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**Kanoronhkwa': A Haudenosuane Anishnawbe woman's view on the impact of
the Doctrine of Discovery on Haudensaunee women**

By

Stephanie Pangowish

A Thesis
Submitted to the Faculty of Graduate Studies
through the Faculty of Law
in Partial Fulfillment of the Requirements for
the Degree of Master of Laws
at the University of Windsor

Windsor, Ontario, Canada

2023

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Kanoronhkwá: A Haudenosaunee Anishnawbe woman's view on the impact of the The
Doctrine of Discovery on Haudenosaunee women

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23 November 2022.

DECLARATION OF ORIGINALITY

I hereby certify that I am the sole author of this thesis and that no part of this thesis has been published or submitted for publication.

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ABSTRACT

Since the colonization of Indigenous peoples on this territory, Indigenous women have faced violence, and we continue to face violence not only in political spheres but also at home; at the root of this is the assumed sovereignty of the Canadian state over Indigenous peoples. Haudenosaunee women have long held a sacredness, a sacredness that has long been recognized by Haudenosaunee communities. Women's sacredness is outlined in our Creation Story and our Great Law of Peace. The Creation Story tells us how we interact with each other and all spiritual creation. Our Great Law of Peace is our governing law that combines all six nations, the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and the Tuscarora, in the Haudenosaunee Confederacy. Women play a central role in both the Creation Story and the Great Law of Peace, which confirms the importance of women within traditional Haudenosaunee communities; the impact of the Doctrine of Discovery has damaged that traditional knowledge and customs.

The impacts of the *Indian Act*, disenfranchisement of Haudenosaunee women, and the residential school systems are tools that have tried to erase the "Indian problem" in Canada. This thesis focuses on how attacking Haudenosaunee women, and family structure has had negative impacts through our history and continues on. Along with the negative consequences, this research also highlights the resilience of Haudenosaunee women providing examples of how Haudenosaunee women have remained firm in their sacredness by fulfilling the roles that Creator intended for them and that they continue to provide Kanoronhkwá (love) to their people, homes, and lands.

DEDICATION

In Loving memory of my Nbaa-Paa (dad) Michael Pangowish who I lost during this project and whose presence, love, support, and laughter I miss always.

In Loving memory of my uncle Ted Hill who fought for our Haudenosaunee peoples and encouraged a fight in me.

To all my ancestors who came and have made their journeys home but while here on Turtle Island fought and survived for me, I thank you. Nia:wen.

To all the Indigenous women who have fought battles and created a space for me I thank you. Nia:wen.

To all the little ones and the seven generations coming I hope you never lose sight of how powerful you are.

ACKNOWLEDGEMENTS

To my communities, Six Nations and Wiikwemkoong, I am thankful for your voices and the fight that you have. We are powerful. Nia:wen.

To Dr. Jacobs, there are no words to express how grateful I am for your support, kindness, and guidance. Day one of law school you made me feel that I have something meaningful to contribute and provided the push. This LLM would not have happened without your hard work and dedication. Nia:wen. Love you!

Nia:wen to all my Committee Members, they have come with me through this difficult process with kindness and support.

To my Isten:'a (mom) I thank you for your unconditional love and strength because without you I would have never accomplished all I have. Love you!

To my brother, Ninaantg who has taken up the preservation of our Anishnawbwe language. He makes me so proud that he is ensuring the continuance of our language because it is vital to our identity. I thank you for your kindness and love- we finished our masters together. We did it!

To my amazing nephew, Tritin, I thank you for the drive to complete this task, you are the future my boy and I am so proud of you. It is your presence that can take all my negative thoughts away and I remember why I started and continue to fight for justice and recognition of our people. Love you to the moon and back!

To my brother Al, it is because of you I am fearless. Your love and support are one that I can depend on at any time. You will tell me when I am wrong and cheer me on when I am weak. You show up when I need you without question. I admire your strength and am so lucky and grateful to be your sister. Love you!

To my auntie Chick, you are an amazing source of strength and grace. I often seek your advice and am grateful that I can call my auntie for help and reassurance anytime. I love you!

To Cheyanne, this project would not have happened without your support. Thank you for your tremendous support and friendship. Nia:wen.

To Dillon, when I wanted to give up on this project you pushed me through. I appreciate your encouragement, words of wisdom, support, laughter, and happiness you provide. Nia:wen.

This project really did take a community of people, a circle of support and to all I am very thankful for your presence: Destiny, Michelle, Nicole, Tyra, Raven, and Val. Nia:wen.

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Thanksgiving Address

GREETINGS and THANKS to each other as people
TO THE EARTH mother of all, greetings & thanks
To all the waters WATERFALLS & RAIN RIVERS & OCEANS, greetings & thanks
To all the FISH LIFE, greetings & thanks
The grains and greens BEANS & BERRIES as one we send thanks TO FOOD PLANTS MEDICINE
HERBS of the world and their keepers, greetings & thanks
TO ALL ANIMALS & their teachings, greetings & thanks
THE TREES for shelter & shade fruit & beauty, greetings & thanks
TO ALL BIRDS large and small joyful greetings & thanks
And from the four directions THE FOUR WINDS thank you for purifying the air we breathe and
giving us strength GREETINGS
THE THUNDERERS our grandfathers in the sky
WE hear your voices GREETINGS & THANKS
And now THE SUN for the light of a new day and all the fires of life, GREETINGS & THANKS To
our oldest grandmother THE MOON leader of women all over the world
AND THE STARS for their mystery beauty & guidance GREETINGS & THANKS
TO OUR TEACHERS from all times reminding us how to live in harmony GREETINGS & THANKS
AND FOR ALL the gifts of creation FOR ALL THE LOVE around us GREETINGS & THANKS And for
that which is forgotten WE REMEMBER. WE END OUR WORDS
NOW OUR MINDS ARE ONE.¹

¹ Beverly Jacobs, *Impacts of Industrial and Resource Development on the Wholistic Health of Akwesasronon: A Human Responsibility/Rights Solution* (Ph.d, University of Calgary, 2018) [unpublished] at 1 [Jacobs].

INTRODUCTION

The genocide starts and ends with women. The colonial powers know that our nations live and die with the women.²

I am thankful to all those who came before me, survived for me, and created space for me to survive in this world. Nia:wen. I must position myself in this paper before I continue. My traditional name is Esentséi and I am a proud member of the Haudenosaunee and Anishnaabwe communities. I am from two great confederacies called the Haudenosaunee Confederacy and the Three Fires Confederacy. My Haudenosaunee community is called Six Nations of Grand River and my Anishnaabwe community is Wikiwemikoong Unceded Territory both located in what is now known as Ontario. I grew up in Toronto, Ontario and have worked in many different spaces. Once I was a lifeguard, other times I worked retail and sometimes poured coffee, but my most interesting and challenging work was serving my urban Indigenous community.

After I dropped out of high school, I returned to post-secondary education in a bridging program hosted by Seneca College for Indigenous students who did not complete high school. At Seneca I completed a Law Clerk diploma and for my student placement, I was placed at Aboriginal Legal Service of Toronto (now known as Aboriginal Legal Services). I worked there as a tenants' rights advocate and as an Aboriginal Criminal Court worker for some time and while in these positions, I learned more than I ever knew about

²Report to the United Nations Committee to End All forms of Discrimination Against Women Canada's Flagrant and Scurrilous Human Rights Violations Against Oqwehó:weh Agó:weh (First Nations Women) Six Nations Traditional Women's Council Fire & Haudenosaunee For Women's Autonomy, Rights and Dignity online: < https://www2.ohchr.org/english/bodies/cedaw/docs/ngos/SNTWCFH_Canada_cedaw42.pdf> at 6 [Six Nation].

my people. During my employment, I was also completing my undergraduate degree in Sociology and Indigenous studies. My colonial legal education at my college included an Indigenous college support worker who opened my mind up to the colonial powers on Turtle Island. College is where I started to learn more about the *Indian Act* and how my Indian status came to exist.³ I learned about the treaties that were established all over Turtle Island (commonly called Canada), and most importantly I started to understand why there were so many negative stereotypes about Indigenous peoples. We were in the way of settlement and the natural resources are taken from our home, Mother Earth.

I grew up disconnected from my traditional ceremonies for the most part, but I managed to attend a couple at my moms' urban Indigenous workplace. Only recently did I realize that all the strong Indigenous women there provided me so much when they gathered for my berry fast teachings (puberty ceremonies). At her workplace was the first time I remember smudging, a daily practice now, to clear away any negative energy and to send my prayers to the Creator in thanks for all of creation and the work they do. Finally, while I attended law school, I attended ceremony and received my traditional name in the longhouse. Had our traditional Haudenosaunee ways of life continued to happen without interference from colonization this naming ceremony would have taken place at the time of my birth but, unfortunately due to my family's disconnection from my traditional community, it did not. I am fortunate that I now have access to both of my communities and Elders and Knowledge Keepers who are willing to teach me. All of our teachings ground me in my identity and build my strength and resiliency.

³ *Indian Act*, RSC 1985, c 1-5. [Act].

My life has been a mixed bag of the physical and cultural violence that Indigenous women faced at higher rates compared to our non-Indigenous women. I have gained a higher post-secondary education without being able to speak either of my Indigenous languages. I have advocated for Indigenous peoples in and outside of criminal courtrooms and I have heard my ancestors' stories of advocacy and harm. This path of colonial education is a hard one for me because at the core of who I am does not align with the colonial narrative. Hearing very little about my people in education is why I believe the hate, rage, and racism continues today and why I am afraid of the harms that come to our children in school.

My thesis includes a combination of my experience battling stereotypes and my unique experience of being a Haudenosaunee Anishnabwe Kwe who has been in the colonial spaces that these policies and laws have impacted.⁴ My thesis research is focused on Haudenosaunee women because I have participated more with my Haudenosaunee traditional community and ceremonies. I understand that Haudenosaunee and settler governments both have a role to play in accomplishing the goal of peace between our sovereign nations. Throughout these pages are some personal stories of how I have been impacted by residential schools and Indian status and identity. The title of this thesis is Kanoronhkwá (love) and what I have come to discover at the root of my advocacy is love. I thought it was about battling the injustices, but it is not. I realized it was Kanoronhkwá after writing about the Haudenosaunee women's leadership as noted in chapter five and I remembered it is simple – Kanoronhkwá applies to whole community and that while

⁴ Haudenosaunee Anishnabwe Kwe means in my case a Seneca Ojibwe women. Haudenosaunee represents nations within the confederacy and Anishnabwe represents nations within the Three Fires Confederacy the Ojibwe, Odawa, and the Potawatomi. Kwe is the Ojibwe word for woman.

teaching settlers about the historical wrongs, I will help build a path between us. Kanoronhkwá applies to myself, and my aunties and I continue to call on the violence against Indigenous women to stop. It is out of Kanoronhkwá for the little human beings who have joined my life that I speak about my own experience to ensure they live without harm and finally it is out of Kanoronhkwá that I continue to raise my voice against injustices in hope that I contributed to a space where the seven generations coming will no longer have to grow up hearing land defenders being called terrorists and that they will have security and freedom.

In this thesis, I have identified different terms of indigeneity being used. *Indian* is a term that is used to speak one's colonial identity. For *Indian or status Indian* it speaks to a status within Canada because it confers who qualifies to be an *Indian* under the *Indian Act*. Other terms used are Aboriginal, First Nation, and Indigenous which all mean the same but, are terms for different time periods. Aboriginal also is the term used in the *Constitution Act*.⁵ Section 35 of the *Constitution Act* states:

Recognition of existing aboriginal and treaty rights

35 (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Land claims agreements

(2) For greater certainty, in subsection (1) *treaty rights* includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

(3) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Commitment to participation in constitutional conference

⁵ *Constitution Act*, 1982, s 35, being Schedule B to the Canada Act 1982(UK), 1982, c.11

35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the *Constitution Act, 1867*, to section 25 of this Act or to this Part,

- (a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and
- (b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.

Indigenous is the most recent term used but, many Indigenous peoples will identify with their specific nations. I am a *status Indian*, and my band membership is with Six Nations of the Grand River. I am registered as an Upper Mohawk, but my matriarchal lineage is Seneca from upper state New York, USA. I identify as half Haudenosaunee and half Anishnabwe. How I identify myself is different than how Canada defines me.

This thesis began during the Covid-19 pandemic which directly impacted my intended research. Many Indigenous communities had outbreaks. Both of my First Nations communities were horribly impacted, and many went into lock down to protect our people. We lost many of our elders and family. Covid-19 impacted First Nations communities at a higher rate because there are layers of colonization that still exist on reserve; for example, there are still barriers to having access to clean and safe drinking water, inadequate housing, and poor health conditions which amplify risks of getting sick. I would have preferred to visit and research in my Haudenosaunee communities and to speak and listen to our Clan Mothers, Faithkeepers, Chiefs and community members and gather their input. I believe it would have been a much stronger thesis if I was able to obtain views from those in my community on the topics of my thesis, which include the Doctrine of Discovery, the impact of roles of authority or leadership of Haudenosaunee women. Because of the social

distancing and protecting our community this was not possible at this time. Thankfully, there are many documents, books, and reports to examine to write this thesis. Next, I will summarize chapters one to five.

In Chapter One, I explain three foundations of the Haudenosaunee Confederacy: The Creation Story where we all begin from, the Great Law of Peace which is our governing law, and the Thanksgiving Address which are the words that come before all else to bring our minds together as one. These are vital to the worldviews of Haudenosaunee peoples.

In Chapter Two, I explore the Doctrine of Discovery and the invasion of Turtle Island. With the Doctrine of Discovery came colonial worldviews on how Indigenous peoples lived their lives. The colonial worldviews were carried out by Christian Kings to civilize Indigenous peoples. The colonial worldview is to be civilized run by a male dominate society and this view caused violence and harm to Indigenous peoples and our future generations.

In Chapter Three, I take a deeper look into the impacts of the Doctrine of Discovery and the policies and laws that were created, for example, the *Indian Act*, case law, and residential schools to control Indigenous peoples, to gain our lands and resources, and to literally control Indigenous peoples' movements.

In Chapter Four, I review Haudenosaunee women in cases of "Marry Out, Get Out" membership band by-law, sections 6.1 and 6.2 of the *Indian Act* that pertains to Indian status and the impact on families. I also provide Haudenosaunee approaches to justice and a court that has adapted a more holistic approach to handling legal matters.

In Chapter Five, I look at the impact Haudenosaunee women had on the white women's suffrage movement. Even after all the hardship that was endured and the patriarchy that has seeped into Haudenosaunee structures, our women are still resilient and remain in spaces of leadership. I highlight five Haudenosaunee women from different communities who have taken up spaces in urban Indigenous leadership, Aboriginal law leadership, and land protector leadership.

I write from a place of my personal knowledge and experience combined with the research skills that I have gained while writing this thesis. My intention is that this thesis provides some insight into the difficult roadblocks that Haudenosaunee woman have had to experience and to highlight their powerful strength and resiliency.

My identity is very complex when you combine the fact that I am Haudenosaunee Anishnabwe kwe and a status Indian. According to my Canadian passport I am listed as a Canadian citizen which identifies me as something that I do not believe I am. I do not call myself Canadian yet the colonial government considers as such. The Doctrine of Discovery and the *Indian Act* tried to assimilate me into their Canadian identity by still reinforcing their assumed sovereignty over me.

The assumed sovereignty over Indigenous peoples is contained in the Doctrine of Discovery and next I review some of the literature about the relevance of the doctrine, Canadian laws and policies and their on-going impact on Indigenous peoples.

Literature Review

Research has been conducted about the impacts of the Doctrine of Discovery and colonization on Indigenous peoples in Canada by the United Nations, Indigenous scholars, and the Assembly of First Nations to mention a few. A United Nations Economic and Social Council Special Report from April 2010, says:

The papal bulls *Dum diversas* and *Romanus Pontifex*. Those decrees are part of the record of the genesis of competing claims by Christian monarchies and States in Europe to a right of conquest, sovereignty and dominance over non-Christian peoples, along with their lands, territories and resources, during the so-called Age of Discovery.⁶

This “age of discovery” is also referred to as the “age of genocide” by Moana Jackson, a Māori lawyer and his view aligns with mine.⁷ Our Indigenous lands have been overrun with colonial and foreign policies, governments, and laws that have devastating impacts on Indigenous sovereignty. The racist roots of the papal bulls are reinforced as social norms towards Indigenous women and is shown within Canada’s legal system as Cyndy Baskin states: “Only 4% of the Canadian population, Indigenous women are overrepresented as victims with violence toward them being 3 times higher than that of other women (Borrows, 2013; Statistics Canada, 2015).”⁸ The age of genocide has long reaching impacts on Haudenosaunee women and are described by Joyce Green:

⁶ United Nations, Economic and Social Council, *Impact on Indigenous Peoples of the International Legal construct known as the Doctrine of Discovery, which has served as the Foundation of the Violation of their Human Rights*, (Preliminary Study Submitted by Tonya Gonnella Frichner, Special Rapporteur), E/C.19/2010/13 at 7 [United Nations].

⁷ Tina Ngata, *Kia Mau: Resisting Colonial Fictions*, (New Zealand: Rebel Press, Trades Hall Wellington, 2019) at 21 (<https://tinangata.com/wp-content/uploads/2020/06/kia-mau-resisting-colonial-fictions.pdf>) [Ngata].

⁸ Cyndy Baskin, “Contemporary Indigenous Women’s Roles: Traditional Teachings or Internalized Colonialism?” (2020) 26: 15-16 *Violence Against Women* at 2083 (<https://journals.sagepub.com/doi/pdf/10.1177/1077801219888024>) [Baskin].

Colonialism is primary cause of the difficulties endured by Indigenous women in their personal lives and social relationships; in their statistical probability of lower economic status, education, and health profiles; in their increased likelihood of suffering from preventable illnesses, early death, incarceration, assault and murder; and in their experiences of racism.⁹

Not only are Haudenosaunee women impacted in our communities but, Indigenous women face higher rates of involvement in the criminal legal system as stated in the Aboriginal Justice Inquiry of Manitoba in 1991 and reiterated by Jonathan Rudin:

It found that Aboriginal women (and children by extension) experience disproportionately rates of violence and sexual assault as a result of the legacies of colonialism, the impacts of the residential schools, mythologies of Aboriginal women as inferior, and the entrenchment of gender discrimination in the *Indian Act*... Aboriginal women are overrepresented both as victims and as offenders in the criminal justice system. The impacts of colonialism and the resulting poverty and loss of culture help explain Aboriginal women's involvement in the criminal legal system.¹⁰

In Canada, Indigenous women are attacked from all sides meaning that we are attacked under colonial laws, under social norms, and within our own communities due to the impacts of colonialism.

I intend to provide an overview of the Doctrine of Discovery and connect it to three main issues focusing on Haudenosaunee women – gender inequalities in the *Indian Act* “6.2 cut off”, band membership issues such as the “Marry out and Get out” impacts as well as the injustices and different approaches in the colonial legal system.

In order for me to complete this research my methodology is based on and is in relation to Indigenous methods and ways of knowing. Haudenosaunee people tell stories

⁹ Joyce Green, *Taking more account of Indigenous Feminism: An Introduction*, 2nd ed (Winnipeg, Manitoba: Fernwood Publishing, 2017) at 10 [Green].

¹⁰ Jonathan Rudin, *Indigenous People and the Criminal Justice System*, (Toronto, Ontario: Edmond Montgomery Publications Limited, 2019) at 22.

that carry laws and principles within them, and our personal stories that provide context for how the impacts of the Doctrine of Discovery is alive today.

Methodology

There is much research on the history of residential schools, violence against Indigenous women, overrepresentation rates of Indigenous peoples in the jail system, legislative changes to the *Indian Act* including on-going issues like the disproportionate rates of mental health, addictions, inadequate housing, higher rates of suicide, and poverty. In recent years, more research is written by Indigenous peoples through an Indigenous lens. My intention is to include doctrinal research of my people and the impacts of the colonial state as well as bring the reader into our spaces by sharing with you stories about how Haudenosaunee women have encountered the colonial systems.

When I teach Introduction to Indigenous Studies, I like to include assignments that are reflective. Students to do more than just read a case study and recite the facts and decision of a case but, I ask them “how they felt about the case?” My peoples have been researched, reported, and written about ever since contact but, it is my hope that the reader feels a connection to these written words. I share my stories so that the reader might be able to connect with issues of identity, violence, and cultural safety. As noted by Kovach, “the word itself, ‘research’ is probably one of the dirtiest words in the indigenous world’s vocabulary.”¹¹ I don’t not want to contribute to that kind of “dirty” research but create a space where reader can feel involved and connected so, that we all can create a much-needed change to how Haudenosaunee women are treated. By sharing the foundations of

¹¹ Margaret Kovach, *Indigenous Methodologies: Characteristics, Conversations, and Contexts* (Toronto, University of Toronto Press, 2010) at 24.

Haudenosaunee Confederacy, I want the reader to understand why we are all connected as human beings even before treaties and invasions. Indigenous peoples and settlers are connected. We share this land and society so we must work to make it a better place for all.

Indigenous peoples are storytellers. Stories are beneficial because they are memorable, and they provide a variety of lessons. Therefore, I share stories of myself and my experiences so that we learn from the encounters that have happened in different spaces such as at the kitchen tables, or friendly conversations, and within professional environments. It is because of these different spaces that I employ the methodologies of phenomenology and narrative inquiry which are:

useful methodologies for Indigenous researchers who wish to make meaning from a story. Denzin and Lincoln suggest that there are ‘seven moments of qualitative research’ and that we are entering the seventh moment, where inclusivity of voices in research practice is possible. I am instinctively drawn to the idea of a seventh moment, I think of seven generations, seven fires with all the hope implied in those terms.¹²

Stories are the way we transmit knowledge to the next generations. Traditional knowledge is passed down and it has survived through the telling of stories. I agree with Denzin and Lincoln as more diversity methods and voices are included in academic spaces and this benefits all readers because we can create a better diverse space for the next generations. I want to provide a better space for the next seven generations ahead. We cannot avoid the history of the past and in order to build a better relationship between settlers, Indigenous peoples, and institutions, we must understand the past. I intend to share my lived experience and how they are shaped by stereotypes and racism,

¹² *Ibid* at 27.

and that violence was shaped by the Doctrine of Discovery. This method is called phenomenological research:

Phenomenological research is the study of lived or experiential meaning and attempts to describe and interpret these meanings in the ways that they emerge and are shaped by consciousness, language, our cognitive and noncognitive sensibilities, and by our preunderstandings and presuppositions. Phenomenology may explore the unique meanings of any human experience or phenomenon.¹³

Through the use of phenomenological research, my intention is to braid together my realities combined with academic research that invites readers into a new space of acknowledgment that Indigenous methods and realities are valid.

Tuhiwai Smith critiques the ‘post’ in *postcolonial* and suggest that ‘naming the world as “post colonial” is, from indigenous perspectives to name colonialism as finished business’ (1999:99). In focusing on the ‘post’ perspective, it frees one from historical analysis. Within a Canadian Aboriginal context, this is problematic because the non-Indigenous majority are adept at forgetting this country colonial history, thus maintaining its reproduction.¹⁴

Haudenosaunee women have battled in every space of settler society. Since settlers and their institutions are permanent, we are not in a post-colonial time. We continue to battle every day.

In this thesis, I review the historical wrongs of Canada’s subtle implementation of the Doctrine of Discovery and all the legal power that came from asserting colonial sovereignty over Indigenous peoples and how they continue to impact our people. I think it is necessary to understand that before colonization Haudenosaunee women had political authority and were considered sacred and settler women wanted the same sort of standing

¹³ Methodspace, “Identifying & Planning Research Qualitative Methodologies: Phenomenology” online: <<https://www.methodspace.com/blog/qualitative-methodologies-phenomenology>>.

¹⁴ Linda Tuhiwai Smith, *Decolonizing methodologies: research and Indigenous peoples* (London: Zed Books, 2012) at 76.

in their communities. The impacts of Haudenosaunee women have historically and will continue to make a tremendous impression. Although there are influences of patriarchy in our communities that have damaged our traditional roles in Haudenosaunee society, we are still here fighting and taking up those leadership roles. Our aunties, grandmothers, and ancestors continue to assist in the fight and passion for the seven generations coming.

Chapter One: Before All Else

Haudenosaunee laws are different than colonial laws. Unlike colonial law, you cannot read a book and read the debates of men about a bill proposed to become law. Haudenosaunee law includes the recitals of Wampum belts or the Great Law, or to watch how the strawberries are growing or how the deer is giving up its life for you to hunt, or the health of the water. Haudenosaunee law includes the connections and agreements we have with creation. There is a purpose in the time we take to provide thanks. Haudenosaunee law surrounds us every day and how we relate to spiritual creation around us. Henry Lickers describes Haudenosaunee laws as “ways of life not imposed structures... they were purposes.”¹⁵ Under the Great Law of Peace the goal is to live in balance with all of creation and spiritual being. Mohawk Clan Mother Louise McDonald says “the supreme law of the Land” is the Creation Story.¹⁶ The Creation Story, Great Law of Peace and the Thanksgiving Address is where I begin to bring you into Haudenosaunee worldviews.

The Thanksgiving Address, Creation Story, and the Great Law of Peace embed a commitment to the sacredness of all things and each carry knowledge, teachings, and stories that provides grounding and a commitment to the earth and all beings. The original instruction from the Creator provides us with an understanding of how to walk on this earth in the right way: to walk gently for the next seven generations that are coming to this world.

Haudenosaunee worldview governs, protects, and creates a space for us and for everyone who comes in the world. We pull from the original instructions legal principles

¹⁵ Jacobs *supra* note 1 at 187.

¹⁶ *Ibid* at 188.

and obligations that must be upheld as we continue our relationship with the land, waters, the earth, and to all of creation. These principles and obligations also involve gratitude. This can be practiced daily to give thanks for what the day has brought us and to think about all of creation. The Great Law of Peace ties into this daily practice connecting to individual behaviour and how to show kindness and how to treat others. This can be seen through the collective nations which, despite differences, are not at war but come together to collaborate and accomplish peace.

Notably, unlike many processes within the colonial framework, these practices are not enforced by an entity or government. Haudenosaunee peoples' right to autonomy comes from the Great Law of Peace and is an essential principle that is practiced daily. People have independence, the freedom to choose, and to adhere and to accept the Great Law of Peace. Individuals have the autonomy and freedom to walk this earth in a good way with a good mind and heart. Colonial governments do not necessarily share these foundations and worldviews, and the principles used to evaluate and ultimately come to a decision may not align with Haudenosaunee teachings, which is why there is such a disconnect between Haudenosaunee laws and colonial institutions.

