

Women, Colonization and Resistance: Elements of an Amerindian Autohistorical Approach to the Study of Law and Colonialism

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This paper outlines the theoretical perspective the authors developed to guide their research on law and colonialism in the Canadian west. This theoretical perspective may also be applied more generally by others researching the history of law and social control in colonial societies. The perspective is based on theoretical and empirical work from a number of different fields, including the history and sociology of social control, the study of legal pluralism and the study of the process of colonization as it has been approached in recent years by feminist scholars and First Nations historians. The purpose of this paper is to show how this new Amerindian autohistorical perspective can be used to help generate research on the interconnected issues of legal change, colonization, gender and resistance.

Cet article souligne la perspective théorique que les auteurs ont développée sur le droit et le colonialisme dans l'Ouest canadien. Cette perspective théorique peut s'appliquer aussi d'une manière plus générale par ceux intéressés à la recherche sur l'histoire du droit et du contrôle social dans les sociétés coloniales. La perspective utilisée est basée sur un travail empirique et théorique provenant d'un nombre de différents domaines, y compris l'histoire et la sociologie du contrôle social, l'étude du pluralisme juridique et l'étude du processus de colonisation tel que les chercheuses féministes et les historiens des Premières Nations l'ont abordé récemment. Le but de cet article est de démontrer comment cette nouvelle perspective autochtone autohistorique peut être utilisée pour aider à générer des recherches sur les questions étroitement liées de la réforme du droit, de la colonisation, des rôles féminins et masculins et de la résistance.

Introduction

This paper is part of a larger body of work that is concerned with accounting—historically and cross-culturally—for the way in which Indigenous peoples have come to be caught up in the complex systems of legal ordering and social control brought by European colonizers. Related research has included contemporary cross-national research aimed at explaining the vast overrepresentation of Aboriginal people in the criminal justice systems of Canada and Australia (Smandych, Lincoln and Wilson, 1993, 1995), as well as historical research aimed at accounting for how the First Nations peoples living in what is now western Canada came to be caught up in the legal system imposed by servants of the Hudson's Bay Company and other early European colonizers (Smandych and Lee, 1994; Smandych and Linden, 1995).¹ One of the aims of our historical research has been to make use of the wealth of primary historical data on legal ordering and social control contained in the archives of the Hudson's Bay Company.² In particular, our work has been concerned with reconstructing the nature and importance of the role played by the Hudson's Bay Company as a law-maker and as an instrument of European colonization.³

The article begins with an overview of studies of legal pluralism and social control that have generated the basic theoretical questions being addressed in our research. This is followed by a discussion of a number of recent studies on the impact of European colonization and the fur trade on North American Amerindians, especially recent work by feminist and First Nations historians that suggests the need for developing a more explicit Amerindian autohistorical perspective for approaching the study of law and colonialism. Drawing critically on the work of these authors, we outline what we consider to be the key elements of a more explicit Amerindian autohistorical perspective, and discuss how this new perspective can be used to help generate research on the interconnected issues of legal change, colonization, gender and resistance. Although developed specifically as an heuristic tool for defining the theoretical boundaries of our research, the theoretical perspective can be used by other researchers of the history of law and social control in colonial societies.

Studies of Legal Pluralism and Social Control

Recent years have seen the development of a growing literature in the field of the sociology of "social control" (cf. Cohen and Scull, 1983; Garland and Young, 1983; Lowman, Menzies and Palys, 1987). The growth of this new sub-field of criminology, which has been mainly the work of sociologists, has occurred during the same years that the study of "legal

pluralism" has become an increasing concern to a more diverse collection of academics, including sociologists, anthropologists, legal scholars and historians (Merry, 1988, 1991). These two fields appear rather isolated and unconnected, but one can find a number of studies which display a considerable amount of overlap in the theoretical and empirical questions addressed by sociologists of social control and students of legal pluralism (Black, 1990; Ellickson, 1991; Fitzpatrick, 1983a, 1983b; Henry, 1983, 1987a, 1987b, 1994; Merry, 1990; O'Malley, 1987; Santos, 1987). The following section provides an overview of the studies that have led to the basic theoretical questions raised in this paper.

Sociologists of social control have raised a number of important theoretical and conceptual questions that have yet to be fully addressed in empirical research. How can "social control" be defined conceptually? What is the precise nature of the relationship between law and other forms of social control? How do different "state" and "non-state" institutions and agencies of social control work together to create and maintain social order? How can we explain changes in the dominant character of legal punishment and social control?

In our research, we pursue this line of questioning by building on the work of authors such as Donald Black (1976, 1984, 1990), Stanley Cohen (1985, 1989), Michel Foucault (1977), David Garland (1985, 1990, 1991) and Stuart Henry (1983, 1987a, 1987b), as well as on the first author's earlier historical work on the changing character of dominant mechanisms of social control in nineteenth-century Upper Canada (Smandych, 1989, 1991a, 1991b, 1995).

