

Indigenous Canada: Looking Forward/Looking Back



Cover Image: Artwork by Leah Dorion

The University of Alberta acknowledges that we are located on Treaty 6 territory and respects the history, languages, and cultures of the First Nations, Métis, Inuit, and all First Peoples of Canada, whose presence continues to enrich our institution.

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Module 4 Introduction

Throughout history, people have gathered together to create communities and societies as they rely upon each other for companionship and survival. As groups of people congregate together in the tens, hundreds, thousands, or even millions, moral codes and behavioural measures are needed to guide the actions of individuals and groups. Without structured principles, conflict and disorder would be inevitable.



Figure 1 Soaring Eagle

Prior to Europeans arriving in North America, Indigenous communities had governing bodies to develop guidelines and models to coexist peacefully and prosper with their environment. Indigenous legal traditions often differ depending on the stories, history, ceremony, and worldview of each community. Even today, Indigenous legal traditions are important aspects to the governance of communities. Indigenous people continue to be guided by the relationship between themselves and their environment (Borrows 2006).

A legal tradition [...] is a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected and taught. (Merryman and Pérez-Perdomo 2007, 2).

Section One: Indigenous Concepts of Law

Recognizing Law

When the first Europeans arrived in North America, they recognized and followed the legal traditions and laws already set in place. The British, French, and Dutch all followed Indigenous ceremonies, laws, and practices during the first phase of contact and during the Peace and Friendship treaty negotiations (Borrows 2006).

Indigenous nations worked to maintain strong ties to other clans and communities, so there were common rules governing relationships. For example, laws were needed to regulate events such as marriage or adoption. Laws were created to protect community members from harm, settle disputes peacefully, regulate resources, and maintain order (Borrows 2006). While these legal systems were often unwritten, the laws were anchored in the ceremonies, songs, dances, and oral narratives and passed down from one generation to the next.

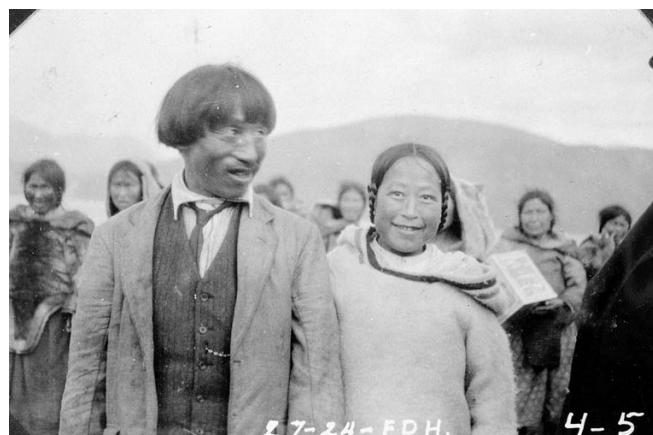


Figure 2 . Inuit couple, 1924; Credit: Canadian Department of Indian and Northern Affairs/Library and Archives Canada.

Indigenous Legal Traditions

Indigenous laws are based on their worldviews and beliefs. Generally speaking, these are concerned with the goal of maintaining and restoring harmony within and between human and nonhuman relationships (Bastien 2012; Belanger 2013). This goal may be considered conservative, in the sense that following nature's cycles and maintaining harmony in society are understood to be a time-tested means of ensuring the good life. Broad principles emerge from worldviews, of which one such principle is the prioritization of the collective. This means that principles may be applied to specific incidents or come to define specific legal customs, regulations and rules, for example, the settling of disputes or management of resources. Because the collective is so important, individuals are inclined to act with it in mind at risk of their own well-being. Thus, individuals are more inclined to self-regulate and do not normally require a coercive legal system, as found in settler societies. The general difference between Aboriginal law and Indigenous laws refer to the former being the way in which the Canadian state interacts with Indigenous peoples, and the latter being legal orders that existed before European presence.