The importance and interconnections of all spiritual beings is recited in the form of a Thanksgiving Address. The Thanksgiving Address is to promote principles that we are to have one mind and to move as one nation that the Great Law speaks about. The concept of having one mind means that all nations are working together to accomplish the goal or decision. If community members are in agreement with a Confederacy decision, then it is easier to implement and better for the community because everyone would be involved with the decision-making process; this represents the concept of having one mind. So, to

work as one we ground in our foundations the Thanksgiving Address, Our Creation Story, and The Great Law of Peace that I write about next.

Thanksgiving Address

One of my first memories of attending a ceremony was when I was much younger visiting my mother at her workplace. Her supervisor, Sylvia Maracle, opened with a Thanksgiving Address by thanking everything from bugs to fish to the thunders. Sylvia thanked all forms and functions within each group. She thanked the trees that provided shade, the trees that provided fruit, and all the work each tree does and continues to do for us. The opening address went on for a long time, and I remember wondering how long the speech would continue for. I realized that the opening would go on for as long as she needed it to and at the very end, she let us know that a Thanksgiving Address could go on for days. What I learned from this experience was that a Thanksgiving Address reminds us of all the different elements in the world that work together to give or provide for us in a single day.

We are all connected because we all use the same resources. Many of the elements, like the air that we breathe to all the rain we feel, contribute to the food and waters we consume to nourish our bodies daily so therefore, it is in our best interest to care for the elements. For example, for the breakfast we made and consumed this morning, we could thank the chicken that laid the eggs, the vegetables that are cooked with the eggs, the farmers for the planting, and the soil for providing the space and nutrients needed to grow those vegetables. Gratitude continues, but the practice is to consider and thank our interconnections and all the elements used daily to meet individual and collective needs and to continue our lives. The Thanksgiving Address is exactly that: a set of words spoken before proceeding with anything else. We provide this address when waking up in the

morning and we thank Grandmother Moon for her work during the night, Brother Sun for his work during the day and that our bodies worked during the night and that woke you up today. We give thanks to all the spiritual beings that have worked, as they were instructed by the Creator, so that we survive today. The food sources return to the land. The deer show themselves so that we may hunt, and the sun returns to the sky so that this world may have heat, as they were all instructed to do by the Creator. We survive because we rely on all of creation. Creation doesn't need humans.

When we gather for an event, the Thanksgiving Address is recited before any business or ceremony to thank all the elements that have contributed to bringing the people together. It focuses our minds on the work that we have gathered to accomplish. The Thanksgiving Address concludes by allowing space for the people who have attended to also provide their own thanks to all things that the speaker might have missed. The individual person can thank anything that the person feels should be thanked. This is important because it facilitates and provides space for autonomy of a person to show their own gratitude in their own way based on their own individual experiences and personal circumstances. For example, if they were personally asked to speak on a matter and they are generally not a speaker, they may want to offer thanks to all those people who worked on their speech with them, provide thanks if people made food for them while they worked on crafting the speech, and deliver thanks to the Creator for giving them the words to speak. No matter the context, the Thanksgiving Address is vital to ground us in our continued work.

The Thanksgiving Address also reminds us of our original instructions from the Creator. The Creator is the last one thanked in the Thanksgiving Address, and that

provides a lesson about hierarchy; some organizations enforce a hierarchical structure where within the Haudenosaunee culture and teachings, the focus is the interconnectedness, and that is why the Creator is thanked last in the Thanksgiving Address. It is a confirmation that although the Creator created all of creation, the Creator is not above anything else or should be. No one is above creation, but we are all connected to the success of each other. The people should be giving thanks for all the little things that contribute, build, grow, develop, and continue to do their work for us to be alive and living today.

The Thanksgiving Address also confirms our togetherness. We talk about the interconnectedness of all of creation and how our minds come together as one. When we meet as one, our minds come together as one to do any work that we must do in a good way. When we start by respectfully thanking everything that have contributed what brings us together as people, we begin to focus our minds on what is a good way. The Thanksgiving Address reminds us about the interconnectedness of everything else, our togetherness as nations, and our strength. The strength of all the creation that keeps coming back to fuel us is also the strength that we need to have when doing the good work for the betterment of us all.

The Thanksgiving Address can also be recited every morning when we first wake up. Every day we benefit from the land, air, and waters. There are no restrictions on how many times the Thanksgiving Address is practiced personally or for how long you give thanks. You could say it at every meal in thanking the farmers that contributed to the meal that you're about to put in your body and that you thank your body for all the different functions completed to digest this food. You could do it in the morning when

your body has carried you through the night and when you woke up to the Sun. You could provide a Thanksgiving Address each evening running through the day's events and providing thanks for all those elements and those people who contributed to the events that you experienced within that day. It is constant work and is required because the aim is to live in balance and peace.

The Thanksgiving Address, the Creation Story, and the Great Law of Peace are foundational to Haudenosaunee laws and understanding Haudenosaunee worldviews, and I am highlighting how they relate to Haudenosaunee women. All three, individually, continue to teach us how to navigate and behave in this world. A common principle within all three is the concept of respect and the obligation to show respect to all things and beings. Respect is a basis for successful, balanced, and productive relationships. Two principles of harmony and peace tie our Creation Story, the Great Law of Peace, and our Thanksgiving Address together because, ultimately, we should try to live our lives respectfully and kindly to all of creation.

Creation Story

There are different versions of the Creation Story. These stories may differ in little ways, and this paper does not explore those differences.¹⁷ However, the context is the same. What follows is an overview of the knowledge and teachings that has been shared with me and my own interpretations and reflections.

¹⁷ Rick Hill, "#1 Hodinoshson:ni Creation Story: Lessons of Life" (18 September 2015) at 1:14 online (video): *Youtube* < <https://www.youtube.com/watch?v=CAqvV--mWY4>>.

Many years ago, before the land was here, there was a Sky World, and in the Sky World, there was a man and a woman. In Sky World, Sky Woman fell from the Sky World and started to travel towards the water. There was no land. There was only water. The animals came to her aid. The winged ones and the birds flew up and carried her and realized that they wouldn't be able to hold her forever, so they asked for assistance, and the turtle answered.¹⁸ Sky Woman was placed on the back of a turtle, but the animals all realized that she couldn't stay there. It was a small piece of living space for Sky Woman on the turtle's back, and the animals were not able return her to the Sky World. So, the water animals were around, and they had decided that they needed to go down to the bed of the ocean and pick up some soil. The bed of ocean soil would be the land for Sky Woman. While the animals tried and some failed, it was the tiniest of the water animals, the Otter, who attempted and succeeded, although he had given up his life to bring up a little piece of soil for her.¹⁹ They were able to place this little piece of ground on the back of the turtle, and Sky Woman began to dance. As she began to dance and shuffle her feet from side to side, that land, that dirt started to grow, and it grew, and it grew until it created what today is called Turtle Island. As a child, when I heard this story, what stood out was the interconnectedness of Sky Woman and the animals that we are connected to. We are kin.

All of Haudenosaunee are connected because our story starts with our Creation Story and Sky Woman. Now I will tell you how the Creation Story relates to me.

¹⁸ North American Indian Travelling College, *The Creation Story: The Sky World* as told by Mike Myers, Seneca Nation, Cattaraugus (Cornwall Island, Ontario: North American Indian Travelling College, 1984) at 4 [Myers].

¹⁹ *Ibid.*

We start at the beginning, where we see the Creation Story as this world's creation and how it began with a woman and continued with the birth of her daughter. In the Creation Story, we see the creation of Turtle Island by a woman who gave birth to not only Turtle Island but to her daughter, who in turn gave birth to twins - two male children. Childbirth reiterates the continuous cycle of life and the sacredness that women carry to care for and to provide life with the sacredness that we have within us. Women gave so much for this world to come together, and we shall always be thankful to women.

Creation Story is told to the youth and to the people to remind the next generation about who they are and where they come from. The Creation Story is expressed in artwork, traditional medicines, ceremony, and foods, and we continue to relearn and engage with this law. When we eat food, we remember that the food has come from Mother Earth, and we will not forget the sacrifices made by Sky Woman and her daughter for us to be here. The Creation Story sets a foundation for people to go into the world and uphold principles that relate to behaviour and obligations. Through the Creation Story, we are told about the animals and their role in the creation of Turtle Island. I am always amazed that the smallest animal can make this arduous journey to the floor to grab the soil that ultimately becomes Turtle Island.²⁰

The Otter, being so tiny but prosperous, the otter was able to show its strength. This is a lesson for ourselves in life, that no matter how difficult the life journey, you can overcome it and be successful, especially when it is for the betterment of the people. Our stories provide many teachings like this. I think they are very multi-use since I believe at

²⁰*ibid* at 4.

various points in life, I may hear something different in the same story. These stories are still helpful today to strengthen our people.

When Sky Woman fell from Sky World, she grabbed some strawberry and tobacco plants, and these are two essential medicines that we use in ceremony today.²¹ These items reconfirmed the importance of Sky Woman. In almost every ceremony that I have experienced, tobacco is used in many ways. For example, tobacco is burned, and words are spoken with prayers to the Creator. Tobacco can also be tied up in a pouch to be given to someone when we ask for something from them. Tobacco ties are made for our dancers. Tobacco is a signal to communicate that we are coming in a good way and seeking assistance or help and that we come with good intentions. Each year we have strawberry ceremonies at the longhouse to thank the strawberry medicines that keep coming back to replenish our bodies. When a young woman comes of age, there is a puberty ceremony called the Strawberry Ceremony. One of the teachings I can recall from my Strawberry Ceremony is that if you cut a strawberry in half and look at all the seeds and the white part of that strawberry, it may remind you of a woman's uterus and the womb that we, as women, provide to our children.

The Creation Story illustrates that when Sky Woman's daughter passed away, strawberries grew from her body. They grow close to the earth for mothers and children coming to the land. It is a reminder for us to protect them and the role and responsibilities that women have to the land. For this reason, the strawberry is the woman's medicine.

²⁵ *Ibid.*

From Sky Woman's daughter's body also grew corn, beans, and squash; these foods are our life sustainers and the crops that our people continue to farm.²² They became known as the three sisters; the stories I was given are that the corn, beans, and squash are diverse plants, but they can grow and live in harmony together and protect one another. Here, the Creation Story teaches us that we can be distinct and different from one another but live in peace together prosperously. These lessons, teachings, and beliefs may be held in your heart similarly to the tobacco that grows from the heart of Sky Woman's daughter.²³ It infers that our women's hearts are sacred, much like the regard for the sacredness of tobacco. As Dr. Art Solomon articulates:

The woman is the foundation on which nations are built. She is the heart of her nation. If that heart is weak, the people are weak. If her heart is strong and her mind is clear, then the nation is strong and knows its purpose. The woman is the center of everything.²⁴

Many Haudenosaunee women, unfortunately, have interacted with violence in their lives; what the Creation Story reminds us of is how strong we are, what we can accomplish, what power we possess and the greatness that we are born with. These teachings illustrate the strength of our women and the importance they carry with them in all that they do.²⁵ It also reminds us that to kill a nation, you go after the woman, and that's why our resiliency is so important.

²²*Ibid* at 5.

²³ *Ibid*.

²⁴Vivette Jeffries-Logan & Marshall Jeffries, "Honoring the Hearts of Our Nations" (13 Feb 2013) online: *Decolonization Indigeneity, Education & Society* <<https://decolonization.wordpress.com/2013/02/13/honoring-the-hearts-of-our-nations/>>.

²⁵ *Ibid*.

The Great Law of Peace

The Great Law of Peace is the foundation of the Haudenosaunee Confederacy. The Great Law of Peace was brought to the Haudenosaunee peoples by the Peacemaker. The Peacemaker was sent with the message from the Creator. Peacemaker had to bring peace to warring nations. Our traditional laws come from creation, and we respect the agreements between the Haudenosaunee and all of creation. For example, there are agreements with the strawberry plant. We gather and give thanks to this plant for nourishing our bodies and thank it for returning to grow for another year. All the people who gather to give thanks can drink this strawberry juice, provide prayers to the plant, and dance to celebrate another harvest. The respect we have for the strawberry plant and its return is the same type of respect that we should have for all things in creation, including other human beings. Oren Lyons, a well-respected Onondaga faith keeper described our law as follows:

The natural law is that all life is equal in the great creation, and we the human being are charged with the responsibility (each in our generation) to work for the continuation of life. We, the human beings, have been given the original instructions on how to live in harmony with the natural law; It now seems that the natural world people are the ones who have kept to this law.²⁶

Ancestors of the Haudenosaunee peoples have been talking about this law with settlers since they invaded Turtle Island. Living and creating a society aimed at community wealth and earth sustainability doesn't appear to be a principle exercised by colonial forces. Great wars have raged in the name of peace and greed to gain lands and wealth for a colonial power while killing men, women, and children. The good message, Great Law of Peace,

²⁶ Beverley Jacobs, *International Law/The Great Law of Peace*, (Master of Law Degree, University of Saskatchewan, 2000) [unpublished] at 7 [B. Jacobs].

was meant to make a better way for all people to live in balance with one another and all of creation.

The Great Law of Peace came to the nations of the Haudenosaunee Confederacy because of the wars between them. We, as humans, were harming one another. There was so much death that a family could not grieve one death before experiencing another. It was time for a change. The Peacemaker carried this good message to the people. The Peacemaker travelled to each nation to speak to them about this good message that all people would operate as one, one person, one mind, one body, and one life.²⁷ The hope was that the nations would accept the good message and live according to the Great Law of Peace. A total of 50 chiefs from five nations embraced the Great Law of Peace. The chief role is challenging because you are responsible for caring for your people and the nation—the chief works for the people holding a type of political office position. Chiefs hold their position for a lifetime if they are not removed by their Clan Mother.²⁸ The Chiefs of each nations attend Grand Council meetings which handle matters that impact the entire confederacy. Clan Mothers select chiefs who are honest, reliable, and clear headed and have knowledge of Haudenosaunee laws.²⁹ Chiefs’ “hearts shall be full of peace and good will and their minds filled with a yearning for the welfare of the people of the Confederacy” - a place of safety and security for their people.³⁰

²⁷ *Ibid* at 12.

²⁸ Haudenosaunee Confederacy, “Government” (5 September 2022), online: *Haudenosaunee Confederacy* < <https://www.haudenosauneeconfederacy.com/government/>>.

²⁹ *Ibid*.

³⁰ *Ibid*.

Similarly, Haudenosaunee women become Clan Mothers to each clan and hold many responsibilities to different people. For example, I am part of the Turtle Clan, and at my longhouse, we have a Clan Mother who is a leader of our clan. She and her clan are responsible to select our clan chief. We can ask her if we have concerns, issues, or questions. This process comes from the Great Law of Peace, where women play a vital role in decision-making and unity. For example, Jigohasase, the mother of Nations, facilitated consensus-based decision-making and gathered nations to come together and agree to live in harmony. She is known as the mother of Nations because she was the first to accept the Peacemaker's good message.³¹

Jigohasase lived in a place where warriors could come rest, get food, and talk. The men would share their stories of war with her. The Peacemaker told Jigohasase that women were essential to this new way of life. That women would hold the clan titles, be Clan Mothers, and have the power to install and remove Chiefs from their roles and responsibilities. The clan mother is responsible for the clan titles and for naming all her clan's children. From the start of our foundation, the Peacemaker installed balance between genders; the clan mother would name the children, and the male would sing to the children to introduce them to their clans.³²

Jigohasase played a crucial role in negotiating and accepting the Great Law of Peace and ensured that women were upheld in all areas of life. As Barbara Mann explains:

The gantowisas [woman] enjoyed sweeping political powers, which ranged from the administrative and legislation to the judicial. The gantowisas ran the local clan councils. They held all the lineage wampum, nominations belts, and titles. They ran

³¹ B. Jacobs, *supra* note 26 at 14.

³² *Ibid* at 16.

the funerals. They retained exclusive rights over naming, i.e., the creation of new citizens and the installation of public officials. They nominated all male sachems as well as all Clan Mothers to office and retained the power to impeach wrongdoers. They appointed warriors, declared war, negotiated Peace, and mediated disputes.³³

Although the Great Law of Peace is grounded in peace and unity among nations, it is evident that women play a significant role in achieving this mission. The Women's Nomination Belt provided detail about our women's roles and responsibility.

Women's Nomination Wampum Belt

Wampum is an essential tool, historically used to record treaties with Europeans and other nations.³⁴ Wampum belts are created from beads made from quahog shells and communicate between nations and can illustrate signs of your office held. Wampum belts record vital agreements and moments and are "living records."³⁵ As the quahog shells are purple and white, some wampum beads are purple, and some beads are white. Using a specific colour on the belt creates a figure or image which represents a message, a story, a teaching, or an event that the belt is recording. Since we maintain an oral tradition, wampum belts can be read and interpreted by others to draw out the law and treaty-making exhibited through the belt.³⁶ Chiefs work for the betterment of the people. In the circle wampum, it looks like a large circle with strings attached to it. One of the strings is longer than the rest. The reason there is one longer string is because it represents the Haudenosaunee people. The longer string, when lying flat, is right in the

³³ Barbara Alice Mann, *Iroquoian Women The Gantowisas* (New York, Peter Land Publishing Inc, 2011) at 116.

³⁴ René R Gadacz, "Wampum" (7 Feb 2006) online: *The Canadian Encyclopedia* <<https://www.thecanadianencyclopedia.ca/en/article/wampum>>.

³⁵ Onondaga Nation People of the Hills, "Wampum" online:<<https://www.onondaganation.org/culture/wampum/>>.

³⁶ *Ibid.*

middle of the strings. The heart of the confederacy is the Haudenosaunee people. For example, wampum was used by 50 chiefs in the Circle Wampum containing 50 equal strands and one long strand. The 50 identical strands represent the chiefs and their power, and the one longer strand represents the people. From this, the people are the heart of the Haudenosaunee Confederacy.³⁷

Haudenosaunee women's political and societal positions was identified in the Women's Nomination Belt. The Women's Nomination Belt is a record of women's sacred roles and provides the ability of our Clan Mothers to confer the chiefs' titles to new chiefs as well as other vital responsibilities. The importance placed in trust to Haudenosaunee women is described by Arthur C. Parker, an archaeologist in New York State:

... 'Great Mother,' Ji-gon-sa-she, the Kakwah, and consulted her in every important detail. Without the approval of their 'Mother of Nations' and her sanction of Hiawatha's plans, the integrity of the principles of the confederacy of the Five Nations would have been assailed. But Ji-gon-sa-she who was regarded as a descendant of all the first Ye-go-wa-neh, the woman who was the mother of all the first Ongwe was sacred to her people, for her word was law and her sanction was necessary in all political measures of inter-tribal importance.³⁸

A Clan Mother listens to her people, considers their concerns, and values their input. The Haudenosaunee women's input is essential to the outcome of a decision, as it was when the confederacy was created. Jigohasase's word and sanction were critical to the creation of the confederacy, and so this importance is placed on Haudenosaunee women to keep the Great Law of Peace. The depiction on the Women's Nomination Belt is

³⁷ Onondaga Nation People of the Hills, "Circle Wampum" online: <
<https://www.onondaganation.org/culture/wampum/circle-wampum/>>.

³⁸ Sally Roesch Wagner, *Sisters in Spirit: Haudenosaunee (Iroquois) Influence on Early American Feminists*, (Native Voices Book Publishing Company, Summertown TN 2001) at 86 [Wagner].

women who are holding each other hands—showing the connection to all nations. The wampum is a critical living reminder of the position of Haudenosaunee women.

Haudenosaunee Women are vital not only to creation of the world and Haudenosaunee Confederacy but, are required for the continuance of the Haudenosaunee nation, confederacy, and people. In the Thanksgiving Address, Creation Story, and the Great Law of Peace we see that all three provide important spaces for women to be considered and involved in. In the next section we braid all three together.

Conclusion: Braiding the Foundations

A key takeaway from the Thanksgiving Address, the Creation Story, and the Great Law of Peace is the principle of respect - respect for all living things - recognition and respect toward each contribution to our daily lives, no matter the size of the gift. These three legal foundations provide a base for individuals to understand Haudenosaunee law and worldviews. When the community thrives, then so do the individuals within that collective. Together, people learn to show respect and gratitude to all beings.

Our Thanksgiving Address is one of the best grounding tools used at the start of a gathering. The Thanksgiving Address reminds us of what we are provided, and we thank all things that have contributed and continue to contribute to our daily lives. This reconfirmation of our Thanksgiving Address is an acknowledgment of our Creation Story and how this interdependence within creation allows us to succeed, thrive, and survive. In the Creation Story, we're told that Sky Woman's daughter gives birth to two males and that these brothers are asked to go all over Turtle Island and name all of creation. We

thank Grandmother Moon and our eldest brother, the Sun, for the work they have completed to bring us warmth during the day and control the tides at night for their work. The brothers provided the time and attention they showed in naming all and continued this work of balance.

When we were children in daycare, we were reminded to be kind to one another, share, and use our words. However, as we grow older, these principles related to behaviour and action are not reiterated to us every day. As a result, our efforts may no longer reflect those values and teachings. These foundational stories and understandings, particularly ones that provide you with the law for conduct and to be a good person, to walk in a good way, and to show respect to all of creation, create a robust worldview and a way of life, is the core of the Haudenosaunee Confederacy.

This foundation provides guidance in how we approach situations, disagreements, and living life. When it is constantly on your mind to maintain peace, and you employ that in every problematic task you encounter and understand, your decision has an enormous impact on yourself and your whole community. You can produce for yourself and your family and protect the seven generations that are coming. You can act according to the outcome that you would like to see, and that is community wealth. Our foundation provides a different connection to the land and all that it produces. The land, our stories, and our matriarchs embodied our resiliency as a people. Although damaged, the land has survived, and our stories have survived. However, colonial policies, laws, and invasions that tried to erase our traditional teachings, which have survived and erase our matriarchs who have survived, despite the continued violence against them, our nations have survived.

Our nations have had to survive the invasion of Turtle Island. The Doctrine of Discovery was the starting point to the colonizers assumed sovereignty over Indigenous peoples. In the next chapter I explain the Doctrine of Discovery and how it came to exist. I discuss how the doctrine has impacted Indigenous peoples and the colonial lens that the doctrine is rooted in.

CHAPTER TWO: THE DOCTRINE OF DISCOVERY

The Doctrine of Discovery began the assumed European sovereignty over Indigenous peoples and their traditional territories and resources. Canada continues to enforce Western perspectives and understandings through colonial legislation such as the *Indian Act* which has controlled Indigenous movement and decision-making power.³⁹ In this chapter, I outline a brief overview of how the Doctrine of Discovery invaded Turtle Island.

The Doctrine of Discovery began with a series of papal bulls issued by Catholic popes.⁴⁰ The Pope was the head of power over Christian princes.⁴¹ The overarching principle of the papal bulls was to conquer non-Christian lands and people. This principle was stated by Pope Innocent IV in 1240, when invading Muslim lands, by saying, "despite the fact that infidels possessed natural rights, they could be legally deprived of these by virtue of the pope's obligation to oversee the spiritual needs of his people."⁴² Poland relied on Pope Innocent IV's ruling in 1414 to justify Poland's disregard for the

³⁹ Act, *supra* note 3.

⁴⁰ Erin Blakemore, "This 500-year-old Catholic decree encouraged colonization. Will the pop revoke it?" (22 July 2022), online: *National Geographic History & Culture* <

⁴¹ Papal Encyclicals online, "Romanus Pontifex: Granting the Portuguese a perpetual monopoly in trade with Africa" (2017), online: Papal Encyclicals <<https://www.papalencyclicals.net/nichol05/romanus-pontifex.htm>> [Papal].

⁴² Jennifer Reid, "*The Doctrine of Discovery and Canadian Law*" (2010) 2 *The Canadian Journal of Native Studies* 2 335 at 338 [Reid].

Lithuanian "pagans" rights if they did not follow Christian natural law.⁴³ This painted Christianity and Pope views as superior to non-Christian beliefs or ways of life. The disregard for non-Christian lives creates a relationship of dominance while dehumanizing non-Christian people. Although the stated purpose of the Doctrine was to spread Christianity, it also provided a way to gain wealth, lands, and resources for Spain, Portugal, England, Holland, and France.⁴⁴ The Doctrine of Discovery is used and relied on as international law to uphold the underlying title of lands and resources to European nations.

The Doctrine of Discovery continues to impact many nations that were "discovered" by a European invader.⁴⁵ After Pope Innocent in 1436, Pope Eugenius IV granted Portugal a papal bull to "civilize and convert the Canary Islanders to the "one true religion" and "for the salvation of the souls of the pagans of the islands."⁴⁶ The Doctrine of Discovery includes the papal bulls of Dum Diveras 1452, Romanus Pontifex 1455, and Inter Cetera 1492. The Romanus Pontifex bull states, "In the name of God, it gives the King of Portugal and his successors the right not only to colonize but also to convert forcibly to Christianity and enslave 'Saraccnos ac paganos' (Saracens and pagans) in perpetuity."⁴⁷ These two bulls, the Dum Diveras 1452 and Romanus Pontifex 1455, were agreements made between the Pope and Portugal. The Dum Diveras between Alfonso V

⁴³ *Ibid.*

⁴⁴ Robert Miller, "*The Doctrine of Discovery: The International Law of Colonialism*" (2019) 5:1 *The Indigenous Peoples' Journal of Law, Culture & Resistance* at 37 [Miller].

⁴⁵ Ngata, *supra* note 7 at 34.

⁴⁶ *Ibid* at 36.

⁴⁷ Valentin Y. Mudimbe, *Romanus Pontifex (1454) and the Expansion of Europe*, ed by Vera Lawrence Hyatt & Rex Nettleford (Washington and London: Smithsonian Institution Press, 1995) at 60.

of Portugal and Pope Nicolas V. Dum Diversas allowed Portugal authorization for the west coast African slave trade.⁴⁸

The Dum Diversas applied to Africa as follows:

to invade, search out, capture, vanquish, and subdue all Saracens [Muslims] and pagans, whatsoever, and other enemies of Christ wheresoever placed, and the kingdoms, dukedoms, principalities, dominions, possession and all movable and immovable goods.⁴⁹

This papal bull was expanded in 1455 with the Romanus Pontifex papal bull. Romanus Pontifex allowed Christian European nations to claim lands during the Age of Discovery.⁵⁰ As earlier noted, Māori lawyer Moana Jackson better described the Age of Discovery era as the "Age of Genocide."⁵¹ Moana Jackson's term is more aligned with the actions of violence that were used to spread Christianity. Romanus Pontifex is an example of the "Papacy's claim to spiritual lordship of the whole world and its role in regulating relations among Christian princes and between Christian and 'unbelievers' ('heathens' and 'infidels')."⁵² The Pope was dividing and providing councils to different nations on international affairs. In 1492, the Inter Cetera by Pop Alexander VI provided a further "legal foundation for European colonialism and the slave trade."⁵³

Accompanying the papal bull is the concept of terra nullius, which is a Latin term for land that belongs to no one.⁵⁴ Terra Nullius allowed nations to determine that if the

⁴⁸ Indigenous values. "Dum Diversas: Papal Bull Dum Diversas 18 June 1452" (23 July 2018), online: Dum Diversas: <<https://doctrineofdiscovery.org/dum-diversas/>> [Values].

