

## Franchises lost and gained: post-coloniality and the development of women's rights in Canada

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## **Franchises Lost and Gained: Post-Coloniality and the Development of Women's Rights in Canada**

### **1. INTRODUCTION**

Canada has an international reputation as a standard setter in relation to women's rights (CEDAW 2003: Para 16) and the Canadian constitution is to some extent characterised by its focus on equality, and in particular gender equality (FAFIA and NWAC 2015: 9).<sup>1</sup> The development of women's rights in Canada and the greater engagement of women as political actors is often presented as a steady linear process, moving forwards from post-enlightenment modernity. In this view rights acquisition and political engagement are linked to 'Western' ideas of progress, and closely associated with 'Western' models of development (Fraser 1999; Friedman 1995). This presents a view of history that Foucault terms a '... discourse of the continuous...' (Foucault 1982:12). This perspective on history has been criticised by postmodern scholars and particularly by feminists. (Foucault 1982; Scott 1988). Amongst other things feminist critique notes that it can place women's rights and non-western cultures in an oppositional relationship leading to the paternalistic treatment of indigenous women<sup>2</sup> (Green 2007). In addition an alignment of women's rights with the experience of middle class white women's emancipation crafts an understanding of gender discrimination and shapes the context of women's rights in a way which fails to take into account the significance of class and race, and other cleavages (hooks 2000; Crenshaw 1989). This can be seen in Canada itself where general views of women's rights fail to recognise the very serious problems of rights 'enjoyment' for Indigenous women. For example Indigenous women are over represented as victims of violence in Canada and underrepresented in political positions (Palmer 2016). These disparities in the enjoyment of rights have been presented as an anomaly and, because they did not fit a picture of the steady development of women's rights in Canada, were blamed on the dysfunctionality of indigenous communities themselves rather than any failing

within the Canadian state (Palmater 2016). This article seeks to disturb this discourse of the continuous,' (Foucault 1982: 12) by using an analysis of the history of suffrage in Canada to both refute a view of women's rights as developing through simplistic linear progression and by arguing for recognition of the Indigenous contribution to the history of women's rights in Canada.

The gain of franchise and the development of suffrage movements in Canada in the late nineteenth and early twentieth century are, rightly, the focus of considerable study (Pauker 2015). This article takes an alternative perspective. Instead, it examines the exercise of earlier franchises in pre-confederation Canada. In particular it analyses why franchise was exercised more widely in Lower Canada and relates this to the context of the removal of franchises from women prior to confederation. Existing literature both references and provides some discussion of the phenomenon of women's early franchise in Canada (Bradbury 2012; Garner 1969; Cleverdon 1950; Campbell 1989). This article draws on the existing secondary literature and uses contemporary primary sources to provide context for both the exercise of and the exclusion from franchise in the pre-confederation period. Distinctively, this article refutes the orthodox explanation given by *The History of the Vote in Canada* (Elections Canada 1997) and by John Courtney (Courtney 2004), that the higher incidences of voting by women in Lower Canada were due to the absence of the Common Law. Alternatively it is suggested that any difference is due among other factors, to the role of women, and particularly indigenous women, in the development of Lower Canada. The context of women's explicit exclusion from franchise in pre-confederation Canada is also analysed through this new perspective. The article argues for the significance of this legal history to current theory and debate on the political and legal contexts of development of women's rights, particularly in the context of indigenous women's rights in Canada.

The next section (2) sets out the recorded incidences of women's voting in pre-confederation Canada and challenges the orthodox reasons given for the higher incidence of voting in Lower Canada. Section 3 provides out an alternative explanation for the difference in political culture while section 4 analyses the removal of these early franchises from women. The

section goes on to link these legal changes to change in the context of the imperial project and the nature of colonialism. Section 5 concludes by arguing that this 'lost' history has a contemporary resonance on understandings of women's rights in contemporary Canada.

## 2 PRE-CONFEDERATION CANADA

### 2.1 Charting Franchise Exercise

The history of women's suffrage in Canada, might appear to support a view of rights acquisition as a linear development. For example *Edwards v. A.G. Canada* ([1930] A.C. 124), the Persons Case, is presented as one of those defining constitutional moments along the way of a steady progression of women's rights. Yet within the 'Persons Case' itself we can also read illustrations of the historical complexity of women's fluctuating positions in society and the more diverse origins of respect for women's equal worth. *Edwards v. A.G. Canada* ([1930] A.C. 124), held that women in Canada had a constitutional right to stand for Senate. Lord Sankey rejected an originalist interpretation and instead found that the Canadian Constitution was a 'living tree' (*Edwards v. A.G. Canada* [1930] A.C. 124: 136) capable of growth and reinterpretation in line with changing social circumstances.<sup>3</sup> The reasoning in this case seems to fit the understanding of rights acquisition as linear. Yet in *obiter* statements Lord Sankey found that women had exercised franchise without explicit grant, noting that 'In Quebec, just as in England, there can be found cases of exceptional women in exceptional instances.' (*Edwards v AG Canada* [1930] AC 124). In fact the evidence shows that these instances were numerous and frequent.

