

# THE REGULATION OF FIRST NATIONS SEXUALITY

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## **Abstract / Résumé**

This paper examines Canada's *Indian Act* and documents official colonial efforts toward making heterosexuality compulsory in First Nations communities. The first part of the paper establishes critically the broad range of gender and erotic diversity in First Nations communities prior to European contact. The second part explores racist, patriarchal and heterosexist knowledges and how they worked to regulate those preferring same-sex intimacies. The paper endorses a move away from treating race, gender and sexuality as separate or mutually exclusive categories of experience and analysis toward recognizing these configurations as a system of relations. It proposes de-marginalizing the intersection of race, gender and sexuality in current theories of state formation and First Nations research.

Cet article examine la loi sur les indiens du Canada et retrace les efforts coloniaux officiels déployés pour rendre l'hétérosexualité obligatoire dans les communautés de Premières Nations. La première partie de l'article établit de façon critique la grande diversité des pratiques érotiques et des comportements liés à la masculinité et à la féminité au sein des communautés autochtones avant le contact avec les Européens. La seconde partie se penche sur les attitudes racistes, patriarcales et hétérosexistes et la manière dont elles se sont appliquées pour contrôler les individus préférant les rapports homosexuels. L'article rejette le traitement de la race, des catégories masculine et féminine et de la sexualité comme catégories d'expérience et d'analyse séparées ou encore mutuellement exclusives; il souscrit à la reconnaissance de ces configurations comme système de rapports unifiés. Il propose d'ouvrir les frontières rattachées à la race, à l'orientation sexuelle ainsi qu'à l'acceptation des genres masculin et féminin, et ce tant dans les théories contemporaines de la formation de l'état que dans les recherches en études autochtones.

## Introduction

Several aspects of Canadian political reality have led historical sociologists to maintain that race, gender and sexuality are not separate categories of experience and analysis but dynamic sets of social constructions which, as they interconnect, impact upon individuals and their (re)productive activities in distinctive, historically specific ways (Ng, 1993:50; Parr, 1995:356-360; McClintock, 1995). Informed by this understanding, any comprehensive analysis of Canada's *Indian Act* and early Indian policy should examine how configurations of racist, sexist and heterosexist knowledges were manifested in the process(es) of colonization. Such an analysis would seek to document the endeavours toward making (European) heterosexuality compulsory within status Indian communities (Rich, 1993). Such an analysis, in its most ambitious sense, would illuminate the convergent discrimination(s) directed toward those preferring same-sex intimacies, and make a contribution toward an integrated theory of race, gender and sexuality. Such an endeavour, though far from exhaustive, is the primary focus of this paper.

The first part of the paper will provide a critical review of the literature which suggests that a broad range of gender and erotic relationships existed among Aboriginal populations at early contact. Part of this exercise will be to specify homosexuality as an analytic category describing in turn the difficulty with using terms such as "gay" and "lesbian" to describe historic First Nations sexual categories (Sun, 1988:35; Whitehead, 1993). The second part of the paper will then document how racist sexism and heterosexism worked together to legislate and define First Nations political reality. Upon illustrating the interactive relationship among these systems of domination, I will conclude that none of the development of class relations, the regulation of sexuality, racism or patriarchy can be explained as mutually exclusive.

## Sexuality and Gender in Native North America

Even prior to Confederation and the emergence of the first statute entitled the *Indian Act* in 1876, the colonial enterprise in Canada had virtually enforced a system of Eurocentric policies, beliefs and value systems upon First Nations. The earliest missionaries, for example, were determined to "civilize" the Indian populations by attempting to indoctrinate a Christian ethos and patriarchal familial structure (Brodrigg, 1984). It was within the context of such a conversion mission that same-sex erotic and sexual diversity was negatively evaluated and often condemned (Kinsman,

1987:71; Katz, 1983:28). This mission was a project fueled by heterosexism.<sup>1</sup>

One of the often quoted passages related to the views of the early missionaries is that of the Jesuit, Joseph Francois Lafitau. Speaking of the erotic and gender relations which he observed among Native North Americans from 1711-1717, he noted:

If there were women with manly courage who prided themselves upon the profession of warrior, which seems to become men alone, there were also men cowardly enough to live as women...they believe they are honoured by debasing themselves to all of women's occupations; they never marry... (Joseph Francois Lafitau, quoted in Katz, 1976:288).