⁴⁹ Miller, *supra* note 44 at 36.

⁵⁰ Values, *supra* note 48.

⁵¹ Ngata, *supra* note 7 at 21.

⁵² Papal, *supra* note 41.

⁵³ Reid, *supra* note 42 at 338.

⁵⁴ USLegal, "Terra Nullius Law and Legal Definition (8, November 2022) online: *Legal Definitions* <<https://definitions.uslegal.com/t/terra-nullius/>>.

land was vacant, meaning not occupied by Christians or not discovered by a Christian King, then the land could be claimed. This papal bull outlined that "one Christian nation did not have the right to establish dominion over land previously dominated by another Christian nation."⁵⁵ Christian powers created a definition for "new discovered lands", and it was lands that were occupied by "heathens," "pagans," "gentiles," and "infidels."⁵⁶

The Pope's papal bulls sanctioned violence to accomplish this goal by using the terms it did. The dehumanization language of "heathens," "pagans," "gentiles," and "infidels" allows for a belief of superiority of Christians over non-Christians. The Doctrine of Discovery is the racist root used by the colonial Crown to assert assumed sovereignty over Indigenous peoples on Turtle Island. The Doctrine is the starting point of the forced removal of Indigenous self-governance and is reinforced by colonial policies, legislation, and legal systems forced onto Indigenous peoples today.

The continued use of the Doctrine of Discovery causes more damage to Indigenous nations on Turtle Island. The following sets out the subtle application of the Doctrine of Discovery in Canada by reviewing policies and laws which are used to weaken our nations and remove our traditional knowledge and ways of life.

The *Royal Proclamation* of 1763 was announced by King George III in an effort to gain an alliance on Turtle Island. After almost 150 years of European powers battling to gain territories and wealth, the signing of the Treaty of Paris in 1763 ended the Seven Years' War.⁵⁷ Britain gained virtually all of France's territories in North America by

⁵⁵ Values, *supra* note 48.

⁵⁶ United Nations, *supra* note 6 at 6.

⁵⁷ The Editors of Encyclopaedia Britannica, "*Treaty of Paris 1763*" (3 February 2021), online: Britannica <https://www.britannica.com/event/Treaty-of-Paris-1763>.

winning the Seven Years' War. The Royal Proclamation created the "proclamation line". It was the boundary to keep British settlers on the Atlantic coast from encroaching on Indigenous lands west of the Appalachian Mountains.⁵⁸ The "proclamation line" was disregarded, and encroachment started and continued from settlers moving towards westward expansion.⁵⁹ The Royal Proclamation is often referred to as the foundational document between Great Britain and British parliamentary institutions and is the document that recognizes Indigenous peoples' rights to land.⁶⁰

The Royal Proclamation set out how the British representatives were to negotiate treaties with Indigenous peoples.⁶¹ Indigenous nations were viewed as powerful allies during the Seven Years' War. This Proclamation spoke about protections for the seven Indigenous nations connected to Britain at the time; the nations would live under King George III's protection and be "unmolested."⁶² The Royal Proclamation also allowed King George III the first right to purchase Indigenous lands; he "prohibited any private person from directly buying Indigenous lands."⁶³

After the British began creating specific legislation about their relationship with Indigenous peoples, the British attempted to develop, build, and rebuild prior relationships in 1764. The Indigenous nations were seen as a military threat. Many

⁵⁸ History.com Editors, "Proclamation of 1763" (9 September 2019), online: History <<https://www.history.com/topics/native-american-history/1763-proclamation-of>> [History].

⁵⁹ *Ibid.*

⁶⁰ Government of Canada, "Royal Proclamation of 1763: Relationships, Rights and Treaties-Poster" (27 November 2013) online: Government of Canada <<https://www.rcaanc-cirnac.gc.ca/eng/1379594359150/1607905375821?wbdisable=true>> [Government].

⁶¹ Anthony J. Hall, "Royal Proclamation of 1763" (30 August 2019), online: The Canadian Encyclopedia <<https://www.thecanadianencyclopedia.ca/en/article/royal-proclamation-of-1763>> [Hall].

⁶² *Government, supra* note 60.

⁶³ Hall, *supra* note 61.

Indigenous nations supported the French in the Seven Years' War, so Britain needed to secure Indigenous allies. Sir William Johnson, head of the Indian Department, sent word to Indigenous nations in 1763 by sending Wampum strings, informing them about the Royal Proclamation.⁶⁴ The Royal Proclamation was described as a British proclamation to end the wars in the Great Lakes area and attempt to repair and build the Indigenous and British relationship. In July 1764, some 2000 Indigenous representatives from approximately 24 nations and Sir William Johnson gathered at Niagara Falls.⁶⁵ Sir William Johnson spent days at Niagara discussing the Royal Proclamation with Indigenous representatives. Over these days, the British representatives took part in Indigenous customs; it started by sending out wampum strings for the invitation to the Niagara meeting, providing oral statements and participating in gift-giving.⁶⁶ Sir William Johnson provided a Wampum belt, the Covenant Chain, to Indigenous representatives and stated:

Brothers of the Western Nations, Sachims Chiefs, & Warriors, You have now been here for several days, during which time we have frequently met to Renew, and strengthen our Engagements, & you have made so many Promises of your Friendship, and Attachment to the English that there now only remains for us to exchange the great Belt of the Covenant Chain that we may not forget our mutual Engagements....⁶⁷

After the Covenant Chain Wampum Belt was given to the Indigenous representatives, they used it as a tool to explain their understanding of the treaty they had created.⁶⁸

Wampum have been used to create relationships, treaties, and record important

⁶⁴ John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government" in *Aboriginal and Treaty Rights in Canada; Essays on Law, Equality, and Respect for Difference* Ed by Michael Asch (Vancouver: University of British Columbia Press, 1997) at 163 [Borrows].

⁶⁵ Government, *supra* note 60.

⁶⁶ Borrows, *supra* note 64 at 163.

⁶⁷ *ibid.*

⁶⁸ *Ibid.*

information. Wampum like the Covenant Chain and the Two Row are used to communicate and record important moments in history.

A Two-Row Wampum belt is a wampum belt that shows two purple lines surrounded by three white lines. One purple row represents the Indigenous peoples, the other purple row the settlers. Each purple row is governed by its laws and is not to be interfered with by the other. In between the two purple rows are three purple beads representing peace, respect, and friendship; these three white beads represent how to govern the nation-to-nation relationship between the Indigenous sovereign nations and the British. The exchange of the Wampum Belts shows the interaction and participation of both parties. As John Borrows says:

...often treat the Royal Proclamation of 1763 as a unilateral declaration of the Crown's will in its provisions relating to First Nations. It is time that this misunderstanding was corrected. First Nations were not passive objects, but active participants, in the formulation and ratification of the Royal Proclamation.⁶⁹

The *1763 Royal Proclamation* was not just automatically accepted into the lives of Indigenous nations because we are sovereign nations with our self-governance. It was solely up to the Indigenous nations if they wished to accept a treaty with another sovereign nation. The Royal Proclamation is noted in the *Tsilhqot'in Nation* case that doctrine of terra nullius has never applied in Canada. I would argue that the actions of the colonial Canadian government and Canadian courts show otherwise.

In *Tsilhqot'in Nation v. British Columbia*, the Supreme Court of Canada said:

At the time of assertion of European sovereignty, the Crown acquired radical or underlying title to all the land in the province. This Crown title, however, was

⁶⁹ *Ibid* at 155.

burdened by the pre-existing legal rights of Aboriginal people who occupied and used the land prior to European arrival. The doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada, as confirmed by the *Royal Proclamation* of 1763. The Aboriginal interest in land that burdens the Crown's underlying title is an independent legal interest, which gives rise to a fiduciary duty on the part of the Crown.⁷⁰

Considering the above, I question the following: if the doctrine of *terra nullius* never applied in Canada how could the Crown acquire anything at the time of assertion of European sovereignty to all the land in the province? How is it possible for two legally valid titles to exist over the same area of land? What are the parameters of the two concurrently existing title, specifically how can one title be burdened by the other? The Court in *Tsilhqot'in* also highlighted that *terra nullius* never applied in Canada because of the *Royal Proclamation of 1763*. However, the *Royal Proclamation* states:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds.⁷¹

The language of the *Royal Proclamation* is possessive and paternalistic. It speaks about “under our protection” and “parts of our dominions and territories” and “whereas it is just and reasonable, and essential to our interest.”⁷² Karen Drake connects *Tsilhqot'in* with the *St. Catharines Milling and Lumber Co (St. Catharines)* by highlighting that “[*Tsilhqot'in*] affirms the logic from *St Catherine's Milling* depicting Aboriginal title

⁷⁰ *Tsilhqot'in Nations v British Columbia* [2014] 2 SCR 257 para 69.

⁷¹ Government of Canada *250th Anniversary of the Royal Proclamation of 1763* (2016) online: <https://www.rcaanc-cirnac.gc.ca/eng/1370355181092/1607905122267#a6>.

⁷² Supreme Court Judgements, *St. Catharines Milling and Lumber Co. v. R. (1887)* 13 SCR 577) online: Supreme Court of Canada < <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/3769/index.do>>.

as a burden on the Crown's already existing underling title."⁷³ It appears that the Royal Proclamation gives Indians the Indian title only because another the British Crown said so. The Royal Proclamation described Indian title as second rate because the underlying title belongs to the Europeans.

The *St. Catherine's Milling* decisions at both trial and appeals levels, contribute greatly to Canadian legal understandings of Aboriginal title. However, there was little to no representation from Indigenous peoples in the matter. This decision related to St. Catharines lumber company cutting down 2,000,000 feet of lumber around Wabigon Lake in northwestern Ontario under a license from the Dominion government.⁷⁴ Ontario did not agree that the Dominion government, Canada, had the authority to issue a lumber license. Chancellor Boyd, the trial judge, agreed with Ontario and decided in their favour. On appeals to the Ontario Court of Appeal, the Supreme Court of Canada and the Privy Council all confirmed the lower court ruling and dismissed the matter. Essentially, Ontario denied that Aboriginal title is an "absolute title", as claimed by the Dominion.⁷⁵

Racist undertones and biases were evident in the trial decision as Chancellor Boyd labelled Indigenous peoples as "untaught", "uncivilized" and "rude red-man" who live in a "primitive state." While Chancellor Boyd drafted his decision in this matter, his two sons were fighting at Cut Knife Hill during the Northwest Resistance where

⁷³ Karen Drake "The Impact of St Catherine's Milling" in Law Society of Upper Canada, ed, Special Lectures 2017: Canada at 150: The Charter and the Constitution (Toronto: Irwin Law and the Law Society of Upper Canada, 2018) at 16 [Drake].

⁷⁴ *Ibid* at 6.

⁷⁵ *Ibid* at 8.

eight Canadians were killed and fourteen wounded.⁷⁶ In addition, during the trial, Poundmaker and Big Bear remained at large. It can be inferred that Chancellor Boyd may have had great difficulty being impartial on this matter. This case went on to appeal and Lord Watson heard the matter at the Privy Council. Lord Watson confirmed the lower court decisions. In the Privy Council court decision Lord Watson stated, “Indian title is “dependent on the good will of the Sovereign.”⁷⁷

Lord Watson also reinforced the notion that Aboriginal title is provided by the *Royal Proclamation, 1763*.⁷⁸ This means that Aboriginal title is provided by a government document and not held inherently because of Indigenous occupation to lands prior to contact. This was rejected by Judson J and Hall J in *Calder*, by Dickson J in *Guerin*, and in *Delgamuukw* which states: “Aboriginal title is *sui generis* insofar as “it characteristics cannot be completely explained by reference either to common law rules of real property or the rules of property found in aboriginal legal systems, it is a common law right insofar as its existence is not contingent on legislative or executive recognition.”⁷⁹ Additional case law has also recognized some of the power imbalances that exist between Indigenous peoples and the Crown. Chancellor Boyd and Lord Watson made a decision that has had a tremendous impact on Canadian Aboriginal law. Their reliance on the racist stereotypes of Indigenous peoples and the continued reliance of their decisions continue to perpetuate the on-going cycle of violence against

⁷⁶ *Ibid* at 10.

⁷⁷ *Ibid* at 15.

⁷⁸ *Ibid* at 12.

⁷⁹ *Ibid*.

Indigenous peoples while using an entire legal system to continue the racist Doctrine of Discovery and terra nullius.

The Royal Proclamation did not provide title to Indigenous peoples. How can another country give Indigenous peoples lands that their ancestors have lived with since time immemorial. I agree with Karen Drakes' views on terra nullius as follows:

It is true that since *Calder*, when Aboriginal title was recognized as an inherent and thus a common law right, what is now Canada was not viewed as being utterly devoid of humans at the time of European arrival. That being said, the doctrine of *terra nullius* is still operative. The reason Aboriginal peoples have a mere burden on the Crown's pre-existing and underlying title, instead of sovereignty, is because the land was viewed as *terra nullius*, or in other words empty of any people whose social and political organization was considered equal to that of Europeans. As a result, Europeans could acquire sovereignty over Indigenous societies. The only blemish on a title acquired by discovery is the 'burden' which has come to be known as Aboriginal title.⁸⁰

Another sovereign nation coming to Turtle Island and asserting their sovereignty and the Crown receiving underlying title means that the Crown used their power to assert their way of life onto our people. Prior to the invasion of Turtle Island, "title" is not a way that we would describe our connection to the land. Our Indigenous sovereignty is challenged by the British because of the enactment of colonial legislation: the *Gradual Civilization Act 1857*⁸¹ and the *Gradual Enfranchisement Act 1869*.⁸²

⁸⁰ *Ibid* at 20.

⁸¹ No. 59, *An Act to encourage the gradual civilization of Indian Tribes in this Province, and to amend the Laws relating to Indians*, 3rd Sess, 5th Parliament 20 Victoria, 1857 (second reading, Tuesday, 10th, March 1857) [Civilization].

⁸² *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, chapter 42*, S.C. 1869, c.6 [Enfranchisement].

Before the Civilization and Enfranchisement Acts, there was an Act *for the better protection of the Lands and Property of the Indians in Lower Canada* which defined who was an “Indian” according to the government.⁸³ Both the Civilization and Enfranchisement Acts were aimed to control Indigenous peoples. It was utilized to control so that settlers could gain more access to land and resources. In the *Gradual Civilization Act*, the British Crown was inviting “Indians” who meet a certain standard to enfranchise into Euro-Canadian society. This act allowed for “male Indians” to become “enfranchised Indians,” and enfranchisement meant you were giving up your identity as an “Indian.” The “enfranchised Indian” under the *Civilization Act* could not live on his nation’s reserve but was provided not more than 50 acres land from the reserved lands for his ownership along with a cash sum to replace his annuity payments.⁸⁴ The *Gradual Civilization Act* provided proof that law was used as a tool for European powers to replace Indigenous sovereignty. It established a system where an enfranchised Indian person can replace their Indian identity with a second-class “settler” identity and take Indigenous community-held lands which upheld colonial world views with personal profit and gain as the goal.

The shame of being Indian was initiated through law because, if you were an Indian, you were unable to be free in your movement or able to celebrate your culture. Indigenous cultural ceremonies were outlawed, and Indigenous peoples were called “savages”. The sections below are examples of how the shame of being an “Indian” was legislated:

III. ...Indian of the male sex, and not under twenty-one years of age, is able to speak, read and write either the english or the french language readily and well,

⁸³ William B. Henderson, “Indian Act” (16 December 2020), online: The Canadian Encyclopedia <<https://www.thecanadianencyclopedia.ca/en/article/indian-act#:~:text=The%201850Act%20for%20the%20better,on%20blood%2C%20and%20essentially%20said>>.

⁸⁴ *Civilization*, *supra* note 81 at s. VII.

and is sufficiently advanced in the elementary branches of education and is of good moral character and free from debt, then it shall be competent to the Governor to cause notice to be given Official Gazette of this Province, that such Indian is enfranchised under this Act;"... "all other enactments making any distinction between the legal rights and abilities of Indians and those of Her Majesty's other subjects, shall cease to apply to any to apply to Indian so declared to be enfranchised, who shall no longer be them. deemed an Indian within the meaning thereof.⁸⁵

VII. Every Indian enfranchised under this Act shall be may be allotted to him by the Superintendent General of Indian affairs, a piece of land not exceeding fifty acres out of the lands' reserved or set apart for the use of his Tribe, and also a sum of money equal to the principal of his share of the annuities and other yearly revenues receivable by or for the use of such tribe ; such sum to be ascertained and paid to him by the said Superintendent...⁸⁶

Along with the shame of being an "Indian" and volunteering to leave your identity behind, you could choose a new name for yourself. The "enfranchised Indian" could choose his Christian name or a name that would have to be approved by the Superintendent. Your colonized name replacement could shed the shame of being an "Indian." A name is something sacred. In the longhouse, I received my name through a naming ceremony. My family and my Clan Mother spoke about me and decided what my name would be. My name was provided to me in the longhouse ceremony by my Chief who introduced me in the naming ceremony at my longhouse to my community. All people who attended the ceremony danced and rejoiced with all who were named. My community knows my name; it was a community effort to name me. When we introduce ourselves, it is with our name, our nation, and our community. The *Gradual Civilization Act* is a legal tool to replace our Indigenous identity with a "baptismal name."

V. Every Indian examined by the Commissioners under Indian to take this Act, shall at the time of such examination declare to them a name and the name and surname by which he wishes to be enfranchised surname. and thereafter known,

⁸⁵ *ibid* at s.III.

⁸⁶ *Ibid* at s VII.

such name being his baptismal name if he have one, and such surname any one he may choose to adopt which shall be approved by the Commissioners...⁸⁷

According to the *Civilization Act*, Indigenous wives were unable to choose for themselves what they wanted. If their husband became an “enfranchised Indian,” so did the wives and their children. No one was considered to be an Indian anymore.

VIII. The wife, widow, and lineal descendants of an Indian children enfranchised under this Act, shall be also enfranchised by the operation thereof, and shall not be deemed members of his former tribe, unless such widow or any such lineal descendant being a female, shall marry an Indian not enfranchised...⁸⁸

XII. The capital of the annual share of the wife of any Indian enfranchised under this Act in any annuity or annual sum share of the payable to her Tribe, shall be held in trust by the Superintendent General of Indian affairs for the purposes of this section and the interest thereof shall be paid to her yearly while she be the wife or widow of such Indian, and upon her death or re-marriage one half of such capital sum shall be divided equally among her children, and the other half shall revert to the Tribe to which she belonged ; but if she have no children, the whole shall revert to the said Tribe.⁸⁹

The entire family could be removed from their home communities and unable to stay with their extended family. In Haudenosaunee communities specifically, we lived in multi-generational family units. Wives and mothers received support from their extended families with childrearing. A child could spend extended periods with their Elders, allowing for the transmission of oral history and values communicated from one generation to the next.

The *Civilization Act* provided a legal tool that prevented family support and traditional knowledge from being supplied to the next generation, which would cause a

⁸⁷ *Ibid* at s V.

⁸⁸ *Ibid* at s VIII.

⁸⁹ *ibid* at s XIII.

disconnect to a person's identity. This Act promoted the Euro-Canadian identity by providing incentives to become an "enfranchised Indian." For the male, it was the gift of fee simple title to land and band annuity payments. For women who became widows, she would supposedly receive a sum annually until her death or until she re-married an "Indian," which then absorbed her back into the "Indian" identity.

Colonial legislation continued to be forced upon Indigenous peoples with the *Gradual Enfranchisement Act 1869*. In addition to the forced enfranchisement of a wife and children, if her husband chose to become an "Enfranchised Indian" from the *Gradual Civilization Act*, the *Gradual Enfranchisement Act* took it a step further; any Indian women who married outside of their "tribe, band, or body [ceased] to be a member of her own community"; she and her children were now a part of her husband's band. If she married someone other than an "Indian," she also ceased to be an "Indian" entirely, and any of her children were no longer "Indian."

6. ... Provided always that any Indian women 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; Provided also, that any Indian woman marrying an Indian of any other tribe, band or body shall cease to be a member of the tribe, band or body to which she formerly belonged, and become a member of the tribe, band or body of which her husband is a member, and the children issues of this marriage, shall belong to their father's tribe only.⁹⁰

The Act created massive issues with gender inequality, community connection, and connection to identity. We, Haudenosaunee people, born from our mother's womb, are a part of that nation. How is it possible that foreign legislation and politics get to decide who you are? My parents are from two different nations. One is from the Ojibway nation

⁹⁰ Enfranchisement, *supra* note 82 at s.6.

and the other from the Seneca Nation. I gain our clans through our parents' clans; my father's nation transmits clans through your father's line and my mother's nation through her line. I have participated more in my mother's community than in my father's. This section would have impacted that. I am a registered Indian to the Six Nations of Grand River Territory. My band membership is there, and it is one of the communities I call home. This section of the *Gradual Enfranchisement Act*, if it had been enforced on my family, it would have legally impacted my ability to access my home, family, community, and culture.

The *Gradual Enfranchisement Act* and *Civilization Act* have had profound impacts on Indigenous nations. Both formulated the 1867 *Indian Act*. At my community of Six Nations, there were detrimental impacts of the imposition and forced enactment of *Indian Act*. In October of 1924, the Royal Canadian Mounted Police raided and padlocked the Haudenosaunee Confederacy council house with a Canadian government declaration to dissolve the Haudenosaunee Confederacy Chief Council and replace it with the *Indian Act* legislated band council system. This raid was a retaliation of Chief Deskaheh's (Levi General) interventions at the League of Nations in 1923 for the Haudenosaunee to be recognized as a sovereign nation to aid in stopping non-Indigenous squatters from invading our territory.⁹¹ Canada and Indian Affairs were no longer wanting to speak with or deal with our Haudenosaunee Confederacy Chiefs and instead used forced legislation to enforce a band council in which only males could be elected to

⁹¹ Alicia Elliott, "The meaning of Election for Six Nations" (21 May 2015), online: *briarpatch* <<https://briarpatchmagazine.com/articles/view/the-meaning-of-elections-for-six-nations>> [Elliott].

hold office. Not only is this band council system not our self-governance system, but it also begins with a gender hierarchy system that is not our values.

Section 10 of the *Indian Act* sets out the colonial system:

10. The Governor may order that the Chiefs of any tribe, band or body of Indians shall be elected by the male members of each Indian Settlement of the full age of twenty-one years at such time and places, and in such manner, as the Superintendent General of Indian Affairs may direct, and they shall in such case be elected for a period of three years, unless deposed by the Governor for dishonesty, intemperance, or immorality, and they shall be in the proportion of one Chief and two Second Chiefs for every two hundred people...⁹²

The band council system was unwanted in the Six Nations community and was evident with the eight hundred signatures on a resolution against it.⁹³ The resolution did not matter, as the first *Indian Act* band council was called to as the "Mountie's council."⁹⁴ According to George Decker, an American lawyer and ally, "it turned out that 12 Six Nations men willing to serve could not be found...without including seven Six Nation [men] in the employ of the Canadian government."⁹⁵ A band council was formed, and tension remains today between the Haudenosaunee Confederacy Chiefs Council and the elected band council.

In 1977, *Davey et al. v. Isaac et al* discussed the rightful leaders of the Six Nations.⁹⁶

At the Supreme Court of Canada, the court decisions stated:

The contention of the appellants being that legal title to the lands occupied by Six Nations was not vested in the Crown because the patent of the Grand River lands to the Six Nations executed by Governor Simcoe, in the name of George III on January 14, 1763, was effective to pass title to the lands to all members

⁹²Enfranchisement, *supra* note 82 s.10.

⁹³ Elliot, *supra* note 91.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Davey et al v Isaac et al*, [1977] 2 SCR 897.

of the Six Nations Band in fee simple. This submission was accepted by the judge at trial. His conclusion was, however, reversed by the Court of Appeal, which held that the tract of land in question still vested in the Crown...⁹⁷

The enforcement of the *Indian Act* detrimentally impacted the Haudenosaunee traditional governance structure. Although the Haudenosaunee Confederacy still stands firm with its leadership in our community, this legislation was an example of government tools deployed to create a divide in our communities. Much like the “enfranchised Indian” vs “Indian” and the marrying outside of your community vs. marriage within, the government is constantly drawing legal lines to define Indigenous peoples’ identities which have vast impacts on a person and their support, self-worth, and access to the community. The divide or break down in our communities was only more evident with the enforcement of the *Indian Act*.

The *Indian Act* controls all status Indians and reserve lands in Canada. The *Indian Act* has developed over time, from 1876, with the most significant changes happening in 1951 and 1985. The *Indian Act* has evolved but remains a racist and sexist piece of Canadian legislation, which continues the paternalistic relationship with the subtle principles of the Doctrine of Discovery that Canada created. The *Indian Act* allowed for legal violence against Indigenous peoples by limiting our movement, connection to community and culture, and identities. The sexist aspect of the *Indian Act* still exists despite amendments in 1985. The 1876 *Indian Act* legislated that if a status Indian woman married a non-status Indian, she lost her status. Still, if a non-status woman married a status male Indian, she would gain status; both the gain and loss of status have a significant impact on

⁹⁷ *Ibid* at 902.

their families and themselves.⁹⁸ The consequences would be the loss of connection to the community, loss of culture, and the loss of identity.

In 1876, any Indian who gained a degree or was a doctor, clergyman or lawyer was automatically enfranchised, which meant again they lost their Indian status and connections to the community.⁹⁹ Moving forward to 1884, the government made it mandatory for status Indians to attend residential schools.¹⁰⁰ The schools did not allow for children to practice their culture or language. The schools alone cause a massive disruption in the passing of traditional knowledge, identity, and love to our children. The schools continue to have an impact because of the intergenerational trauma they created.

In 1885, in addition to the children being unable to grow, be educated, and learn within our communities, the government also made it illegal to practice our spiritual ceremonies.¹⁰¹ Also, in 1885, the Pass System is put in place to restrict the movements of Indians leaving the reserves without permission from the Indian agent.¹⁰² For more of a disruption to practicing our culture in 1914 under the *Indian Act*, Indians had to gain permission to wear their "costume". Cultural dance outside of reserve lands was outlawed; until 1925, when cultural dancing is outlawed entirely.¹⁰³ The word "costume" refers to our traditional regalia, which can carry many meanings, from the colours used to the furs, feathers, and sacred items that are carried and worn by the dancers. This term "costume" is

⁹⁸ Native Women's Association of Canada, "The Indian Act Said What" (1 January 2018), online: Native Women's Association of Canada <<https://www.nwac.ca/wp-content/uploads/2018/04/The-Indian-Act-Said-WHAT-pdf-1.pdf>>.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

disrespectful to our people and our cultural practices and could be connected to why people may think it is appropriate to use our identity as Halloween costumes. Indigenous peoples have raised awareness with the "culture is not a costume" campaign against the use of cultural wear sold as Halloween customs. Still, it continues and is another example of how the stereotypes of Indigenous peoples are constantly reinforced in today's social norms.