Women in Lower Canada voted under the Constitutional Act 1791 Georg.II Cap. XXXI (Shortt and Doughty 1918: 694). A *Plan For a House of Assembly* attached to a petition presented by Anglophones in 1784 called for the British to set up an elected assembly in Lower Canada in which 'None but males shall either Vote or represent.' (Shortt and Doughty 1918: 510). The petitioners desire to limit the vote to men might be viewed as suggestive that women at the time were politically active and would otherwise have expected to vote. Nevertheless when the assemblies for Lower and Upper Canada were established and voting qualifications were set out in the Constitutional Act 1791 in section XX there was no reference to sex as a qualification. The vote was given to 'persons,' provided they had the requisite property qualification, age and citizenship as set out in section XXII.

One of the earliest direct records of women voting in Canada is of Mrs Papineau and her female friends accompanying her son to the Polls in 1809, and announcing proudly that she would be voting for her son (Cleverdon 1950: 214). This was recorded in the press at the time. Further evidence exists through petitions regarding elections. In 1820, the provincial parliament of Lower Canada upheld a petition challenging the validity of 22 married women's votes (Garner 1969: 157). Interestingly it was not the gender of the voters per se that was found to invalidate the votes. It was the married status of the women, together with the fact that their husbands had already exercised votes based on the same property, which rendered their votes void (Garner 1969: 157). Therefore the reasoning suggests that where the property qualification was fulfilled women's votes were acceptable. Cleverdon also notes that at this time and through the 1820s voting by women a Three Rivers was 'commonplace.' (Cleverdon 1950: 215).

Further petitions presented in 1828 provide a record of women voting and reveal a lack of any "strong antipathy" towards women's votes in this period (Cleverdon 1950: 215). One petition from 'divers electors' concerned the refusal of the returning officer to take a widow's vote at an election in Quebec Upper Town. The petition asked the Assembly to invalidate the election of the candidate Mr. Andrew Stuart for this reason (Cleverdon 1950: 215). Supporting this petition, an assembly member, seconded by another, opined that, if the widow's vote had been denied, then the election was surely invalid (Cleverdon 1950: 215). A second petition, presented to the House of Assembly of Lower Canada at the same time argued in the opposite way (Doughty and Story 1935:519). Amongst other electoral irregularities the petition suggested that the "votes of women, married, unmarried and in a state of widowhood were illegally received." (Doughty and Story 1935: 521). Both petitions were laid aside until the next session, when the assembly decided to take no action in relation to either (Cleverdon 1950: 215). There was no duty to keep polling records but some were kept and noted both the sex and the ethnicity of voters. So that in 1825, 27 First Nations women from Ka were recorded as voting in an election in Huntingdon County, Lower Canada (Bradbury 2012: 263).

The highest numbers of recorded votes came in the years prior to the first legislative attempt to exclude women from the franchise. In elections in 1832 records show that 71 women came forward to vote over 4 days in an April by-election in an Montreal East, 61 of the votes were accepted (Parliamentary Report, Lower Canada 1833: 26<sup>th</sup> January 185). Later that month in the by-election of Montreal West that went on for 23 days 225 women approached the hustings. Of these 216 women came forward to vote, 199 women had their votes accepted for the election and 17 were refused. (Parliamentary Report, Lower Canada 1833: 26<sup>th</sup> January 187; 23<sup>rd</sup> February 94). These records were preserved through the report of a parliamentary inquiry into the election which was significant since the Riot Act was read (Jackson 2009). Garner states that there were no recorded instances of women voting in Lower Canada after 1834 (Garner 1969: 158), but Bradbury notes that further recorded instances exist until 1844 (Bradbury 2012: 261).

Some records also exist for Upper Canada, most notably after Upper and Lower Canada had been combined as the United Province of Canada in 1841. In an 1844 election in the County of Halton, 7 women's votes were accepted. James Durand of Dundas a Reform Party Candidate put in a petition to the Assembly in relation to the election. One of the 12 complaints he listed was that the Returning Officer and several of the Deputy Returning Officers '...allowed divers women, in all to the number of 7 on the aggregate Poll, to vote for Mr James Webster' his rival (Assembly 1844 2 December 8 Victoria). The whole election was won by only 8 votes overall so these 7 were key votes. The investigation into this election went on until 1846 and Mr Durand brought 6 women as witnesses to one of the hearings. Ultimately the select committee found that none of the evidence was sufficient to invalidate the election and the costs had to be paid by Durand (Journal of the Assembly 6 May 1846: 214-215).