Indigenous laws are based on the values of society as a whole and take into account the best interests of all people. Consequences for breaking laws vary widely and depend on the circumstance and specific societal laws within each community. Nevertheless, often Indigenous laws were non-punitive and non-confrontational, and they embodied restorative approaches that promoted values such as respect and consensus (Forbes 2008).

For example, Nehiyawak, Dene, and Inuit would address any misbehaviour beginning with counselling by the Elders or respected community members with the perpetrator. If counselling did not work, the entire community would work together to shame the wrongdoer into behaving like a good person. If the offensive behaviour continued, the ultimate (although rare) consequence was banishment. Alone and without the protection of the group, this consequence was often a death penalty for the wrongdoer.

Although the enforcement of Canadian laws has wreaked havoc on Indigenous legal traditions and customs, many of these traditional legal practices have survived. The laws of Indigenous societies are based on the cultural worldview that humans are as important as any other inhabitants of the planet, and that humans must coexist rather than assume authority and control over others. As well, Indigenous legal traditions have evolved over time, forming and reforming as needed and corresponding with the circumstances and challenges of the time (Borrows 2010; Borrows 2016).



Figure 3 . An elder with elementary school children in Iqualuit, Nunavut, 2009; Credit: The Canadian Press/Nathan Denette

European Influence

Canadian common and civil laws were developed from the values and history of the European settlers (Borrows 2016; Christie 2003). In addition to Christian beliefs, they are informed by a worldview embedded in binary thinking. For example, rather than prioritizing relationships between humans and the environment, a European worldview sets humans apart from the environment (Hall 1992). This attitude then suggests a certain orientation toward the use and exploitation of the land. It is also a worldview that emphasizes competition between individuals as opposed to working collectively. As a result, individuals may be less inclined to regulate their behaviour, and so a more coercive legal system is needed (Turner 2006).

Well into the 19th century, the settler legal system continued to recognize Indigenous laws. However, as European populations increased and settlements grew, settler law became the norm, and these alien laws and punishments were forced upon the Indigenous population (Borrows 2016; Ray 2016). European laws under settler legislation displaced and/or deemed illegal Indigenous systems of land, resource, political governance systems, and ceremonies. Indeed, the colonization of North America is very much a legal story, involving both the imposition of settler laws and the attempt to erase Indigenous ones. Indigenous cultures have their own distinct set of laws and procedures for dealing with disruptions that are very different from those found in Western legal orders.

Differences in Legal Traditions

There are many distinct understandings of law amongst Indigenous nations. The common law seeks to reflect this diversity in the formulation of legal concepts applicable to Indigenous peoples (Borrows 2010; Yunupingu 1997). The common law that applies to Aboriginals—the Canadian legal term for Indians (another legal term), Métis, and Inuit—has four legal concepts that are important toward characterizing this area of law:

The first idea is that an Aboriginal right is *sui generis*, a concept that declares that something is unique or "of its own kind" in Latin. This concept suggests that rights, such as Aboriginal rights, must be understood in a manner that reflects the form of the entitlement in Indigenous legal system and not within an incompatible European system. Second, Aboriginal rights are *collective* rights. Although they may be exercised by a singular person, they are held by the community rather than individual. Third, Aboriginal rights incorporate *duties* that limit government powers or guide its actions. These duties include actions like consultation, accommodation, honour of the Crown, and fiduciary duty. Finally, Aboriginal rights are uniquely situated in the Canadian Constitution. They are not Charter rights; they are inherent rights that apply only to Aboriginal peoples. Aboriginal rights exist in Part II of the Constitution (the Charter is Part I) (cf. Branch Legislative Services 2015).

“Aboriginal law” is the general term used to describe all of the law that pertains to Aboriginal peoples in Canada, such as Aboriginal rights, the Indian Act, and other legal instruments. Indigenous legal traditions, is a term sometimes given to refer to the Indigenous laws that continue to be practiced by Indigenous peoples, and that are the basis for *sui generis* Aboriginal rights. There are complexities to Indigenous legal traditions. Indigenous laws focus on maintaining a sense of peace and harmony within communities. One of the major differences that sets Indigenous law apart is that communities promote the use of a variety of systems including restorative justice and healing circles, rather than courtrooms and prisons (Johnstone 2013). Elders play a significant role in the administration of justice and resolution of disputes. Restorative justice recognizes wrongdoing as impacting relationships. It therefore seeks to restore balance in the community after a wrong has occurred (Johnson 2014).