A related theoretical point of departure for our research is the growing literature on "legal pluralism." Specifically, our work begins from a combined theoretical interest in traditional studies of "classical legal pluralism," and the more recent theoretically challenging "new legal pluralism" literature (Merry, 1988). As described by Merry (1988), studies that fall under the rubric of "classical legal pluralism" have for the most part been concerned with describing and explaining how new (usually European) legal systems and laws (brought by colonizers) are superimposed on Indigenous "customary laws" and pre-existing methods of dispute settlement and social control. According to Merry (1988, p. 873), "the new legal pluralism"—exemplified in the work of such authors as Stuart Henry (1983), Bonaventura De Sousa Santos (1987) and Peter Fitzpatrick (1983a)—"moves away from questions about the effect of law on society or even the effect of society on law toward conceptualizing a more complex and interactive relationship between official and unofficial forms of ordering." Some of the key concepts coined by researchers who have led in the

development of "the new legal pluralism" include the notions of "interlegality," "plural legal orders" and "private justice." Collectively, these concepts are now being used by leading proponents of the new legal pluralism to study the many different and complex ways in which state and non-state forms of legal ordering and social control co-exist and interact with one another to produce social order.⁴ According to Santos (1987, pp. 297-99), the concept of *legal pluralism* is "the key concept in a postmodern view of law," because it requires that we shift our priorities from "engaging exclusively in the critique of the existing state legality," to also attempting to "uncover the (more) latent or suppressed forms of legality in which more insidious and damaging forms of social and personal oppression frequently occur."⁵

Although a more detailed discussion of the work of proponents of the new legal pluralism is not required here, it is important to consider the findings of studies that have looked at how law has been used as a tool of colonization. In particular, it is important to look at the general findings that have emerged out of studies that have attempted to explain, historically and in different geographical settings, how Indigenous peoples have tried to cope with attempts that were made to impose external systems of law.

Over the past twenty years, research on the role of law as an instrument of European colonialism has become more theoretically sophisticated. This increased theoretical awareness has led researchers to give closer attention to nuances in historical data. This is reflected in the different themes and new research questions that have surfaced in the law and colonialism literature during the period. As Merry (1988, 1991) and other reviewers (Greenberg, 1980, p. 139; Snyder and Hay, 1987) have pointed out, one of the focuses of early research was on "the role of law in imperial domination." Many of the early studies on the law and colonialism completed in the 1960s and 1970s "demonstrated the power of the state to reshape the social order, suggesting the dominance of this form of law over other normative orders" (Merry, 1988, p. 879). In addition to showing how externally imposed state law often served as an effective and powerful tool for controlling colonial populations (cf. Kennedy, 1989), some researchers attempted to show how European colonizers sought to exert control over Indigenous populations by co-opting local elites and trying to formalize pre-existing "customary" methods of dispute settlement and social control (cf. Snyder, 1981; Gordon, 1989). In particular, a number of researchers carrying out historical research on different colonial settings were able to show that, rather than having existed previously on its own, "the creation of customary law . . . was an ongoing, collaborative process in which power was clearly unequal,

but subordinate groups were hardly passive or powerless" (Merry, 1988, p. 880).

By the late 1970s, students of classical legal pluralism were more frequently beginning to recognize that Indigenous peoples were not simply the passive recipients of externally imposed law (Kidder, 1979). Increasingly, in the 1980s attention shifted from studies of the deceptive and coercive imposition of European law to questions about the manner in which Indigenous peoples resisted and accommodated such laws. Since the mid-1980s, the study of "forms of resistance, including both overt and covert resistance" have become a central topic in research on law and colonialism (Snyder and Hay, 1987, p. 24). Although more recent researchers have not necessarily turned away from looking at how colonizers have attempted to dominate Indigenous populations through ideological manipulation and direct coercion (Gordon, 1989; Kennedy, 1989), more attention is now being given to examining "the way nonstate normative orders resist and circumvent penetration or even capture and use the symbolic capital of state law" (Merry, 1988, p. 881).

Several authors have pursued the theme of resistance to European colonial domination. Two examples are Peter Fitzpatrick (1987, 1989), "Crime as Resistance: The Colonial Situation," and Mike Brogden (1990), "Law and Criminal Labels: The Case of the French Métis in Western Canada." Also, one could look at studies that have pursued this theme in the often richly detailed historical literature that has attempted to assess the impact of European contact on specific Indigenous populations in different countries. For example, in her review of the writing of academic historians on the consequences of European contact for the Aborigines of Australia, Attwood (1990) notes a pattern of shifting research themes that parallels those found in the more general "classical legal pluralism" literature—a shift from studies published in the 1960s and 1970s that looked at "the destructive impact of European capitalism and racism on traditional Aboriginal society" (1990, p. 121), to more recent studies concerned with providing more historically nuanced accounts of the many different types of "relations" and "reciprocal obligations" that developed between Europeans and Aborigines, and to the various kinds of "creative strategies" that were used by Aborigines to deal with European colonizers (1990, pp. 125–28).⁶

Recent studies of law and colonialism in Africa (Snyder and Hay, 1987), Australia (Attwood, 1990) and elsewhere (Merry, 1991) draw attention to the types of questions that need to be addressed in order to develop an understanding of the complex social processes and specific historical circumstances involved in determining the outcome of imposing

one type of legal system on an existing system of dispute settlement and social control. These studies also illustrate how the experiences of different groups of Indigenous peoples have varied significantly in different parts of the world. The findings of this comparative historical research, and the various explanations offered by different authors to account for their findings, highlight further questions that need to be addressed in the study of law and colonialism in the Canadian west. One of the questions that obviously needs to be addressed is the extent to which the Indigenous peoples of western Canada attempted to avoid and resist being dominated by servants of the Hudson's Bay Company and other early European colonizers.

