a, 2007b). This criticism is most often two-fold: (1) it ignores past struggles over status or the exclusion of women (and their children) who married non-status or non-Indigenous men from community and their rights and members of Indigenous nations; and (2) it presupposes Indigenous traditions as gender-friendly and negates the impact of colonialism on institutionalizing patriarchy and heteronormativity. These criticisms are quite valid to the extent that understandings of gender and gender relations have been colonized (to varying degrees) and to the extent that so many communities opposed the changes to the Indian Act that resulted in many women and their children reclaiming their status (and their 'privileges' under the Indian Act) in 1985 with Bill C-31. But such criticisms are readily cast aside as well. While the federal government is often said to have championed Bill

C-31 despite massive criticism from Indigenous governments and political organizations (including the National Indian Brotherhood/Assembly of First Nations), one must not forget that they did so only after years of Indigenous women lobbying for change in the streets, the courts, the international arena and the constitutional arena. One must also remember that Bill C-31 was not a women-friendly policy – far from it! Reinstated Indigenous women (and their children) are still fighting their disadvantaged status under the terms of the Indian Act.

The critics are very correct in arguing that women did not fair very well in many of those communities that used Bill C-31 as an opportunity to create their own membership codes (as was allowed under the terms of the legislation) (Dick 2006). The vehement resistance of leaders from Indian Act Band Councils and political organizations such as the National Indian Brotherhood/Assembly of First Nations to the supposed degendering of status and provisions for reinstatement did not cease in 1985. Instead, several communities (including Sawridge, Ermiskin and Tsuu T'ina) opted to create their own exclusionary membership codes under the terms of Bill C-31. These codes, such as that developed by Sawridge, have explicitly perpetuated gender inequality in the granting of membership to those individuals who have been reinstated by the federal government under the terms of Bill C-31 (Dick 2006, 101-2).

But must these critics be correct? Absolutely not! Although Sawridge was unable to escape its own internal colonialism and develop a 'women-friendly' policy using their understanding of Cree tradition and law, this does not mean that it is impossible to do so. The issue, in my mind, is not Indigenous political and legal traditions for these are, according to Smith, predicated on ideas of inclusivity, inter-relatedness and responsibility rather than the legitimization of power and violence (Smith 2006, 94). At issue, rather, is the existing disconnect between tradition and some communities' discourses of sovereignty and decolonization which have resulted from the church and state's efforts to create a polity in their own image through the institutionalization of patriarchy and heteronormativity (among other equally problematic exports of colonial society). That said, if Sawridge is any indicator, those who benefit from sexism and racism are not likely to give up their privileges that easily. But it can be done. To overcome this and to address the standard debates (among scholars and Indigenous women) over the utility of and possibilities offered by Indigenous traditions, both leaders and communities will need to decolonize their understanding of gender and to gender their understanding of decolonization and be accountable for these processes. Accountability is necessary because claiming Cree law as the basis for excluding women (Sawridge) can not be tolerated especially when this stands in direct opposition to the understanding of that same Cree law in other Cree communities (such as Cowesses which has used traditional law as the basis of an extremely inclusive modern kinship or membership).

Complex realities situate both Canadian Indigenous governments as posing obstacles and creating opportunities for 'women-friendly' policy. If the disconnect between tradition and contemporary gendered realities was rectified through the decolonizing of gender and the gendering of decolonization, then the paradoxical relations between Indigenous women, their communities and the state might be resolved. If Indigenous communities were to fully embrace their inclusive, gender-friendly political and legal traditions, then the federal government would appear as an unequivocal obstacle as its legislation forces communities to maintain the less women-friendly policies and norms of the settler society. Even without this change in

communities, the federal government still poses a seemingly insurmountable challenge by maintaining the status quo through the continued imposition of legislation. Still, Indigenous communities, governments and political organizations (gendered and otherwise) are confronting this challenge head on and are pushing the federal government to relinquish its rule and allow communities to develop women-friendly matrimonial property law and citizenship/membership policies.

Given their experiences with Bill C-31 and its lingering sexist aftermath, the ongoing rebuilding of communities and their political and legal orders, the further mobilizing of women in communities and political organizations and the policy, educational and analytical supports now being developed and offered by Indigenous political organizations (such as AFN's expanded gender-based analysis program which is grounded in Indigenous teachings of gender (some nation's teachings speak of multiple genders and are not limited to the simple male-female dichotomy), inclusivity, connectivity, responsibility and inter-relatedness), it is extremely likely that local governments will become the place where Indigenous women gain huge gender-friendly policy successes. It is also likely that such success is community-dependent and thus, will not be universally obtained by Indigenous women.