The later diaries of the Jesuit, Pedro Font, resonated with the observations made by Lafitau. Only Pedro Font also identified an impending need to eradicate all such erotic or sexual relations and in their place establish a system of Christian morality. Making an assessment based on his observations taken from the expedition of Juan Bautista de Anza from 1775-76, he noted:

Among the women I saw men dressed like women, with whom they go about regularly, never joining the men...From this I inferred they must be hermaphrodites, but from what I learned later I understood that they were sodomites, dedicated to nefarious practices. From all the foregoing I conclude that in this matter of incontinence there will be much to do when the Holy Faith and the Christian religion are established among them (Pedro Font, quoted in Katz, 1976:291).

Missionary accounts of sodomy were not always so subtly expressed. Jean Bernard Bossu, whose translated journals from the interior of North America between 1751 and 1762 spoke of "perverse" addictions among the Aboriginal nations he observed, expressed it thusly:

The people of this nation are generally of a brutal and coarse nature. You can talk to them as much as you want about the mysteries of our religion; they always reply that it is beyond their comprehension. They are morally quite perverted, and most of them are addicted to sodomy. These corrupt men, who have long hair and wear short skirts like women, are held in great contempt (Jean Bernard Bossu, quoted in Katz, 1976:291).

The spectrum of erotic and gender diversity recorded in times of early contact suggests that same-sex relations were considered to be of some moral and political consequence.<sup>2</sup> Labelled as "nefarious", the relations that

did exist were seen as illegitimate. Clearly, there is no superior foundation for such "common sense" forms of paternalistic judgement, but we can explain the claims to Euro-Christian preeminence as grounded in the ethos of the historical period.<sup>3</sup> Informed by notions of supremacy, ideologies of racial inferiority and of "civilized" (hetero)sexual behaviour, the early Europeans saw First Nations (indeed all non-Europeans) as subordinate and underdeveloped entities (Miles, 1989; Said, 1978).<sup>4</sup> Of pertinent interest in the aforementioned passages is also the way they reveal the interrelated nature of all systems of oppression.

Configurations of racist, patriarchal and heterosexist knowledges worked together to influence the views of the missionaries. Being a "nefarious sodomite", for example, not only meant "debasement" oneself by "cowardly" appropriating the gender and assumed sexual roles of a devalued (in this case) female class, it was an "unproductive" realm that, as I will describe in further detail, required complete refashioning. Salvation (sexual and otherwise) was to rest under the auspices of a religiously superior race of Europeans: a motive that was clearly racist. Salvation was something that required the regulation of a "savage" sexuality thought antithetical to Christian decorum, gendered domestic relations, and moral rationality. There may be reason to suggest, however, that the view toward individuals referred to as "nefarious" by the missionaries was an unshared sentiment among some of the original inhabitants of North America. It has been suggested that the *berdache* enjoyed an esteemed role within certain communities prior to contact.<sup>5</sup>

Among the Bella Coola Nation located in what is now called British Columbia, Franz Boas noted the special status accorded to the *berdache*, a status that was central to an origin myth on food (Boas, reprinted in Roscoe, 1988:81-84). Toleration of the *berdache* and even "institutionalized homosexuality" is suggested in more contemporary anthropological literature and Native testimonials (Benedict, quoted in Roscoe, 1988:16-17; Mead, quoted in Roscoe, 1988:19; Owlfeather, 1988:100; Kenny, 1988:153). Sharing a similar perspective, Kenny (1988:26) has noted that:

Some tribes, such as the Minois, actually trained young men to become homosexuals and concubines of men. The Cheyenne and Sioux of the plains may not have purposely trained young men to become berdaches but certainly accepted homosexuals more readily than perhaps other tribes.