In other parts of pre-confederation Canada some recorded instances of women voting exist but are much less frequent, and these were more often successfully contested at the time. Jennings believes the earliest women's votes recorded were six women's votes at Winston County Nova Scotia in 1793 (Jennings 2015). Garner also cites two further examples, which

suggest that women's right to vote was recognised in Nova Scotia even if it was not deemed to be customary (Garner 1969: 156). In the first cited instance a candidate sought to challenge his opponent's use of female votes again on the basis of their property qualification rather than sex. He dropped his challenge when told that any investigation would centre on the property qualification of the candidates, not those of the voters (Garner 1969: 156). The second instance occurred at a general election in Annapolis County, when the Tories rounded up 26 eligible women supporters to vote. They were defeated when the Reform Party got wind of this and found 40 similarly qualified women of their own (Garner 1969: 156). It was suggested, by Garner writing in 1969, that in New Brunswick women did not try to exercise the vote at all. He could find no examples (Garner 1969: 156). Later research by Gail Campbell and Elections Canada cites one instance where a vote was accepted (Campbell 1989; Elections Canada 1997), and Kim Klein discovered evidence of dozens of women attempting to vote in controverted elections (Klein 1996: 72). The votes were accepted by the clerks even though "instructions that guided the conduct of New Brunswick's earliest elections stipulated that voters must be male." (Klein 1996: 71) It was only afterwards when these were challenged and were not allowed to stand. The fact remains that they were cast (Klein 1996:74) and the clerks accepted them on the basis that all the women were feme sole and had the requisite property qualification (Klein 1996: 73). This difference in formal rules and the acceptance of women's votes by people on the ground is not uncommon. Where discretion was given to ordinary people it was often exercised in relation to customary understandings of the law and in a manner which might be at variance with the tenor of elite debates (Klinghoffer and Ellis 1992; Markoff 2003). This can be illustrated in the acceptance of votes by polling clerks and lower officials, even in cases where higher authorities later overturned them.

## **2.2 Lower Canada A Distinctive Position?**

Across pre-confederation Canada, there are many more reported instances of women voting than the "... exceptional women and exceptional instances" noted by Lord Sankey in



*Edwards v Att. General* ([1930] AC 124 at 132). Does Lower Canada stand out as an exceptional area?

Existing research findings vary, and new materials are still being brought to light, but currently held records give more frequent instances for women voting in Lower Canada than elsewhere in pre-Confederation Canada. This marked difference between the ‘recorded incidences’ of women voting in Lower Canada as compared to Upper Canada, New Brunswick, Nova Scotia and Prince Edward Island seem beyond doubt. This is not just because of preserved records but also because Lower Canada was recognised as distinctive by contemporary sources at the time.

For example in Lower Canada itself the issue of women’s voting was openly discussed. Joseph Papineau made a great show of accompanying his mother to the polls in 1809 and openly encouraging women to come forward and vote (Elections Canada 1997). It might also be inferred, that a different culture of political behaviour for women existed in Lower Canada, from the fact that the press in other provinces commented often unfavourably on women’s political behaviour there. In 1820 in the New Brunswick popular press the involvement and acceptability of women’s political activity was noted and it was suggested that if Lower Canada was not careful it would develop into a “Petticoat Polity” (Klein 1996: 71). This suggests then that this very visible political activity of women in Lower Canada was not the norm throughout pre-confederation Canada.

What, then, explains the difference between the frequency and acceptability of voting by women in Lower Canada compared to other Provinces? The *History of the Vote in Canada* and John Courtney suggest that this difference in voting patterns is linked to the operation of French civil law in Lower Canada; in comparison with the Common Law operating in the other provinces (Elections Canada 1997; Courtney 2004). There are, however, two problems with this explanation. First, it is not clear that, before the case of *Chorlton v. Lings* (1868-69) L.R. 4 P.C. 374) that, the Common Law did exclude women *per se* from voting. Second there is no evidence that French Civil Law produced better results anywhere else. The former will be argued further in section 2.3 and 2.4 and the latter at 2.5.

### 2.3 – Did the Common Law Exclude?

In *Chorlton v. Lings* Chief Justice Bovil in 1868 in the Court of Common Pleas held that the law was, and always had been clear that women were subject to a legal incapacity and could not vote (*Chorlton v. Lings* (1868-69) L.R. 4 P.C. 374). He noted references to aristocratic women voting on occasion but suggested, that these women might have been acting as returning officers. In conclusion Bovil considered that even if these women were voting in their own right, “these instances” were “of comparatively little weight, as opposed to uninterrupted usage to the contrary for several centuries.” (*Chorlton v. Lings* (1868-69) L.R. 4 P.C. 374: 383). I argue though that the Common law was far from crystallised in the earlier historical periods which Bovil referred to (Brooks and Sharpe 1976), instead he ‘reasoned backwards’ (Atiyah 1986) and applied the mid-nineteenth century developing notions of who and what women were, to earlier periods of time in order to justify denying women the vote.