Another important new theme reflected in the law and colonialism literature is the importance of gender and gender relations in shaping the outcome of the early contacts between European colonizers and Indigenous peoples. Significantly, in the same way that several feminist historians have shown was the case in the history of early post-contact western Canada (Brown, 1980; Van Kirk, 1980), Attwood (1990, p. 126) points out, through her review of the work of Ann McGrath (1987), that "gender played a fundamental role" in affecting the nature and outcome of the early relations that developed between Europeans and Australian Aborigines.⁷ Since the early 1980s, feminist scholars, including sociologists, anthropologists and historians, have begun to develop a much more nuanced picture of both the role played by Aboriginal (or Indigenous) women in the process of European colonization, and the impact this process had on gender relations among Indigenous peoples (Leacock, 1978, 1980; Van Kirk, 1987; Anderson, 1991; Bonvillian, 1989; Bourgeault, 1988, 1989; Devens, 1992; Emberley, 1993; Foster, 1993). In the following section, we look at the most important themes and issues that have been raised in recent North American literature on Aboriginal women and colonization. As we will see, one of the most significant trends in this literature is the increasing adoption of an Amerindian autohistorical perspective (cf. Sioui, 1992). We argue that adopting this perspective in a more explicit manner can help us to better understand how Amerindian people themselves may have interpreted the historical events of which they were a part.

Women, Colonization and Resistance: Toward an Autohistorical Approach

The attempt to understand how the people of North American First Nations reacted to European colonization has been part of the approach taken in recent decades by socio-historians and historical anthropologists who have been commonly referred to as "ethnohistorians" (cf. Axtell, 1992;

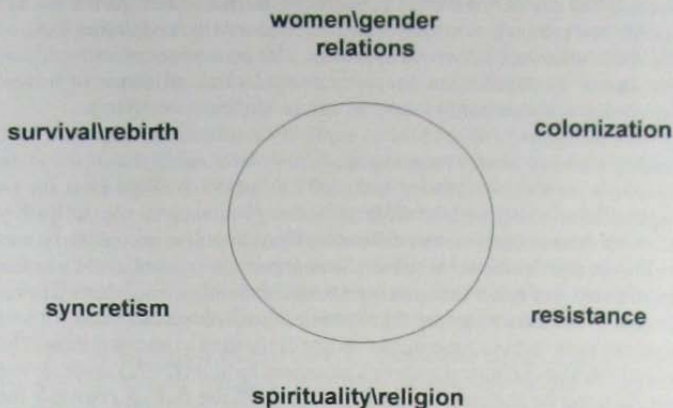


Figure 1: Essential Elements of an Amerindian Autohistorical Perspective for the Study of Law and Colonialism

Brown, Eccles and Heldman, 1994; Calloway, 1987; 1991; Del age, 1993; Jaenen, 1976; Jennings, 1975; Trigger, 1976, 1985). However, thus far, ethnohistorians have avoided the attempt to explicate a specific theoretical approach that can be used as an heuristic device for studying how Amerindian people viewed and responded to the process of European colonization. The essential elements of the autohistorical perspective we propose in this paper can be captured in the form of a diagram (see Figure 1).

The approach we illustrate in this diagram builds on the work of a number of authors who have independently drawn attention to the need for abandoning the Eurocentric approach of conventional historians. In the following brief discussion of their work, we try to accurately represent the ideas and insights offered by these authors and show how they contribute elements of this approach. At the outset, however, the reader needs to be aware that we do not make an effort to compartmentalize and discuss separately each of the key concepts included in our illustrative diagram. Nor do we attempt to sketch out an assumed causal order or a set of postulated cause-and-effect relationships for which one might otherwise look to link these concepts to one another. This explains the absence of any arrows or other symbols connecting the key concepts included in the diagram. It also explains why the circle at the centre of our diagram is open rather than being

occupied by any one of the key concepts to which we refer. As we will see shortly, the rationale for these decisions resides in the underlying logic of the Amerindian autohistorical approach. The view of social and spiritual life shared by Amerindian people is one in which all forms of human interaction are necessarily recursive and have reciprocal effects.

We recognized the need for an explicitly autohistorical approach after reading Georges Sioui's recent book, *For an Amerindian Autohistory: An Essay on the Foundations of a Social Ethic* (1992). Sioui calls for an explicit acknowledgement of the fact that the unfolding post-contact history of North America was viewed differently by Amerindian people than it was by European colonizers. Moreover, Sioui argues that, regardless of whether an historian is of either European or Aboriginal descent, he or she will never be able to accurately capture the meaning of past historical events without trying to view them as Amerindian people likely tried to interpret them. The Amerindian autohistorical approach advocated by Sioui (1992) has profound implications for the way in which we approach the task of rewriting the colonial history of North America. According to Sioui (1992, p. 37), "The goal of Amerindian autohistory is to assist history in its duty to repair the damage it has traditionally caused to the integrity of Amerindian cultures." Although Sioui's book is admittedly written in a polemical fashion that has opened him up to attacks from more traditional ethnohistorians (cf. Adams, 1992; Cruikshank, 1994), Sioui nonetheless contributes significantly in exposing the highly contestable nature of the interpretations of Amerindian history offered by many anthropologists and historians.⁸

Sioui explains "the system of values proper to Native American societies" and attempts to show that "the value systems of Amerindians are superior to and more viable than, those of Euroamericans." At the centre of this shared set of values of Amerindian people is the idea of the "sacred circle of life" as "opposed to the evolutionist concept of the world" (1992, pp. xi, xxi). Contrary to the way in which the unfolding of post-contact North American history has been depicted by conventional Eurocentric historians (as one of "European takeover"), Sioui argues that what occurred in the decades and centuries following first contact was the reverse process of the " 'Americanization of the world,' whereby the essence of original American thought [was] communicated to other continents" (1992, pp. xxii-xxiii). In the chapter of his book on "The Sacred Circle of Life," Sioui highlights the pivotal role played by women in "gynocentric" Amerindian societies like those of the Iroquois and the Huron. Specifically, Sioui notes that (1992, pp. 17-18):

... deference towards the women reflects the recognition, in matrilineal societies, of a human brotherhood vested in the

Earth-Mother, source of respect for personal vision in those societies. Non-Native writers still frequently do not perceive this fundamental cultural difference. Instead, they tend to insist on depicting Amerindian societies, especially hunting societies, as being governed by the naturally more imposing men, whereas the reality is quite different. . . .