The *Indian Act* governed our movements, lives, and rights. In 1918, the government was willing to and had the power to lease out Indian lands to non-Indians for farming.¹⁰⁴ The decision-making power was another way for the government to take up and use land reserved for Indians to benefit the government if they deemed the Indians not to be using the land appropriately. A short nine years later, it becomes illegal for Indians to hire lawyers and legal representation to battle land claims issued against the federal government without government approval.¹⁰⁵

Over the years, I have been asked why we did not fight legally for our lands; it was illegal at one time to do it. There were many barriers to fight for Indigenous lands. First, the *Indian Act* clearly set out the illegalities to hire a lawyer. Second, it was difficult to raise the monies required to hire a lawyer for the matter which includes research, writing legal documents, court appearances, photocopying, and travel to name a few expenses. Third, it is difficult to find a lawyer who understands our Haudenosaunee ways of being, and the reason why there is nonparticipation in the elected band council and elections. Finally, we find it difficult to bring a land title claims in a foreign legal system. The government legally controlled our actions then required us to ask them for

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.*

permission to correct the harmful decision they made when they decided to take up Indian lands. The government taking up reserve lands, the illegal sales of lands, and the inability to hire a lawyer to advocate for lands in a foreign legal system made it impossible to protect our lands and our children's future. Our children and their connection to their home territories are essential but, if we become a landless nation, where do our children get to call or come home? Although, this section was repealed in 1951, some twenty years later, it still impacted our land and territories because much of it was already taken.

If all this disconnection to community and identity was not enough, the Canadian government then enacted 1951 amendments to the act called the "double mother rule." This meant that if your if your mother and grandmother gained status through marriage, you lost your status. Now the women who married to a status Indian and had children could lose access to their communities. To cut off a person's status impacted their ability to live on reserve lands, the ability to participate in certain community activities such as voting in band elections. It created a divide amongst family members. For example, some cousins could have status while others do not. This also only impacted the mothers, and this further enforced the gender inequalities in the *Indian Act*. In exchange for this new "double mother rule," the Canadian government repealed the bans on women not voting in band elections, cultural dancing, our ceremonies, and land claims.¹⁰⁶ The 1951 *Indian Act* still had the mandatory enfranchisement remaining in effect and impacted Indians who "married out" (i.e., the status women who married a non-status Indian). Indians who gained a degree or

¹⁰⁶ *Ibid.*

became a doctor, lawyer, or clergyman were no longer considered to be Indians.¹⁰⁷ Forced enfranchisement meant that Canada had taken on the parental role of Indigenous peoples. If there are no Indians and there is no Indian department, that means no treaty, policies, framework, inquiries, commissions, lands claim, and Indigenous rights issues; it was a means to force Indians to become second-class Canadians.

Since we were not seen as people with good morals, it was not until 1960 when Indians could vote in federal elections.¹⁰⁸ Today, people are encouraged to vote and have a voice in who is in power in Canada. The ability to vote was not provided to Indigenous peoples for years because the Canadian government used voting to promote enfranchisement. Only one year after we had voting power, the mandatory enfranchisement law was repealed from the *Indian Act*. Shortly after this, in 1969, Prime Minister Trudeau's government released the "white paper" intending to eliminate any rights of Indigenous peoples as well as to eliminate the *Indian Act*.¹⁰⁹ If no *Indian Act*, there are no Indians to manage. Government resources could be allotted to different places, and no issues with Indian lands or resources. In defence of the "White Paper," Trudeau stated it would give the "right of Indian peoples to full and equal participation in the cultural, social, economic and political life of Canada," completely missing the point that Indigenous peoples a distinct group and connected to this land; and have a treaty relationship with the Crown that comes with responsibilities on both parties.¹¹⁰ In reply to the "White Paper" the "Red

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ Naithan Legace & Niigaanwewidam James Sinclair, "The White Paper, 1969" (11 September 2015) online: The Canadian Encyclopedia < <https://www.thecanadianencyclopedia.ca/en/article/the-white-paper-1969>>.

¹¹⁰ Facing History and ourselves, "White Paper, Red Paper: Stolen Lives: The Indigenous People of Canada and the Indian Residential Schools" online: Stolen lives: The Indigenous Peoples of Canada

Paper" was written by Harold Cardinal in defence of Indigenous peoples treaty rights.¹¹¹

He stated:

The new Indian policy promulgated by Prime Minister Pierre Elliott Trudeau's government, under the auspices of the Honourable Jean Chrétien, minister of Indian Affairs and Northern Development, and Deputy Minister John A. MacDonald, and presented in June 1969 is a thinly disguised programme of extermination through assimilation. For the Indian to survive, says the government in effect, he must become a good little brown white man. The Americans to the south of us used to have a saying: "The only good Indian is a dead Indian."

Indigenous peoples have been and are heavily governed by a foreign system that does not value our lives, culture, or community.¹¹²

The Indian Act continues to control status-Indians every day. Our aunts, uncles, great-aunts, great uncles, and grandparents have survived this treatment and stereotypes of Indians during their lifetimes. We are experiencing them now. By writing this thesis, I battle for the rights of the coming children, hoping that one day their lives will be lived in a genuine nation-to-nation relationship between the Canadian government and the sovereignty of Indigenous nations across Turtle Island. We are not Canadian citizens but members of our communities. I am not a Canadian; my identity is a Haudenosaunee Anishinaabe kwe from the Six Nations of Grand River Territory and the Wikiwemikoong Unceded Territory. I am from two great confederacies, Haudenosaunee Confederacy and Three Fires Confederacy; my ancestors and nations had travelled, navigated, lived, and

and the Indian Residential Schools/Civil Choices <<https://www.facinghistory.org/stolen-lives-indigenous-peoples-canada-and-indian-residential-schools/chapter-8/white-paper-red-paper>>[facing].

¹¹¹ Ian Getty, Harold Cardinal (15 May 2011) online: The Canadian Encyclopedia <<https://www.thecanadianencyclopedia.ca/en/article/harold-cardinal>>.

¹¹² *Facing, supra* at note 110.

cultivated these lands long before any European invader stepped a toe on the soil. Still, under the *Indian Act*, I am classified as an Upper Mohawk registered to No. 40 Six Nations of Grand River Reserve.

Conclusion:

The *Indian Act* was meant to control Indigenous peoples on our lands—a reoccurring theme. It was also meant to manage our movement, our lives, and our identities for the government to rid themselves of the “Indian problem” and to eventually have no “Indian department.” It was meant for us to be absorbed into the Canadian society as civilized and well-mannered people, according to the British definition of what well-mannered is. All legislation that assumes control over Indigenous peoples is a tool that the Canadian Government has maintained to support its racist roots which began with the Doctrine of Discovery and the papal bulls. The racist origin in Canada continues to be relied on as international law and is used as legal justification for Crown action. As stated by Robin Diangelo:

...when a racial group's prejudice is backed by legal authority and institutional control. This authority and control transforms individual prejudices into far-reaching system that no longer depends on the good intentions of individual actors; it becomes the default of society and is reproduced automatically.¹¹³

Some European invaders could have believed that they were saving the "savages" souls by discovering our lands. They have caused trauma, pain, and suffering to many Indigenous peoples. Every day in Canada, a status Indian is governed by the *Indian Act* and relies on the racist history used to create the *Indian Act*. By relying on the Doctrine of

¹¹³ Robin Diangelo, *White Fragility: Why it's so hard for white people to talk about racism* (Boston: Beacon Press, 2018) at 21.

Discovery, Canada reinforces stereotypes of "savages," "heathens," and "infidels" that the Pope used to describe us. These stereotypes have been recreated in Canadian education systems, Canadian legal systems, and the Canadian policing units, to name a few. The impacts of the Doctrine are vast. Residential schools, violence against Indigenous women and girls, Indian status and other implications of the *Indian Act* are alive today because Canada continues to use the subtleties of the Doctrine of Discovery as its legal backing to exercise their assumed sovereignty over our Indigenous Nations.

In the next chapter I focus specifically on the impacts of the Doctrine of Discovery on Indian status and residency, band elections and voting under the *Indian Act* and violence against Indigenous women to point examples on how this racist doctrine still impacts Haudenosaunee women today.

CHAPTER THREE: IMPACTS OF THE DOCTRINE OF DISCOVERY

The doctrine of discovery is not history; it is operative withing Canadian law now. It is the current legal explanation for why Aboriginal peoples have only Aboriginal title (if they can pass the hurdle of satisfying the test for Aboriginal title) instead of sovereignty.¹¹⁴

Doctrine into Case Law

The United States of America (USA) cemented its legal relationship between Indigenous peoples and settlers in the 1823 case of *Johnson v. M'Intosh*. Johnston, a settler, purchased land directly from Indigenous peoples, and another settler, M'Intosh, purchased the same land from the USA government; the court ruled that the sale of land directly from the Indigenous peoples was void; even though that sale pre-dated the sale from the government. In this case, the court accepted the Doctrine of Discovery as the rule of law on "whether American Indian nations owned the absolute title, or the fee simple title, to their lands and thereby possessed the property right to sell land to whomever they wished."¹¹⁵ This case, as a foundation of the Doctrine of Discovery used in law, is still relied on today both in the USA and Canada - across Turtle Island. The caselaw disregards Indigenous peoples' sovereignty and replaces it with a foreign legal

¹¹⁴ Drake, *supra* note 73 at 21.

¹¹⁵ Robert J Miller, "Review of *Buying America From the Indians: "Johnson v. McIntosh" and the History of Native Law Rights* By Blake A. Watson" (2013) 33:2 Great Plains Quarterly at 115 (<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=3495&context=greatplainsquarterly>).

system that the colonizer deemed valid to govern over Indigenous peoples and our territories.

The use of the Doctrine of Discovery is to seek lands by using religion to control space and landmasses that were occupied and governed by Indigenous peoples and Indigenous laws; was a disregard for Indigenous sovereignty. An example of disregarding Indigenous peoples' sovereignty is a statement made by the Supreme Court of Tennessee. Justice John Catron, in an 1835 case, found "a principle... in the law of Christendom" allowed for "discovery" and "gave title to assume sovereignty over, and to govern the unconverted [non-Christian] people of Africa, Asia, and North and South America."¹¹⁶

The USA relied on the Doctrine of Discovery in 2005 in a case of one of our Haudenosaunee nations – the Oneida Nation: *City of Sherril v. Oneida Indian Nation of New York*. The court's first footnote written by Justice Ruth Bader Ginsberg states

... fee title to lands occupied by Indians when the colonists arrived became vested in the sovereign – first the discovering European nation and later the original states and the United States".¹¹⁷

Since the USA and Canada are a connected landmass and common law system, Canada also relies on the USA and their interpretation on the Doctrine of Discovery. Next, I will provide examples of Canadian case law and its impacts on Haudenosaunee communities.

In Canada, a Quebec court found in 2001 that Theresa Santoro could not inherit her mother's reserve property via the will because Theresa had married a non-Indian.¹¹⁸

¹¹⁶ United Nations, *supra* note 6 at 5.

¹¹⁷ *City of Sherrill v Oneida Indian Nation of N.Y* 544 U.S 197 (2005) at footnote 1.

¹¹⁸ Shin al et, *Annotated Aboriginal Law: The Constitution, Legislation, Treaties and Supreme court of Canada Case Summaries*" (Toronto, ON: Thomson Reuters, 2019) at 159 [Shin].

According to section 24 of the *Indian Act*, an Indian can transfer property to the band or another band member once a minister has approved the transfer. Theresa had lost her Indian status. Theresa's nephew was able to take possession of the property. Once Theresa regained her status in 1985, she tried to take possession of the property; she wrote the Department of Indian Affairs and her band but was unsuccessful. When Theresa died, she left her mother's property in her will and gifted the property to her son, Curtis. Curtis brought the matter to the court to seek a declaration that he was the rightful owner. However, the court found that Theresa could not inherit the property when her mother passed away, and possession of the property was not awarded to her when she had her status reinstated in 1985.¹¹⁹ Since Theresa could have never had rightful possession of the property, she could not pass it to her son Curtis in a will. The *Indian Act* is the successor of other colonial policies like the *Gradual Civilization Act* and the *Enfranchisement Act*. These colonial policies tremendously impact Indigenous nations, especially Indigenous women.

In Canada, the *Devereux* 1965 case is another example of how individual Indians do not have control over their lands.¹²⁰ In this case, Rachel Davis, an Indian registered to Six Nations, upon her death in 1953, willed her 225-acre farmland to a non-Indian, Harry Devereux. According to section 50 (1) of the *Indian Act*, she cannot will her lands to a non-resident of the reserve.¹²¹ Although the lower court agreed that Harry Devereux did have

¹¹⁹ *Ibid.*

¹²⁰ *The Queen v Devereux* [1965] SCR 567.

¹²¹ DIALOG: Résea de recherche et de connaissances relatives aux peuples autochtones, "The Queen v. Devereux Supreme Court of Canada – [1956] SCR 567" online: Indigenous Jurisprudence Authochtone <<https://jurisprudence.reseaudialog.ca/en/case/the-queen-v-devereux/>> .

a right to possess the farm, the Supreme Court of Canada disagreed and awarded the farm back to the band council.

These cases and statements allow Canada to continue to rape Indigenous peoples' lands and territories and allow for Indigenous nations not to have the space, resources and land required to ensure a happy and healthy environment for the children coming.¹²² The enforcement of colonial law like the *Gradual Civilization Act*, the *Enfranchisement Act*, and the *Indian Act*, combined with case law, have all legally allowed harm to be enforced on Indigenous peoples. Residential schools, marrying outside your status, and the criminal legal systems have used tools that reinforced systemic racism that negatively impacts Indigenous women, thus re-confirming the racist Doctrine of Discovery which allowed for the taking of Indigenous lands and territories.

The Indian Act

The *Indian Act* abolished the traditional matriarchal society for a patriarchal one. Our men turned to the Indian Act to get back into a position of strength, and they still use it today.¹²³

The *Indian Act* is an act that combines some of the colonial policies of the *Gradual Civilization Act* and *Enfranchisement Act*, and the *Indian Act* is still in place today. Band councils are enacted under Section 74, and they are legally recognized by the colonial governments.¹²⁴ The Six Nations community has a Haudenosaunee Confederacy, and it follows their values, laws, and traditions, but the colonial elected band council system tried

¹²² The term rape is used here because Haudenosaunee Worldviews see the Mother Earth as our Mother who provides all we require in life. The taking of the lands, waters, and resources and causing pollution is raping our Mother Earth from her gifts that she provides humans with. It is a matter of respecting the interrelationship of all living things on Mother Earth.

¹²³ Green, *supra* note 9 at 11.

¹²⁴ Act, *supra* note 3 at s 74.

to remove the Haudenosaunee Confederacy; however, the traditional leadership, including Chiefs, Clan Mothers and Faithkeepers still exist and function today.

The enforcement of the elected band council at Six Nations was an attempt to overthrow the traditional Haudenosaunee Confederacy. In *Logan v Canada*, the Haudenosaunee Confederacy fought against the elected imposed band council in a surrender of land matter.¹²⁵ At the time, there were 3,600 eligible voters, however, "a great majority" of Six Nations members did not participate in the band council governance.¹²⁶ There were two ballots on this matter wherein at the first vote, only 54 people voted and 37 voted in favour. In the second ballot, only 53 people voted with 30 people voting in favour.¹²⁷ Although, the court noted that "It is difficult to see what advantage would accrue to the Six Nations Indian by surrendering the land in question," the Judge still validated the surrender of land.¹²⁸ The Judge accepted the surrender as valid because under section 39 of the *Indian Act*, absolute surrender of lands is valid if the land is surrendered to Her Majesty, the band council has followed procedures and votes, or the Governor in Council accepts it.¹²⁹ In the case of *Logan* the Judge even questions what the benefits Six Nations in surrendering the land.¹³⁰ It is simple to see how this checklist in the *Indian Act* land surrender is not aligned with Haudenosaunee community.

¹²⁵ *Shin*, *supra* note 115 at 192.

¹²⁶ *Ibid*.

¹²⁷ *Ibid* at 193.

¹²⁸ *Ibid*.

¹²⁹ *Ibid* at 190.

¹³⁰ *Ibid* at 193.

The *Logan* case is similar to *Hill v. R (1998)*¹³¹ because there was a surrender vote where Six Nations had more than 4,000 eligible voters, but only 280 voted.¹³² A Haudenosaunee Confederacy Chief presented a 300-signature petition that, although they did not participate in the elected band council vote, they would have voted against the surrender. The court again found that the surrender vote complied with procedures set out in the *Indian Act* and the validated the surrender. The Canadian government has installed their laws; the Canadian government governs the reserves. By validating the votes and surrendering lands that the majority would not have surrendered, these court cases show the disregard for the needs of the Six Nations community. The elected band council is a system that is ruled and created by a colonial government that disregards Indigenous sovereignty. Many community members may choose not to participate in an oppressive colonial tool like the elected band council.

Therefore, in these two above-noted cases, we see that the Haudenosaunee Confederacy can provide documentation for a more significant number of community members who don't wish to participate in the elected band council vote but are willing to participate in fighting against the surrender of lands. These lands are a part of acknowledging the sacrifices made by the Haudenosaunee peoples who fought as allies of the British in the American Revolutionary War. The Haldimand Treaty secured six miles on each side of the Grand River from its mouth to the source which is approximately 950,000 acres of land.¹³³ This land was set aside by proclamation by Frederick

¹³¹ *Hill v. R (1998)* 151 F.T.R 285

¹³² Shin, *supra* 118 at 192.

¹³³ Six Nations Lands and Resources, "Six Miles Deep: Land Rights of the Six Nations of the Grand River" (2015), online: Information Index <<https://www.sixnations.ca/LandsResources/SixMilesDeepBooklet2015Final.pdf>> at 3.

Haldimand, a British Crown representative, to the Six Nations People. Although the land was set aside it was not actually protected from encroachment.

Through the dispossession of the land in cases like the ones discussed above, the Six Nations of the Grand River has roughly less than 5% (approximately 46,500 acres of land).¹³⁴ The land is more than just property. It is our mother, much like our human mothers, who provide for us. Our Mother Earth provides what we need to survive, so we must tend to her like she is our kin.

Unfortunately, the loss of land, the *Indian Act's* impact, and an elected band council have negatively impacted Haudenosaunee women. The importing of colonial systems and policies came with the importing of colonial and patriarchal views on women. The colonial system held men as superior to women which harmed the traditional roles and authority of Haudenosaunee women. Haudenosaunee women have titles of authority wherein Clan Mothers are respected for their leadership roles. Haudenosaunee women made decisions about war. For example:

...women could hinder or actually prevent a war party which lacked their approval by not giving the supplies of dried corn and the moccasins which the warriors required... The importance of clan matrons in deciding the fate of captives, whether they would be adopted to replace a lost clan member or tortured as revenge for a death within the clan, is well known."¹³⁵

Haudenosaunee women play a vital role in the longevity of the nation.

The impacts of the Doctrine of Discovery upon Haudenosaunee women are devastating. It impacts our relationship to the land as the Doctrine of Discovery was a

¹³⁴ *Ibid* at 4.

¹³⁵ Martha Champion Randle, *Iroquois women, then and now*, in Reprint: *Iroquois Women an Anthology* ed W.G. Spittal (Iroquois Iroquois Publishing and Craft Supplies July 1990) at 139 [Randle].

way to take Indigenous lands, control and displace them from their connection to the lands, territories, and ancestors. The disconnection to the lands also damaged our ability to provide the best for our children. The disconnection from the land also damaged family relationships which impaired Haudenosaunee women to return home to their families. Six Nations of the Grand River is where some of my ancestors' bones rest. It is a land rich with knowledge and much to teach us, but to be disconnected is to lose out on the traditional identity of the Haudenosaunee people. Haudenosaunee women are sacred. The women provide life much like Mother Earth does. They both give all that we require to survive. As with Mother Earth, women carry and give life, so we are the title holders to the lands and territories. Clan Mothers and women have raised their voices to protect the people from the continued destruction and the taking of our lands and territories because women are the protectors. Any theft of the lands and territories directly attacks Haudenosaunee women's authority.

Indian Act and "Marrying out"

The colonial policies impacted more than just land; they affected the way of life. The *Indian Act* is a colonial legislation which has tried to remove the traditional knowledge, the traditional life milestones, and the traditional governance. One of the ways to remove the Indian other than civilizing or enfranchising was to remove the Indian mother; the *Indian Act* removed them when they married a non-Indian - they were no longer considered Indian. How do you kill a nation? You kill its women - so if women could not pass their Indian identity or their Indian status to their children, you killed the Indians. Marrying out was how the *Indian Act* disconnected us from our cultural traditions, our family, and our land.

Haudenosaunee marriage was different from colonial weddings because women did not lose their identity under Haudenosaunee laws. The marriage didn't change a woman's life. A young woman's mother would start looking for a suitable young man so "...after adolescence her marriage would be arranged by her mother and the mother of a suitable man. Marriage would not change her residence, name, or place in the clan."¹³⁶ He would come into her life, start attending her longhouse, and their children would attend her longhouse. These are concrete examples of how women are sacred to the Haudenosaunee people and that women have vital roles within their nations.

Haudenosaunee Law recognizes women to be powerful, unlike in patriarchal systems where women were not in positions of authority. Haudenosaunee peoples are matrilineal which provides a safe space for women to speak their minds, be in leadership roles, manage the household and hold and succeed as leaders of our clans. Our marriages and the power relationships between the partners were equal compared to an imbalance between sexes. Haudenosaunee society upheld women and girls:

... Matrilocal among the Mohawks, gave the woman the utmost security. There were no discontinuities in her upbringing. Desired as the one to carry on the clan and its prerogatives, and through her children, to keep up the strength of the numbers of the clan, the girl was fondly and permissively treated as the boy.¹³⁷

The *Indian Act* legislated a power imbalance between our men and women. Colonization imported and enforced gender inequality. "Gender equality (inequality) was not an issue during pre-contact eras because each person was valued and held an important role within

¹³⁶*Ibid* at 137.

¹³⁷ *Ibid*.

the community: men, women, elders, and children.”¹³⁸ It used a legal tool to provide a division between the people and allowed for harmful societal hierarchy for example, status and non-status. It allowed the treatment of men and women to be different where women were seen and treated as differently than men.

The patriarchal system detrimentally impacted our Haudenosaunee matriarchal governance system by forcing patriarchy through the *Indian Act*. It regulated who could remain and live on reserves. It provided rules for individuals who could participate in elections. Indian status was decided by a colonial system about who receives status and who doesn't. It has become a symbol of who belongs and who doesn't. The reality is that the colonial system cannot define us because it isn't Indigenous; it doesn't have the same worldview.

The *Indian Act* and the marrying out clauses tried to erase the authority and protection of our women. Marrying out of Indian status provided a legal route to remove Indigenous women from their lands and territories and to remove Indigenous children from their homes and territories. Haudenosaunee women were rich – meaning that they governed lands and participated in nation-to-nation relationships. For example,

The earliest treaties were signed by Matrons and chiefs, later agreements only men signed. Early land holdings were in women's names.¹³⁹

Haudenosaunee women are not weaker than men. Women are not less powerful than men, and there shouldn't be a divide between the sexes. It should be a communal goal for

¹³⁸ Cynthia D. Stirbys “Gender- Based Analysis and Differing Worldviews” (2008) 26: 3-4 Canadian Woman Studies 138 at 140.

¹³⁹ *Ibid* at 141.

a happy and whole community where everyone is respected, everyone is cherished, and there is an acknowledgement of everyone's contribution to the community. It is this type of mentality that makes the community strong. The women can see the good in all. The *Indian Act* tried to shatter that. The *Indian Act* worked against Haudenosaunee women but was unsuccessful in erasing our authority and roles in our communities. However, our men and our communities have been affected by patriarchy; it still is an infection by the colonizer that we are battling.

Case law, colonial policies and legislative acts are still a power source that continues today against Indigenous peoples. Haudenosaunee women's authority to parent their children is challenged. They couldn't be raised in our communities connected to their families and loved ones. Disconnecting Haudenosaunee women from our homes is a direct consequence of the Doctrine of Discovery and its power over Indigenous peoples on Turtle Island.

Sometimes the status of Indigenous peoples' rights is referred to as "benefits."¹⁴⁰ Benefits is the incorrect term. We do not benefit from our people getting abused, dying at higher rates, having higher levels of poverty, and surviving the impacts of intergenerational trauma rooted in the Doctrine of Discovery and colonization. Canada damaged our culture, language, traditions, and pride during the "dark and shameful chapters of [Canada] our past."¹⁴¹ A country tried to eradicate people, whole nations of

¹⁴⁰ Government of Canada, "About Indian Status" (25 February 2022) online: *Indian Services Canada* <<https://www.sac-isc.gc.ca/eng/1100100032463/1572459644986>>.

¹⁴¹ Helena Hanson, "Trudeau Is Speaking Out About The 'Dark & Shameful Chapters' of Canada's Past" (2 September, 2020) online: *Narcity Ottawa* <<https://www.narcity.com/ottawa/canadas-history-has-some-dark-shameful-chapters-acknowledges-trudeau>>.

men, women, and children, all for wealth in our land's natural resources. The continued effects of Canada's "dark chapters" was not just a period; it is not over; it is happening now, and it has been since the papal bulls.

The Residential School and the Impacts on family systems
Mohawk Institute "Mush Hole" Brantford, Ontario

When I was a child at my grandmother's trailer on Six Nations of Grand River Territory, she and I talked, and she shared a story about her time at school. I had never spoken to my grandparents about school in any in-depth discussions. I never really felt there was an exception for me to finish high school or even carry on to post-secondary studies. My grandmother told me about being hit in school. She told me, "if they hit me in school, I should cup my hand, so the strap would only hit some and not all of my hand." My young, uninformed mind could not understand this. I remember thinking to myself, why would a teacher hit me? Hitting me isn't allowed. I did not know at that moment that my grandmother was telling me about her experience at Mohawk Institute residential school. The Mohawk Institute, commonly known as the "Mush Hole," is a short drive away from my grandmother's trailer. People referred to the institute as the "Mush Hole" because the children ate "porridge for breakfast every day and for supper five times a week," according to student accounts and an 1895 menu.¹⁴²

I have visited the Mush Hole residential school and many times, and a feeling of sadness overcomes me each time. On one visit, I arranged for my family and some friends to attend a tour of the school. I took my younger cousins and nephew with me. It

¹⁴² Elizabeth Graham, *The Mush Hole: Life at Two Indian Residential Schools* (Waterloo, Ontario: Heffle Publishing, 1997) at 25 [Graham].

was vital for me to provide a chance for them to have some insight into the harms that have been committed to our people so that if one day they encounter racism, they would understand the injustices Canada has committed against them.