This next section looks first at the context of women as political and legal actors under the Common Law and then at evidence of franchise itself. Modern historians have produced much good direct evidence of the involvement of both aristocratic or propertied women (Stretton 1998; Prest 1991; Bailey 2002; Froide 2005; Bradbury 2012; Pearlston 2009, 2011; Harris 1990) and ordinary women<sup>4</sup> as political and legal actors through the medieval and modern periods (Power and Postan 1997; Clark 2005, 573; Pollard 1920: 153). This is not in itself evidence of franchise exercise but it was an absence of evidence of legal and political activity which in the past made many historians think franchise exercise was unlikely, although Pollard is unusual in stating he is open regarding its ‘extent’ (Pollard 1920: 153).

Women’s petitions in the seventeenth century show the extent of women’s participation in the political life at that time, and their sense of entitlement to be involved (Harris 1990; Thomas 1958). For example in 1641, “Gentlewomen, tradesmens’ wives, and many others of the female sex” forced the House of Commons to accept their petition by attending in ever greater numbers and saying, as they stood at the doorway of the Commons, that “it was as good to die here as at home.” (Cobbett 1807: cols 1072-1076). In 1649 another women’s petition, this time arguing for the release of Levellers imprisoned without trial in the

Tower of London, was met with the response that women should not “meddle in things they could not understand.” (Brailsford and Hill 1976: 317). In response, ten thousand women signed a second petition and a thousand women marched it to Parliament. This second petition complained about the treatment of the first petition, stated women’s right to share in the freedoms of the Commonwealth, and asserted their equal interest with men in the “beliefs and security contained in the Petition of Right and the other good laws of the land.”

(Brailsford and Hill 1976: 317). When women’s right to petition was challenged in 1829 a House of Commons Speaker’s Ruling confirmed that women, whether single or married, were competent political actors in relation to petitions (Pickering 2001: 382).

The well-kept records of Protestation Oaths in the seventeenth century also give a good sense of both the acceptability and the expectation for women to be political actors. The requirement to swear an Oath of Allegiance to the Parliament and the protestant religion were required to be sworn in 1641 (House of Commons Journal vol. 2 30 July 1641) and set out in gender-neutral language (Mendelson and Crawford 1998: 398). Mendelson and Crawford note that in some places, like West Sussex, women were excluded altogether, in others only single or widowed women were included; while elsewhere all women were listed (Mendelson and Crawford 1998: 149), sometimes these including the names even of those who refused to swear (Froide 2005: 149). The later “George Oaths,” (Oath Act 1715 1 George 1 c.13; and Oath Act 1723 9 George I c.24) required people of requisite civic status to swear allegiance to the King. Again there were great regional variations, but in some places up to a third of the signatories were women (Froide 2005:149).

Direct evidence of franchise itself needs to be placed in the context of the changing nature of franchise. Until the sixteenth century, attendance at the infrequently convened parliaments was seen as “an unpleasant incident of feudal service” (Pollard 1920: 153). The privilege of not attending, or of sending proxies, was sought after: the question was not “a matter of who is anxious to serve but of who is obliged to attend.” (Pollard 1920: 153).<sup>5</sup> As it became desirable to have a representative in Parliament, the variety of franchises available at

the local level proliferated. This general complexity in itself complicated the question of whether any particular ‘person’ let alone female persons held franchise (Pollard 1920: 156; Seymour and Frary 1918: I: 70; Anderson 2010: 430).<sup>6</sup>

The extent of the franchise was also sometimes actively misrepresented for political reasons (Hirst 1975: 29). Coke (Coke 1669), for example, was cited in *Chorlton v Lings* as authority for women’s exclusion from the franchise at common law (*Chorlton v. Lings* (1868-69) L.R. 4 P.C). Yet, it is suggested that he misrepresented the position in relation to women (Stopes 1894: 101). Coke was present when the Privileges Committee decided cases which confirmed that women were entitled to exercise the vote, and he was criticised for amending interpretations of law to suit his own political ends (Hirst 1975: 29). Coke’s contemporaries, William Hakewill and D’Ewes, stated that women, when *femes soles*, were under no legal incapacity (Hirst 1975: 18–19).<sup>7</sup>

Women were recorded as participating in the “cry,” where the crowd roared its choice, and the “view,” where hands were raised at both the election at Westminster, and in Worcestershire, in the elections for the Long Parliament of 1621. These informal methods seem to have allowed lower class women, without property or status, to vote (Hirst 1975: 19).

Even in the period after the Restoration of the Monarchy in 1660, when it is suggested that to some extent women’s public activity was “closed down” (Mendelson and Crawford 1998: 428), the legal right of qualified women to vote was still recognised. For example women at a Richmond election in 1678, were prevented from exercising the vote in person but they were conceded their right to deputise male proxies (Mendelson and Crawford 1998: 347). The use of proxies through discreet temporary transfers of Burgage rights<sup>8</sup> became accepted practice for qualified women in the Eighteenth century Burgage-tenure constituencies (Hirst 1975: 18).