It does so in two ways. First, through the healing and reparation of all parties involved and rehabilitation of the offender. As opposed to being focused on a punishment, this process forces offenders to be accountable to those they have hurt. Offenders are also expected to acknowledge their actions. In Canadian law, offenders who commit a violation are not required to incriminate themselves and can plead “not guilty”. Restorative justice requires offenders to plead guilty. This encourages a resolution between the victim and their family, as well as the offender and his/her conscience (Aboriginal Justice Implementation Commission 1999). Once the offender acknowledges complicity in a crime, everyone can begin to accept and move towards resolution. This process also allows the victims to express their feelings.

Second, as opposed to being adversarial, restorative justice brings everyone involved together to come to resolutions that allow people to move past transgressions in a mutually acceptable way. Once an offender has faced his/her circle of community members and reconciles the offending act, the obvious next step requires discussion about the consequences. This process of holistic and values-based justice affects the decisions about consequences and may be distinguished from more retribution or “just deserts”-based approaches.

Terms of Justice

Within settler law if a person is found guilty of a crime, the punishment takes the form a fine, jail sentence, or probation (in which the person is free to be in society while abiding by a tighter set of rules than everyone else). As mentioned within Indigenous legal traditions, an offender must concede and admit the crime that he/she has committed in order for everyone involved to move forward in a positive way. The consequences for breaking the law vary from community to community. From an Indigenous perspective, law is about restoring balance (Aboriginal Justice Implementation Commission 1999).

A punishment-based system under settler law seems like it lets the offender off the hook, effectively relieving them of guilt. The perception is that the offender goes off to prison where they do not have to face the victim or their family, and they are fed and cared for. This system falters twice.



Figure 4 . Prison bars and cell

First, the offender does not make any kind of direct restitution to the victim(s), and second, offender's family may suffer hardships while the offender is imprisoned, particularly if he or she was the primary provider. Everyone but the offender is seen to pay the consequences of the crime (Johnstone 2013).

So, what happens instead within Indigenous legal traditions? The consequences of committing crimes vary from situation to situation and community to community and have evolved over time. Forms of punishment are less fixed than Western law and focus mainly on the offender taking responsibility for their actions to work towards healing and recovery. Though there are many parallels in philosophy surrounding Indigenous law, the type and severity of punishment can differ quite dramatically (Belanger 2013). Depending on the severity of the crime, an offender might face

anything from monetary restitution to banishment, depending on their community. An example of this comes from a Dakota community where the father of a murderer gave his son to the family of the victim, in order to assume the role of provider for the family and in some way restore what he had stolen away (Borrows 2006, 3–4). Indigenous cultures place a lot of value on relationships. There is an expectation that efforts will be made to honour not only each other but also the Earth and other inhabitants that make living possible in the first place.

Respect, Restoration and Consensus

Indigenous legal systems are generally non-prescriptive, non-adversarial, and non-punitive (Borrows 2006). They tend to promote values such as respect, restoration, and consensus, and are closely connected to the land, the Creator, and the community. To many people familiar only with settler justice systems, Indigenous laws are perceived more like customs, because they are oral and not connected to state institutions (Borrows 2016).

Prior to contact, many Indigenous laws were not written down. In some cases, they were visually illustrated, such as the case of the Iroquoian wampum belt. Indigenous laws were often passed down from one generation to the next through storytelling. Storytelling is a method of non-interference allowing elders to give advice to young people without directly telling them what to do.