The Mush Hole was established by the New England Company (NEC) "...with the aim of "civilizing" Native peoples and producing ministers and teachers who would act as agents of "civilization" and teaching farming and trade skills; useful in Native communities."¹⁴³ The original location of the Mush Hole was within the Indigenous community. In 1840 the community was relocated approximately 17 km away by the government, making it difficult for parents to visit their children.¹⁴⁴ Originally, Rev. Robert Lugger was the schoolmaster, and he offered classes in spin and weaving for the girls and tailoring, carpentry, and mechanic for the boys.¹⁴⁵ Later, the NEC employed Robert Ashton who was a schoolmaster at an England Industrial school in 1872.¹⁴⁶ Robert Ashton reported his findings at the Mush Hole as "sloppy" and "set up a strict system of discipline" at the institute.¹⁴⁷

A former student, Martha Hill attended the school from 1912 to 1918 and she described Ashton as cruel. She said, "When he gave you a licking, he used the cat-o'-nine-tails".¹⁴⁸ Haudenosaunee children in community were raised in a good way.

¹⁴³ *Ibid* at 7. The author used the term, Native. At different times different terms have been used to describe Indigenous people. In this paper, Native, Aboriginal, Frist Nation, and Indigenous are used to describe the same general population of people. Today, Indigenous people may identify with their nation's identity instead of Aboriginal, Indigenous, or other terms that have been used before. [this should be moved to beginning of thesis]

¹⁴⁴ *Ibid*.

¹⁴⁵ *Ibid*.

¹⁴⁶ *Ibid* at 9.

¹⁴⁷ *Ibid*.

¹⁴⁸ *Ibid* at 355.

Children were not punished; they participated in activities as soon as they were able, were not disciplined in any harsh physical fashion, nor weaned too young. Surrogate mothers were always available, and in the extended household, there was no chance for isolation or neglect of the child.¹⁴⁹

There would have always been a connection to the community. The violence against the children and the repeated lack of respect for Indigenous culture are the reasons why Haudenosaunee children started to feel shame in who they were and laid the groundwork for intergenerational trauma.

Indigenous children who attended the school were not able to speak their language and got punished if they did. The punishment made way for the students to lose their language while they used English in their daily lives. Losing language causes a disconnection from a person's community, family, and teachings. Mush Hole student Emmert General from 1932-1938 says, "I [he] spoke my Native language when I went there, but if you tried to speak to someone in your language, you'd always get the strap or something- they figured we were talking about them. We got disciplined for that."¹⁵⁰

I do not speak any Indigenous language fluently. My family did not speak any Haudenosaunee language around me. When my father and his family tried to teach me Ojibway when I was younger and in grade school, I didn't want to learn, mostly because I did not want the shame of being Indian. Another male Ojibway student was teased in grade school for his long hair. He and his family were pow-wow dancers. It is a great honour to dance. The long hair represents a connection from your spirit to Mother Earth, but other students made fun of him. The teasing was so bad that the principal had to walk

¹⁴⁹ Randle, *supra* note 135 at 137.

¹⁵⁰ Graham, *supra* note 141 at 374.

him from class to class to explain why he had long hair. This is what I mean by shame. While I cannot speak for him and how he felt, what I can say is I felt shame. The other students who mocked him were mocking our culture, beliefs, and community. So, although I defended him on the playground, I did not want to engage in my traditional language because of the shame.

During the residential school tour, I wanted my younger cousins and nephew to understand our past in hopes of making them strong in their identities and in hopes that they never are touched by the thoughts of shame of being Indigenous. I do carry those intergenerational traumas because of the injustices committed against Indigenous peoples. The bible was translated into the Mohawk language so the invaders could communicate their beliefs to us, if you kill our language, then the true meanings of one's culture cannot be fully communicated to one another.¹⁵¹

I attend many ceremonies but cannot understand them entirely because most are in Indigenous languages. I must get the English version of the tradition explained to me after, and there is a loss of connection with the translation. Our trauma is still happening; only 8 of 67 former "Mush Hole" students who were interviewed can speak their language; they also described a "deep sense of loss, saying losing the language, whether individually or collectively, and the associated loss of their culture, was the worst thing about the schools."¹⁵² The loss of language was a path for the government to replace the Indian identity with a white, Christian identity. It was a step forward in the plan to eliminate Indians, Indian culture, and Indian children. The beatings, unhealthy

¹⁵¹*ibid* at 22.

¹⁵² *ibid.*

conditions, and loss of identity and culture in residential schools removed our traditional laws of the great peace and respectful relationships with one another. As a former student, Lorna, who attended the Mohawk Institute from 1940 to 1945, stated:

We had the opposite- no more government, no more mama, no more daddy, no more uncle, no more sister, no more longhouse, no more way of life. The whole thing was disrupted, and the people who were put at residential schools were molested. So, there was a mental as well as physical abuse that went on.¹⁵³

Feeling alone in a world that does not appreciate your community, culture or traditions and instead describes a child's family members and community as "savages" is not a place for a person to feel loved or valued. This life is far from what the Haudenosaunee Great Law of Peace describes. In our Thanksgiving Address, after we are finished thanking the natural elements that we are thinking of, we also say:

We have now arrived at the place where we end our words. Of all things we have named, it was not our intention to leave anything out. If something was forgotten, we leave it to everyone to send such greetings and thanks in their way. And now our minds are one.¹⁵⁴

This shows that we are inclusive. We want a respectful relationship with everything in our life cycle. We welcome all this so that we as a whole community can live in balance with each other, and this balance was completely thrown off track with the enforcement of foreign policies and practices.

The residential schools outlawed our Indigenous culture and traditions. The residential schools how our children rounded up and forced to attend them. The residential schools made run aways who were captured return to the residential schools.

¹⁵³ *Ibid* at 375.

¹⁵⁴ Native Self-Sufficiency Center, *Thanksgiving Address Greeting to the Natural World*, (Corrales, New Mexico: The Tracking Project) at 16.

The residential schools imprisoned our children, and this practice has continued with the criminal legal system.

Criminal legal system and violence against Indigenous women

The criminal legal system continues to control Indigenous peoples, with Indigenous incarceration rates higher than the general population and even higher among Indigenous women. Indigenous women sentenced to correctional facilities, “make up 42% of the maximum-security women’s population in Canada, and 50% segregation placements.”¹⁵⁵ The criminal legal system is another way to remove and restrict Indigenous peoples. To kill a nation, you kill its women or lock them up and remove them from the community and society. The narrative of Indigenous women as “unruly” is typical to justify today's treatment of Indigenous women including the numbers of missing and murdered Indigenous women and girls and the high rates of Indigenous women in correctional facilities.

The violence against Indigenous women has become a social norm. In 2019, the Missing and Murder Indigenous Women and Girls National Inquiry released its report; the report noted:

Indigenous women and girls are being criminalized as a result of colonization and their resistance to colonial violence, including systemic oppression and marginalization. Therefore, Canada is incarcerating Indigenous women and girls because of their fight against colonization or due to the impacts of colonization on them.¹⁵⁶

¹⁵⁵ The Native Women’s Association of Canada, *“Indigenous Women in Solitary Confinement: Policy Background”* (Ottawa: 2017) at 6.

¹⁵⁶ Canada, The Law Commission of Canada and/or the Miscarriages of Justice of Commission, *Injustice and Miscarriages of Justice Experienced by 12 Indigenous women: A Case for Group Conviction Review and Exoneration* (9 May 2022) at 10.

A tool of colonization is naming Indigenous women “Squaw” was a tool used.

"Squaw" is a racist term used to describe Indigenous women. It is a term used to disrespect Indigenous women and it conveys a racist viewpoint; for example, it "is a synonym for prostitute, harlot, hussy, and floozy."¹⁵⁷ Colonizers' stereotypes remain today due to a lack of education into why stereotypes involving Indigenous women came to be, aiming to discredit our women and our sacredness. According to the colonizer narrative:

...Indigenous women's "lifestyles," which are typically blamed for this violence, it is societal indifference and the sociopolitical barriers that Indigenous women experience that keep them at risk. Such systemic violence toward Indigenous women has been called 'structural violence'...¹⁵⁸

Because of this, our capabilities are challenged.

Colonial laws and policies were aimed to control Indigenous women and they used the *Indian Act* as the legal backing to create a colonial standard of civilized and created a way for Indigenous women to lose their identities and communities. Indigenous women are held to a colonial standard. These negative stereotypes are contained within colonial systems like the criminal legal system.

The criminal legal system, which has a disproportionate number of Indigenous peoples criminally charged. The criminal legal system relies on the Doctrine of Discovery through previous case law that allows them to govern over Indigenous peoples. The system disproportionately affects Indigenous women because it removes

¹⁵⁷Debra Merskin, "The S-Word: Discourse, Stereotypes, and the American Indian Woman" (2010) 21:4 Howard Journal of Communications at 348 (https://www.torontomu.ca/content/dam/aec/pdfs/The_S_Word_Discourse-Stereotypes-and-the-American-Indian-Woman.pdf).

¹⁵⁸ Baskin, *supra* note 8 at 2089.

Indigenous women from our communities, negatively impacts our homelife, and enforces our participation in the Canadian legal system, a foreign system, when Indigenous our legal systems are disregarded.

Conclusion

The impact of the Doctrine of Discovery is found throughout Canadian society. That is because it is the basis on what the settler or colonial society relies on to continue its assumed sovereignty over Indigenous peoples. The Doctrine of Discovery is the starting point for the creation of Indian status under *Indian Act*, the “marry out get out” policies, powers to create and enforce residential schools, and the criminal legal system today. Indigenous peoples have long been at the hands of colonial policy which has caused a disconnection from our homes; our communities; our people; it has caused the loss of land; it has caused injustices to be committed against our children, women, and our men. If Indigenous peoples’ sovereignty was respected, the numbers of Indigenous peoples in custody and the disproportionate rates of missing or murdered Indigenous women would be different. The colonial law is a tool that relies on the Doctrine of Discovery in the first cases mentioned in this chapter, and it continues to be relied on today.

In 2017, Canadian Prime Minister Justice Trudeau released a statement on National Aboriginal Day saying:

No relationship is more important to Canada than the relationship with Indigenous People. Our Government is working together with Indigenous People to build a

nation to nation, Inuit- Crown, government-to-government relationship- one based on respect, partnership and recognition of rights.¹⁵⁹

Throughout this chapter, you have read the racist doctrine that is embedded within settler society, and it is the very law that the colonial state of Canada stands on to continue being Canada, so the question is, how can Canada create relationships with Indigenous peoples and accomplish a re-build with Indigenous people, if the foundation of Canada is the subtle application of the racist Doctrine and Discovery.

The Doctrine of Discovery allowed for colonial laws and powers to create the *Indian Act*. It is this power that has created spaces which contribute to the intergenerational trauma that is happening in our communities. In the next chapter I provide case studies involving Haudenosaunee women and impacts from Indian status, residential school abuse, and resident by-laws that all attack the sacredness of Haudenosaunee women. I also start to turn away from all the negative impacts and start to discuss a new approach to justice in colonial Canadian courts, a Haudenosaunee approach to justice.

¹⁵⁹ Canada, Prime Minister of Canada Justin Trudeau, *Statement by the Prime Minister of Canada on National Aboriginal Day*, (statement), Ottawa Ontario (21 June, 2017).

CHAPTER FOUR: THE COLONIAL COURT IMPACTS & A HAUDENOSAUNEE APPROACH TO JUSTICE

With the import of settlers, so too came foreign laws and the colonial government enforced them on Indigenous peoples. These foreign laws and policies had different impacts based on a person's sex. Some laws impacted where children attended school and what age it became mandatory to go to school. Some laws determined the identity of an Indigenous person and their children (i.e., who is a status Indian) and determined who is and is not Indigenous. Colonial law is a powerful tool that has been used consistently against Indigenous peoples. From the time of the papal bull invasion of this territory until today and for the foreseeable future, we are still dealing with the high rates of violence against women, and Indigenous women are still constantly dealing with the severe impacts of colonial state sexism and dehumanization. Residential schools and band councils are two avenues highlighted in this chapter which are some of the tools used to tear down Indigenous nations. The attempt to tear down Haudenosaunee nations on Turtle Island has only enabled Haudenosaunee nations to remain strong but there has been damage due to the creeping in of colonial worldviews. Some Haudenosaunee nations have consistently worked on nation to nation-building by utilizing a colonial court that employs the principles of the Haudenosaunee people. Working on the nation-to-nation relationship is still a reinforcement of the resiliency of our people and strength.

Residential Schools and Physical Abuse

Residential schools in Canada are more than a stain on Canadian history. They are examples of an ongoing process to exclude and reform Indigenous peoples into settler society. At the time of this writing, several unmarked mass graves were located by Indian residential schools. At Cowessess First Nation in Saskatchewan, there was a discovery of 751 unmarked graves; although not clear at this moment, the bodies are thought to have a connection to the Marieval Indian Residential School (1899 to 1980s).¹⁶⁰ A mass grave, which had 215 children's remains, was found near Kamloops Indian Residential School.¹⁶¹ Another mass grave was found with 160 remains by The Penelakut Tribe near the Kuper Island Residential school in British Columbia.¹⁶² These findings were on many public media platforms. There was a call to cancel Canada Day because of the horrible treatment of Indigenous people.¹⁶³ Thousands showed up to march across Turtle Island with some shouting "no pride in genocide."¹⁶⁴

These recent discoveries have shocked people. Several years ago, I would visit with an elder from my community. We would meet and go on talks and walks. She and I went out one day and ended up at the Mush Hole and the Mohawk Chapel (Her Majesty's Royal

¹⁶⁰ BBC, "Canada: 751 unmarked graves found at residential school" (24 June 2021) online: *BBC CANADA AND USA*: <<https://www.bbc.com/news/world-us-canada-57592243>>.

¹⁶¹ Ian Austen, "'Horrible History': Mass Grave of Indigenous Children Reported in Canada" (28 May 2021), online: *The New York Times* <<https://www.nytimes.com/2021/05/28/world/canada/kamloops-mass-grave-residential-schools.html>>.

¹⁶² CBC News, "B.C. First Nation says more than 160 unmarked graves found" (12 July 2021) online: *CBC News British Columbia* <<https://www.cbc.ca/news/canada/british-columbia/penelakut-kuper-residential-school-1.6100201>>.

¹⁶³ CTV News, "Shame on Canada': Thousands attend Cancel Canada Day Tally on Parliament Hill" (1 July 2021) online: *CTV news Ottawa* <<https://ottawa.ctvnews.ca/shame-on-canada-thousands-attend-cancel-canada-day-rally-on-parliament-hill-1.5493234>>.

¹⁶⁴ *Ibid.*

Chapel of the Mohawks) and was the first Protestant church in Upper Canada, it was the church that Mush Hole students attended.¹⁶⁵ We walked and talked as she gave me stories, thoughts, and wisdom about my troubles. We stopped and sat on a rock by the street which was a short distance from the Mush Hole. She then told me a story about students who attended the Mush Hole. She told me, "One night they [the children] arrived, and the next they were gone. The child marched down this street to a mass grave." It was the first time I had heard of mass graves. Now the discoveries have started. We have known for years that there are unmarked graves. Our ancestors' spirits have not been treated respectfully. This treatment is our reality. Those are our people. Our family members were buried in unmarked graves because they were Indigenous. Burials of Indigenous children would have been dramatically different if our ancestors had passed away in our communities. Their spirits would have been respected and honored.

Our respect, love, and caring are what those unmarked mass graves have taken away from our ancestors by denying our traditional death ceremonies. In 2015, when the Truth and Reconciliation Commission (TRC) Report released six volumes of its findings, volume four was titled "Canada's Residential Schools: Missing Children and Unmarked Burials: The Final Report of the Truth and Reconciliation Commission of Canada."¹⁶⁶ It has been six years since the TRC report was released and many government messages have talked about a way to work towards reconciliation with Indigenous people. I believe that

¹⁶⁵ H.M. Royal Chapel of the Mohawks, "Welcome to H.M.Royal Chapel of The Mohawks where Royalty and Nations Unify" online: <https://mohawkchapel.ca>.

¹⁶⁶ Canada, Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Missing Children and Unmarked Burials: The Final Report of the Truth and Reconciliation of Commission of Canada*, (Report) volume 4 < https://web.archive.org/web/20200717144330/http://www.trc.ca/assets/pdf/Volume_4_Missing_Children_English_Web.pdf >[TRC].

some of the messages and actions are performative and result in little positive movement forward. The TRC report was released in 2015 and only now there are resources for some communities to find the unmarked graves.¹⁶⁷ Reconciliation is a buzz word. The TRC report volume four said:

...many students who went to residential school never returned. They were lost to their families. They died at rates that were far higher than those experienced by the general school age population. Their parents were often uninformed of their sickness and death. They were buried away from their families in long-neglected graves. No one took care to count how many died or to record where they were buried.¹⁶⁸

We know that our ancestors are still out there and have not been found yet. Still, we wait for our loved ones to be returned home after many years. Six years ago, this call to action was published.

Call 73 of the TRC is:

We call upon the federal government to work with the churches and Aboriginal community leaders to inform the families of children who died at residential schools of the child's burial location, and to respond to families' wishes for appropriate commemoration ceremonies and markers, and reburial in home communities where requested.¹⁶⁹

This call like many other Indigenous focused reports, inquiries, and commission that have recommendations remained unfulfilled. It is a shame for all the time, effort, and resources that have been spent to produce reports and recommendations that produced little follow through.

¹⁶⁷ Ka'nhehshi:io Deer "Less than half of the \$200M requested for burial searches at residential schools funded", CBC News Indigenous (29 September 2022) <https://www.cbc.ca/news/indigenous/residential-schools-burial-search-funding-requests-1.6598566>.

¹⁶⁸ TRC, *supra* at 165 at 4.

¹⁶⁹ Canada, Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* at 12 <https://web.archive.org/web/20200506065356/http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf>.

The TRC was negotiated as part of the Indian Residential School Settlement (IRSS). The settlement happened after seventeen years of the Canadian government fighting against Indigenous survivors in the courts.¹⁷⁰ For seventeen years, Canada fought hard to not to be held accountable for the actions that they allowed to happen in the schools. Canadian policies, even while under British control, funded services that aimed to control and kill Indigenous peoples. These schools are one of the reasons that there is a massive disconnect between some Indigenous people and their culture. I never heard my grandmother speak about culture or her language. She attended the Mush Hole. We never shared a cultural experience. Canada must not only be accountable for all the actions that it took part in since the invasion of these lands. The harm from the intergenerational trauma has ongoing damage and continues to harm our children through persistent systemic racism. The settler's government must actively take steps to heal the continuing harm.

Abuse that happened at the Mush Hole is recorded in the 1914 case of *Miller v Ashton*.¹⁷¹ Miller sued for damages for the punishments that students experienced under Superintendent Ashton's rule. Sisters Hazel and Ruth Miller, alongside Emma and Edith Issacs attended the Mush Hole and ran away together in 1913.¹⁷² Ashton determined that Ruth was the leader and punished her by locking her in a small cell and then whipped her (the Mush Hole had the cat-o-nine tails until 1915).¹⁷³ Hazel, Emma, and Edith were locked in a small room. They all had their hair cut in and did not receive full rations of food

¹⁷⁰ Thomas L McMahon, *The Horrors of Canada's tort law system: the Indian Residential School Civil case* at 3 [McMahon].

¹⁷¹ *Ibid* at 5.

¹⁷² *Ibid*.

¹⁷³ Graham, *supra* note 141 at 23.

while being punished.¹⁷⁴ When their fathers learned about their daughters' punishment, they spoke to the Six Nations Council. Six Nations Council paid a \$100 deposit to a lawyer and sought funding from Indian Affairs to pay the legal fees.¹⁷⁵ After an investigation, Chief George Miller of Six Nations wanted to go to take the school to court. Indian Affairs Assistant Deputy J.D. McLean did not approve the request. Indian Affairs cited that this issue appeared to be a private dispute between Chief George Miller and Ashton.¹⁷⁶

Chief Miller and the council viewed this issue as an event that impacted all the residential school students. The case claimed that harm was caused to the girls. The first ground was having their hair cut off; the second was being restricted to the sick room for three days; the third ground was the issue of the rations of food, and finally, the fourth ground was Ruth being held in a cell. The jury dismissed all but one of the grounds. After a 12-hour trial, the jury awarded Ruth \$100.00 because of her claim to have been kept in 3 feet by 6 feet cell in the Mush Hole. Ruth was only provided water and bread to eat one day out of the three days she was held in the cell. TRC aimed to uncover injustices that the children of the residential schools endured and provided space for survivors to heal from the abuses. *Miller v Ashton* case made it to court, but many others did not. A Mush Hole student recounted of a violent encounter with an authority figure was:

The principal came down and he strapped her until she an epileptic seizure. The child tried to protect her but we couldn't because he was starting to strap her and lick her and he just kept on, and the girls were standing around and one of the girls pulled the strap from his hand from behind and kicked it, and all the girls tried to kick it away, and he shoved everybody ran out of the lavatory and into the playroom, and that

¹⁷⁴ McMahan, *supra* note 169 at 5.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

when he got the strap and came after everyone and started strapping everybody wherever he could swing the strap.¹⁷⁷

How horrifying for all those children watching it, and how traumatic for the student that had to endure that. How heartbreaking is it to know those children had no recourse for what was happening to them? The school's aim was supposed to civilize our ancestors. In this recount, you see the ladies or the girls stepping up to try to help their colleagues even though that strap then turned on them. Residential schools like the Mush Hole broke down identities. When faced with so much violence trying to return home, the intergenerational trauma that it caused and the absolute painful memory of the experience, and just reading this encounter is difficult. The harms are countless and very real; unfortunately, little was done to protect these children legally.

These children grew up harmed and internalized some of the hate that they received at these schools. The internalization of racist world views on Indigenous peoples was imported into our communities and continues till today. Community members sometimes reiterate some of the negativity their parents were told while they were in residential schools. Some racist notions are against women and are contained in the *Indian Act*. The racist and sexist *Indian Act* continued to treat women as second-class community members in our homes. Residential school was a tool used to carry out and deconstruct our authority and leadership as women in our community by breaking us down and determining the worth of women according to an outsider's definition.

¹⁷⁷ Graham, *supra* note 141 at 35.

Status and Residency

Earlier I reflected on a story about how my identity changed because my mother found out that our matriarchal lineage is Seneca and not Mohawk. The impacts and fears it caused me were profound. I always retained my Indian status, but it brought up an old memory of my cousin telling me that I did not belong in my community because I lived in the city. We were children and at such a young age, my cousin tried to enforce boundaries on my identity; thankfully, I've always had a community. My grandmother and mother married men that were recognized as Indians under the *Indian Act*. So, my status and band membership were never in question.

When I got a bit older and was in conversation in Toronto with a friend, he told me that he didn't have status, but his cousins did have Indian status, and their mothers were sisters. I didn't understand this. He knew and visited his community and family members, but it was confusing to me how one side of a whole family could have a different status. This conversation made me aware of Canada's dividing lines amongst our communities. Indian status may seem like a ticket to being officially recognized as an Indian. The reality is that Indian status is only official when it comes to Canada's definition of who is an Indian. Canada also decides who can and cannot reside in Indian reserves. If Canada defines who is and isn't Indian, they also get to determine who has access to Indian status rights. Women and children are victims of the sexist *Indian Act* legislation. Over the years and many court cases, the *Indian Act* and its sexist impacts have changed.

For example, in 2001, a civil suit was brought against Canada in the Ontario Superior Court of Justice to challenge the validity of Bill C-31, which is a part of section 6 of the Indian Act.¹⁷⁸ Connie Perron, a 57-year-old Mohawk grandmother from Tyendinaga reserve, brought the suit with the assistance of her lawyer Mary Eberts, a well-known feminist legal advocate.¹⁷⁹ Before 1985, status women who married men without status lost their status. When you lose your status, you would also lose the rights that came with status, like band membership, the ability to live on your reserve, and the ability to pass Indian status on to your children.¹⁸⁰ This loss of status did not happen to men who married a non-status woman. The women and their children gain and could pass on Indian status. In 1985, Bill C-31 came into force, intending to address the status inequalities based on being a woman. The new issue impacts the grandchildren of a mother who was re-instated under Bill C-31. Connie Perron's restored Indian status was described by her lawyer as:

Class 1, Connie's class, they got status back but not under 6-1) a. They got it back under 1) c. And because they got it back under 6-1) c, it's not as strong as status that people hold under 6-1) a. And because Connie got her status back under 6-1) c, Michael [her son] has to get his status back under 6-2. What we want is to say just put Connie back where she'd be if they'd never taken her status away in the first place, then she would have status under 6-1) a, just the way her brother does.¹⁸¹

¹⁷⁸ Paul Barnsley, Bill C-31 draws \$400 million dollar lawsuit, Ammsa.com via Windspeaker Publication 19:8 2001 [Barnsley].

¹⁷⁹ *Ibid.*

¹⁸⁰ Native Women's Association of Canada, "Aboriginal Women's Rights are Human Rights" (17 May 2022 (posted)), online : *Native Women Association of Canada* <https://www.nwac.ca/assets-knowledge-centre/2000-NWAC-Aboriginal-Womens-Rights-Are-Human-Rights-Research-Paper-1.pdf> at 2.

¹⁸¹ Barnsley, *supra* note 177.

This area of the *Indian Act* has had many cases and challenges before it. The section tries to define an Indigenous person under a government law when the Indigenous person does not recognize the Canadian colonial state as their home, Turtle Island is our home.

Canada has had several bills and laws passed; for example, in 2010, Bill C-3 and in December 2017, Bill S-3 both failed to address the negative impacts that existed for Indigenous women and their children. The colonial government has tried to fix their failures in this specific section because of the continued calls to erase the gender-based discrimination of the *Indian Act*. Bill C-3 addressed the following issues:

- Aboriginal women and their descendants who regain status under Bill C-3, are not entitled to equal status;
- Descendants of women born before 1951 will not be entitled to status, whereas descendants of men born before 1951 are entitled to status;
- Descendants of women in common law or other non-martial unions with non-status men are not entitled to status.¹⁸²

Both Bills were in response to two long legal battles in *McIvor v Canada*¹⁸³ and *Descheneaux c Canada (Procureur general)*¹⁸⁴, which are not discussed in this thesis but are important to this history of legislative changes in Indian status. Bill S-3 aimed to remove and fix the continued sex-based discrimination as follows:

¹⁸² Submission to the standing committee on Aboriginal Affairs and Northern Development of Bill C-3: Gender Equity in Indian Registration Act Women's Legal Education and Action Fund (26 April 2010), at 2 online: (pdf) <<https://www.leaf.ca/wp-content/uploads/2016/03/2010-04-Submission-To-The-Parliamentary-Standing-Committee-On-Aboriginal-Affairs-Northern-Development-On-Bill-C-3.pdf>> at 2.