Two later case reports of an election for a Sexton<sup>9</sup> in 1738 (*Olive v Ingram* 93 E.R. 1067; *Olive v Ingram* (1738) 2 Str. 1114) also provide evidence of the eighteenth century understanding of the extent of women’s franchise under the Common Law. Both a male candidate and female candidate stood for Sexton, each received votes from women electors

and the female candidate, Sarah Bly, was elected. The male loser disputed the result and the King's Bench was asked whether the Common Law allowed women to stand for election as Sextons, and also whether it allowed them to vote for the appointment of a Sextons. The case was heard on three different occasions before the Court accepted that women could both vote and stand. If you only read the English Report of the case you might think that this was the first time that women had participated in such elections, but an alternative report written up by Strange, the Solicitor General who acted in the case, casts a different light. He stated that he did not feel it proper to argue against women standing as Sextons since there are many "cases where offices of greater consequence had been held by women and there being many women Sextons now in London." (*Olive v Ingram* (1738) 2 Str. 1114: 1115).

The case was politically sensitive. Lee, the Chief Justice, had initially indicated that the case was of wide significance, and he cited the cases of *Holt v. Lisle* or *Coats v. Lisle*, and *Katherine v. Surrey*<sup>10</sup> as authority for the right of women to vote in parliamentary elections when they were *femes soles*. By the final hearing, however, the Court was very careful to state that its decision should not be taken as authority for parliamentary franchise. Despite this statement, though, both Lee C.J. and Page J. gave *obiter* comment to the effect that they believed that women's parliamentary votes were also good votes (*Olive v Ingram* 93 E.R. 1067: 1068).

#### **2.4 Common Law: In Colonial Contexts**

Final support, for the proposition that the Common Law provided no absolute bar to women's franchise before the mid-nineteenth century, comes from the colonial experience itself, and particularly from the experience of colonies established prior to the nineteenth century. English Common Law was often cited as authority for the right of propertied women to vote in Canada. For example the Petition to the House of Assembly Lower Canada in 4<sup>th</sup> December 1828 in favour of women's votes, argued that "property and not persons is the basis of representation in the English Government" and, that "the same principle is carried into our own constitution." (Doughty and Story 1935: 519).

Similarly in the colonies which later became the United States of America, it was understood that, if women were to be excluded from franchise, then this must be done explicitly through state or federal constitutional mechanisms (Keyssar 2000). Ratcliffe notes that in accordance with traditional British terms, voting was on the basis of property and non-dependent women who were responsible for family property could vote (Ratcliffe 2013: 220). It was only after the American revolution that most states disenfranchised women by setting maleness as a voting qualification (Ratcliffe 2013: 229). A debate on women's franchise prior to the 1776 constitution in New Jersey referred to the "time honoured right of *femes soles* to represent their own property", and did not exclude them (Klinghoffer and Elkis 1992: 193). In 1790 the Assembly passed a Bill setting out franchise qualifications which explicitly referred to voters as both 'he' and 'she.' (Turner 1915: 167) Women's franchise remained in New Jersey until 1807 (Ratcliffe 2013: 244).

### **2.5 Was French Civil Law More Conducive to Women's Franchise Exercise?**

The other reason given more frequent exercise of Franchise in Lower Canada is the existence of French Civil Law (Elections Canada 1997: 24). Once again I argue that this does not seem to be a likely reason. Although community property systems under the *coutumes* were said to favour women, there is no evidence that French Civil Law was usually any more supportive of women's formal political participation than was the English Common Law (Hanley 1998). Women voted in the eighteenth century revolutionary period in France, but this was short lived, and their deliberate exclusion from subsequent franchises was heavily criticised by French women at the time (Proctor 1990; Kingdom 1990). In no other colony with French legal *coutumes* was a difference in political behaviour apparent. For example Corsica had a tradition from 'time immemorial' of women voting in local elections in the shepherd's villages whose remoteness made them like 'little republics.' (Gregory 1985: 19) This tradition was continued in the Paoli constitution from 1755- 1769, but when France took over in 1769 women's rights to vote were removed (Nardo 2014: 7).

## **3 LOWER CANADA A DISTINCTIVE CULTURE?**

### **3.1 – Alternative Reasons for Higher Exercise of Franchise**

Section 2 identified Lower Canada as distinctive in terms of the frequency and acceptability for women exercising franchise. The section also refuted arguments which suggested that this was either because of the absence of the English Common Law or the presence of French Civil law. Rather than looking for explanations in the European heritage of its law this section argues that differences in Lower Canada are more likely to be related to specific local factors, and to its distinctive cultural development. In Lower Canada it is argued that the settlers adopted some ‘traits from the aboriginal world’ to create a distinctive culture that was “resistant to hierarchy” and “driven by egalitarianism” (Elections Canada 1997: 19). In ‘two generations they became a distinct society readily distinguishable from sojourners.’ (Elections Canada 1997: 19). This paper argues there are three factors, including the contribution of First Nations culture to early Canadian society, which are significant in creating these differences in manifestation of women’s political autonomy. This section will look at these factors in turn.

