Beyond Blood: Rethinking Indigenous Identity

Chair in Indigenous Governance

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Dr. Pamela D. Palmater

Curve Lake First Nation

Why I Wrote My Book

My Lived Identity

• Born 100% L'nu (Mi'kmaw)
• Ogpi'kanjik (Eel River Bar First Nation)
• Large extended family
• Grandma was healer
• Her father (my GG Grandfather) was chief

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Why I Wrote My Book

Granny & Aunt Dolly

• Granny 100% L'nu
• Turned into “Indian”
• She married out (non-Indian)
• Became 0% Indian
• Husband abandoned
• Remained 0% Indian
• But 100% L'nu
Why I Wrote My Book

My Dad and Uncle Guy

- Father 100% L’nu
- But 0% “Indian” in law
- 1985 Amendments
- Dad applied for status
- Granny = 100% Indian
- She became s.6(1)(c)
- Dad = 50% Indian
- He became s.6(2)
- He applied for me

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My kids

- I was 25% “Indian”
- Mom had L’nu ancestry
- No Indian status
- No band membership
- Had to live off-reserve
- External identity = NSI
- My kids = 0% Indian
- Due to Granny’s gender

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Beyond Blood

Canada has had control of our identities for too long
- Blood quantum rules will result in legislative extinction of “Indians”
- Indigenous women & descendants do not have equality
- Knowledge is key to decolonization

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Pre-Contact

- Indigenous Nations
  - 60-80 Traditional Nations
  - Large populations
  - Vast territories
- Citizenship Rules
  - Traditional laws, customs
  - Relational Concept
  - Benefits & obligations

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Mi'kmaq

Pre-Contact

- Generous Concept
  - Marriage, adoption, residency
  - Absorption of prisoners, tribes
  - Language, relations, ties to land
  - Traditions, histories, beliefs, view
  - Citizenship never tied to scarcity or surplus of resources

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Indigenous Identity

Territory
- Sustained from lands, waters, plants, animals, resources
- Obligations to defend, protect & maintain

Culture
- Customs, practices, traditions, dances, songs
- Languages, beliefs, views

Relationships
- Histories & ancestors
- Familial & communal
- Nation-based & future
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**Treaties**
- Nation to Nation
  - No transfer of jurisdiction
  - Royal Proclamation of 1763
    - “Nations”
- Treaties of 1725-26
  - “their natural descendants”
- Treaty of 1752
  - “their heirs and the heirs of their heirs forever”
- Treaties of 1760-61
  - “my Tribe, my Heirs and their heirs for ever”

**Colonial Policies**
- Policy Objectives
  - Secure land and resources for settlement
  - Control Indian trade networks
- Policy Assumptions
  - Indians & culture were inferior
  - Indians slowly dying off
  - Temporary “Indian problem”

**Residential Schools**

**Phrenology**
- Colonial ideologies justifying actions
  - Indians “sub-human”
  - Terra Nullius
- Measured by physical traits
  - blood, hair, skull, eye, teeth, skin
  - Disqualify Indians from lands & treaties
- Dishonoured ancestors
  - Dug up thousands bodies
  - Measured skulls, bones, etc
Beyond Blood

**Eugenics**
- Improving human genetics
  - Focuses on evolution
  - Brutal movement = mass human rights violations
- Associated with Nazi Germany
  - Concept of "racial hygiene"
  - Extermination of "undesired" populations
- Used to breed Indians out of existence
  - Tying Indianness to blood
  - Treated as a "race"

**Colonial Policies**
- Policy Design
  - Short term planning
  - Minimal funding
  - Control, divide, assimilate
- Policies
  - Elimination
  - Assimilation
- Impacts
  - Chronic poverty, ill health, pre-mature deaths
  - Loss of identity, culture, language, lands, resources

**Early Legislation**
- 1868 Management of Indian Lands
  - Generic "Indian" race
  - Blood, residency, marriage
- 1869 Gradual Enfranchisement Act
  - Exclude Indian women who out-marry
  - Entitlements tied to 1/4 blood
  - Enfranchisement – voluntary
"I want to get rid of the Indian problem... Our objective is to continue until there is not a single Indian in Canada."

"Indian children... die at a much higher rate [in residential schools]... but this alone does not justify a change in the policy... which is geared towards a final solution of the Indian problem."

"Parliament has provided the legal definition of an Indian... This definition has greatly simplified the Indian problem... it has enabled the Government to deal with its wards without complications... in gradual assimilation."

When an Indian woman marries outside the band... it is in the interests of the Department, and in her interests as well, to sever her connection wholly with the reserve.