¹⁸³ *McIvor v. Canada (Registrar of Indian and Norther Affairs)*, 2009 BCCA. 153 (CanLii)

¹⁸⁴ *Descheneaux c. Vanada (Procureur Général)*, 2016 QCCS 3555.

The 2019 amendment to Bill S-3 removed the 1951 cut-off date, which ensured the entitlement of all descendants of women who lost status, or whose names were removed from band lists, for marrying a non-entitled man dating back to 1869.¹⁸⁵

Prior to this bill, grandchildren of women who were given Bill S3 status could still be denied status if they were born before September 4, 1951.¹⁸⁶

Canada has had a long-standing violent attack on our Indigenous women and children, but the Haudenosaunee women continue to fight to hold Canada accountable for the harm that they have caused. In a 2019 news article, Crown-Indigenous Relations Minister Carolyn Bennett said:

Gender equality is a fundamental human right and for far too long, First Nations women and their descendants have continued to face the effects of historical gender discrimination in *Indian Act* registration going back to its inception 150 years ago.¹⁸⁷

A fundamental human right denied to Indigenous women; a fundamental right that took millions of dollars in litigation, hours of drafting legal arguments and years away from their families to regain a basic human right. Imagine a child who grows up knowing where they come from but cannot participate in that community because a foreign colonial government has said they do not meet the standards to participate in an elected band council. Imagine feeling less than – imagine being hurt by your community because, according to colonial rule, you don't belong. This thesis is not meant to provide a comprehensive overview on regaining Indian status but, this section is meant to provide evidence on how the gender inequalities within the *Indian Act* contribute to legislative

¹⁸⁵ Native Women's Association of Canada, "Bill S-3" online: Legal and Justice affairs <https://nwac.ca/policy/bill-s-3>.

¹⁸⁶ Justin Brake "First Nations women finally to be treated equally under Indian Act: Bennett", APTN National News (16 August 2019) online: <<https://www.aptnnews.ca/national-news/first-nations-women-finally-to-be-treated-equally-under-indian-act-bennett/>> .

¹⁸⁷ *Ibid.*

ways the colonial government attempted to remove women and children from their nations.

The government laws which create dividing lines in our families also happen in our communities. Dividing residential school survivors by removing them from the community and dividing us by Indian status impact the ability to return to our communities. There is a dividing line of who is Indian enough to reside on reserve and gain on-reserve services. All the dividing was an attempt to remove our Indigenous identity and it failed because we are fighting back against the dividing lines. In the next section I examine how these diving lines happened in a membership code which impacted Waneek Horn Miller.

Waneek Miller v. Mohawk Council of Kahnawake

Waneek Horn-Miller is from the Mohawk community of Kahnawá:ke and at the age of 14, she was injured during the Kahnawá:ke resistance also known as the Oka crisis in 1990. She was defending her community and was stabbed and taken into custody.¹⁸⁸ Waneek and her partner Keith Morgan are both Olympians. Waneek wanted to return to her home community and build a house on the reserve before she and Keith welcomed their first child. Waneek learned about a petition to have her home construction stopped when she was eight and half months pregnant.¹⁸⁹ Waneek was removed from the band membership list. She tried to speak to the community about this situation at a meeting but was "attacked for two hours afterwards."¹⁹⁰ Despite all the violence she still wanted to

¹⁸⁸ *Ibid at para 83.*

¹⁸⁹ *Ibid at para 88.*

¹⁹⁰ *Ibid at para 90.*

return home with her family and raise her children in her community and ensure that her children had access to their home territory.

Waneek was one of sixteen people involved in a civil lawsuit against the Mohawk Council of Kahnawá:ke in which she was challenging the 2003 Membership Law called the "Marry out, get out" policy. It required members of the Mohawk Nation to leave the Kahnawá:ke community if they marry a non-Indigenous person."¹⁹¹ The band council law changed over time and in 2003, the relevant sections read as follows:

Suspension and Revocation

20.1 A member who:

- a) married, or marries, a non-Indigenous person after May 22, 1981, or
- b) commences, or commences, after May 22, 1981, a common-law relationship with a person who has no Kanien'kehá:ka or Indigenous lineage, will have their entitlement to receive any of the benefits and services to which they would otherwise be entitled as a member of the Kanien'kehá:ka of Kahnawá:ke suspended for so long as they remain married or in a common-law relationship with the non-Indigenous person

20.2 Notwithstanding section 20.1, when the non-Indigenous person referred to in section 20.1 was raised in the community of Kahnawá:ke, the member's right to reside with the Territory will not be suspended.¹⁹²

This membership law impacts the ability to live on Kahnawá:ke lands and applies to land allotments, housing assistance, welfare on reserve, education on reserve, voting eligibility, burial, medicine on reserve, and tax privileges on reserve.¹⁹³

¹⁹¹ *Miller c Mohawk Council of Kahnà:ke* 2018QCCS 1784 para 2 [MCK].

¹⁹² Kahawá:ke Band Council, "Kahnwá:ke Membership law (2 April 2007) online: Kahawake <<http://www.kahnawake.com/council/docs/membershiplaw.pdf>>[Band].

¹⁹³ MCK, *supra* note 189 at para 18.

The membership law impacts children of non-Indigenous and Indigenous birthparents differently. Children of mixed marriages were unable to access funding for education and unable to attend Mohawk language schools.¹⁹⁴ The membership law was enacted by the Mohawk Council of Kahnawá:ke in November 2003.¹⁹⁵ The membership law is sanctioned violence against Indigenous families. It is understandable why by-laws like these are used because our reserve lands and resources do not grow with our population sizes. The reserve do not automatically gain more land because of an increasing in population so less land resources for a higher population is hard to figure out how to manage. We cannot expand and develop like in the city centers. Indian reserves and resources are controlled under the *Indian Act*, and therefore this is sanctioned violence because it provides a space that we can try to prove who more deserving of lands and resources because of diving lines that were created with colonial laws.

After people were asked to leave the reserve, some did not who were the focus of protests advocating for them to leave the reserves.¹⁹⁶ The protest occurred at the homes of members who did not comply with their eviction notices. Some of the protests resulted in property damage.¹⁹⁷ During a membership meeting, a person "suggested going back to the '70s when "we burned their [non-natives] houses." This is community violence that is

¹⁹⁴ *Ibid* at para 16.

¹⁹⁵ Band, *supra* note 191.

¹⁹⁶ MCK, *supra* 189 at para 24.

¹⁹⁷ *Ibid* at para 109.

rooted in the *Indian Act*.¹⁹⁸ The *Indian Act* created separation between Indigenous people and non-Indigenous people and about who belongs and who does not.

The plaintiffs made claims that section 20.1 and 20.2 of the Kahnawá:ke Membership Law were unconstitutional under sections 15 and 7 of the *Canadian Charter of Rights and Freedoms*:

Section 7

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.¹⁹⁹

Section 15

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Section (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.²⁰⁰

The court found that the membership law section 20.1 and 20.2 are discriminatory and inoperative under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*.²⁰¹ The two sections of the membership law were intended to treat those who married or held a common law relationship with non-Indigenous people differently. This also had a direct impact on the children of those marriages or common law relationships. They were not able to fully participate in their community. The elected band council argued that allowing non-members to remain harmed lands and culture.

¹⁹⁸ *Ibid* at para 61.

¹⁹⁹ *Canadian Charter of Rights and Freedoms*, s 7, Part I of the of the Constitution Act, 1982 being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

²⁰⁰ *Ibid* s 15.

²⁰¹ MCK, *supra* note 189 at para 325.

The Court found that without any evidence provided by the elected band council having non-Indigenous spouses on the reserve, it does not negatively impact the band's ability to manage lands and that allowing children of these relationships to participate in schools and activities would not harm the Mohawk culture.²⁰² Section 7, the court found that there was a breach because of the memberships law “attempt to deprive people of their residency on the Reserve based on their decision to marry a non-native or to be in a common-law relationship.”²⁰³ None of these infringement of rights could be saved by section 1 according to the *Oakes* test, which means that the court found that none of the sections of the membership law in this case were reasonable and justified.²⁰⁴ The court found that even though Mohawk culture have been in crisis, there was no evidence provided that non-Indigenous spouses “take up more land or uses more services than a family where both spouses are native.”²⁰⁵ Ultimately, the Court declared that the membership law is invalid, and the Mohawk Council of Kahnawá:ke must convene the Council of Elders to review and decide on the applications of any of the plaintiffs so that they may be installed or reinstalled to the band registry, Kahnawá:ke Kanien'kehà:ka Registry.

Waneek Horn-Miller spoke out about the harm that she, her family, and others faced because of the membership law. Waneek faced a lot of violence from her community, but she says she brought the case out of love:

It was not my proud moment to do it. But I know why I did it. I did it our love for my community. I did it with the understanding of our past and who we are and a hope

²⁰² *Ibid* at para 208.

²⁰³ *Ibid* at para 237.

²⁰⁴ *Ibid* at para 239.

²⁰⁵ *Ibid* at para 245.

for the future where we are not just a people that based in our DNA but we're a really strong, powerful nation of people that are going to stake our claim in this country.²⁰⁶

In a podcast for CBC Unreserved Waneek Horn Miller says, "focus on the love".²⁰⁷

Focus on the love for community and the cultures that she fought so hard to have her children grow up in and around their home territory. The division of community sources is related to the Doctrine of Discovery because it creates an "other."²⁰⁸ Individuals who chose to marry or be in common law relationships with a non-indigenous person on Kahnawá:ke were othered in their community.²⁰⁹ It perpetuates a distancing between mixed children and their home. This disconnection tremendously impacts identity, sense of belonging, attachment to the land, and the ability to go home. It is hard to see the difference between this membership law and colonial laws. They both determined rights and privileges, and identity through the *Indian Act*. The colonial laws disconnected families and profoundly impacted the transmission of cultural knowledge to the upcoming generations. The colonial rule harmed our elder generations to the point where they no longer practiced their traditional knowledge because of the disconnect to their communities. So, what is different between the membership law and the colonial law? We have internalized the structure of the colonial process and turned it around and placed it on our people in the name of protecting Mohawk culture. Protection of our culture is a

²⁰⁶Rosanna Deerchild, "It broke my heart': Waneek Horn-Miller fought Kahnawake's 'marry out, get out' policy – and won", CBC Radio (October 12 2018) article and podcast: online <https://www.cbc.ca/radio/unreserved/standing-up-and-speaking-out-meet-indigenous-people-motivated-to-take-action-1.4857364/it-broke-my-heart-waneek-horn-miller-fought-kahnawake-s-marry-out-get-out-policy-and-won-1.4859534>.

²⁰⁷*Ibid* Podcast at 9:21.

²⁰⁸ My use of "other" refers to a person who may appear not to be able to fully participate in a community. For example, although I am from Wikiwemikoong I am not registered on their band list, so I am unable to participate in band elections, so I am from the community but am unable to fully participate in colonial tools on reserve due to the *Indian Act* definitions and dividing lines of Indigenous people.

²⁰⁹ *Ibid*.

tremendous need, from our languages to our traditions, to protect our laws. But it is vital that we do it following our ways and don't follow or employ colonial structures.

Haudenosaunee people have instructions from the Creator and our Great Law of Peace to govern ourselves.

We have our own systems; settlers have their own systems as outlined in the Two Row Wampum. The settlers' systems try to decolonize their space by incorporating Indigenous practices into their courts. Haudenosaunee approaches are fundamentally different to colonial laws. Haudenosaunee legal approaches are holistic and require more time and attention to the person. Our ways have shown success. In the next section I examine the use of Haudenosaunee approaches to justice in a court room.

Haudenosaunee Processes

Consistent messages of the Creation Story, the Great Law of Peace, and the Thanksgiving Address are about respecting everything and interconnectedness. There are examples provided in these three foundations of Haudenosaunee law that recognizes how we should walk in a good way with a good mind, and that is required every day. The Great Law of Peace instructs us on how to walk in this world, how to be a good person, and a good member of our nations.

On the other side of the spectrum is colonial law. Look at the Criminal Code of Canada, for example. There are numerous sections telling people what not to do instead of providing an example of what to do. The colonial worldview appears to lay blame and fault on people rather than looking at the whole person as to what has contributed to them

being involved in a matter. According to our Haudenosaunee worldview, it's more about what has brought this person here and what is out of balance in their life.

The Great Law of Peace is the aim of the Haudenosaunee people. The goal is contained right in the title: peace - peace between the nations, clans, and people. Within the Great Law of Peace, we understand that we are connected through family relationships, our clan system, or to the Mother of all Nations, Jigohsase. Our clan system connects many people together as kin because you cannot marry within your clan. For example, if your mother is from a turtle clan, you cannot marry another turtle clan member from any of the Haudenosaunee nations because you are considered family. You must marry another clan member. There is a certain number of clans:

The clans are represented by birds and animals and are divided into the three elements: water, land and air. The bear, wolf and deer represent the land elements, the turtle, eel and beaver represent the water element, and the snipe, hawk, and heron represent the air element.²¹⁰

Along with seeing clans as family relationships, you also see your connection to elements, and in turn, members have a closer connection to clan members and creation. This continued connection to one another is a means to bring peace amongst all. With a worldview focused on community health and protecting the Earth for the seven generations coming, there is no space for harmful behaviour. Everyone works in a good way, and hopefully, the aim is to have good things in life. The Haudenosaunee worldview is that:

²¹⁰ Haudenosaunee Confederacy, "Clan System" online:
<https://www.haudenosauneeconfederacy.com/clan-system/>.

When members were focused on the best interest of others within the Clan or society, the catalysts for criminal behavior, such as greed or vengeance, had much less opportunity to develop and emerge.²¹¹

When you can focus on the health and safety of family and extended family it benefits the community as a whole. Greed and vengeance are not seen to align with the Great Law of Peace, so for members whose aim is to accomplish the goal of peace, that is the focus.

Haudenosaunee's legal system had its own set of rules. Some harms had specific approaches to help heal the issue that contributed to the harm happening. For the most part, if someone had committed a wrong against another member and they were remorseful and willing to work on it following the Great Law of Peace, then they were forgiven for their actions.²¹² Remember that the primary goal is Peace amongst the people. Anyone can make a mistake and can grow, but some actions require different treatment. Murder by a chief was considered a matter of national security issues so that the entire Confederacy would be involved compared to just one of the Six Nations' clans.²¹³ The remedy was to have the chief deposed and banished from the whole confederacy, and the chieftainship title was given to a sister family so as not to be connected to that chief's bloodshed.²¹⁴ For a confederacy member who committed murder, it was considered a matter for the family members or clan to determine the punishment. If the two people were from different clans, then a clan council is called, and the penalty is determined there if the people were from one clan, only that clan

²¹¹ Michael Cousins, "Aboriginal justice: A Haudenosaunee Approach" (2004) 9:1 Justice as Healing Native Law Centre online: <
<https://web.archive.org/web/20140123054450/http://www.usask.ca/nativelaw/jah/2004/Haudenosaunee.pdf>> at 4.

²¹² *Ibid* at 5.

²¹³ *Ibid* at 5.

²¹⁴ *Ibid*.

council was to meet.²¹⁵ The council or family could decide on execution by the murdered victim's family or the murderer who must bring the victim's family wampum. This wampum, which was all white, meant the murderer was willing to admit to their actions and make atonement.²¹⁶ To make a wampum belt takes a lot of time and effort. Finding the shells, creating the beads, and then making the belt is an expensive process. If the murder is a man, the wampum was one hundred yards long, and if they murdered is a woman, the belt would be two hundred yards.²¹⁷ Theft is another offence. The attempt to gain something that was a part of another household because it is attached to greed is not a lined with the Haudenosaunee people. Haudenosaunee views "there was no desire by members of society to possess more than others. No social status or esteem was gained through material accumulation."²¹⁸ Generosity is praised, while greed is not wanted. For theft, the person would face "public disregard ...considered a severe form of punishment."²¹⁹ Generosity is a part of the Great Law of Peace and aims for people to become more generous because the more generous people are, the better the community is. Adultery was horrible because of the easy process of dissolving the relationship. All a withdrawal from a relationship was a declaration from one to another. The penalty for adultery was the public ostracization of both parties from the community.²²⁰ Other penalties for harms were reparation and banishment.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ *Ibid* at 6.

²¹⁹ *Ibid.*

²²⁰ *Ibid* at 6.

The court's stated principles align with our foundations, and the court's judiciary understands Indigenous laws. Although Indigenous justices, they are still working within a colonial system.²²¹ The Court may not see it as odd to think that rocks have a spirit or that creation doesn't need humans, but that we require creation to survive. The Court may think that returning to the community is the way to heal, unlike other courts. The court is still a space of the government. Although it remains a colonial court, it is different when you see other Indigenous people in positions of authority rendering the decisions in the courtroom. Seeing Indigenous lawyers and judges working in the courts provides a space for Indigenous worldviews in the colonial courts.

While I worked for Legal Aid Ontario over a summer, I was in the courtroom one day talking to a court support worker. The court is located close to a reserve so, it handles the criminal matters for people charged nearby. The support worker mentioned to me that it was great to see an Indigenous lawyer and judge working in the courtroom. I was only focused on getting my work completed that I had not thought of the impact the judge and I had just by occupied the space. In Akwesasne there is a court that is incorporating Haudenosaunee principles and practices into their system.

Akwesasne means “the land where the partridge drums” and is a Mohawk community that straddles the colonial government's border between Canada and the United States of America.²²² Akwesasne is located along the banks of the Saint Lawrence

²²¹ Beverley Jacobs, "Indigenous Justice in Oceania and North America," article, Oxford Research Encyclopedia of Criminology and Criminal Justice (https://www.uwindsor.ca/law/sites/uwindsor.ca.law/files/jacobs_cv.pdf).

²²² Jacobs, *supra* note 1 at 12.

River Valley.²²³ The Mohawk Council of Akwesasne started as early as the 1960s to negotiate with the Indian department to have jurisdiction over laws in their community.²²⁴ Finally, in 1994 the Akwesasne Mohawk Court was opened to hear matters that involved any band by-law that the Mohawk Council of Akwesasne created. The court's principles and values are: "Sken:nen (Peace), Kasatstenseara (Strength) and Kanikonri:io (a good mind)" ²²⁵ which mirrors the Great Law of Peace; is connected to the Haudenosaunee people, and more aligned with Haudenosaunee worldviews.

The Akwesasne Mohawk court has the authority to hear matters that directly impact their home community. The justices have an Indigenous background. It is a different environment than the colonial-focused courts. From my time working within the colonial courts as a court worker and as a summer law, I noticed that the courts are packed with individuals who are charged, and some would just like the matter handled by pleading guilty or bringing the matter to trial. There is little room to hear the voices of the people who are charged because only the lawyers really speak.

In Canadian courts, First Nations peoples are forced to subject themselves to a forum that is alien: a process where they have no voice because prosecutors and defense lawyers do battle before a Judge who in turn, makes a decision on the best argument put forth. In this process, there is very little opportunity for an aboriginal person to address the Court.²²⁶

²²³ *Ibid.*

²²⁴ Presentation Akwesasne Mohawk Court: Experiences, successes, and Challenges (May 25, 2019) https://ciaj-icaj.ca/wp-content/uploads/documents/2019/06/r84e-akwesasne-mohawk-court_c.-jacobs.pdf?id=10727&1600832200.

²²⁵ *Ibid.*

²²⁶ Presentation Mohawk Council of Akweasane (March 8 & 9 2006) https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/projects/pdf/Chiefs_of_Ontario-Mohawk_Council_of_Akwesasne_Presentation.pdf.

Allowing space for everyone to share how they feel and how they have been impacted by the matter can provide some healing in this process. And these are the biggest differences between colonial courts and Haudenosaunee principles of law is that the person as a whole needs to be taken care of other than just dealing with this matter. It is that the entire person matters and not just a docket court number. Therefore, courts that are developed with Haudenosaunee or Indigenous perspectives are better suited to deal with an Indigenous person who participates in their community, who want to or is involved with their Indigenous laws, and any Indigenous person who looks to their community for strength. It is harder to be vulnerable in front of people who know your family and are a part of your community than a judge crown or defense lawyer that you may never see again after that appearance.

For justice to be meaningful, it must impact the people involved including the victims, the accused, and the community members. Community members are indirectly harmed and should be considered when a matter is being decided. When all parties are heard, this makes an impact because everyone is connected to the event that brought them to the legal system and freedom to speak is a step towards being heard and healing. This Court does take the community into account, according to Bonnie Cole, prosecutor, and legal counsel, for the Court:

We structured the court to meet the needs of the community,” Cole said. “It’s a restorative justice approach, looking at restoration, rehabilitation, restitution – all of those concepts. [...] We look at the person, and not necessarily just the offense. So when we’re dealing with people, we’ll be looking at who he or she is, what are their skills, what are their gifts, and how will that be used and incorporated into restoring balance, not only to that person, but to the community.²²⁷

²²⁷ *Ibid.*

The Akwesasne Mohawk court has created a system that handles matters in the community. In 2016 the court passed law that was drafted by the community and without involvement from Ottawa, the colonial law headquarters.²²⁸ Although criminal matters are still outside the jurisdiction of this court, they are able to hear about matters involving tobacco regulations, sanitation, elections, property, and wildlife conservation, band council by-laws.²²⁹ The court can also adjudicate over civil matters within the *Indian Act*, Protection Orders (Peace bonds/Skennen Orders), and Court-ordered Mediation services.²³⁰ It may not be all the matters that impact Indigenous people. Still, it is a start to move forward to where Haudenosaunee people can use Haudenosaunee law to deal with their matters. It is an avenue to show there should be an Indigenous legal system that is a recognized parallel legal system on Turtle Island.

Haudenosaunee women are involved in this project that is making meaningful headway in building the nation-to-nation relationship as recorded in the Two-row Wampum, Gäsweñta'. The settler's ship carries its laws and self-determination for its people and never should cross over into the Indigenous people's canoe. The rows are the same size showing the equal power between the nations. The Haudenosaunee and the Dutch agreed to three principles to govern their relationship between nations, friendship,

²²⁸ Giuseppe Valiante "Akwesasne create first court in Canada for and by Indigenous people", *CBC Montreal* (2 October 2016) < <https://www.cbc.ca/news/canada/montreal/akwesasne-indigenous-court-canada-1.3787969> > [Valiante].

²²⁹ *Ibid.*

²³⁰ Mohawk Council of Akwesasne, News Release, "MCA announces Appointment of four justice" (29 April 2022) online: <http://www.akwesasne.ca/mca-announces-appointment-of-four-justices/> .

Peace, and forever.²³¹ The agreement was for all of us to benefit from peace and harmony.

In 2016, the director, public prosecutor, and the territory's two justices were women, and the court and in April 2022, four new Ratiianerehserakweienhstha (Justices) were appointed, all women. These women are carrying on the Great Law of Peace by providing a space where the accused can restore balance.²³² Although limited numbers of participants, the court has been affective. Gilbert Terrence, court administrator, said about the court, "the system is working: out of 63 cases in the restorative justice program so far, sixty have been successful."²³³ Dealing with the contributing issues that brings a person into conflict is more beneficial than just dealing with the charge itself. Holistic healing is more effective than sentencing or ordering someone to do something. Seeing your people in the positions of authority in the court is different than seeing people that may never have had experiences like you. There are people in this world that may never know the feeling of not finding a family member you can call because you don't know your family, or never know the feeling to not know your culture or never know what it felt like for their grandparent to tell you what they felt at residential school. If the people who are supposed to guide you through a difficult process and they do not have a clue about how your life impacts you then how do you trust them. If you have a matter before the Court, you can start believing in the process

²³¹ Onondaga Nation People of the Hills, "Two Row Wampum- Gä•sweñta'" online: <<https://www.onondaganation.org/culture/wampum/two-row-wampum-belt-guswenta/>>.

²³² Valiante, *supra* note 226.

²³³ Marina Cupido "An independent Indigenous court: Panel Discusses successes and challenges of Akwesasne court", *Mcgill daily* (23 January 2017) <https://www.mcgilldaily.com/2017/01/an-independent-indigenous-court/>.

because at this court the people guiding you through the process may have faced what you have, understood your world, and ultimately have a better result. Although there are still limitations of what the court can hear, it is a step – a tiny step in years of missteps. But movement nonetheless is better than being stagnant. The hope is that there are bigger steps and bigger movements so that Haudenosaunee can govern themselves according to their laws and traditions. Community members and those impacted can be heard and have an opinion about the outcome of the harm they have experienced and that a person matters as an entire being and not just the act that was committed. The love and the wisdom from their community are shown and offered to them so that they may benefit and perhaps heal from the harms they could carry.

Conclusion

Violence happens in many forms. It could be the outright violence that ends up causing someone physical harm, or it could be violence which breaks someone spirit. Much like residential schools tried to do was to break the spirit of a child. If you break someone's spirit, they may see everything as hopeless, so why try to improve the situation if you only expect bad things to happen? Still, we have Haudenosaunee women who face the violence head-on and speak about the uncomfortable situations that they have been involved in. The violence against our women and children was a tool to lessen the Indigenous population, and although it didn't kill all of us directly, it did cause tremendous harm and hurt to those impacted. A fundamental human right that Indigenous women did not qualify for numerous amounts of years, and even now, Indigenous women have to battle against more violence because our communities have been affected by the colonial way of thinking. In addition to that violence, we also have to deal with the high

rates of murdered and missing Indigenous women. So, unfortunately, the violence continues in many ways in many different arenas. The root of the discrimination against Indigenous women is the papal bulls that authorized the invasion of Turtle Island.