### **3.2 Role of Women in Establishing New France**

First women played an unusual influential and significant role in developing the colony of New France. They administered hospitals and schools and religious communities and were viewed with great respect (Noel 1991). General Murray’s report for the British Government on the state of the government in Quebec in 1762 made a number of observations on the contribution of women to the colony (Murray 1918). Murray noted the many ‘communities of women’ and the institutions for teaching girls to read and write. He found these communities of ‘Women’ to be ‘... much esteemed and respected by the people’ (Murray 1918). A later report from Finlay to Sir Evan Nepean the first Permanent Under Secretary of State for the Home Department, noted that while the educational standard overall were poor, the females had ‘... a great advantage over the males in point of education’, since the sisters had taught girls to read and write as well as sew and knit (Finlay 1918). He saw

this lack of education in males as a potential issue for the success of any future elections and local assembly (Finlay 1918), but of course it placed women in a good position to participate.

### **3.3 Distance of Lower Canada from Changing Conceptions of Gender.**

Second as a factor was the relative distance of Lower Canada from the development of “modernity” in Europe. The European settlement of New France began at time when “ideas about women’s role were surprising flexible in western Europe” (Noel 1991: 30). Subsequent contact with Europe was minimal, so that the changes in European society were not transferred to, and paralleled in, Lower Canada. Settlers became “Canadianised” and differentiated themselves from the French *Sojourners* who came to the colony and did not adopt settler life (Noel 1991: 30). Further, Lower Canada never received the same flow of emigrants as the other Canadian provinces or European colonies. For example the province was not flooded with refugees following the American war of Independence. One of the results of this was that the liberalism that swept Europe with its notion of “separate gendered spheres” was late in coming to Lower Canada (Choquette 1997: 298). Markoff notes that women in other ‘frontier settlements’, most distant from the centre and its social control, also evidenced stronger political activity (Markoff 2003). In Lower Canada, colonial life, carried on at a distance from the political centre, and in circumstances which demanded greater mutuality than in other places, created challenges to contemporary European norms about the nature of relations between men and women. Eighteenth century, European *sojourners* found women in New France to be well educated, and to play a role unequalled in any other “country or colony” in relation to the leadership, “financing, immigration, and defences that played a major role in the colony’s survival” (Noel 1991: 29). Women were noted for exercising their “initiative ... in business and commerce,” and it was noted in eighteenth century in Quebec that women-only assemblies elected midwives, and may also have had other functions (Noel 1991: 29).

### **3.4 Influence of First Nations Culture**

Thirdly, the different nature of Lower Canada was not due only to its remoteness from the colonial centres, first of France and then England, and the distinctive authority and



efforts of the women who were founders, but also to its closeness to an alternative to European culture.

Good contact with indigenous communities was initially essential to the success of the colony, and of the trading companies, when European settlement commenced in the sixteenth century.<sup>11</sup> Sylvia Van Kirk in her monograph *Many Tender Ties*, argues that the knowledge and craft skills of indigenous women, and their ability to mediate between two different worlds, became crucial to both the survival of the settlers and the success of the fur trade (Van Kirk 1983). Although much of Van Kirk's work relates to developments in Western Canada, the fur trade was administered from Montreal and Quebec and Van Kirk records the bringing in to society in Lower Canada, traders wives and children of indigenous Canadian origin. The French government also encouraged marriages with dowries and land grants, hoping that it could assimilate the indigenous populations and make them 'French' (Martin 2007). Intermarriage between European settlers and indigenous people thus became usual, and was encouraged at a local level by Champlain, one of the founders of New France (Fischer 2008). This acceptability of interrelationships between the two communities was compounded by the fact that there were few French women in Quebec in the early seventeenth century only five were counted in Quebec in 1632 increasing to 65 in 1636 as a result of an influx of immigration (Fischer 2008: 467). The French government later provided dowries for the *Filles de Roi* – the women sent in the late seventeenth century to boost French immigration (Noel 1991), but comparatively few women travelled out to Lower Canada until the nineteenth century (Choquette 1997). First Nations women were also more numerous than men in the area where New France was established, diseases, like smallpox, brought by Europeans, had a greater impact in taking the lives of men than women (Devens 1992: 27). Many First Nations groups viewed interrelationships as a way of fostering good relations with other communities (Martin 2007), and relationships were often based on affection rather than mere practicalities (Backhouse 1991: Chapt 1). In Lower Canada a distinct Métis (mixed) community developed, and still exists. Instead of French assimilation of indigenous people the French and other European settlers became 'Canadianised' (Elections Canada 1997: 19).