In short, some have been inclined toward emphasizing the *berdache* as a recognized and legitimate social institution. Nonetheless, is it necessary to look upon this claim with some scepticism.

First, there is some difficulty in making cross-cultural comparisons like the one made by Kenny (1988) in the above noted excerpt. In his postulation, the tradition of *berdache* gets conflated with "homosexual" leaving little or no recognition of Native sex/gender systems. Such an interpretation is limited, for as Harriet Whitehead has argued, "sexual practices and beliefs must be understood within the context of the specific gender-meaning system of the culture in question" (Whitehead, 1993:523; Rubin, 1975:159). If we take a brief look at Native North American cultures, we grow increasingly familiar with the weaknesses of "homosexual" as an analytic category (Sun, 1988:35).

The evidence to substantiate the claim that the Native North American *berdache* was an equivalent to the modern-day "homosexual" is limited. As Harriet Whitehead explains, such cross-cultural investigations tend to posit a *shared sexual identity* between the gender-crossing *berdache* and modern "homosexual": the very place where contradictions start to emerge (1993:498). Alluding to the importance of sex/gender systems, Whitehead explains:

Western society foregrounds erotic orientation as the basis for dividing people into socially significant categories, but for Native North Americans, occupational pursuits and dress/demeanour were the important determinants of an individual's social classification, and sexual object choice was its trailing rather than leading edge (1993:498).

Whitehead does not suggest that the role of the *berdache* excluded same-sex sexual behaviour (1993:514). She illuminates instead a sex/gender system that renders one's chosen occupational behaviour of much greater importance than sexual object choice when it comes to social (re)classification (Whitehead, 1993:511; 513). The role of *berdache*, according to Whitehead, was more about gender-crossing than it was about sexual relations. In making this point, she alerts anthropologist and social historian alike to the weaknesses of "homosexual" as an analytic category. In an historic or cross-cultural interpretation, modern-day Western categories may be unknown to the culture or past under study. The categories applicability is subsequently limited. This is a position that is broadened by constructionist theorists who are interested in the history of sexuality. Foucault is exemplary.

For Foucault, sexuality is not a natural given, but the name that is granted to a historical construct (1990:105; 127). Sexuality, in other words, is never more than a set of ever-varying developments tied to the mode of production and prevailing social/political realities (Foucault, 1990:5-6; Padgug, 1989:58). In short, sexuality and subsequently related behaviour

is socially constructed. Failing to recognize this category as such presents the social historian with conceptual and interpretive difficulties. Kenny's postulation in the above noted excerpt on Native "homosexuals" is again problematic.

The inclination to extract some *modern-day notion* of "homosexual", "gay" or even "lesbian" Native identity from the missionary statements on "sodomy" cannot be clearly substantiated. Nor can references to Indigenous sexualities be referred to as "homosexual" as this is known in the historical present. There are at least two reasons for this. First and foremost, the history of sexuality does not permit a conclusion such as the second. Foucault, for example, reminded us that the concept of "homosexuality" did not even emerge in western discourse until the 19th century (1990: 43). To be sure, and this is my second point, the missionaries were speaking of "sodomy" and "nefarious practices" as a set of sex related acts. The missionary statements, though they may speak of "morally perverse" behaviour and the outwardly physical attributes of the *berdache*, make no explicit mention of a specific personality type, sexual sensibility or sexual identity. It is not possible to make such an inference on that basis.

It is necessary to distinguish between behaviour and identity when we apply an analytic category such as "homosexual" to the historic past. We cannot take the sexual acts reported to have been witnessed by the missionaries and convert them to a history of personality or contemporary "gay" identity. For on this question of identity, Robert Padgug insists:

These identities are not inherent in the individual. In order to be gay... more than individual inclinations (however we might conceive of those) or homosexual activity is required; entire ranges of social attitudes and the construction of particular cultures, subcultures, and social relations are first necessary (1989:60).