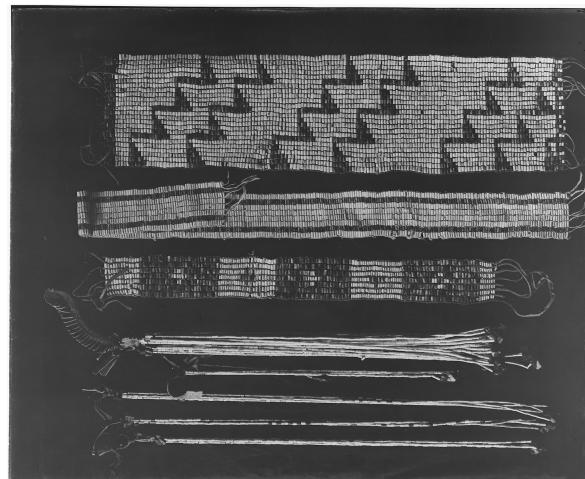


Figure 5 Wampum belts; Credit: National Archives Catalog

This strategy is their way of complying with the all-important value of non-interference in the behaviour of others (Aboriginal Justice Implementation Commission 1999). Non-interference requires individuals to derive their own meaning from the stories based on

their own experiences, and to thereby allow them to feel more connected to the outcomes or legal lessons.

Indigenous societies understood that if people, even young people, were allowed to make their own decisions about behaviour, then they would be more likely to take responsibility for their actions (Poonwassie 2001). In addition, since wrong-doers could not plead “not guilty” as one could in a Western courtroom, children grew up understanding that they would be held accountable for their behaviour. As people become aware of connections between their actions and the resulting impact on everything and everyone around them, the lessons become real for them. An “actions equal consequence” approach is closely tied to admitting “guilt” and a consequent willingness to make up for their acts through restorative justice. Historically, relationship building was also important to Western colonizers, but for different reasons.

Section Two: Outside Influences

Royal Proclamation of 1763

The Royal Proclamation of 1763 was one of the first significant legal documents defining the relationship between Indigenous peoples and the British (Dickason and Newbigging 2015; Ray 2016). Following the Seven Years War, the British worked to create a framework for defining their relationship with Indigenous peoples that would reassure the First Peoples of their inherent rights to their land. To avoid further conflict and loss of life, the British wanted Indigenous groups to believe that they would still have sovereignty over their land and would be able to continue to hunt and maintain their way of life while also participating in economic trade. The British sought to establish a firm relationship with Indigenous allies by protecting their land rights and providing them with annual gifts of guns and ammunition. Previous relationships did exist between Indigenous peoples and Europeans through treaties, trade, and intermarriage, but for newcomers these types of relationships were irrelevant and seemed to give license for anyone to change the “unwritten terms” of land acquisition in order to serve their own interests.

The Proclamation states that all land west or northwest of any river that flowed into the Atlantic Ocean still belonged to Indigenous peoples and could not be appropriated by anyone without their consent. Further, the Proclamation went on to say that the only people who could actually negotiate land transfers on behalf of the British were King George and his officers. No private citizen could enter into any kind of agreement for land with an Indigenous group. It was made very clear in the Proclamation that no one could just make an offer or take over land (Brigham 1911, 212–218; Royal Commission on Aboriginal Peoples 1996).

Recognized Rights?

The Royal Proclamation of 1763 was a significant piece of British legislation that recognized that Indigenous people had inhabited the land for centuries prior to the arrival of the French and British settlers (Dickason and Newbigging 2015; Ray 2016; Walters 2015). It set aside a large swathe of land for Indigenous peoples in eastern North America. Whereas the governance of Quebec is mentioned, the Proclamation makes no mention of British political influence over Indigenous matters. This suggests that Indigenous peoples were important allies and retained political independence. The Proclamation further declared that any non-Indigenous person previously settled on land that had not been ceded or sold to the British would be required to leave that land. The Proclamation also acknowledged that it wanted to prevent further “Frauds and Abuses” of unceded territory (Royal Commission on Aboriginal Peoples 1996, 100–101).

In terms of the economy, unrestricted trade with Indigenous people was allowed and encouraged, but colonizers had to get a license to do so. If the terms of trade were abused, the offender would lose their license. It was the intent of the Proclamation to allow the Indigenous peoples to maintain their way of life.