The "high status" of Amerindian women is not, as some authors have declared, "the result of their control over the tribe's economic organization." The matricentric thought in these societies springs from the Amerindian's acute awareness of the genius proper to women, which is to instil into man, whom she educates, the social and human virtues he must know to help maintain the relations that are the essence of existence and life.

In another recent work that looks at Amerindian history from a similar perspective, Ronald Wright (1992) uses the term syncretism to capture something of the above idea advanced by Sioui. In *Stolen Continents: The "New World" through Indian Eyes*, Wright (1992, p. 150) defines syncretism as "the growing together of new beliefs and old . . . [as] a way of encoding the values of a conquered culture within a dominant culture." Used as an heuristic concept, syncretism provides a more explicit way to refer to the many different types of exchange-based reciprocal relations that grew up between Europeans and Amerindians in the post-contact period.⁹

In the context of historical research on law and colonialism, the notion of syncretism can be applied to both gender relations and to the reverse assimilation of ideas about law and justice. First, with regard to ideas about law and justice, Merry (1991) points out in her critique of the literature on law and colonialism that it is also important to ask questions about how the contact with Indigenous peoples affected the thinking and behaviour of the colonizers. Specifically, Merry (1991, p. 55) suggests that we need to ask questions like who brought and imposed new concepts of law, what these concepts were, what effects their earlier experiences had on the way they treated colonized peoples, and how their encounter with the legal system of an Indigenous people affected their ideas of their own law, their own identities, and their sense of entitlement and cultural supremacy.

Any theoretical perspective that attempts to encompass a concern for explaining aspects of the relationship linking law, colonialism and gender relations in post-contact Amerindian societies must address the issues raised in the recent work of feminist ethnohistorians. One question that has caused much discussion and debate in recent years is the extent to which pre-contact Amerindian societies were egalitarian. It is important to review the literature that shows how egalitarian pre-contact societies were compared

to the one we live in today. This is necessary because all researchers interested in investigating aspects of the history of law, colonialism and gender relations in the Canadian historical context must identify the specific model of pre-contact Amerindian society that they believe existed prior to the outset of the colonialization process. An understanding of gender relations and the respective roles accorded to women and men in pre-contact Amerindian societies is an indispensable starting point of any analysis of the later impact of colonialism on Amerindian societies.¹⁰ In turn, we also need to look at the role played by Amerindian women in shaping the character of Amerindian-European relations in the early post-contact period.

There is a great deal of evidence supporting the view that Amerindian women played a central role in shaping the outcome of the early contact between Europeans and Amerindians in what is now the eastern part of Canada and the northeastern United States. In addition, evidence about the way in which Amerindian women influenced and altered the ideas that European male colonizers had about gender and gender relations is contained in several recent studies that have been completed by feminist scholars and First Nations historians. As we will see shortly, the work of these more recent investigators reflects a movement toward recognizing the need for approaching the study of women and colonization from a more explicitly stated "non-Eurocentric" Amerindian autohistorical perspective.

In her widely acclaimed recent work, Olive Dickason (1992) offers a corrective to the traditional Eurocentric approach taken by conventional historians. Although Dickason does not use the term *autohistorical perspective* to summarize the nature of her historical approach, it is clear from her history of *Canada's First Nations* that she tries to interpret North American history as it was more likely seen through the eyes of Amerindian people themselves. In her discussion of the role of women in the post-contact period, Dickason (1992, p. 143) argues that "women played a pivotal role in both trade and Amerindian society generally." Significantly, Dickason (1992, p. 165) points out that, from the earliest period of French settlement in Quebec, "the official idea was that [the men] would intermarry with the Indigenous population, producing a French population overseas."¹¹ Referring to the role played by Amerindian women in later years of the fur trade and western Canadian settlement, Dickason notes that:

In short, co-operation with Amerindians was necessary for Europeans to establish a viable colony, and when it came to selecting a mate, an Amerindian or, later, a Metis had obvious advantages over her European counterpart. Despite determined efforts from [the Board of Governors of the Hudson's Bay Company in] London to prevent it, this pattern of intermarriage

was repeated among the English when they established themselves on Hudson Bay. [1992, p. 168]

Other recent work by feminist and First Nations scholars has added to knowledge about the impact of colonization on gender relations. At the same time, most of these works fall short of providing the kind of Amerindian autohistorical approach we argue is needed as a methodology for re-examining the history of Amerindian responses to European colonization.