#### **FINAL THOUGHTS: NECESSARILY A HINDERENCE?**

Though it can be argued that the federal government has been more of an obstacle than an opportunity for organized Indigenous women promoting 'women-friendly' policies in the recent past (such as seen with matrimonial property law), multilevel governance in and of itself may not necessarily be an obstacle. This is the case for several reasons.

First and foremost, recognizing that it is actually colonialism and the contemporary realities of colonialism that results in my classification of multilevel governance as an obstacle, it follows that this situation may be rectified through decolonization. That is to say, the problem is not federalism in and of itself but the subordinate position of the imposed system of Indian Act band governance which does not allow Indigenous nations to govern themselves or to create 'women-friendly' policy without federal delegation and approval. Given that most Indigenous nations in Canada signed treaties which specifically protected Indigenous nationhood and sovereignty and which provided for a nation-to-nation relationship with the Canadian state, such a situation is not and never has been tolerated – thus the ever present considerations of nationhood and (de)colonization which define Indigenous politics. Decolonization therefore entails renewing the relationship between Indigenous nations and the settler state and renewing Indigenous governance (including legal and political orders). As such decolonization could significantly transform multilevel governance internally and externally so as to create opportunities rather than obstacles to 'women-friendly' policy.

Internally, decolonizing Indigenous political structures means marking a departure from the Indian Act and its imposed system of band council government (originally designed to provide for indirect colonial rule) and allowing Indigenous peoples to decide how to govern themselves based on a renewal of traditional structures, the creation of new structures or some combination thereof. Given that the Canadian government's imposed system of band governance served to disband the national and supranational governments of most nations, it is likely that

decolonization will result in a regeneration of Indigenous multilevel governance. Beyond these traditional national and supranational systems of multilevel governance, it is very likely that other supra-national structures will develop or be recreated at the federal and provincial levels (likely through existing bodies such as the AFN and NWAC). Such developments could greatly benefit Indigenous women seeking ‘women-friendly’ policy for Indigenous systems of multilevel governance would provide for opportunities for forum shopping and as well as the creation of accountability structures so as to mitigate against discriminatory interpretations of tradition (such as that which occurred with Sawridge) by providing processes of national and supranational oversight.

Externally, decolonizing Indigenous political structures and the relationship between Indigenous nations and the Canadian government does not mean that the interaction between and or involvement of Indigenous women, Indigenous organizations, Indigenous nations and Canadian governments will cease. Rather as the growing body of scholarship in the area of treaty federalism and/or treaty constitutionalism suggests the departure from the colonialism and its mass subordination of Indigenous people, nations and governments will necessitate the creation of a new paradigm and a transformation of the way in which Indigenous peoples interact with the state. No longer will it be necessary to lobby the federal government for years and years to create legislation permitting Indigenous governments to create legislation that meets federal requirements rather than the needs, and aspirations of women in a specific community. No longer will it be necessary to engage Canadian governments in lengthy multi-year negotiations to attain delegated responsibilities that may or may not allow a community with the policy room necessary to respond to both the specificities of a community and the need for ‘women-friendly’ policy. Still the nation-to-nation relationship, the division of powers and the resource sharing that ensues as a result of decolonization may actually result in a renewal of multilevel governance that is far more integrated (not assimilated or subordinated) than that which exists now. Regardless as to the level of integration, removing subordination and current obstacles should greatly enhance the ability of Indigenous women to pursue women-friendly policy at the local (community/band), national (Indigenous nation) and supranational (be that provincial or federal) level.

Second, even without decolonization, multilevel governance is not in and of itself a hindrance or an obstacle for Indigenous women seeking to create ‘women-friendly’ policy. That is to say while the federal government is likely to remain a constant obstacle and a periodic opportunity in so far as the colonial policy paradigm and the subordination of Indigenous governments remain, other (quasi) multilevel government opportunities exist both domestically and internationally.