Are the rights from the Royal Proclamation of 1763 relevant today? Section 35 of the 1982 Constitution Act was written to reaffirm the rights of Indigenous peoples (Branch

Legislative Services 2015). Thus, the Proclamation is still valid today, as no legislation specifically overrides or repeals it. Canadian courts and Indigenous nations disagree on what exactly those rights are. The result of this has been repeated court battles and disagreements over who has the right to what land, the breadth of any subsistence rights claims, and the extent of Aboriginal jurisdiction over matters they deem to be important, such as fisheries (Christie 2003; Gilbert 2010).

Civilization

The concept of civilization emerged in 18th century Europe to describe complex, centralized societies that removed and disassociated themselves from the environment. For Europeans, a civilized person meant a person's cultural identity was focused around Christianity, technology, and settled lifestyles (Hall 1992). Decentralized and tribal societies were often considered primitive and therefore uncivilized in the eyes of European explorers. Furthermore, the concept of civilization can be hijacked by racist ideologies so as to provide a hierarchy or ranking across civilizations. These ideologies may be mobilized by so-called knowledge contained in academic disciplines, mythology, common sense, and "travellers' tales".

European explorers arriving in what is now known as Canada encountered a society that operated much differently from theirs. For many Europeans, Indigenous societies were considered uncivilized and even barbaric. Think about a time you saw someone do something in a completely different manner than how you were taught. For example, when learning math in school we are taught to do things a particular way, and if we don't follow a certain formula, our response may be considered incorrect, even though we achieved a positive or desirable result.

The European explorers were familiar with a system that valued money and possessions, Christian faith, obedience to the higher power of government, agricultural or settled lifestyles, and a punitive system of law. For Europeans, this lifestyle defined civilized, and anything else was ignorant or a less advanced form of civilization. Since

Europeans tended to have a religious belief in the need to save souls, an investment in the Victorian cult of improvement, and a humanitarian impulse toward redeemable humans, they viewed “primitives” as subjects worthy of their “civilizing” mission (Hall 1992, 200).

Often the idea of civilization is very limited, especially when the lack of understanding of different worldviews and perspectives may breed fear, and therefore a need for control and power. The word civilization conjures wildly different images depending on your perspective. You may picture concrete, skyscrapers and shopping malls. In the Western worldview, civilization is commonly defined as “an advanced state of human society, in which a high level of culture, science, industry, and government has been reached” (‘Civilization’ 2016).



Figure 6 . Children at Fort Simpson Indian Residential School, 1922; Credit: J.F. Moran/Library and Archives Canada

Because Indigenous peoples' worldviews understand humans to have social and spiritual relationships with humans and nonhumans, it is unlikely that they would concern themselves with “civilization”, given that the term is based on being set apart from nature. In this view, the land is a place to be cared for the upcoming generations and is not something to be dominated, tamed or pillaged. Likewise, people try to live and co-exist with each other.

For the sake of argument, if Indigenous people were to adopt the term civilization, they would likely link their ancestors, family, other living entities, the landscape, ceremony, to the values of harmony, accountability and responsibility to community (cf. Muskeg Lake Cree Nation 2017). As for its cultural characteristics, Indigenous civilization would include concepts of respect and gratitude, moving with the seasons and animals,

subsistence lifestyles, and striking political alliances with other families, camps or tribes over discrete areas of concern, such as the sharing of a salmon run. Structures have always existed to help manage the flow of activity whether between mobile hunting groups, settled farming communities, or more urban groups. Every civilization has critical components, including education, law, currency, family, and health care, without which survival would be a lot more challenging (Grim 2008).

Sense of Order

The term civilization evokes a sense of order in societies. It is not just laws that help maintain a civilized state; laws govern behaviour. As well, there are governing mechanisms in place to carry out business, trade, education, and health care in relative cooperation and harmony.