Karen Anderson's (1991) recent study of Aboriginal women in New France in the seventeenth century provides one example of this. In her book on the subjugation of Huron and Montagnais women, Anderson (1991) uses variants of contemporary Marxist and feminist theory as the starting point for her analysis of how gender relations were transformed by Jesuit priests in the period from 1609 to 1649. In introducing her study, Anderson explains that:

One task will be to discern the basis on which differences between men and women were established in native society and which brought relations of power between women and men into play. This discussion will focus on the points of concern already identified by Marxist and by feminist theory—production, reproduction, kinship and the formation of the psyche and emotional life. [1991, pp. 8–9]

Anderson argues that at the time of first contact with Europeans, Amerindian women in general enjoyed greater freedom and power in their societies than did most European women of the time. She maintains that, although life was far from easy, women were not subjugated because gender roles were clearly defined and women and men had their own spheres of control.¹² What this meant in practice was that neither men nor women could do without each other, and it was likely the case that, if anything, women were recognized as being more powerful than men.¹³

Anderson acknowledges that her understanding of Huron and Montagnais history has been shaped in part by a critical reading of Eleanor Leacock's (1978, 1980) earlier influential work on the status of women in Amerindian societies. In her influential essay, Leacock (1978) set out to describe how the hierarchical structure we usually accept as given in modern society distorts the analysis of egalitarian socio-economic structure and women's status in egalitarian societies. Leacock's critique of the problems of interpretation created by an Eurocentric perspective has been used by most subsequent researchers as a starting point for examining the impact of colonization on gender relations in Amerindian societies. It has also been important in influencing feminist scholars to move closer toward adopting

an Amerindian autohistorical perspective.

The influence of Leacock's (1978) work is also reflected in Carol Devens' (1992) recent study, *Countering Colonization: Native American Women and the Great Lakes Missions, 1630-1900*. Devens makes an explicit attempt to combine the themes of gender and resistance. Devens argues that Aboriginal men were relatively easy to convert to Christianity, because accepting Christianity presented a way of adapting to the new economic situation they faced with the arrival of the European fur trade and Jesuit missionaries. On the other hand, she maintains that Aboriginal women tended to resist much more actively and persistently the efforts made by missionaries to force the Aboriginal peoples of the Great Lakes region to abandon their customary religious and social practices. Devens claims that Aboriginal women rejected Christianity for the most part because it did not make their lives easier, and they saw it as a tool that had the potential to destroy their families. For example, when daughters were removed to a mission school the mothers lost control of child rearing. Devens addresses this issue when she states:

As men grew more receptive to introduced practices and values that they hoped would allow them to deal successfully with whites, women stood only to lose status and autonomy. Thus, whereas many men favored accommodation, women tended to stress "traditional" ways. [1992, p. 4]

However, Devens does much more in her book than simply claim that the egalitarian social structure of pre-contact Amerindian society began to break down under the pressure of Christianizing missionaries. While Devens accepts the premise that pre-contact Amerindian societies were more egalitarian, she also recognizes that women and men thought and responded differently to events that occurred in the world around them. Devens (1992, p. 3) points out that the purpose of her study "is to consider how native communities perceived colonizers and how those perceptions influenced whether people presented a unified front or split into factions of accommodation and resistance."¹⁴ In addition to providing a more complex picture of the impact of colonialism on gender relations, Devens implicitly recognizes the need for adopting an Amerindian autohistorical perspective.

According to Devens, if we want to understand the status and role of women in Amerindian societies today, we have to look back at the way in which colonization affected Aboriginal women. As men gradually moved from the old ways toward an acceptance of Christianity and education, women increasingly identified themselves, and were so identified by men, with traditional culture. In some ways this change protected women's status

and interests, for the very separateness of the female world helped preserve it from the disintegration that often devastated the lives of men. Indeed, this separation became so pervasive that it effectively hid women's lives from observers (Devens, 1992, p. 119).

A crucial contribution made by Devens is her recognition of the possibility that current gender dichotomies and gender conflict in Amerindian societies may be one of the historical legacies of colonization.¹⁵ Women are also seen as the ones who have had the power to struggle for the survival of traditional culture. Perhaps because colonization is male-directed and male-specific, women are inherently overlooked. In the practice of colonization, it may be the case that men are incorporated into the system while women are largely ignored, except when it becomes obvious to the colonizers that they cannot survive without the help of women. This might help explain why women are rarely mentioned in the historical records left by colonizers (like the Hudson's Bay Company records) and why, when they are mentioned, it is most always the case that they are being described in relation to men. Indeed, this could explain why early historians of women and the fur trade, such as Sylvia Van Kirk (1980) and Jennifer Brown (1980), focused on fur trade marriages and the families that resulted from these marriages. Thinking this problem through from an autohistorical perspective, the more important question that perhaps should have been asked was why so few Aboriginal women married Europeans, or why they resisted so strongly compared to Aboriginal men.¹⁶

What is important about Devens' (1992) analysis is that it points out that the perceptions and goals of men and women were very distinct from each other. Such a divergence in responses leads one to naturally speculate that men's and women's traditional lives were also very different. This speculation is also supported by our knowledge and use of the Amerindian autohistorical perspective, which reaffirms the view that, while women in Amerindian societies possessed a great deal of power and personal freedom (Sioui, 1992, pp. 15–18), they were also constrained by the roles that were assigned to them by their traditional culture. In Amerindian autohistorical terms, we could say that a culture is a reflection and product of the spiritual life and world views of the people who make up a society. There is nothing inherent in the Amerindian autohistorical perspective that says that because pre-contact men and women were both Amerindian, they could not have had their own gendered world views.¹⁷

No detailed work comparable to Anderson's (1991) and Devens' (1992) work on gender and resistance has been done for western Canada. The closest to it are Ron Bourgeault's (1983, 1988, 1989) essays on issues of race and class in the fur trade society of the Canadian west and the colonial

domination of Indian women. Bourgeault also accepts Leacock's (1978) account of the nature of pre-contact gender relations, and applies a structurally based Marxist political economy perspective to explain the decline in the status of women after the arrival of the Hudson's Bay Company and the growth of the fur trade. However, in recent years, both the validity and generalizability of Leacock's arguments about the egalitarian nature of pre-contact Amerindian societies have come under question.