It is argued that this is significant because indigenous culture and the relative autonomy of indigenous women provided an alternative model for all women's lives in the colony.

There are many different accounts of women's life in indigenous societies. Contemporary ethnographic accounts by the Jesuit missionaries, and many colonial historians, were critical of the egalitarian nature of the indigenous societies, and particularly of the economic role of women (Devens 1992: 25). These accounts must be understood through the barrier to comprehension created by the white patriarchal system of the observers (Williams 1989: 1023). So that many of these accounts portrayed the lives and economic activity of indigenous women as "drudgery."<sup>12</sup> Yet other contemporary sources provide keys to a much more positive interpretation. Champlain one of the founders' of New France noted women's sexual freedom and autonomy yet rationalised this according to his own mores. He reasoned that a woman by taking 'many lovers', and 'keeping company with whoever she likes' was '... engaging in a form of courtship and marriage...' selecting a 'partner who pleases her most' to 'live together to the end of their lives' (Fischer 2008: 145). Baillargeon also suggests that the autonomy and independence of Indigenous women was '... manifest in the free exercise of their sexuality.' (Baillargeon 2014:4) Divorce was eminently acceptable. Devens cites a seventeenth century governor observing that '... when a woman wishes to put away her husband she has only to tell him to leave the house and he goes without another word.' (Devens 1992: 26).

Reviewing and evaluating many of the contemporary sources, Leacock suggests that, while life was hard, women were full political participants in their communities and lived more autonomous lives than their European counterparts (Leacock 1980). Egalitarianism was based on mutuality and gendered checks and balances (Williams 1989). Women worked hard, but they ultimately "retained control over the products of their labour." (Leacock 1980: 25) In many groups while 'Chiefs,' such as they existed,<sup>13</sup> were male, they were chosen by the women and could be removed by women if necessary.<sup>14</sup> A 1842 law 'text book' written by Doucet sets out the laws of the Huron and Iroquois 'Indians,' arguing that they were very similar to the Lycians – an 'empire of women' (Doucet 1847: 15). He suggested real authority

lay with Huron and Iroquois women (Doucet 1847: 10), who often fought and provided a strong resistance to the attempts of missionaries to assert ‘masculine authority’ and ‘French social organisation’ in New France (Devens 1992: 25). In some groups Matrons selected the new chief after consultation (Doucet 1847: 15) and women both choose and were sometimes appointed as representatives to act under ‘Chiefs.’ (Doucet 1847: 16) Doucet noted that ‘Women are always the first to deliberate.’ (Doucet 1847: 16).

The Clio Collective suggest that European women ‘considered their own position to be more enviable’ than that of the indigenous women they lived so close to because they believed the onerous work done by those women ‘outweighed their influence in the Councils and family clans.’ (Clio Collective et al 1990). Yet there was positive contemporary recognition and evidence of indigenous influence on the political expectations of women within New France. Frances Brooke, for example, an English *sojourner* who came to New France in 1763 as the wife of a chaplain, noted the indigenous approach to women’s political activity with approval. She wrote the novel *The History of Emily Montague* while living in the Quebec garrison, and published it on her return to England in 1769 (Brooke 1995). Boutelle notes that the novel argued for women’s rights, and at one point Brooke’s principal male character draws unfavourable comparisons between the position of women in Huron society and that of their sisters in Europe, saying that the “sex we have so unjustly excluded from power in Europe have a great share in Huron government; the chief is chose by the Matrons.... We [men] are the savages who so impolitely deprive you of the common rights of citizenship.” (Boutelle 1986: 56).

Across the American-Canadian border, there is much clearer evidence that First Nations Haudenosaunee women directly inspired and influenced early American feminists. In 1848 the first American women’s rights convention, composed of three hundred women and men took place in Seneca Falls, New York. Speeches demanded that women should have a ‘restoration’ of the right to vote, and should receive equal rights under the constitution (Stanton 1993). Elizabeth Cady Stanton, Matilda Gage and Lucretia Mott, who were a driving force in the convention and subsequent movement for women’s suffrage in the US, studied

Haudenosaunee life and used it as an illustration of a society in which women already possessed the political freedoms which they themselves sought (Wagner 2001, 2004).<sup>15</sup> Later the National Woman Suffrage association drew parallels with the oppression of “Indian tribes” by the USA government, and of man’s treatment of woman (Wagner 2001: 93). Huadenaunee men also argued for all men and women in the United States to be given the vote, as they were in their nation (Wagner 2001: 92).<sup>16</sup>

This section has provided an alternative explanation for the higher incidence of women’s exercise of franchise in Lower Canada. It has argued that rather than looking to the European legal heritage of the colony we should look to local reasons for the seemingly greater political autonomy of women, and in particular recognise the influence of indigenous culture.