Organization in Indigenous communities was about order, not about power, control, or ownership of goods and land. It was about ensuring survival of everyone, not each for themselves. It was about respectful co-existence and consumption based on need, not the coveting of resources. The idea that resources and land could or should be owned was not part of most Indigenous worldviews. The concept of individual ownership conflicted with cultural imperatives of sharing and non-competitiveness. The overall health and needs of a community came before individual needs. These imperatives, viewed by Westerners as uncivilized, served to prevent people from becoming all-powerful or greedy (cf. Small and Sheehan 2008).

Education was another area in which Indigenous customs were viewed as uncivilized by Western standards. Education was valued, but the structure was very different. Children were encouraged to observe and then put what they have learned into practice. For the most part, instruction was nonverbal. Education was about preparing children for life and to think independently, rather than obediently following instructions (Battiste 2013). Finally, Indigenous practices of law were carried out in a dramatically different manner than Western colonial societies. Indigenous legal systems were based on taking

responsibility for one's actions, and making restitution to those who have been wronged. These systems were in place for thousands of years prior to the arrival of Europeans in North America and, as a result, Indigenous peoples thrived. If indeed civilization is key to the good life, then this outcome suggests that a revision of the term is required to include the abovementioned qualities of Indigenous civilizations. In the history of Native and non-Native interaction, Indigenous civilizations—or ways of life—were vigorously undermined by European settlement, laws and policy, eventually leading to conflict and mutual distrust (Hall 1992, 204).

British Assertion

The Royal Proclamation of 1763 seemed appealing for Indigenous peoples in Canada. They were to have rights to a significant portion of the land they occupied, and they were supposed to be able to continue to live unimpeded as they had for thousands of years. Despite what the Proclamation said, the British began to assert themselves even more forcefully, choosing in many cases to completely ignore that which they themselves declared to be law. One of the biggest factors for the British wanting to solidify their position geographically was American Independence. When the United States formed, it became important for Loyalists to prevent American expansion northward, and so it wasn't long before the colonizers laid claim to vast amounts of land from coast to coast that, according to the Proclamation, was not theirs to take. The colonizers wanted to occupy as much territory as possible to prevent American movement northward (Dickason and Newbigging 2015; Ray 2016; Walters 2015).

Inundation of Settlers

Between 1776 and 1884 a great many new settlers arrived in Nova Scotia, and many land disputes arose. Despite the Proclamation, which aimed to protect Indigenous property and lifestyle, the boundaries of traditional territories remained unclear, as land for Indigenous people was not officially surveyed. As a result, settlers continued to station themselves wherever they pleased. Further west in Quebec, Indigenous land was also being claimed by non-Indigenous peoples. This happened often, particularly

after the British passed the British North America Act in 1867, allowing Lower Canada to further ignore the guidelines of the Royal Proclamation thereby securing land for arriving Loyalists. The British attempted to create a “fur desert” across the 49th parallel to keep out the Yankees. This meant that they effectively depleted the fur resources along this border across the plains to make it less desirable for settlement by the Americans, thus cementing their claim to the land (Dickason and Newbigging 2015; Ray 2016).

Even further west, roamed bands of “white mountain men” patrolling Oregon country and the Pacific Northwest to further discourage American advancement. Even as far west as Vancouver Island development proceeded with the intention to keep out Americans. These efforts to prevent Americans expansion were evidence of British desire to exert control over as much land as possible, regardless of previously existing treaties and agreements. However, this was not the only way that the colonizers secured their place in Canada. To maintain a long-term stronghold on the country it was also crucial for the British to establish power in a social context. This included the promotion of a farming lifestyle, a British system of law, and restrictive land title policies (Laidlaw and Lester 2015).

Land Title Policies

James Douglas, appointed as HBC Chief Factor in 1851, enacted several land title policies. They were based on the same agreements made in New Zealand with the Maori in 1840, and it is worth noting that the Maori and British had two very different interpretations of these agreements. To the British this meant that while Indigenous people had a right of occupancy they did not have title to the land. Only groups with a settled form of government by colonial standards and existing as farmers cultivating the land could hold title (Tennant 2011).



Figure 7 Sir James Douglas;
Credit: Library and Archives
Canada

These colonial standards still managed to exclude groups like the Haudenosaunee who already had an established agricultural presence (Jones and Wood 2012). If Indigenous people wanted land titles, they had to abandon their hunting lifestyle and embrace one of agriculture (Ray 2016).