Domestically, Indigenous political organizations are more than simply lobby groups and/or social movements. With the exception of NWAC and its provincial counterparts which claims to represent all Aboriginal women (First Nations and Métis) and the Congress of Aboriginal Peoples and its provincial counterparts which claims to represent all non-status and Urban Aboriginal peoples, Indigenous political organizations reflect and represent national and/or sub-national communities and are, by and large, representative bodies elected by band council chiefs, Inuit community leaders or leaders from Métis communities. In any case, these organizations do not act as mere lobby groups but see themselves as quasi-governments which can negotiate on behalf of constituent members and develop policy initiatives such as AFN’s Gender Re-

Balancing Strategy which currently combines strategies for policy analysis, community (re)building and governance based on principles of holism, voice, equity, cultural diversity, community control and cultural identity (AFN 2007).

These organizations (gendered and otherwise) have played critical roles in the past as Indigenous women mobilized and pursued women-friendly policy change. That some have been more helpful than others should not come as a surprise given that organizations such as the National Indian Brotherhood/Assembly of First Nations represent band council chiefs who by and large viamently opposed Bill C-31 and the re-instatement of those women (and their children) who had lost their status as a result of the sexist provisions of the Indian Act. Because of the fact that these organizations created such obstacles for women-friendly policy change, Indigenous women developed their own political organizations and have created their own infrastructures within the other (supposedly non-gendered) organizations such as the AFN Women's Council. The development of such organizations and organizational capacity serve to create and enhance opportunities for Indigenous women to organize and for those seeking to create women-based policies and gender-based changed more generally. Such developments within national and/or provincial organizations often serve as access points for women into the policy process at both the federal and local level and/or serve to force change through policy dissemination. Viewed in this light, Indigenous political organizations are increasingly becoming identified as creating opportunities for positive gender-based change and women-friendly policy as they provide increases opportunities for forum shopping, innovation and policy transfer and inter-governmental exchange (both among Indigenous governments and/or political organizations and between these organizations and Canadian governments). This is even becoming the case for those organizations which have historically been viewed as obstacles for women-friendly policy such that it is AFN that is championing the need for gender-based analyses plus (the plus representing the need to address other genders and other diversities).

Internationally, supranational multilevel governance has also provided Indigenous women with tremendous opportunity to promote women-friendly policy and gender-friendly change more generally. Though gaining access to supranational forums such as the United Nations has often been an obstacle for Indigenous peoples for these venues are typically reserved for nation-states and as colonized nations (nations which are currently occupied) direct access has been limited. That said, despite their inability to participate in forums such as the General Assembly, Indigenous peoples have been extremely resourceful and very successful in using the mechanisms available to them at the United Nations and in establishing their own mechanisms such as Article 8(j) Traditional Knowledge, Innovations and Practices in the Convention on Biological Diversity, the Working Group on the draft declaration on the rights of indigenous peoples and the United Nations Permanent Forum on Indigenous Issues. Using such processes, Indigenous political organizations (gendered and otherwise) such as Quebec Native Women and NWAC continue to press for gender-friendly change. This is particularly true now that the Permanent Forum is being used as a venue to push for the implementation of the UN Declaration both within communities and by nation-states such as Canada. According to these political organizations, since it lays out a general framework for decolonization and recognizing the rights (and responsibilities) of Indigenous peoples within settler-states, implementation of the Declaration is viewed as enabling a renewal of Indigenous legal orders and the creation of women-friendly policy. Even though the odds of achieving success using supranational forums

to achieve 'domestic' women-friendly policy is a long-shot, the fact that there has been some success means that such venues have become viewed as opportunities rather than as obstacles for Indigenous women seeking change.

Though Canadian federalism (really the federal government as Indigenous people see themselves as both a federal responsibility and as having a nation-to-nation relationship with the Canadian state), is often viewed as both obstacle and opportunity for creating 'women-friendly' policy, and although Canadian federalism is primarily an obstacle in achieving success, this does not mean that multilevel governance is, in and of itself, an obstacle. Opportunities for envisioning and advancing women's rights and gender-friendly change exist outside of the institutions of the nation-state as multilevel governmental structures comprised of Indigenous governments and political organizations (gendered and otherwise) and within supranational structures such as the United Nations. Thus, to conclude, for Indigenous women seeking to create women-friendly policy, multilevel governance represents a very complex and multidimensional system of Indigenous and non-Indigenous institutions all of which pose both inherent challenges and tremendous possibility.



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