A report from the Six Nations Traditional Women's Council Fire spoke to some Haudenosaunee women and gathered their stories of violence; here are some of the Indigenous women's realities:

- A 16-year-old girl in Tyendinaga Mohawk Territory near Belleville, Ontario had a gun held to her head by a member of the Ontario Provincial Police when she blockaded a road leading into disputed territory that was being quarried by a private company.
- A former police officer who resides adjacent to land being reclaimed by Six Nations threatened to “shoot and kill all of your children!”
- At Barrier Lake, where the people were protesting against logging on their territory, the Sureté du Québec (provincial police), used tear gas to disperse a group including infants, children and women.
- In the April 2006 police raid on the peaceful encampment at the Six Nations reclamation site, young girls were attacked and a grandmother was beaten by police.
- In September 2008, Ontario Provincial Police once again entered the reclamation site, and brutally assaulted and arrested the male partner of one of the women; meanwhile, when two women came to the door to see what was happening, the police pointed assault rifles at their heads, and said “Get back or we’ll shoot.”²³⁴

One system or legal process doesn't necessarily work for all people. The colonial system of violence and terror against Indigenous peoples is so ingrained that systemic racism continues. It perpetrates against our children, our elderly, our women, and our men. There must be another way. There must be something else that does not foster the high rates of recidivism, poverty, mental health and addictions. The colonial system doesn't work for

²³⁴ Six Nations, *supra* note 2 at 6.

us because it is a foreign standard. In some examples of the one land defender, we see the police cause harm to our people at Oka, Ipperwash, Kanonhstaton (the protected place) and at the Land Back Lane in Six Nations. The colonial process does not carry the same values as the Haudenosaunee people. There have been years of trying to work with each other to create a better space for Indigenous women but the violence has continued. The violence to our homes, lands, people, and children continues, and we must have a better way to deal with the issues. Haudenosaunee people have our own legal system with principles that were created with our foundations in mind. The colonial legal system was never a system that Haudenosaunee people accepted as theirs to abide by and participate within. The sovereignty of the Haudenosaunee people has been discussed. It will continue to be a discussion point until the colonial state realizes that Haudenosaunee women continue to stand firm even faced with violence in different spheres and continue to overcome while creating and supporting new safe spaces for our people to participate in until we have self-governing in place where our principals are employed according to our Great Law of Peace entirely.

Haudenosaunee women have survived the abuses and injustices at residential schools. We have had our status and residency challenged by the *Indian Act* and membership laws. TRC report provide the colonial government with a path forward, yet we still are advocating for action. Some women are assisting in battles both in the courtrooms and at grassroots levels by keeping the Great law of Peace alive in hopes that Indigenous peoples can return fully to our instructions. It is amazing that throughout the years of colonialism, there are women who have held on to who they are, what they are, and stayed true to their instructions.

Haudenosaunee women had political and social power. With the imposition of patriarchal values in colonial structures, it tried to erase Haudenosaunee women's authority. Although it damaged it, it did not completely remove it. Haudenosaunee women have banded together to raise their voices and discuss matters of injustice. Haudenosaunee women continue to battle for their rightful spaces in society together. For example, in the Great Law of Peace, when the Peacemaker holds one arrow, it breaks easily, but when he holds five arrows together, they do not break. Our togetherness makes us stronger.

In the next chapter, I look at how Haudenosaunee women continue their fight against the Doctrine of Discovery and its impacts. I highlight the resiliency of five Haudenosaunee women who break down barriers to create space for other Indigenous women to succeed.

CHAPTER FIVE: THE RESILIENCE OF HAUDENOSAUNEE WOMEN

This chapter showcases five Haudenosaunee women, each from a different nation within the Haudenosaunee Confederacy, who have accomplished and overcome tremendous barriers throughout their lives. A common theme is that these women have fought in service to their community, and the knowledge shared is carried within traditional teachings, the law, and community elders. It is crucial to remember that many other Haudenosaunee women are fighting against colonialism and its impacts with knowledge and expertise.

In this chapter, I selected a variety of Haudenosaunee women to highlight. I aimed to maintain diversity and distinctiveness in recognizing that, as individuals, we all have different trials, traumas, and thoughts about what resilience is. For example, individuals may have different experiences and impacts from the *Indian Act* and the residential school system. Our women have overcome genocide in many ways, often because of resiliency, advocacy, and upholding the Great Law of Peace. Women who take up space in this world as members of the Haudenosaunee Confederacy, and those who are not yet at the stage but hold their law in their hearts, continue to practice their resiliency. However, this is not an easy task.

There is difficulty in publicly claiming one's identity and standing up for Haudenosaunee law and governance. I am thankful for the women who have come before me. I am grateful for their advocacy, participation, and strength to uphold the responsibilities and rights of our people and to create a better space for the next seven

generations ahead of them. These women have broken down many barriers they have encountered.

Influence on the Women's Suffrage Movement

The women's suffrage movement in the United States was a 72-year battle of advocacy which ultimately won the right to vote for women.²³⁵ Haudenosaunee women greatly influenced this movement. Haudenosaunee women historically maintained political, economic, and social authority, which settler women did not have. The inherent authority held by our ancestors is what the suffrage movement demanded, grounded their advocacy efforts for equality and respect for women. The settler population, particularly women, sought equality for women in a way that mirrored equality provided within the Haudenosaunee nations – notably, the strength and sacredness of our women and how to use that to accomplish goals and generate the success desired by settler women.

In 1848, a two-day gathering was held at Seneca Falls, where the Declaration of Sentiments was drafted and then signed by 68 women and 32 men. This declaration was in support of the abolishment of anti-women laws. It called for equality among genders, arguing that men and women should be held accountable to the same standard.²³⁶ Lucretia Mott was one of the 68 women who signed the Declaration of Sentiments. Mott spent the summer of 1848 with some of women of the Seneca Nation, one of the nations within the Haudenosaunee Confederacy. The Haudenosaunee Confederacy exists under one constitution and original instructions from the Creator. Although individual and distinct

²³⁵ Tea Chumburidze, *Section III: History, Art, Economics: The Role of Native American Women in Women's Suffrage Movement* (paper) delivered at the AMS Conference Periodical 2019) at 139.

²³⁶ *Ibid* at 141.

nations form the confederacy, they are bound together under the constitution, the Great Law of Peace. All nations under the Great Law of Peace share the same views on the sacredness of women.

Mott described her interactions with the Seneca Nation where "she watche[d] the women have equal voice politically and she watched the women have spiritual responsibilities to plan ceremonies."²³⁷ She also saw "how clan mothers would nominate the chiefs, putting them in positions of power and removing them as necessary."²³⁸ Louise McDonald, a Bear Clan Mother of the Mohawk Nation, highlighted: "women have a strong position, and our society cannot move forward without their presence of women."²³⁹ As a Clan Mother, she works for her clan where "she's in charge of appointing leaders, naming members and working for the general welfare of her people."²⁴⁰ She is a woman with responsibilities to her clan and holds a position of authority.

This role was quite different from settler communities, whose views on gender were imbalanced. Settler women were held to serve and provide for men. This was grounded in Christianity tied to the bible: Thy desire shall be to thy husband, and he shall rule of thee (Genesis 3:16). According to Elizabeth Cady Stanton, this passage stems from the biblical understanding that women were to be eternally punished for Eve's sin in the story of Adam

²³⁷ *ibid.*

²³⁸ *ibid.*

²³⁹ *ibid.*

²⁴⁰ *ibid* at 140.

and Eve.²⁴¹ It is understandable why some settler women viewed Indigenous communities as more comfortable and desirable than their own:

Euro-American women taken captive by Native American nations often chose to continue to live as adopted members of the nation rather than return to the Euro-American world. The enemies had become family: their identity Indian.²⁴²

Settler and Haudenosaunee communities differed in many respects, particularly in how they viewed the role and treatment of women and their ability to participate in society. Haudenosaunee women are respected. Their thoughts are valued as Haudenosaunee peoples see the greatness in including the opinion and perspectives of women. This extends to various matters, including national security, home security, and the daily operations of the nation. Arthur C. Parker reminded non-Native readers in 1909:

Does the modern American women [who] is a petitioner before man, pleading for her political rights, ever stop to consider that the red woman that lived in New York state five hundred years ago, had far more political rights and enjoyed a much wider liberty than the twentieth century woman of civilization? ²⁴³

We are born from this. It is our ancestors' blood that runs through our veins as Haudenosaunee women today. This matrilineal authority is a vital part of our nations and its success; the resiliency of our women has created a space for us to thrive today. We are discovering the stories of our ancestors and singing them proudly for all to hear. We want these stories to ring in the ears of colonial authorities to understand that their governments tried to kill us, displace us, and remove our inherent jurisdiction and authority. Their government forced genocide on our people and apprehended our children. Yet, we are still

²⁴¹ Sally Roesch Wagner, *How Native American Women Inspired the Women's Rights Movement* (13, June 2022) online: *National Park Service website* < <https://www.nps.gov/articles/000/how-native-american-women-inspired-the-women-s-rights-movement.htm> > [Roesch].

²⁴² Wagner, *supra* note 38 at 14.

²⁴³ *Ibid* at 93.

here and more vital than ever. This is because our ancestors prevailed with a focus on our communal survival – they thought of us.

When I think of what kind of ancestor I want to be remembered for, I think of words like kind, strong and graceful but powerful. I picked women who I believe represent kindness, strength, grace, and are powerful Haudenosaunee women. I wanted to pick Haudenosaunee women from different communities and with different employment background because I think it is an example of no matter where our path takes us in life that we continue to advocate for a better space for the Indigenous community and our seven generations coming.

I. Resilient Haudenosaunee Women

Ellen Gabriel

Ellen Gabriel (Katsi'tsakwas) is from the Mohawk Nation, Turtle Clan from Kanehsarà:ke (Kanestake) Nation. I was first introduced to Ellen Gabriel in my women and gender studies class at York University. The course screened the documentary "Kanesatake -270 years of resistance" by Alanis Obomsawin.²⁴⁴ It was my first time watching the film focused on the expansion of a nine-hole golf course into the Pines. The Pines are a sacred place to the Kanestake Mohawk Nation.²⁴⁵ The expansion resulted in a standoff between the Mohawk peoples of Kanestake, the Town of Oka community members and the Canadian Army.

²⁴⁴ Alanis Obomsawin, "Kanehsatake: 270 years of Resistance" (1993) online: National Film Board of Canada < https://www.nfb.ca/film/kanehsatake_270_years_of_resistance/>. There are various with spelling of Kanestake and Kanesatake.

²⁴⁵ The Mohawk Nation is a part of the Haudenosaunee Confederacy.

The Mohawk people of Kanestake selected Ellen Gabriel to become a spokesperson for this resistance. She attended political meetings to resolve the issue. Ellen spoke in her language and shared with the media the history and hope for the Pines. Significantly, she informed the press about the authority of Haudenosaunee women as title holders of the land and their inherent obligation and responsibility to protect and care for it.

The Kanestake resistance caused a lot of fracturing of relationships between the townspeople of Oka and the Haudenosaunee people because of the ignorance of the history between the colonial state and the Haudenosaunee people. The resistance was a violent event with force inflicted by the police and the army with insults and aggression spurred against Mohawk peoples occupying the Pines. This event was challenging not only for the people at the site but also for other Haudenosaunee people and Indigenous peoples globally. This was because of the huge impacts of a disrupted Haudenosaunee connection to the land – the concept of "ownership" between the colonial state and the Haudenosaunee people did not align. The focus on individual ownership rather than community prosperity posed a challenge.

Ellen Gabriel and those involved in the resistance are warriors, land defenders, and protectors. They are working hard to stand up for our laws and uphold our obligations following The Great Law of Peace. The work is guided by a need to maintain a respectful relationship with the land. The resistance at Kanestake was to protect the land for the collective community and the next generations. However, the concept and treatment of land is very different in the colonial narrative, as can be seen in the plenty of examples of increased wealth and greed stemming from individual land ownership. The stereotype that the "Indian" wants land is a problematic misconception continuously perpetuated. The land

is much more than something to possess—this understanding is grounded in our laws and relationship to the land. Yet, colonial laws continue to perpetuate violence against those, like Ellen Gabriel, who uphold their responsibilities to the land following Haudenosaunee law.

Ellen Gabriel spoke about her time the standoff in an interview with Kim Anderson, where she expressed that she thought "there could be a gun battle, any second, am I going to make it through this experience? what's going to happen to me afterwards? am I going to jail? am I going to jail for a long time?"²⁴⁶ At the end of the protection of the Pines, Ellen Gabriel and other land defenders walked out and were violently and physically beaten by Canadian Army officers. The land defenders occupied the Pines and sacrificed so much. I believe they did because they recognized what our ancestors provided for us and how it continues to be diminished. The resiliency of our ancestors reminds us that we must continue to defend ourselves. Ellen Gabriel notes:

There is a saying: 'a nation is not conquered until the heart of the women are on the ground!' while this has not happened yet, the continuation of colonization is still attempting to do so. The strength and tenacity that has brought our nations this far, will carry us forward into the future. We just need to remind ourselves of this fact.²⁴⁷

The resistance at Kanestake took place in 1990, and today, in 2022, we are experiencing similar issues that Ellen Gabriel and the other 77 warriors faced in the Pines. Ellen's comments are chilling and eye-opening as we face land-related disputes and conflicts with

²⁴⁶ Kim Anderson, "An interview with Katsi'tsakwas Ellen Gabriel of the Kanien'keha:ka Nation, Turtle clan" (2008) 26:3-4 *Canadian Women Studies* 52 at 53.

²⁴⁷ Ellen Gabriel, "Aboriginal Women's Movement; Aquest for Self determination" (2011) 1:1 *Aboriginal Policy Studies* 183 at 188 (<https://journals.library.ualberta.ca/aps/index.php/aps/article/view/10137/7949>).

the state. Even further, our message and advocacy remain the same; upholding our obligations and our laws and instilling awareness to improve the lives of the Haudenosaunee people. Ellen Gabriel is well respected for her role and continues to advocate for the Haudenosaunee nations. She is an inspiration with decades of efforts trying to improve the lives of the Haudenosaunee people. While more work is needed, Ellen has paved the way forward, setting an example and path for us to follow.

Roberta Jamieson

Roberta Jamieson is from the Mohawk Nation from Six Nations of Grand River. She was the first Indigenous woman to earn a law degree in the colonial state of Canada in 1976. After earning her law degree, Roberta became part of the Canadian Indian Rights Commission secretariat, where she worked as an executive assistant to the commissioner.²⁴⁸ She also was the first female elected Chief in Six Nations in 2001 on the band council. Roberta was also a non-parliamentarian in the House of Commons and the first woman appointed to the Ontario Ombudsman.²⁴⁹ She was a founding chair of the International Aboriginal Media Arts Festival called Imaginative, and in 1994 she was appointed to the Order of Canada.²⁵⁰ She has accomplished many things and continues to break down barriers for Indigenous people and specifically, Indigenous women.

In an article by APTN, Roberta Jamieson is a role model to other young women and a whole generation.²⁵¹ Still, Roberta states: "I have always grown up with the

²⁴⁸ Heather Conn, "Roberta Jamieson" (17 July 2019) online: *The Canadian Encyclopedia* <https://www.thecanadianencyclopedia.ca/en/article/roberta-jamieson>.

²⁴⁹ *Ibid.*

²⁵⁰ Mark Blackburn "Roberta Jamieson blazing a trail", APTN National News (9 March 2012) <https://www.aptnnews.ca/national-news/roberta-jamieson-blazing-a-trail/>.

²⁵¹ *Ibid.*

expectation that for my own community, people around me believe the Creator has given us gifts. Our job is to put them to service to the community."²⁵² At the root of Roberta's success is the community and a collective vision and goal to be better, do better, and see better not for individual gain but to establish a better sense of wellbeing for a collaborative community. Haudenosaunee communities are so powerful because traditionally, our mindsets are for the community's prosperity and for us all to be successful. If we could get back to that mindset, think of all the things we could accomplish together. Roberta Jamieson speaks about other women taking up the challenge to create spaces for other Indigenous women. She notes,

there is hundreds, and thousands of our women, indigenous women who inspire, the women who are quietly studying to get their PhD, who have gone back to school. There are so many of our women that are taking up the challenges that will inspire all of us.²⁵³

Notably, these women are the mothers, children, and grandchildren of Haudenosaunee women who have survived the sexist and racist policies of the colonial state.

The strength of Roberta Jamieson to navigate these systems and accomplish what she has, including attaining recognition both within and outside Indigenous societies, gives hope that our relationship with the colonial state will improve due to increased acknowledgement of the power, strength, and resiliency of our women. Roberta Jamieson was one of eight siblings in her family, and she said that she learned at a young age the advantage of non-adversarial conflict resolution, which helped in her negotiator role. She took some of the traditional knowledge and, at an early age, was aware of Mohawk political traditions, including the process of holding a council in which people gathered, traded

²⁵² *Ibid.*

²⁵³ *Ibid.*

opinions, and kept talking until consensus was reached. Jamieson has been using her traditional tools in her consultations.²⁵⁴ Heather Ball, author, noted that Jamieson honors the same tradition in that “believing decisions should not be reached by discussion and consultation in cool-headed manner, rather than through angry confrontation.”²⁵⁵ Again, this is a way of using ancestral knowledge to achieve the desired result.

Roberta Jamieson occupied spaces that were not created for Indigenous people. For instance, the colonial law school does not often align with Indigenous legal orders and worldviews. She has accomplished difficult work, some of which is the first of its kind, but she remains humble and maintains that she is nothing special and it is all for her community. This reiterates the strength and love she has for the whole Haudenosaunee community and the children who are coming. Her resiliency has created space for other Indigenous women to follow and the knowledge, tools, and confidence to create their own space in their ways by breaking the glass ceiling of the western world and dismantling limitations placed on Indigenous women.

Janie Jamieson

I first was introduced to Janie when watching the documentary entitled “Six Miles Deep.”²⁵⁶ Janie was a part of the group of original Haudenosaunee women who started to raise awareness about the Kanonhstaton (The Protected Place) land. In February 2006, a group of Six Nations people began to occupy a Henco building site; the site is on land that

²⁵⁴ *Ibid.*

²⁵⁵ Lawrence Scanlan, “A woman of firsts”, *Western Alumni* (2017) online: <http://alumni2.westernu.ca/fam/western-law/2017/a-woman-of-firsts.html>.

²⁵⁶ Sara Roque. “Six Miles Deep” (2009), online: *National Film Board of Canada* < https://www.nfb.ca/film/six_miles_deep/>.

is included in the Haldimand Proclamation of 1784 and the Albany Treaty of 1701.²⁵⁷ Kanonhston is included in a land claim filed with the Canadian Federal government in 1987, the Plank Road Claim.

In 1841 a document was signed in Kingston, Ontario, hundreds of miles away from Kanonhston, which purportedly surrendered this portion of land; the document had Seven chiefs' signatures on it; some were subchiefs and unofficial chiefs, and some of the seven were later denounced.²⁵⁸ Usually, land transactions were discussed by a council of fifty chiefs. This document is considered the 1841 surrender of land, which Six Nations believes is illegal.²⁵⁹ This was a state-led process used to gain land and signatures required for a land surrender. It bypassed traditional governance structures, including a process composed of a council of 50 chiefs who would sit together and engage in dialogue. This dialogue would include consultation with the community to understand needs and wants to ensure all were heard, and their thoughts were thoughtfully considered as part of decision-making. Our traditional council should have made that decision, not the seven that signed the 1841 document.

The documentary "Six Miles Deep" highlights the work of Janie Jamieson, who approached the band elected chief and council to speak to them about attaining their support.²⁶⁰ The elected band council stepped back from discussions on this matter with the colonial government; in turn, the colonial government had to speak with the Haudenosaunee Confederacy again since the RCMP stormed the council house in 1923.

²⁵⁷ Susan M Hill, "Conduction Haudenosaunee Historical Research from Home: In the Shadow of the Six Nations-Caledonia Reclamation". (2009) 33:4 American Indian Quarterly 470 at (JSTOR) 481.

²⁵⁸ *ibid.*

²⁵⁹ *ibid.*

The documentary also shows how some of the Haudenosaunee Clan Mothers are present at the time. One Clan Mother begins to talk about a time when the Ontario Provincial Police officers invaded the land. This woman described the treatment of the Haudenosaunee people when those officers came onto the land. Those clan mothers decided that the people would remain on that land and defend the land for their community and children. We protect the land because we are the inherent title and rights-holders. We also protect the land because we must do so for the next generations. It is believed that our children are there in the land, watching and looking up from the land. That is why we must walk softly on this earth to have it for them when they arrive. So, when those clan mothers instructed the people to stay and listen, they did so even though some men wanted to leave.

Throughout our land defender's history, our people have been called "terrorists," which is unfair. If settlers were aware of the ongoing theft of Indigenous lands, perhaps there would be a different opinion. What Janie Jamieson and others did for the land was brave. They stood up to the colonial machine and yelled for no more. Janie specifically asked Canada to show that they had title to the land in an interview. This land is still in possession of the Haudenosaunee people, and Ontario provided some compensation to the building company and residents of Caledonia. Recently we have celebrated Canada's 150 years, but this land dispute has been going on for over 250 years.

Sylvia Maracle

Sylvia Maracle is a Mohawk Nation Bear clan member from Tyendinaga territory. She has spent most of her life advocating for Urban Indigenous people with the Ontario Federation of Indigenous Friendship Centers (OFIFC). Sylvia worked at the OFIFC between 1978-

2021 and was eventually appointed the OFIFC's Executive Director. In an article authored by Sylvia and others, the authors refer to defining ancestral leadership:

That it's based on knowledge that is built on earlier experience and continues to reflect leadership dynamics from the bonds of ancestry by virtue of a continuous exchange between 3 realities the human the Cosmo and the divine. The people who embody ancestral knowledge often make decisions and cultural values that are learned in the early years and that they cherish a geological connection to the leaders that came before them.²⁶¹

Sylvia credits much of her knowledge to her late paternal grandmother Mary Ellen Maracle. The article notes that by honouring her grandmother's teaching, Sylvia embodies one of the most powerful lessons in being a leader and that being a leader means to "carry the bones of the people."²⁶² This statement is crucial to the plus 40 years that Sylvia Maracle has committed to improving the lives of urban Indigenous people. She connects to her roots, particularly her grandmother's words, to guide her practice. Daily, Sylvia reconfirms maternal knowledge that was passed down to her.

Sylvia Maracle is without a doubt an influential Haudenosaunee leader but what is also evident is that the article describes overarching themes from conversations had with Sylvia. The themes mentioned include:

- 1) Conscious upbringing and the importance of growing up with cultural knowledge.
- 2) Making time and space for emerging leaders.
- 3) Leaders as servants of the people.

Sylvia Maracle created programs at the OFIFC for youth to access cultural knowledge, reiterating the importance of having cultural knowledge within our lives and uplifting

²⁶¹ Sylvia et al, "The work of a leader is to carry the bones of the people: exploring female-led articulation of Indigenous knowledge in an urban setting" (2020) 16 (4) *Alter Native* 281 at 281.

²⁶² *Ibid* at 282.

upcoming leadership and protecting our seven generations. The youth program, called "Little Beavers," was a pilot project launched in 1976. It is a mentorship program aiming to connect youth, elders, and knowledge keepers to facilitate dialogue on one's healthy (physical, mental, emotional, and spiritual) development by honouring participants within a lifecycle teaching.²⁶³ Sylvia's efforts are what resilience is – showing up for your people and using ancestral knowledge to inspire and create a safe space for those who want to learn.

Sylvia Maracle talks about her grandmother's teachings, and they highlight the value of positions and one's meaningful participation rather than the position they hold, which is terrific. These teachings show how the whole team matters, from the smallest animal to the biggest one. We all matter; we all have a role to play in the outcome of our realities. These teachings are directly reflected in Sylvia's work and advocacy. There are a tremendous number of lessons learned that Sylvia provides. For me, one of the biggest takeaways is the image of carrying the bones of the people as a reminder of the sacrifices our ancestors made for us. In consideration of us, and now no matter what position or title we hold, traditional knowledge has been saved, protected, and shared for us to use and replenish our souls and our connection to our communities and our people.

Kimberly Murray

Kimberly Murray is Mohawk from Kanestake. Kimberly has worked for many years within the colonial legal system to improve conditions that have impacted Indigenous people. For 15 years, she worked as a staff lawyer and eventually became the Executive

²⁶³ *Ibid* at 284.

Director for what was then referred to as the Aboriginal Legal Services of Toronto. She worked on matters that appeared in all levels of court at the Ontario Court of Appeal, the Federal Court of Appeal, and the Supreme Court of Canada. In particular, she worked as a co-counsel on the Ipperwash inquiry. For context, the Ipperwash inquiry took place in 1995 in southern Ontario in response to the death of Dudley George. Here, the Canadian government used the *War Measures Act* to take land occupied by the Stoney Point people. Canada told the Stoney Point people that once the war was over, they wouldn't need the training camp and would return that land to the Stony Point people.²⁶⁴ Unfortunately, this did not happen, and the land was not returned. As a result, people from Stony Point went to occupy that land in hopes of it being returned. Ipperwash and other land defender actions are hard to see, mainly when anything results in violence or death, but the land defenders are working according to Indigenous laws.

Kimberly Murray also worked as the Executive Director of Canada's Truth and Reconciliation Commission. She established a team to ensure that survivors of the Canadian Indian residential schools had a safe space to share their experiences. This team worked to compile a report along with 94 calls to action for different institutions to put into action to improve the relationships between them and Indigenous people across Turtle Island. Moving forward in her career, Kimberly Murray became the first assistant deputy attorney general for the Indigenous Justice Division in Ontario.

While working as Assistant Deputy Attorney General, Kimberly worked on injustices that happened and continue to happen to Indigenous peoples within the Canadian

²⁶⁴ Tanisha Salomons, "Ipperwash Crisis" (10 November, 2022), online: *Indigenous Foundations* <https://indigenousfoundations.arts.ubc.ca/ipperwash_crisis/>.

legal system.²⁶⁵ She was Executive Lead for the Mohawk Institute Survivors' Secretariat and most recently, she was appointed Special Interlocutor for Missing Children in unmarked graves at the burial sites associated with their residential schools. Over the last year and as noted in Chapter Four, Indigenous communities have located unmarked burials by Indian residential schools across Turtle Island. This news is, of course, devastating to our people. The children in those graves weren't provided with any respect at their burials nor were their families given any closure. As Executive Lead for the newly created Survivors' Secretariat at the Six Nations of Grand River, the aim was to recover the missing children from the Mohawk Institute known as the "Mush Hole" and discussed at Chapter four. Even after all the accomplishments, Kimberly Murray her advice to the youth is simple; from her Indspire video message in 2017, is that "she believes in them [youth] and to overcome adversity is to speak to the elders."²⁶⁶ It's amazing how we keep coming back to the basics of speaking good words to our youth and to all and understanding that our elders carry that knowledge that we are privileged to hear from them. Kimberly Murray's tireless fight to improve conditions for Indigenous people is an ongoing form of the resilience that she carries.

Conclusion:

The women showcased above exemplify bravery and courage. Through their work and advocacy, they have provided space for other Haudenosaunee women to occupy spaces. Their efforts and actions to break down and overcome significant barriers are inspiring. They have faced both seen and unseen harms that could impact their safety along with their

²⁶⁵ Indspire, "Kimberly R. Murray, BA, LL. b, IPC Law and Justice (2017)" (7 February 2017) online: (video) Indspire <<https://indspire.ca/laureate/kimberly-r-murray/>>.