In sum, while it may be true that *homosexual behaviour* existed in history, we cannot call those whose behaviour was so inclined either "gay", "lesbian" or homosexual as these are known in the historic present.<sup>6</sup>

The third problem with postulating on and about "Native homosexuality" is in alluding to its prevalence as "institutionalized". This suggestion, as noted by Kenny and others, tends to overshadow any critical understanding of the practice from a culturally-informed point of view. This characterization of homosexuality threatens to foreground the homosexual sex act over and above gender-crossing, occupational choice and the distribution of (cross-gendered) tasks. The effect of this characterization is to suggest that sexual object choice was more important than gender-crossed behaviour in Native social classification systems. A mistaken consequence is thereby afforded

to the homosexual or even heterosexual sex act since some *berdaches* "lapsed into anatomic heterosexuality and on occasion even marriage without any loss of their cross-sex status" (Whitehead, 1990:512; also see Schnarch, 1992:115). In sum, it is important to recognize when we speak of "institutionalized homosexuality" that:

[H]omosexual acts were not in any way immediately suggestive of an enduring disposition such as that which characterized the gender-crosser (or the "homosexual" in our culture), and such acts were not confused with gender-crossing in the Native mind (Whitehead, 1990:511).

This brief investigation on sexuality and cross-gendered behaviour in Native North America provides some insight into the diversity of erotic and gender relations that existed among a selection of Aboriginal populations at early contact. Through the use of secondary documents provided by Katz (1976), this investigation also illustrates the missionary response to such interactions. By no means exhaustive, what I have sought to illuminate is merely the care required when using "homosexuality" to describe or interpret the historic past. To that extent, the preceding discussion permits at least three conclusions.

First, missionary statements confirm the existence of "sodomy" following (and likely even prior to) contact and nothing more. While it may be tempting to transform the Jesuit accounts to reveal a history of homosexual *identity*, we can deduce only that homosexual *behaviour* existed in a selection of Native communities. Neither homosexual or heterosexual behaviour was definitive to the (re)classification of social identity under Native sex/gender systems (Whitehead, 1993). On that account, the history of First Nations sexuality may be better thought a history of cross-gendered behaviour.

A second conclusion is that heterosexual behaviour could not have been as "mandatory" for Native North Americans as it was for the Euro-Jesuit newcomers since sexual behaviour did not set into motion an entire process of gender reclassification (see Schnarch, 1992:111). Contrary to a European sex/gender system that characterized or equated the homosexual sex act with some enduring (cross)gendered disposition, the Native North American could engage in same-sex sexual conduct without necessarily acquiring the recognized status of (gender-crossing) *berdache*. Later colonial policy would work to alter this system through institutionalizing a structure of power and kinship relations that were both patriarchal and heterosexist. In the next section of this paper, this proposition will be further elaborated.

A third and more central conclusion based on the preceding analysis and evidence is the way that racism, patriarchy and heterosexism are witnessed to have developed in relation to one another. In the selected descriptions, the sexuality of Native North Americans was quite simply racialized and engendered. "Sodomy", for example, was viewed as a practice engaged in by a "morally perverted" and "coarse natured" *race* of people. By extension, the cross-gendered effeminacy and homosexual behaviour of the male berdache was socially constructed as "cowardly" or effeminate. In short, the dynamic interplay between "racial", sexual and gendered types of knowledge both produced and organized missionary recordings. A similar set of ethnocentric understandings would later translate into a set of policy objectives. These colonial knowledges would influence the contemporary circumstances of Native "gays" and "lesbians", some of whom continue to identify as "two-spirited" people. In the following section I explore the interactive relationship between racism, patriarchy and heterosexism in early "Indian" policy and the *Indian Act*.

### **Racism, Patriarchy and Heterosexism in the Indian Act**

In this section I will highlight the way in which the *Indian Act*, in the assumptions that it made about the kinship and social organization of First Nations, assumed homosexual behaviour out of existence. Further research is needed to illustrate more precisely the actual impact, or causal effect that government initiatives and legislation had on the suppression of homosexual behaviour and same-sex intimacies. For an initial analysis of how the *berdache* tradition is no longer as recognized an institution as it once was in Native communities, see Williams (1986:183-192), Roscoe (1988, Part II), and Brown (1997).