One of the first historians to question Leacock's thesis was Sylvia Van Kirk. According to Van Kirk (1987, p. 1), the "study of the role of women in pre-contact native societies is a vital foundation for any historical study of native peoples' response to European contact." Van Kirk (1987, p. 2) questions the accuracy of Leacock's claim "that hunting and gathering societies such as the Montagnais-Naskapi were egalitarian because the women made an essential economic contribution to the survival of the band," and because they "had an important voice in the decision making process and enjoyed considerable autonomy in domestic and reproductive concerns." She also questions Ron Bourgeault's "even more extravagant assessment of Chipewyan society where the idyllic nature of pre-contact sex roles was apparently destroyed by the fur trade." Van Kirk argues that a "feminist perspective demands that such statements be examined with caution and that the scholar guard against translating what are really relativistic claims into absolute ones." Van Kirk (*ibid.*) maintains that a more realistic feminist perspective on Native history would begin with the premise that women were likely more equal to men in pre-contact societies, but only in relative terms compared to the European societies, "which subsequently sought to impose their own patterns of sex roles and values on native societies."

Most recently, Martha Foster (1993) has looked at the impact of colonization on gender and status among Hidatsa and Crow women. Foster (1993, p. 121) raises the concern that "[v]ery few early observers noted differences in women's roles among tribes, and even fewer attempted to examine Native American society through the women's eyes."¹⁸ Foster notes that the purpose of her paper is to explore problems inherent in the evaluation of Hidatsa and Crow women's roles and status. In particular, she (1993, p. 144) maintains that "the importance of tradition, of the spiritual world, and of matrilineal kinship are often ignored or misunderstood by Western observers."

At the most basic level, Foster sets out to display the shortcomings inherent in work of anthropologists and historians who have argued that the declining status of Hidatsa and Crow women in the nineteenth century

resulted mainly from economic factors, including the fur trade and acquisition of the horse and gun. Foster calls this the "Great Plains Model" (or interpretation) of nineteenth-century Amerindian history. Foster notes that according to this "historical materialist framework," the decrease in women's status "manifested itself in an increased workload, increased polygyny, and loss of control over trade." In essence, proponents of the "Great Plains Model" argue that while the status of women was comparable to that of men prior to the integration of the horse and heavier reliance on the buffalo trade, this integration resulted in a relative decline in women's status.

Foster's (1993, p. 123) analysis indicates that this economic-determinist model does not apply to either Hidatsa or Crow nations and that it distorts the real nature of the roles and status of women in these societies. Foster points out that a major problem with this model is that it lacks supportive empirical evidence. She notes that, while many of the early ethnographic accounts that have been used as evidence to support the model were "colorful and dramatic," they "seldom reported important day-to-day activities," and women and their activities were for the most part invisible in them.

Foster (1993, p. 126) argues that many of the dualisms that we take for granted, like the "separation of the religious and the secular," and dichotomies, "such as our interpretation of male/female or public/private, are Western creations and are not necessarily applicable to the Hidatsa and Crow." She maintains that one of the consequences of this was that early "[t]raders and ethnologists misunderstood domestic power in Hidatsa and Crow society and assumed reproductive and domestic work to be demeaning." More specifically, Foster (1993, p. 140) points out that "it is Western, male-dominated thought that views the domestic, nurturing role as restrictive, uncreative, and inferior. This Eurocentric view cannot be projected cross-culturally or assumed to be appropriate when applied to Hidatsa and Crow women." It is clear from her analysis that Foster (1993) is also trying to work from an autohistorical perspective. This is reflected in particular in the emphasis she places on the need for us to understand the significance of Amerindian cultural values and spirituality.

The evidence brought forth by Foster to cast doubt on the "Great Plains Model" is too detailed to relate here. However, in essence, Foster (1993, p. 139) shows that when the historical data on Hidatsa and Crow women are examined against any of the four criteria that have been used for evaluating women's status—economic, political, religious and personal freedom—there is little evidence "to justify the conclusion that 'the status of women declined sharply'." Although Foster does not offer any one explanation for

why the status of Hidatsa and Crow women did not decline sharply, she does suggest that "symbolic/cultural theories" may be used to help explain "the ability of women to maintain equality in such societies as the Hidatsa and Crow." Significantly, Foster notes that:

Symbolic/cultural theories, while often used to explain continued male dominance, can explain the maintenance of women's positions in society, even after considerable economic change and cultural stress. When a strong ideology supports women's personal autonomy and their economic and religious positions, as in matrilineal societies such as the Crow, a model based primarily on economic factors is incomplete. Status is a product of a variety of factors. To suggest that one theory, whether it is economically, biologically, or psychologically determined, can answer all of the questions as to status is to miss the point of this complexity. [1993, pp. 142-43]

The element of importance overlooked by previous researchers, with the exception of Foster (1993), is the element of spirituality. If one is going to determine the reasons for the observed equality or inequality of women and men in Native society, then one needs to understand the importance of Native spiritual beliefs. The basic element of all Amerindian culture and societal structure is the spirituality of individuals and the collective spirituality of the society in general. The function of spirituality in Amerindian life was all-encompassing and provided the foundation for understanding. In a very fundamental way it taught relationships and respect. At the same time, spiritual beliefs also provided the basis for the differences found in Amerindian culture and relationships.