Figure 8 Plowing the sod, 1918; Credit: John Boyd / Library and Archives Canada

The British regarded the Indigenous population as having an uncivilized lifestyle, because they were not settled farmers. Some groups, like the Métis, who were particularly well organized, embraced farming lifestyles when subsistence hunting became increasingly difficult. They did not entirely abandon their hunting lifestyle; instead, they diversified their economic ventures to increase their chances of survival (Hogue 2015; St-Onge et al. 2012).

Under legal terms and policies meant to attract immigrants, and thereby consolidate Britain's territorial claims, settlers flooded into Canada over the course of the 19th century. Indigenous peoples witnessed their economies collapse due to resource depletion and their eroding land base. Many Indigenous leaders entered into treaties with the state in order to carve out a future for themselves and their children in a rapidly changing world (Laidlaw and Lester 2015).

Indian Act

In 1876, the Indian Act formally combined new and old legislative provisions that aimed to assimilate the Indigenous population. The Indian Act undermined Indigenous peoples' identity, sovereignty, and nationhood. Indigenous peoples were classified as Indians and were seen as children or wards of the state with little autonomy or control and subject to an array of regulations (Bartlett 1988; Dickason and Newbigging 2015; MacDonald and Steenbeek 2015; Ray 2016).

One of the most significant parts of the Indian Act revolved around the rules of citizenship (Wood 2003). "Enfranchisement" meant the relinquishing of Indian status to become a Canadian citizen. Theoretically, enfranchisement would reduce the population of Indians, thereby reducing government responsibility and costs. In order to become a Canadian citizen bearing all rights and privileges, an Indian person had to meet one of two sets of the criteria. Under the first set, one had to be literate in English or French, be debt free, and have managed one's land as property (i.e. through farming) for at least three years. These criteria made citizenship a lofty goal for most people who resided in Canada at the time. Under the second set, one could become a citizen upon entering a profession as a lawyer, teacher, minister, or doctor. The enfranchisement program was unpopular, and very few Indigenous people pursued it. The enfranchisement policy continued to change over time and was finally removed from the Indian Act in 1985 (Milloy 2008; Palmater 2014).

Shifting Power

To further assimilate the Indigenous populations, the Indian Act of 1876 also abolished traditional forms of governance and inserted laws that brought local government under state control (Milloy 2008). Leadership roles of women, hereditary chiefs, and elders were replaced with a patriarchal, male-only elective system, largely under the control of the local Indian Agent (Sayers 2001). Leadership positions were simplified and categorized into "chiefs" and "band councillors". All their activities were overseen and directed by the Crown, and leaders could be removed from their posts at any time, for

any reason. Band government effectively lost all of their law-making capacity, and the Department of Indian Affairs eventually gained full control of Indian resources, land, and finances (Palmater 2011).

Potlatch Law

The assimilatory goal of the Indian Act was to bring all people together under one form of law and one way of life. In 1884, the Indian Act was amended to ban ceremonies such as the potlatch and the Sun Dance (Dickason and Newbigging 2015; Ray 2016).



Figure 9 Salish Drummers; Credit: MartialArtsNomad.com

Still popular with Coast Salish people today, the word potlatch itself means “to give”. The potlatch involves gift giving and feasting, and it can last for weeks. They are held at occasions such as naming ceremonies, change of leadership, births, and deaths. The cultural event of the potlatch is significant in that it upholds legal traditions of the Coast Salish with the redistribution of wealth, refinement of oral histories, and affirmation of territorial boundaries (Cole and Chaikin 1990).

The respect that families would earn by hosting a potlatch would be directly related to their generosity of gift giving and great feasting. The more one would give, the more honour and respect one would earn. Since these events reject the Western value of private property ownership and individualism, potlatches were viewed as a major barrier to assimilation. Because Indigenous peoples relied heavily on oral history as a means of cultural preservation, banning of these celebrations also resulted in a major breakdown in the ability of older generations to share important stories about laws and traditions with younger generations (Kan 2015).