For well over 100 years, the *Indian Act* has been the central legislation governing the affairs of First Nations in Canada. Since its inception in 1876, the *Act* consolidated earlier policy and appointed the Federal Government in control of all aspects of "Indian" life including education, social services, health care and lands administration. For the purposes of this paper I will concentrate largely upon those sections of the *Indian Act* that deal with "Indian" status and citizenship. These were the sections that fundamentally reorganized kinship relations and delineated who was, and who was not, eligible to be registered as an "Indian" under the jurisdiction of the *Indian Act*.<sup>7</sup> While the historical development of these sections are most blatantly patriarchal, I will also illustrate how they combine to reveal an interactive relationship between racism, patriarchy and heterosexism. It is necessary, in other words, to understand patriarchal discrimination *in relation to* racism

and heterosexism. Moreover, these systems of domination cannot be understood outside of the formation of capitalist relations.

The implementation of the Reserve system in 1830s Upper Canada was among the earliest of statutory policies to affect First Nations prior to Confederation. This was a policy intended to resocialize First Nations into recognized "British-agricultural-Christian patterns of behaviour" (Frideres, 1983:22). To that extent, the agricultural policy of the reserve system revealed underlying ideologies of racism and ethnocentrism. The Reserve system was intended to "civilize" the "Indian" who, in the eyes of the European, would be otherwise susceptible to nomadism and societal decline.

The agricultural component of the reserve system was also among the earliest of policies to commence with the social construction of gendered tasks. Commenting on the sexual division of labour associated with this policy, Ng has observed that "men were taught farming skills such as how to clear land and hold a plow, [and] women, under the tutelage of the missionaries' wives and daughters were taught "civilized" domestic skills" (1993:54). The reserve system policy thus represented a further endeavour toward the re-construction of gender relations among Aboriginal populations. These "common-sense" assumptions about the gendered division of tasks likely impacted upon First Nations women. At the same time, these assumptions likely influenced the position of the *berdache* discussed earlier in the paper. Had systems that recognized and affirmed an engagement in cross-gendered occupations existed prior to European contact, they would not have been possible during the 1830s.

A continued emphasis toward gender hierarchicalization continued well into the late 1800s. Most notably, it emerged in the status and citizenship sections of "Indian" policy. These were the sections that defined who was, and who was not, entitled to "Indian" status. In the tradition of earlier statutes, these initiatives made invidious distinctions between male and female "Indians".

The status and citizenship sections of the *Indian Act* have historically excluded Aboriginal women from recognition as status "Indians". As early as 1869, for example, Native women marrying non-Native men lost status, along with their children, as defined under section 6 of *An Act for the Gradual Enfranchisement of Indians* ([S. C. 1869, c. 6 (32-33 Vict.)], reprinted in Venne, 1981:11-15).<sup>8</sup> This same loss of status did not apply to Native men or their children. In law, Native men retained their entitlement to status along with an ability to bestow it regardless of whom they married.

The exact motive for making invidious distinctions between Native men and women is not immediately discernable, but as one author has put it:

"[T]he 1869 legislation... was intended to reduce the number of Indians and "half-breeds" living on reserves" (Jamieson, 1986:113). The surface motivation behind the 1869 Act, then, was doubtlessly assimilationist. It may also have been about protecting "Indians" from White male encroachment onto Reserve lands (Sanders, 1972:98). To be sure, the mandate of the 1869 Act was to institutionalize a system of patrilineal descent and heterosexual marriage.

The status and citizenship sections of the 1869 policy carried connotations that were simultaneously racist, patriarchal and heterosexist. As Jamieson (1986:118) has asserted "the statute of 1869, especially section 6... embodied the principle that, like other women, Indian women should be subject to their husbands." At the level of "common sense", in other words, it went unstated that all Native women (and children) take on the "racial" status of their husbands at marriage. It also went unstated that Native women and men ought to be inclined toward the Euro-Christian institution of heterosexual marriage. Had there ever been a time where heterosexual behaviour was not judged "mandatory" in First Nations communities, it was unlikely to have been during the mid to late nineteenth century. By making marriage the only possible avenue through which to convey "Indian" status and rights, the 1869 Act simply legislated European forms of heterosexuality compulsory in First Nations communities.<sup>9</sup> Later legislation would only perpetuate such institutionalized domination.