We may postulate that power within the culture and in individual relationships was balanced in a way that would help preserve social harmony. However, that is not to say that all things were equal. What we need to understand is that the "power balance" that existed in Amerindian societies was perceived from the standpoint of a different set of values than those that currently dominate Western society. We can also postulate that the power of women was understood to be very potent and was accepted as common knowledge.

With spirituality as the basis of knowledge, the autohistorical perspective leads us to further hypothesize that relations of power between men and women existed along with checks and balances to regulate the distribution of power. In pre-contact society the balance of power between men and women and power relations were constantly changing and being challenged.

It was not until the scales were tipped by European colonizers that the women were truly subjugated to a level unlike no other that Native women had experienced previously. This later subjugation was perpetuated because it came to be accepted as a means of survival by Native men (cf. Anderson, 1991; Devens, 1992), and because it was enforced by European male colonizers. This understanding of the possible explanations that arise in attempting to explain the nature of gender relations in pre-contact Amerindian societies is needed as a background to any study of women, colonization and resistance.

In any study of law and colonialism in the Canadian context, we must consider the cultural values and beliefs of Amerindian society that were constant and that provided the basis of strength that sustained Amerindian people during war, famine, disease and spiritual challenge. Sioui (1992) has argued that there is present in all Amerindian belief systems a fundamental belief that all forms of human, animal, and spiritual life are connected in "the sacred circle," and he notes that it is commonly recognized that all of these relationships in the physical and spiritual worlds have to be acknowledged and respected. If we accept Sioui's claim, we must conclude that, to a certain degree, pre-contact Amerindian societies were inherently more egalitarian.

Conclusions and Directions for Future Research

In our more detailed historical work (Smandych and Lee, 1994; Smandych and Linden, 1995), we attempt to describe the historical circumstances that led to the imposition of a private justice system created by the Hudson's Bay Company on the pre-existing dispute-settlement system of the Indigenous peoples of western Canada. In this research, attention is given to pursuing specific themes and questions raised in the recent work of sociologists of social control and students of legal pluralism. In addition, we use the Amerindian autohistorical perspective articulated in this paper as a starting point for our interpretation of the manner in which the imposition of Hudson's Bay Company law was likely perceived by Aboriginal people. This perspective recognizes that, when we look at historical topics, such as the nature of traditional methods of dispute settlement and social control used by Aboriginal people, or the different roles played by men and women in Amerindian societies prior to European intervention, we are limited to assessing the documents left by the skewed perspective of the European colonizer. In our work, we use this perspective to expose the inadequacy of the theoretical and methodological approaches adopted by conventional historians, and to provide the corrective needed in order to overcome these

inadequacies.

We are still at an early stage in our research in which we examine the impact that the Hudson's Bay Company and its private legal system, as an embodiment of European colonization, had on Aboriginal peoples living in what is now western Canada. One of the major findings that has emerged from our research so far is that, from a very early date following its arrival in western Canada, Aboriginal people began to be dealt with under the private justice system created by the Company (Smandych and Lee, 1994; Smandych and Linden, 1995). However, we have also begun to uncover evidence showing that, rather than being passive victims of a process in which law is used as a tool of colonization, the Aboriginal peoples of western Canada actively resisted having the private justice systems of the Hudson's Bay Company and other early European colonizers imposed on them. We are currently involved in carrying out the archival research that is needed to further address important theoretical questions raised in recent years by sociologists of social control and students of legal pluralism, along with feminist and Amerindian historians.

Another key feature of our work is the use we are making of the Amerindian autohistorical perspective developed in this paper as a way of approaching the study of the impact of the colonization process on Aboriginal women, and their involvement in the process as agents of syncretism and resistance. In addition, we are undertaking work that is aimed at deconstructing the meaning of historical documents in which mention is made of the role and status of women in early post-contact Amerindian societies (Emberley, 1993). Other questions we have begun to address in our research are the questions posed by Merry (1991) about the impact of the colonizing experience on European colonizers themselves. Canadian fur trade historians have already found a great deal of evidence showing that for many years European colonizers (like those who worked for the Hudson's Bay Company) depended on Indigenous peoples to provide them with the cultural knowledge and basic material resources they needed to survive (Ray and Freeman, 1978; Russell, 1991; Thistle, 1986). The impact Indigenous peoples had on the thinking of Europeans also likely extended to the Europeans rethinking their preconceived ideas about law and justice. A great deal more remains to be learned about who the people were "who brought and imposed new conceptions of law" and what effect "their earlier experiences [had] on the way they treated colonized peoples" (Merry, 1991, p. 55). Ultimately, we hope that bringing attention to questions like this will help generate new knowledge about the interconnected issues of legal change, colonization, gender and resistance.