This provision of the Indian Act was in place for close to 75 years and what that did was it prevented the passing down of our oral history. It prevented the passing down of our values. It meant an interruption of the respected forms of government that we used to have, and we did have forms of government be they oral and not in writing before any of the Europeans came to this country. We had a system that worked for us. We respect each other. We had ways of dealing with disputes. (Scow and Royal Commission of Aboriginal Peoples (RCAP) 1992, 344–345)

Conclusion

Resistance

The potlatch continued to be held in secret despite the risk of terrible consequences. If caught holding a potlatch, Indigenous people faced imprisonment, and their sacred ceremonial items such as masks, bentwood boxes, and totem poles were confiscated and sold. In 1951, this section of the Indian Act was dropped, as well as another section, which effectively had denied legal counsel to Indians and Indian bands for the purposes of making claims on the government. These changes came about partly as a result of a reconsideration of the treatment of the Indigenous people of Canada in the aftermath of the Second World War.



Figure 10. Potlatch; Credit: Library and Archives Canada

Credits

- Cover Image: Artwork by Leah Dorion; Credit: Leah Dorion; URL: <http://www.leahdorion.ca/index.html>
- Figure 1. Soaring Eagle; License: CC0 Public Domain, no attribution required; URL: <https://pixabay.com/en/eagle-eagle-flying-soar-bird-1029908/>
- Figure 2. Inuit couple from Pangnirtung [Qangattiniq is the man wearing a vest and tie. Kiliugaq is to his right. Woman second from right is Siuqpaluk], 1924; Credit: Canada. Dept. of Indian and Northern Affairs / Library and Archives Canada / PA-186863; Restrictions on use: Nil; Copyright: Expired; URL: http://collectionscanada.gc.ca/pam_archives/index.php?fuseaction=genitem.displayItem&lang=eng&rec_nbr=3194748
- Figure 3. Elder teacher Maata Maiku, left, burns a small fire in a tent, while wearing her traditional Inuktitut clothing at the Nakasuk Elementary School in Iqualuit, Nunavut on Wednesday, April 1, 2009; Credit: The Canadian Press/Nathan Denette; License: Purchased from CP images.
- Figure 4. Prison bars and cell; License: CC0 Public Domain, no attribution required; URL: <https://pixabay.com/en/prison-prison-cell-jail-crime-553836/>
- Figure 5: Wampum belts; Credit: National Archives Catalog 523577; License: Public Domain; URL: <https://catalog.archives.gov/id/523577>
- Figure 6. Children at Fort Simpson Indian Residential School, 1922; Credit: J.F. Moran/Library and Archives Canada/PA- 102575; Restrictions on use: Nil; Copyright: Expired; URL: http://collectionscanada.gc.ca/pam_archives/index.php?fuseaction=genitem.displayItem&lang=eng&rec_nbr=3628582
- Figure 7. Sir James Douglas, Governor of Vancouver Island and the Crown colony of British Columbia, 1851-1864; Credit: Library and Archives Canada / C-003316; Restrictions on use: Nil; Copyright: Expired; URL: http://collectionscanada.gc.ca/pam_archives/index.php?fuseaction=genitem.displayItem&lang=eng&rec_nbr=3215021
- Figure 8. Plowing the sod; Credit: John Boyd/Library and Archives Canada; Restrictions on use: Nil; Copyright: Expired; URL: http://collectionscanada.gc.ca/pam_archives/index.php?fuseaction=genitem.displayItem&lang=eng&rec_nbr=3643819
- Figure 9. Salish Drummers; Credit: MartialArtsNomad.com; License: CC BY 2.0; URL: Source URL: <https://flic.kr/p/9iiGr8>
- Figure 10. Potlatch; Credit: Library and Archives Canada; Restrictions on use: Nil; Copyright: Expired; URL: http://collectionscanada.gc.ca/pam_archives/index.php?fuseaction=genitem.displayItem&lang=eng&rec_nbr=3572940

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