In 1876, for example, the Federal government passed the first legislation entitled the *Indian Act*. Like preceding legislation, this Act imposed patriarchal definitions of "Indian" by again emphasizing patrilineal descent. Section 6 of the 1869 statute became section 3(c) of the *Indian Act*, only later to become section 12(l)(b) in the revised 1951 *Indian Act*.<sup>10</sup>

Similar to previous legislation, the 1876 legislation did not require a loss of status for Native men. Native men retained their legal "Indian" status and, under section 3, were able to bestow it onto the non-Native women they married. Section 3 of the *Indian Act* would later become section 11(l)(f) in the revised 1951 Act.<sup>11</sup> Historically, these legislated changes institutionalized descent through the male line and simply "naturalized" the heterosexual nuclear family within First Nations communities.

Major changes to the *Indian Act* were common following 1876 and several systems of domination were upheld. In 1956, for example, an amendment to section 12(2) of the 1952 Act strengthened patriarchal definitions of "Indian" by enabling individual Band members to contest the status and band membership of Native children thought to be "illegitimate". If an individual band member could prove that the father of a child was not an "Indian", then the child would not be entitled to statutory registration or

Band membership.<sup>12</sup> "Indian" women's status, henceforth from 1956, ceased to be of any official legal significance in and of itself since only men could bestow legitimacy (Department of Indian and Northern Affairs, 1991:14). It was by entrenching this system of relations that a discourse of patrilineage was offered to First Nations. At the same time, notions of "illegitimacy" in the 1952 Act privileged heterosexual unions by emphasizing the importance of paternity to the exclusion of non-male partners. In this way, the existence—even possibility—of same-sex relationships in First Nations communities went unacknowledged.

This chronological selection of legislation provides some insight into the early provisions of the *Indian Act*. What I have sought to illustrate are the colonial assumptions made with respect to gender and sexuality. But in many ways, this brief explication requires further engagement. At least two considerations might guide this analysis. First, how can the *Indian Act* be considered a tool through which "Indians" were being "re-socialized" to become "productive" members of an emerging Nation? Second, why did racism and (hetero)sexism interrelate as they did within "common-sense" attitudes about kinship organization? To what larger project, or sets of knowledges, was the interrelationship between these systems of domination tied? In short, what is so unique about the regulation of First Nations sexuality?

The historical development of the *Indian Act* and other "Indian" policy was a process coincident with the building of Canada as a Nation. Between 1830 and 1950, for example, most of the Act's central prescriptions were being created. These were the years when Canada was moving toward an urbanized industrial economy. On that account, it is reasonable to speculate that the *Indian Act* and other "Indian" policies were informed by ideologies congruent with the impending processes of social and economic change. The *Indian Act* may be (re)interpreted as a mechanism fashioning the human infrastructure necessary for the growth of capitalism. Informed by that understanding, the Reserve system of the 1830s may be revisited.

The agricultural policy of the 1830s not only placed emphasis on the state's motivation toward socializing "Indians" into economically viable entities, it also made some fundamental distinctions between the male and female genders. Policy makers of this new legislation, as mentioned, simply presupposed that "Indian" men would learn agricultural skills; and women, domestic chores. In this way, policy makers made "common-sense" assumptions about the gendered distribution of tasks. These assumptions were informed by ideologies of the sexual division of labour and the private and public spheres. It was within the broader context of these knowledges that the State mandated the regulation of gendered behaviour among First

Nations. The imperative to divide tasks on the basis of gender must certainly have impacted upon women and also those inclined toward cross-gendered activity.