Notes

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- 1 This historical research has been completed as part of a three-year research program funded by the Social Sciences and Humanities Research Council of Canada. The working title of the research program is "Legal Ordering and Social Control in Pre-1870 Manitoba: A Study of the Development and Interaction of Aboriginal, Private and State-Run Justice Systems."
- 2 The Hudson's Bay Company Archives (HBCA) now exist as part of the Provincial Archives of Manitoba in Winnipeg. The HBCA contains a detailed historical record of the operation of the Hudson's Bay Company in western Canada from the 1670s to the end of the nineteenth century.
- 3 In 1670, a royal charter granted by the English monarchy gave the Hudson's Bay Company the exclusive right to rule over an area that encompasses most of what is now the western part of Canada. As part of its original charter, the Company was given the power to enact any laws and regulations not repugnant to the laws of England that were needed to deal with Company employees and maintain social order throughout the territory of "Rupertsland," which included all of the land drained by rivers flowing into Hudson Bay. By a later statute, enacted in 1821, the Company was granted a licence to extend its trade monopoly and legal authority to encompass the territory known as "Indian country," which included all of the land beyond Rupertsland whose rivers drained into the Pacific and Arctic oceans (Foster, 1990). This immense territory, covering approximately 5 percent of the land surface of the Earth, had of course already been populated for centuries by First Nations peoples, who had their own complex cultural and social institutions, including customary laws and traditional methods of dispute resolution and social control.
- 4 Some of the more recent works of leading representatives of the "new legal pluralism" include Santos (1992) and Fitzpatrick (1992a, 1992b).
- 5 Recently, the use of the concept of "legal pluralism" by the above-noted authors has come under attack from Brian Z. Tamanaha (1993a) in an article entitled "The Folly of the 'Social Scientific' Concept of Legal Pluralism." In essence, Tamanaha (1993, p. 212) develops a critique of the concept of "legal pluralism," arguing that the insights about legal change and non-state forms of normative ordering provided by these authors "do not depend upon the concept of legal pluralism and may be hindered by it." See also Tamanaha (1993b).
- 6 For examples of recent work on the effect of law and colonialism on the Maori people of New Zealand, see John Pratt (1991) and Kayleen M. Hazlehurst (1993). For an excellent recent collection of studies on the colonial experience of a number of countries in Africa, Asia and America, see Dirks (1992). For a number of good accounts of the post-contact experience of Indigenous peoples of North and South America, see Bourgeault, Broad, Brown and Foster (1992).
- 7 In another recent work, Attwood (1992, p. 302) looks at how modern female Aborigine writers have helped to "define or proclaim an Aboriginal consciousness or identity."
- 8 Viewed from a broader perspective, one can see an affinity between Sioui's (1992) contribution and the work of recent "post-colonial" theorists and

researchers who have begun to openly contest the interpretations of colonialism offered by traditionally Eurocentric writers (cf. Hill, 1992; Mallon, 1994; Prakash, 1994).

- 9 The work of North American ethnohistorians frequently reflects the implicit, and sometimes more explicit, use of this concept (cf. Axtell, 1992; Calloway, 1987, 1991; Del age, 1993; Jaenen, 1976; Jennings, 1975; Trigger, 1976, 1985).
- 10 As Julia Emberley (1993, p. 101) notes in her recent deconstructionist work on Native women's writings and post-colonial theory, "The necessity for a theory of gender subordination in postcolonial criticism cannot be insisted on too forcefully."
- 11 Dickason (*ibid.*) also quotes the words of Champlain, who said to the Huron that "Our young men will marry your daughters, and we shall be one people."
- 12 As an example of the relatively equal sexual division of labour, Anderson points out that in Huron society men cleared fields while women planted crops. Men were the traders, hunters and warriors, while women tended crops, harvested, gathered wild foods, and prepared and controlled the distribution of food and clothing.
- 13 A similar argument about the status of women in pre-contact Huron society is advanced by the Quebec socio-historian Denys Del age (1993, pp. 66-69). In particular, Del age (1993, p. 66) argues that, "Living in a society where coercive power did not exist, the Hurons, like the Iroquoians or the Algonkians in general, were proud, strongly individualistic, tolerant, and free." Furthermore, he states that, "This applied to both men and women."
- 14 Devens' book is largely concerned with identifying patterns of resistance and accommodation to colonization and how these patterns changed over time. The first two patterns involved united responses. In the first, whole communities expelled missionaries whom they viewed as threats to tribal lifeways and security. At other times, adverse economic conditions elicited a quiet, if grudging, accommodation to Christianity by the entire group. The third pattern, however, was a split response. When missions or economics affected women and men unevenly, communities divided along gender lines into factions that supported different approaches to dealing with changes disrupting their world. By the late nineteenth century the latter pattern had become the norm. As men grew more receptive to introduced practices and values that they hoped would allow them to deal successfully with Whites, women stood only to lose status and autonomy. Thus, whereas many men favoured accommodation, women tended to stress "traditional" ways. As a consequence, friction between men and women eventually prevailed in many communities. Devens (1992, p. 4) argues that this third pattern clarifies the significance of gender in the colonization process; the friction between men and women in Aboriginal communities is in fact the bitter fruit of colonization. Devens maintains that, while men viewed education and conversion as an advantage, women saw Christianity, schools and clergy as a threat, and the mission schoolhouse became a silent battleground. Her examination of nineteenth-century mission schools suggests that they had a great impact on children who were suddenly removed from Native life-styles, and on mothers, who abruptly lost control of their daughters' educations (1992, pp. 108-109).

- 15 See also Paula Gunn Allen (1986, p. 224).
- 16 A comparable literature that raises questions more like this is now developing out of the study of gender and resistance to colonization in California, especially during the early period in which California was colonized by the Spanish (cf. Castillo, 1994; Brady, Crome and Reese, 1984).
- 17 Significantly, in her recent discussion of issues surrounding Aboriginal women and self-government in Canada, Katherine Chiste (1994, p. 26) notes that "the voices of aboriginal women" today still continue to be often different from the voices of both Aboriginal men and "mainstream feminists." In particular, she (1994, p. 26) points out that in recent years the ongoing Royal Commission on Aboriginal Peoples has heard eloquent testimony from Aboriginal women that indicates that "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."
- 18 For an example of one exception to this widespread tendency on the part of early ethnographers, see Wendy Wickwire's (1993) discussion of the work of James A. Teit.

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