**Beyond Blood**

**Indian Act, 1876**

- One parent descent rule (male Indians)
- "Indianness" tied to male blood
- Full federal control
- Carried out largely by Indian agents
- Many protests from FNs

**Indian Act, 1951**

- Registrar & band lists
- Section 11 entitlement
  - (c) male person descended from male in (a) (b)
  - (d) legitimate child of male
  - (e) illegitimate child of female (unless protested)
  - (f) wife or widow of male

"Mary Two-Axe Searcy,"
Jeanette Corbiere - Lavell
Indian Act, 1951

- Section 12 exclusions
  - (i)(a)(iii) enfranchised
  - (iv) born of marriage post-1951, 21 yrs, whose mom & father’s mom gained status
  - (b) Indian woman marries non-Indian
- Lavell, Bedard v Canada

Indian Acts up to 1985

- Demographics
  - 16,000 Indian women lost Indian status
  - 16,200 non-Indian women gained Indian status
- Gender Inequality
  - Only 200 Indian men lost status (all reinstated)
  - 285 FNs had OIC re DMC
  - 63 FNs had OIC re 12(1)(b)

Lovelace v. Canada

- Facts
  - Lovelace married NI
  - Lost status & right to live on reserve
- Canada
  - Needed to protect “Indian minority”
  - Indians “divided on issue of equal rights”
- Decision
  - Art.27 ICCPR – Act denies right to enjoy culture & language in community w members of her FN
Indian Act, 1985

Who Knows Best??

Section 6 – entitled
- (1)(a) acquired rights
- (b) new Indians
- (c) reinstates (DMC & 12(1)(b))
- (d) enfranchisement order
- (e) omissions
- (f) two parents w status
- 6(2) child of one parent w status

Indian Act, 2010

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McIvor v. Canada

McIvor Case
- S.15 equality claim
- Desc of Indian men have protected status in 6(1)(a)
- Desc of Indian women have lesser or no status in 6(2) or non-status Indians (NSIs)
- Residual vs. new discrimination
- No challenge to 6(2)
- Trial vs. appeal decisions

Bill C-3
- Re-enacted s.6(1)(a)
- Created s.6(1)(c.1)
- Shielded gov from liability
- Discrimination
  - Not address residual discr
  - 2 new forms- disability & family
- Retroactive Application of C-31
  - Desc of Indian men – protected
  - Desc of Indian women have 2nd gen cut-off applied pre-85
  - Protects 2nd gen cut-off rule
### Ongoing Gender Inequality

<table>
<thead>
<tr>
<th>Pre-85 Indian Grandmother</th>
<th>Pre-85 Indian Grandfather</th>
<th>Bill C-2 Indian Grandmother</th>
<th>Bill C-2 Indian Grandfather</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian GM + NI Husband = 2 NSIs</td>
<td>Indian GF + NI Wife = 2 Indians</td>
<td>Indian GM + NI Wife = 2 Indians</td>
<td>Indian GF + NI Husband = 2 NSIs</td>
</tr>
<tr>
<td>Male Child + NI Wife = 2 NSIs</td>
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<td>GGS + NSI</td>
<td>GGS + NI</td>
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</tbody>
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### Beyond Blood

#### Biological Notions of Race

<table>
<thead>
<tr>
<th>Notional Blood Quantum</th>
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<tbody>
<tr>
<td>6(1) = 100% blood</td>
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<tr>
<td>6(2) = 50% blood</td>
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<tr>
<td>NSI = 25% or less</td>
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<tr>
<td>“1/4 blood rule”</td>
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<tr>
<td>Introduced in 1951 w/ DMC rule</td>
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<td>Expanded in 1985</td>
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<tr>
<td>= Legislative extinction</td>
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#### beyond blood

<table>
<thead>
<tr>
<th>Parent A + Parent B) / 2 = Child's Notional Blood Quantum</th>
</tr>
</thead>
<tbody>
<tr>
<td>6(1) + 6(1) = 6(1) (100% + 100%)/2 = 100%</td>
</tr>
<tr>
<td>6(1) + 6(2) = 6(1) (100% + 50%)/2 = 75%</td>
</tr>
<tr>
<td>6(2) + 6(2) = 6(1) (50% + 50%)/2 = 50%</td>
</tr>
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<th>Second Generation Cut-off = ½ notional blood quantum</th>
</tr>
</thead>
<tbody>
<tr>
<td>6(1) + Non = 6(2) (100% + 0%)/2 = 50%</td>
</tr>
<tr>
<td>6(2) + Non = NSI (50% + 0%)/2 = 25%</td>
</tr>
<tr>
<td>NSI + NSI = NSI (25% + 25%)/2 = 25%</td>
</tr>
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</table>
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Purebred Dog Registration  Purebred Indian Registration

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Purebred Horse Criteria  Purebred Indian Criteria

• 8 generations of “like breed ancestors” without any cross-breeding with other breeds
• Goal is to promote a “true blood-breed” standard
• Head of complimentary size to neck and body, there can be no extreme profiles
• Coat pattern should be recognizable from 15 feet away
• Eyes most commonly brown

• Indians to breed with other Indians - no cross-breeding for more than 1 generation
• Goal to maintain “genealogical proximity” to “historical” group
• “the skull of the North American Indian…” is noticeable for its roundness
• “Pencil test” to be used on hair – if it stays in hair, not Indian
• Eyes most commonly brown

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If We Do Nothing…  Legislative Extinction

Out-marriage (parenting) rates

• Low (20%)
• 25 FNs
• Mod. Low (20-39.9%)
• 113 FNs
• Moderate (40-59.9%) 240 FNs
• Mod. High (60-79.9%)
• 162 FNs
• High (80-100%)
• 49 FNs

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If We Do Nothing...