For women, capitalist and patriarchal knowledges combined to require that their labour be restricted to the private sphere. The implication of capitalist and patriarchal knowledges was to relegate women to the lower strata of the institutionalized gender hierarchy.<sup>13</sup> For those inclined to cross-gendered behaviour, capitalist and patriarchal knowledges relating to the sexual division of labour combined to mandate, even if unintentionally, the loss of gender flexibility. The effect of these knowledges was likely to have intensified gender classification systems making cross-gendered behaviour of considerable consequence. Seen in the 1880s as an *implicit* threat to the very project of Nation building and economic prosperity, the cross-gendered individual was seemingly confronting legislative regulation if not vigilant policing. A similar concern over discordant individuals inhered within the "Indian" status sections of 1869 and 1876.

The status and citizenship sections of the *Indian Act* were as much about extending a project of invidious gender distinctions into First Nations communities as they were about the regulation of sexuality. The formulation of these sections were shaped through an historical context that ideologically prescribed the types of sexual behaviour thought most compatible with the mode of production. Capitalist and patriarchal knowledge relating to the (re)productive modes of sexuality combined in the 1800s to require the disavowal of same-sex relationships. Since only heterosexual marriage ensured a form of reproductive sexuality, these would become the only recognized unions through which to convey status in the *Indian Act*. Later *Indian Act* prescriptions on "illegitimacy" would reveal a similar influence from the historical period.

The "legitimacy" sections of the *Indian Act* were just as much inspired by the patriarchal emphasis on paternity as they were by the emerging productive relations of the late 19th century. The imperative of "legitimacy", for example, was tied intimately to capitalist notions of private property. Those status provisions that upheld notions of "illegitimacy" simply reflected a legal and social system which tried to ensure that only men could bequeath wealth onto their own children (Engels, 1942:76; O'Brien, 1981:54). The way that wealth was bequeathed was to declare that wives were the sole and exclusive property of their husbands and that subsequently, a man's children were those that his wife bore. It was in the broader context of wealth and the transference of property that the state endeavoured toward the regulation of women's sexuality. The imperative

of paternity was largely to bring all First Nations into further congruence with a patriarchal system of private property.

To sum up, the historical development of the *Indian Act* was a process that coincided with the building of Canada as a Nation. With that in mind, it is not possible to consider the *Indian Act's* development outside of the pervasive ideologies of that period. Engrained within the *Act* itself are "common-sense" assumptions about the gendered distribution of tasks, the forms of reproductive sexuality and capitalist notions of private property. All of these knowledges were contained within early "Indian" policy.

## Conclusion

A central conclusion of this paper is that the regulation of First Nations sexuality cannot be explained apart from, or without reference to, racist and patriarchal configurations as those emerged in the Euro-Christian and subsequent colonial contexts.

For the early missionaries, descriptions of sexuality were informed by both "racial" and "gendered" knowledges. "Sodomy", for example, was a practice engaged in by a "coarse natured" "race" of people. The cross-gendered behaviour of the *berdache* was further constructed as effeminate. Informed by knowledges that linked sexuality with "racial" difference, along with ideas that linked gender with masculinity and femininity, the Euro-Christian missions made the first attempt toward a "civilizing" agenda. In any attempt to reconsider that agenda, the dynamic interrelationship among all systems of domination needs to be recounted.

Racist and patriarchal configurations also influenced the later agenda of Nation building. Capitalist and patriarchal knowledges relating to the (re)productive modes of sexuality, for example, combined to require the disavowal of same-sex relationships in the status and citizenship sections of the *Indian Act*. By extension, the sexual division of labour intensified gender classification systems in turn requiring the regulation of cross-gendered behaviour. All of these systems combined to deeply affect First Nations.

In short, the dynamic interplay between racist, patriarchal and capitalist knowledges all influenced the regulation of First Nations sexuality. Any account of the history of this regulation, or theory of state formation, needs to illuminate that interrelationship.