²⁶⁶ *Ibid.*

families, yet they continue. They remain strong through decades of tirelessly working to improve the lives of our people. We often talk about walking on a good path, speaking in a good way, and seeing in a good way. In line with the Great Law of Peace, I believe that these women are shining examples of how to accomplish this. Our Haudenosaunee women have contributed to many battles, and we were finally thanked in 1998:

Congresswoman Louise Slaughter gave that long overdue thank you to Haudenosaunee women at the opening ceremonies of Celebrat'98 in Seneca, Falls, New York, on July 16, 1998. In acknowledgment of the Native practice of equality rights, which modelled and laid a path for the early women's rights movement, the 150th-anniversary commemoration of the First woman's rights convention began with the First words of the Thanksgiving address, spoken in Mohawk by Wolf Clan member Judy Swamp on behalf of the people of the world.²⁶⁷

How amazing is it to come from a nation of communities of people where, beginning at birth, you are taught about the sacredness of women. The sacredness of our connection to the land, our ability to bring life into this world, and our whole being is shared and learned. Our women provided strength to non-Indigenous women as they fought their suffrage battle. At the same time, we maintained our authority, and our women continue to give this strength in a foreign system for Indigenous and non-Indigenous women.

As a Haudenosaunee woman, I am eternally grateful for the battles our ancestors have overcome. We exist only because of the sacrifices that they made. The women highlighted in this chapter, and those outside of this paper, have fought for all of us even to exist today. They have stood up to our laws and governance and have defended the lands, waters, and environment around us. They have inspired others to do the same through what I believe is the principle of love. We must work together to figure out how to work in this

²⁶⁷ Wagner, *supra* note 38 at 94.

relationship with the colonial settler state and people. We must do so out of love for our people and the coming children. Like Sylvia Maracle's feeling of carrying the bones of her ancestors, we need to continue to fight and occupy necessary spaces to raise our voices and speak of the Great Law of Peace in advocating for the sovereignty of our nations. The strength of our women and the love of our people will guide this work.

FINAL CONCLUSION

Tell the Canadian government to back off of violating our Onkwehon:we women and to deal with us on a Nation to Nation basis and to recognize our right to liberty, security, etc – and self-determination and sovereignty and to honour the treaties we signed with them, like the Guswenta (Two Row Wampum). We have kept our promises. They need to recognize us as protectors of Mother Earth and stop abusing her. And finally, realize that we are People too. Also, to bring the perpetrators of the missing and murdered Aboriginal women to trial.²⁶⁸

Throughout these pages, I provide examples of how the invasion of Turtle Island and the use of the Doctrine of Discovery have impacted Haudenosaunee women. I have examined the colonial court systems and reviewed some decisions that challenged Haudenosaunee women, the title holders to the land. I examined how colonization, legalized patriarchy tried to remove Haudenosaunee women's autonomy and to belong to their community legally. We see that the use of residential schools broke down the bond between families and caused a further disconnection between our traditional teachings of women's sacredness and continue to enforce the colonial idea of civilized. Yet settler women saw what Haudenosaunee women had and settler women decided to fight in the woman suffrage movement, hoping to have the same political and authority opportunity as Haudenosaunee women. In that fight for fundamental human rights, Haudenosaunee women are a second thought because of the continued fight against the injustices that the invasion of our lands brought.

The first chapter explained some of the foundational stories of the Haudenosaunee Confederacy. The Creation Story, the Great Law of Peace and the Thanksgiving Address

²⁶⁸ Six Nations, *supra* note 2 at 8.

commonly speak about respecting each other and all living beings on Mother Earth; this included the plants, waters, rocks, soil, and trees because they are all interconnected. All living beings' matter. This connected worldview is a disconnect between Indigenous and settlers' worldviews. Our connections mean it matters how all living beings are treated because it ultimately impacts our communities. Because all living beings come from Mother Earth and Mother Earth was born from Sky Women, Haudenosaunee women played a vital role in the creation, continuance, and governance of the Haudenosaunee Confederacy.

The origins of the Great Law of Peace and the colonial laws are fundamentally different. On Turtle Island, the colonial laws created a hierarchy system that enforced oppressive methods on Indigenous peoples. Colonial laws are tools that were imported using the Doctrine of Discovery and continue on Turtle Island today. The case law that relies on the Doctrine of Discovery to assert colonial sovereignty over Indigenous peoples' lands, families, and resources. The Great Law of Peace begins with warring nations, but ultimately the goal of peace is achieved, and the Haudenosaunee Confederacy was created and operational today. While the colonial laws separated Indians into categories and placed several limitations on us to become civilized and enfranchise us. The Great Law of Peace speaks of gaining strength from one another and celebrating the differences while being able to work together for the betterment of the entire community. The law started and continues to operate differently, as seen in the evidence of the difference in treatment of Haudenosaunee women and children.

Haudenosaunee children were stolen to attend residential schools, and Haudenosaunee women are dehumanized because of sexuality to remove and disconnect them from their lands, homes, and families. The *Indian Act* worked hard to erase Haudenosaunee women's authority and replace it with patriarchy. The patriarchy was an avenue to try replacing Haudenosaunee women's authority by not allowing have a choice not to enfranchise if her husband did. The *Indian Act* would only allow men to be elected to political roles because women were not seen as equal to colonial law. Yet still, Haudenosaunee women keep their positions of authority following the Haudenosaunee foundation – The Great Law of Peace. Haudenosaunee women had the autonomy and political power that other women wanted. The settler women's suffrage movement started partly because of the power of Haudenosaunee women. Haudenosaunee Clan Mothers, leadership, and community members remain powerful and continue to crave space for the Haudenosaunee women today.

Haudenosaunee women continue to fight against the colonial machine that has produced systematic racism that even seeped into our communities. But the unique part is that no matter what harms have come and have been overcome as well as the difficulties faced by our women, we continue to survive. Our aunts, grandmothers, and little children coming all provide a reason to stand up and fight to become better than we are and use our minds and souls to overcome and succeed. Haudenosaunee women continue to show up and put in the effort for their clans, nations, and communities. Clan Mothers continue to do the work they were assigned, and we continue. No matter how much patriarchy seeps into the community, the women still show up out of love, and the fight continues for the seven generations.

My conclusion recognizes the damage to Haudenosaunee women's authority and leadership because of the systemic violence that occurs because of the *Indian Act* and the racist Doctrine of Discovery; Haudenosaunee women have fought against the patriarchy and sexism that has infested our communities and continue in the colonial settler society and institutions. Haudenosaunee women have maintained their political roles as Clan Mothers and continue to work for the community by still participating according to the Women's Nomination Belt. Haudenosaunee women continue in many positions of leadership in a variety of fields. Haudenosaunee women are lawyers leading community agencies, national inquiries and speaking to raise awareness at international forums like the United Nations. Like many other bonds damaged due to the invasion of Turtle Island, like the disconnections to culture, language and land, the bonds are regrowing. Our connection to culture, languages, and lands is becoming more assertive due to the leadership roles our Haudenosaunee women have played in advancing Indigenous people's issues. Although Haudenosaunee women are using their political authority and leadership, I still hope the damage from the *Indian Act* and all that comes from the Doctrine of Discovery will be healed through our Kanoronhkwá for our community and each other.

BIBLIOGRAPHY

Legislation:

No. 59, *An Act to encourage the gradual civilization of Indian Tribes in this Province and to amend the Laws relating to Indians*, 3rd sess, 5th Parliament 20 Victoria, 1987

An Act for the gradual enfranchisement of Indians, for the betterment management of Indian Affairs, and to extend the provisions of the Act 31st Victoria, c 42 SC 1869 c6.

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982 being Schedule B to Canada Act 1982 (UK), 1982, c.11.

Constitution Act, 1982, s 35 being in Schedule B to the *Canada Act 1982 (UK)*, 1982, c.11.

Indian Act, RSC 1985, c 1-5.

Band Council By-Law

Kahnwá:ke Membership Law, 2 April 2007 online: Kahawake
<http://www.kahnawake.com/council/docs/membershiplaw.pdf>.

Jurisprudence

City of Sherrill v Oneida Indian Nation of N.Y 544 U.S 197 (2005)

Davey et al v Isaac et al, [1977] 2 SCR 897.

Descheneaux c. Vanada (Procureur Général), 2016 QCCS 3555

Hill v. R (1998) 151 F.T.R 285

Johnson v M'Intosh 21 US (7 Wheat.) 543 (1823).

McIvor v. Canada (Registrar of Indian and Northern Affairs), 2009 BCCA.

153

Miller c Mohawk Council of Kahnà:ke 2018QCCS 1784

The Queen v Deverux [1965] SCR 567.

Tsilhqot'in Nations v British Columbia [2014] 2 SCR 257

St. Catharine's Milling and Lumber Co. v. R. (1887) 13 SCR 577)

Secondary Materials: Monographs

Borrows, John, *Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government* in *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* ed by Michael Asch (Vancouver, University of British Columbia Press, 1997)

Diangelo, Robin, *White Fragility: Why it's so hard for white people to talk about racism* (Boston: Beacon Press, 2018).

Graham, Elizabeth, *The "Mush hole" Life at Two Indian Residential Schools* (Waterloo, ON: Heffle Publishing 1997).

Green, Joyce, *Taking More Account of Indigenous Feminism: An Introduction* (Winnipeg: Manitoba Fernwood Publishing 2017)

Kovach, Margaret, *Indigenous Methodologies: Characteristics, Conversations, and Contexts* (Toronto: University of Toronto Press, 2010).

Kanawahienton & Stoke, John, *Thanksgiving Address Greetings to the Natural World Ohén:ton Karihwatéhkwen Words Before All Else*, (Native Self-Sufficiency Centre Six Nation Indian Museum Tracking Project Tree of Peace Society 1993).

Mann, Barbara Alice, *Iroquoian Women The Gantowisas* (New York: Peter Land Publishing Inc, 2011).

Mudimbe, Valentin Y, *Romanus Pontifex (1454) and the Expansion of Europe*, ed by Vera Lawrence, Hyatt & Rex Nettleford (Washington and London: Smithsonian Institution Press, 1995)

Ngata, Tina, *Kia Mau: Resisting Colonial Fictions* (New Zealand: Rebel Press, Trades Hall Wellington 2019).

North American Indian Travelling College, *The Creation Story: The Sky World* as told by Mike Myers, Seneca Nation, Cattaragus (Cornwall Island, Ontario: North American Travelling College, 1984)

Randle, artha Cahmpion, *Iroquis Women, then and now*, in Reprint: Iroquois Women an Anthology ed W.G. Spittal (Iroquois Publishing and Crafts Supplies 1990).

Rudin, Jonathan, *Indigenous People, and the Criminal Justice System* (Toronto, Ontario Montgomery Publications Limited, 2019).

Shin al et, *Annotated Aboriginal Law: The Constitution, Legislation, Treaties and Supreme court of Canada Case Summaries* (Toronto, ON: Thomson Reuters 2019).

Smith, Tuhiwai Linda, *Decolonizing Methodologies: Research and Indigenous People* (London: Zed books 2012).

Native Self-Sufficiency Center, *Thanksgiving Address Greeting to the Natural World*, (Corrales, New Mexico: The Tracking Project) at 16.

Wagner, Sally Roesch, *Sisters in Spirit:Haudenosaunee (Iroquois) Influence on Early American Feminists*, (Summer, TN: Native Voices Book Publishing Company 2001).

Secondary Materials: Articles

Anderson, Kim, "An Interview with Katsi'tsakwas Ellen Gabriel of the Kanienkeha:ka Nation, Turtle Clan" (2008) 26 3-4 Canadian Women Studies.

Baskin, Cyndy, "Contemporary Indigennous Women's Roles: Traditional Teachings or Internalized Colonialism (2020) 26:12-16 Violence Against Women.

Cousins, Micheal, "Aboriginal Justice: A Haudenosaunee Approach" (2004) 9:1 Justice as Healing Native Law Centre.

Chumburidze, Tea, *Section III: History, Art, Economics: The Role of Native American Women in Women's Suffrage Movement (paper) delivered at the AMS conference Periodical 2019.*

Drake, Karen, "The Impact of St Catherine's Milling" in Law Society of Upper Canada, ed, *Special Lectures 2017: Canada at 150: The Charter and the Constitution* (Toronto: Irwin Law and the Law Society of Upper Canada, 2018).

Gabriel Ellen, "Aboriginal Women's Movement; A quest for Self-determination" (2011) 1:1 *Aboriginal Policy Studies* 183 at 188 (<https://journals.library.ualberta.ca/aps/index.php/aps/article/view/10137/7949>).

Hill, Susan M, *Conduction Haudenosaunee Historical Research from Home: In the Shadow of the Six Nations-Caledonia Reclamation* (2009) 33:4 *American Indian Quarterly* 470.

Jacobs Beverley, "Indigenous Justice in Oceania and North America," article, *Oxford Research Encyclopedia of Criminology and Criminal Justice* (https://www.uwindsor.ca/law/sites/uwindsor.ca.law/files/jacobs_cv.pdf).

McMahon, Thomas L, *The Horrors of Canada's Torot Law system: The Indian Residential School Civil Case* (June 9, 2017) available at SSRN: <https://ssrn.com/abstract=2983995>.

Merskin, Debra, "The S-word: Discourse, Stereotypes, and the American Indian Women" (2010) 21:4 *Howard Journal of Communications*.

Miller, Robert, "The Doctrine of Discovery: The International Law of Colonialism" (2019) 5:1 *The Indigenous Peoples' Journal of Law, Culture & Resistance*.

---"Review of *Buying American From the Indian: "Johnson v McIntosh"* and the history of Native Law Rights by Blake A Watson (2013) 33:2 *Great Plains Quarterly*.

Native Women's Association of Canada, "Aboriginal Women's Rights are Human Rights" (17 May 2022 (posted)), online : *Native Women Association of Canada* <https://www.nwac.ca/assets-knowledge-centre/2000-NWAC-Aboriginal-Womens-Rights-Are-Human-Rights-Research-Paper-1.pdf> at 2.

Reid, Jennifer, "The Doctrine of Discovery and Canadian Law" (2010) *The Canadian Journal of Native Studies*.

Sylvia et al, “The work of a leader is to carry the bones of the people: exploring female-led articulation of Indigenous Knowledge in an urban setting” 2020 16:4 *Alter Native*.

Other Materials:

Austen, Ian “‘Horrible History’: Mass Grave of Indigenous Children Reported in Canada” (28 May 28 2021), online: *The New York Times* <<https://www.nytimes.com/2021/05/28/world/canada/kamloops-mass-grave-residential-schools.html>>.

Barnsley, Paul, “Bill C-31 daws \$400 Million dollar lawsuit” *Wind speaker Publication* 19:8 (2001).

BBC, “Canada: 751 unmarked graves found at residential school” (24 June 2021) online: *BBC CANADA AND USA*: <<https://www.bbc.com/news/world-us-canada-57592243>>.

Blakemore, Erin “This 500-year-old Catholic decree encouraged colonization. Will the pop revoke it?” (22 July 2022), online: *National Geographic History & Culture* <<https://www.nationalgeographic.com/history/article/doctrine-of-discovery-how-the-centuries-old-catholic-decree-encouraged-colonization#:~:text=Origins%20of%20the%20Doctrine%20of%20Discovery&text=In%20a%20series%20of%20edicts,and%20convert%20them%20to%20Christianity.>>>.

Blackburn, Mark “Roberta Jamieson blazing a trail”, *APTN National News* (9 March 2012) <https://www.aptnnews.ca/national-news/roberta-jamieson-blazing-a-trail/>.

Brake, Justin, “First Nations women finally to be treated equally under Indian Act: Bennett”, *APTN National News* (16 August 2019) online: <<https://www.aptnnews.ca/national-news/first-nations-women-finally-to-be-treated-equally-under-indian-act-bennett/>> .

Canada, “The Law Commission of Canada and/or the Miscarriages of Justice of Commission, Injustices and Miscarriages of Justice Experience by 12 Indigenous women: A Case for Group Conviction Review and Exoneration” (9 May 2022).

Canada, Truth and Reconciliation Commission of Canada, *Canada’s Residential Schools: Missing Children and Unmarked Burials: The Final Report of the Truth and Reconciliation of Commission of Canada*, (Report) volume 4 <https://web.archive.org/web/20200717144330/http://www.trc.ca/assets/pdf/Volume_4_Missing_Children_English_Web.pdf>.

Canada, Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* at 12 <https://web.archive.org/web/20200506065356/http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf>.

CBC News, “B.C. First Nation says more than 160 unmarked graves found” (12 July 2021) online: *CBC News British Columbia* <<https://www.cbc.ca/news/canada/british-columbia/penelakut-kuper-residential-school-1.6100201>>.

Conn, Heather, “Roberta Jamieson” (17 July 2019) online: *The Canadian Encyclopedia* <https://www.thecanadianencyclopedia.ca/en/article/roberta-jamieson>.

CTV News, “Shame on Canada’: Thousands attend Cancel Canada Day Tally on Parliament Hill” (1 July 2021) online: *CTV news Ottawa* <<https://ottawa.ctvnews.ca/shame-on-canada-thousands-attend-cancel-canada-day-rally-on-parliament-hill-1.5493234>>.

Cupido, Marina, “An independent Indigenous court: Panel Discusses successes and challenges of Akwesasne court”, *Mcgill daily* (23 January 2017) <https://www.mcgilldaily.com/2017/01/an-independent-indigenous-court/>.

Deer, Ka’nehsio:io “Less than half of the \$200M requested for burial searches at residential schools funded”, *CBC News Indigenous* (29 September 2022) <https://www.cbc.ca/news/indigenous/residential-schools-burial-search-funding-requests-1.6598566>

Deerchild, Rosanna

“It broke my heart: Waneek Horn-Miller fought Kahnawake’s ‘marry out, get out police- and won”, *Unreserved CBC Radio Podcast and article* (12 October 2018).

DIALOG: Résea de recherche et de connaissances relatives aux peuples autochtones, “The Queen v. Devereux Supreme Court of Canada – [1956] SCR 567” online: Indigenous Jurisprudence Autochtone <<https://jurisprudence.reseadialog.ca/en/case/the-queen-v-devereux/>>.

Elliott, Alicia “The meaning of Election for Six Nations” (21 May 2015), online: *briarpatch* <<https://briarpatchmagazine.com/articles/view/the-meaning-of-elections-for-six-nations>>

Facing History and ourselves, “White Paper, Red Paper: Stolen Lives: The Indigenous People of Canada and the Indian Residential Schools” online: *Stolen lives: The Indigenous Peoples of Canada and the Indian Residential Schools/Civil Choices*

<<https://www.facinghistory.org/stolen-lives-indigenous-peoples-canada-and-indian-residential-schools/chapter-8/white-paper-red-paper>>

Gadacz, R Renè, “Wampum” (7 Feb 2006) online: *The Canadian Encyclopedia* <<https://www.thecanadianencyclopedia.ca/en/article/wampum>>.

Government of Canada, “About Indian Status” (25 February 2022) online: *Indian Services Canada* <<https://www.sac-isc.gc.ca/eng/1100100032463/1572459644986>>.

Government of Canada, “Royal Proclamation of 1763: Relationships, Rights and Treaties-Poster” (27 November 2013) online: Government of Canada <<https://www.rcaanc-cirnac.gc.ca/eng/1379594359150/1607905375821?wbdisable=true>>.

Government of Canada 250th Anniversary of the Royal Proclamation of 1763 (2016) online: <https://www.rcaanc-cirnac.gc.ca/eng/1370355181092/1607905122267#a6>>.

Getty, Ian “Harold Cardinal” (15 May 2011) online: *The Canadian Encyclopedia* <<https://www.thecanadianencyclopedia.ca/en/article/harold-cardinal>>.

Hall, Anthony J, “Royal Proclamation of 1763” (30 August 2019), online: *The Canadian Encyclopedia* <<https://www.thecanadianencyclopedia.ca/en/article/royal-proclamation-of-1763>>.

Haudenosaunee Confederacy, “Clan System” online: <https://www.haudenosauneeconfederacy.com/klan-system/>.

--- “Government” online: <https://www.haudenosauneeconfederacy.com/government/>.

Hanson, Helena “Trudeau Is Speaking Out About The ‘Dark & Shameful Chapters’ of Canada’s Past” (2 September, 2020) online: *Narcity Ottawa* <<https://www.narcity.com/ottawa/canadas-history-has-some-dark-shameful-chapters-acknowledges-trudeau>>

Henderson, William B, “Indian Act” (16 December 2020), online: *The Canadian Encyclopedia*: <<https://www.thecanadianencyclopedia.ca/en/article/indian-act#:~:text=The%201850Act%20for%20the%20better,on%20blood%2C%20and%20essentially%20said>>.

Hill, Rick, “#1 Hondinoshson:ni Creation Story: Lessons of Life (18 September 2015) at 1:14 on Youtube.

History.com Editors, “Proclamation of 1763” (9 September 2019), online: History <<https://www.history.com/topics/native-american-history/1763-proclamation-of>>.

H.M. Royal Chapel of the Mohawks, “Welcome to H.M.Royal Chapel of The Mohawks where Royalty and Nations Unify” online: <https://mohawkchapel.ca>.

Indspire, “Kimberly R. Murray, BA, LL.b, IPC Law and Justice (2017)” (7 February 2017).

Indigenous values. “Dum Diversas: Papal Bull Dum Diversas 18 June 1452” (23 July 2018), online: Dum Diversas: <<https://doctrineofdiscovery.org/dum-diversas/>>.

Jacobs, Beverley, “Impacts of Industrial and Resource Development on the Wholistic Health of Akwesasronon: A Human Responsibility/Rights Solution (Ph.d, University of Calgary, 2018).

---“International Law/The Great Law of Peace” (Master of Law Degree, University of Saskatchewan, 2000).

Jeffries, Marshall & Jeffries-Logan, Vivette, “Honoring the Hearts of Our Nations” (February 13, 2013), online: *Decolonization Indigeneity, Education & Society* <<https://decolonization.wordpress.com/2013/02/13/honoring-the-hearts-of-our-nations/>>.

Legace , Naithan & Niigaanwewidam, James Sinclair, “The White Paper, 1969” (11 September 2015) online: The Canadian Encyclopedia <<https://www.thecanadianencyclopedia.ca/en/article/the-white-paper-1969>>.

Methodspace, “Identifying & Planning Research Qualitative Methods: Phenomenology, online <<https://www.methodspace.com/blog/qualitative-methodologies-phenomenology>>.

Mohawk Council of Akwesasne, News Release, “MCA announces Appointment of four justice” (29 April 2022) online: <http://www.akwesasne.ca/mca-announces-appointment-of-four-justices/> .

Native Women’s Association of Canada, “The Indian Act Said What” (1 January 2018), online: Native women’s Association of Canada <<https://www.nwac.ca/wp-content/uploads/2018/04/The-Indian-Act-Said-WHAT-pdf-1.pdf>>.

--- “Indigenous women in Solitary Confinement: Policy Backgrounder (Ottawa 2017).

--- “Bill S-3” online: Legal and Justice affairs <https://nwac.ca/policy/bill-s-3>.

Obomsawin, Alanis “Kanehsatake: 270 years of Resistance” (1993) online: National Film Board of Canada <
https://www.nfb.ca/film/kanehsatake_270_years_of_resistance/>.

Onondaga Nation People of the Hills, “Wampum” online:<
<https://www.onondaganation.org/culture/wampum/>>.

Onondaga Nation People of the Hills, “Circle Wampum” online: <
<https://www.onondaganation.org/culture/wampum/circle-wampum/>>.

Onondaga Nation People of the Hills, “Two Row Wampum- Gä•sweñta” online:
<<https://www.onondaganation.org/culture/wampum/two-row-wampum-belt-guswenta/>>.

Papal Encyclicals online, “Romanus Pontifex: Granting the Portuguese a perpetual monopoly in trade with Africa” (2017), online: Papal Encyclicals
<<https://www.papalencyclicals.net/nichol05/romanus-pontifex.htm>>

Presentation Akwesasne Mohawk Court: Experiences, successes, and challenges (May 25 2019) online: https://ciaj-icaj.ca/wp-content/uploads/documents/2019/06/r84e-akwesasne-mohawk-court_c.-jacobs.pdf?id=10727&1600832200.

Presentation Mohawk Council of Akwesasne (March 8 & 9 2006)
https://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/projects/pdf/C_hiefs_of_Ontario-Mohawk_Council_of_Akwesasne_Presentation.pdf.

United Nations Economic and Social Council “Impact on Indigenous People of the International legal construct known as the Doctrine of Discovery, which has severed as the Foundation of the Violations of their Human Rights” Preliminary study submitted by Tonya Gonnella Frichner, Special Rapporteur E/C.19/2010/13

Roque, Sara “Six Miles Deep” (2009), online: *National Film Board of Canada* <
https://www.nfb.ca/film/six_miles_deep/>.

Salomons, Tanisha “Ipperwash Crisis” (10 November, 2022), online: *Indigenous Foundations* <
https://indigenousfoundations.arts.ubc.ca/ipperwash_crisis/>.

Scanlan, Lawrence, “A woman of firsts”, *Western Alumni* (2017) online:
<http://alumni2.westernu.ca/fam/western-law/2017/a-woman-of-firsts.html>.

Six Nations Traditional Women’s Council Fire & Haudenosaunee For Women’s Autonomy, Rights and Dignity “Report to the United Nations Committee to End All forms of Discrimination Against Women: Canada’s Flagrant and Scurrilous Human Rights Violations Against Ogwehò;weh (First Nations Women).

Six Nations Lands and Resources, “Six Miles Deep: Land Rights of the Six Nations of the Grand River” (2015), online: Information Index <<https://www.sixnations.ca/LandsResources/SixMilesDeepBooklet2015Final.pdf>>.

Submission to the standing committee on Aboriginal Affairs and Northern Development of Bill C-3: Gender Equity in Indian Registration Act Women’s Legal Education and Action Fund (26 April 2010), at 2 online: (pdf) <<https://www.leaf.ca/wp-content/uploads/2016/03/2010-04-Submission-To-The-Parliamentary-Standing-Committee-On-Aboriginal-Affairs-Northern-Development-On-Bill-C-3.pdf>>

Stirbys Cynthia D. “Gender- Based Analysis and Differing Worldviews” (2008) 26: 3-4 Canadian Woman Studies 138 at 140

The Editors of Encyclopaedia Britannica, “*Treaty of Paris 1763*” (3 February 2021), online: Britannica <https://www.britannica.com/event/Treaty-of-Paris-1763>.

USLegal, “Terra Nullius Law and Legal Definition (8, November 2022) online: *Legal Definitions* < <https://definitions.uslegal.com/t/terra-nullius/>

Wagner, Sally Roesch, “How Native American Women Inspired the Women’s Rights Movement” (13, June 2022) online: *National Park Service website* < <https://www.nps.gov/articles/000/how-native-american-women-inspired-the-women-s-rights-movement.htm>>.

Valiante, Giuseppe “Akwasne create first court in Canada for and by Indigenous people”, *CBC Montreal* (2 October 2016) < <https://www.cbc.ca/news/canada/montreal/akwasne-indigenous-court-canada-1.3787969>>.

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