- "Extinction" Dates = Assimilation
  - 75-100+ years extinction dates for birth of last status Indians
  - No status = no band membership for majority of FNs
  - Majority = descendants of Indian women who married out
  - What happens to bands, reserve lands, treaties, Abrights?
  - How impact political status/power?

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Canadian citizenship determined by proximity/remoteness to "original" founding father?

- Inter-marriage b/w original Canadians & immigrants meant diluted citizenship? Loss?
- National deficit meant next year Canadian babies could not be registered as citizens?
- Canadians who adapted First Nation traits like hunting, fishing were considered "assimilated"?
- Canadians had same level of identity insecurity as FNs?

Why Does Status Matter?

- Economic
  - Federal Programs & Services
  - Lands, resources, tax benefits
- Political
  - Band membership
  - Band Elections, governance
- Participatory
  - Treaty & land claim beneficiaries
  - Self-government citizens
Why Does Status Matter?

Old Status Circle

- Economic
  - Federal Programs & Services
  - Lands, resources, tax benefits
- Political
  - Band membership
  - Band Elections, governance
- Participatory
  - Treaty & land claim beneficiaries
  - Self-government citizens

Mi'kma'ki

- Legal
  - Right to live on reserve
  - Own, bequeath reserve lands
- Cultural
  - Access to elders, language
  - Cultural practices, gatherings
- Personal
  - Access to community
  - Inclusion

Moving Forward

No Blood Quantum

- Decolonization
  - Indigeneity not in IA
  - Identity is not in our hair, teeth, or blood
- Forgive Ourselves
  - For effects of colonization
  - Internalization
  - See each other differently
  - Heal our communities
Beyond Blood

Equal Indian status under the Indian Act will not undo generations of colonization, nor will it give us our cultures, languages and authentic Indigenous identities back;

BUT

Removing the legislative barrier of unequal or denied legal identities will remove practical legal, political and social barriers to individuals who want to access their communities & cultures.

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Idle No More

We Are

IDLE NO MORE

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Idle No More

What is Idle No More?

- Inclusive Indigenous grassroots movement;
- Includes traditional & many elected leaders;
- Elders, men, women, youth;
- Respects sovereignty of individuals & First Nations;
- Based on treaty principles of peace and friendship;
- Grounded in our cultures & traditions;
- Allied with Canadians & Americans;
- Living up to our responsibilities

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What Idle No More is Not:

- No National Chief, elected leader or politician;
- No corporation, organization or bureaucracy;
- No one leader or spokesperson;
- No one controls or dictates activities;
- Not replace or challenge any current political orgs;
- Not a funded entity;
- Not political (not attached to fed/prov parties etc);

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What are core messages?

- First Nations are Canadians last best hope at saving the lands and waters for all our future generations;
- This movement is about asserting, defending and living our sovereignty as Indigenous Nations;
- Our actions will help restore democracy and the rule of law in Canada for Canadians;
- Fundamental shift in relation back to Nation to Nation treaty relationship.

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**Idle No More**

**What are core demands?**

1. Repeal Bills C-45, C-10 and C-38 and withdraw rest of federal legislation targeting First Nations unless and until consent is obtained;
2. Deal with current crisis in many First Nations – adequate funding for water, sanitation, housing, food, medicine, education;
3. Nation to Nation process (w timelines, objectives & outcomes) to implement treaties and inherent rights to share/protect the lands and resources.

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**Idle No More**

It’s time for action to end federal BLOCKADE of our First Nations!

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**Idle No More**
What can you do?

- Self-educate, teach-ins, presentations
- Ask questions, seek out facts, stay informed
- Social media, community contacts & resources;
- Help organize, pass word, participate in round dances, marches, rallies, protests and slow-downs;
- Support others who do organize and participate;
- Help educate others, Canadians & our communities;
- Put all our skills together to defend our treaties!
We Can Do This!

- Indian Act attempt to ban ceremonies – Defeated
- Residential school try to assimilate us - Defeated
- Sterilization of women to eliminate us - Defeated
- Indian Act discrimination vs women - Defeated
- 1969 White Paper – Defeated
- Saskatchewan prohibition re FN gaming – Defeated
- Meech Lake Accord - Defeated
- First Nations Governance Act - Defeated
- HST Legislation in ON - Defeated