## Notes

1. By the term "heterosexism", I mean the system of knowledges or "political institution" through which heterosexuality is either implicitly or explicitly assumed to be the only acceptable or viable life option

- and/or sexual aim (Rich, 1993:232; Blumenfeld and Raymond, 1988:244-5).
2. The actual depth of missionary observation, comment and sentiment about "sodomic practices" cannot be thoroughly discussed in a paper of this size. Testimonies can be analyzed more closely, however, in Katz (1983) and Williams (1986). Goldberg (1992) provides further analysis of the evidence in both Katz and Williams, along with an overview of the sexual practices of Indians from the vantage point of Spanish explorers.
  3. I borrow the term "common sense" from Himani Bannerji (1987) who draws attention to the way that systems of discrimination "disappear from the social surface" and become ordinary ways of doing things of which we rarely have consciousness.
  4. For a scholarly analysis of the genealogies of imperialist knowledge, see Anne McClintock (1995:21-74).
  5. As Burns has noted (1988:1), *berdache* is the word used by early French explorers to describe male Indians who "specialized in the work of women and formed emotional and sexual relationships with other men" (also see Kinsman, 1987:71).
  6. It is worth noting—without delving too far into an analysis of "essentialist" versus "constructionist" theories of sexuality—that the (in)stability of analytic categories such as "gay", "lesbian" or "homosexual" are of some political urgency for communities interested in recounting "minority history" and validating an immemorial existence (Boswell, 1989:20; also see Sharpe, 1992:31;38). This may represent one explanation as to why modern-day notions of "homosexuality" are sometimes conflated with the role of the *berdache*.
  7. The very first attempt to define the term "Indian" and thereby racialize a heterogeneous and diverse group of people was made in 1850 under legislation entitled *An Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury* (Indian and Northern Affairs Canada, 1991:7).
  8. As section 6 read: "Provided always that any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children issue of such marriage be considered as Indians within the meaning of this Act..." (*An Act for the Gradual Enfranchisement of Indians...*[S.C. 1869, c.6. (32-33 Vict.)] reprinted in Venne, 1981:11).
  9. Resistance to heterosexist status sections may have been possible by securing some alternate arrangement whereby the children of "two-spirited" people could obtain Indian status. However, this did not alter

the fundamental effect of the legislation which was to privilege heterosexual over same-sex relationships. Had same-sex relationships ever been recognized and affirmed in First Nations communities—and it seems more than reasonable to suggest they were—the *Indian Act* would work toward ensuring that the legal and structural means with which to regain such systems were lost.

10. As section 3(c) of the 1876 Act read: "Provided that any Indian woman marrying any other than an Indian or a non-treaty Indian shall cease to be an Indian in any respect within the meaning of this Act..." (*Indian Act* [S.C. 1876, c. 18], reprinted in Venne, 1981:25). In 1951, this section was amended to read: "The following persons are not entitled to be registered, namely... (b) a woman who is married to a person who is not an Indian" (*Indian Act* [S.C. 1951, c. 29], reprinted in Venne, 1981:319).
11. As section 3 of the 1876 Act read: "The term "Indian" means, First. Any male person of Indian blood reputed to belong to a particular band; Secondly. Any child of such person; Thirdly. Any woman who is or was lawfully married to such person" (*Indian Act* [S.C. 1876, c. 18], reprinted in Venne, 1981:24). In 1951, this section was amended to read: "Subject to section twelve, a person is entitled to be registered if that person ... (f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e)" (*Indian Act* [S.C. 1951, c.29], reprinted in Venne, 1981: 318-319).
12. As section 12(2) of the 1952 Act read: "The addition to a Band List of the name of an illegitimate child described in paragraph (e) of section 11 may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under paragraph (e) of section 11" (*Indian Act* [R.S.C. 1952, c. 149], reprinted in Venne, 1981:360).
13. For many settlements, this meant a fundamental reconstruction of gender relations as some communities are said to have been egalitarian and matriarchal prior to contact. For a discussion of the matriarchal kinship organization and egalitarian relations among the Iroquoian Nations see Druke (1986:esp.305). Also see Native Women's Association of Canada (1992) and Kirkness (1987:410-413).

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