#### **4. NINETEENTH CENTURY EXCLUSIONS**

##### **4.1 1832 Reform Act in Britain**

The exclusion of women from franchise did not occur simultaneously in either Britain or the different parts of British North America and the changes to the British franchise did not seem to have been the influence for all of the changes to franchise in pre-confederation Canada. Yet the process of introducing gender qualifications for new voting categories in Britain and excluding women from franchises in pre-confederation Canada coincided with fears about unrest and the security of empire in both Britain and North America, assertions of rights to self-rule and were also reflected in the changing ideologies around gender relations and notions of difference that developed in the course of the nineteenth century.

In relation to Britain the first formal reference to sex only came in with Representation of the People (England and Wales) Act 1832 (2 & 3 William IV c. 45). Although women’s votes were not directly debated it is noted in *Hansard* that the second reading of the final Bill presented to the House of Lords attracted unusual attention from propertied women coming to spectate (7 Parl. De, (3rd ser.) (1831) 1307).<sup>17</sup>

The 1832 Act, limited the new categories, which greatly extended the franchise, to male voters. Also where there were newly created Boroughs, it was stipulated that voting applied only to ‘male persons.’<sup>18</sup> The Act recognised the continued existence of the 40-Shilling shire franchise, and stated that this applied to any “person,”<sup>19</sup> rather than any ‘male’ person. Moreover, it further stipulated that any “persons” previously entitled to vote in a borough still in existence did not lose that right because of the Act.<sup>20</sup> Following in the footsteps of the 1832 Reform Act, the Municipal Corporations Act 1835,<sup>21</sup> gave a statutory franchise for 178 boroughs, which stipulated that ratepayers must be “male persons” in order to qualify. The Reform Act did differentiate between ‘persons’ who were entitled to vote under the old categories and ‘male persons’ who were the only people entitled to vote under the new categories. The new categories gave a greatly reduced property qualification and extended class of people able to vote. Any exercise of the old franchises by propertied women was minor at that time, but the prospect of including women in these wider franchises would have been a very different matter. The association made between political action by women without real property and anarchy was longstanding (Mendelsdon and Crawford 1998: 388; Proctor 1990).

#### **4.2 Exclusions in Pre-Confederation Canada**

While that there was no attempt to impose a uniform electoral qualification on ‘colonies’ after the 1832 Act, Orders in Council for pre-confederation Canada reflected the differentiation of different types of qualification in Britain and stipulated that for new franchises or newly established electoral districts the voting qualification must be male (Quebec Gazette Friday 8<sup>th</sup> June 4340 vol. 69).

In the pre-confederation British North American provinces exclusions occurred at differing times. In Lower Canada an attempt to exclude came in 1834 and then was successful in the United Province of Canada in 1849. In other provinces formal exclusions started in 1836, when Prince Edward Island extended some categories of the franchise but limited these new categories to male voters (Laws of Prince Edward Island, An Act to Consolidate and

Amend the Election Laws Cap. XXIV.); before this all Protestants could vote. In New Brunswick formal exclusion came in 1848 (Klein 1996: 75).<sup>22</sup> In Nova Scotia in 1843 a new Act further incorporating the town of Halifax set two different voting qualifications ‘male persons over 21’ and ‘any inhabitant householder’ with a property interest of ‘twenty pounds or upwards’ (Garner 1969; 32) then a requirement that all voters be male was brought in in 1851 (Garner 1969: 154). British Columbia, established in 1856, did not restrict the franchise on the basis of gender, but in 1870 prior to confederation with Canada it was forced by London to restrict the vote to male voters over the age of twenty-one who could read and write English, aboriginal peoples and US immigrants were also excluded (Garner 196:128- 9).

It has been suggested that Canadian exclusions were a reaction to the Seneca Falls conference in America because of fears that this conference, calling for women’s rights, might generate similar demand from Canadian women (Markoff 2003, 89). Yet Seneca Falls is insufficient as an explanation for Lower Canada, where women’s voting had been both a social reality and widely accepted, and where deliberate and conscious exclusion took place prior to Seneca Falls. In Lower Canada the first attempt to exclude women came in Controverted Election Act 1834 C28 s. 27. This is significant not just for its timing but also because unlike other exclusions which were achieved by just stipulating that voters be male, this explicitly excluded women by stating that they were not qualified. Section XXVII of the Act stated

“Be it declared and further enacted by the authority aforesaid that from and after the passing of this Act , no female shall vote at any election for any county, City or Borough of this Province”

For unconnected reasons the imperial government overturned the 1834 Act.

The new Legislative Assembly of the Province of Canada’s Electoral Act of 1849, which standardised electoral regulations in Upper and Lower Canada, followed the trend begun by the overturned Act of 1834 by using the same explicit language to consciously exclude women (The Province of Canada Act 1849, 12 Victoria c. 27). Section XLVI of the Act stated:

“And it be declared and enacted, that no woman is or shall be entitled to vote at any such election whether for any county, riding, city or town.”

It was said to be motivated by that controversial County of Halton election in 1844 (see 2.1) in which 7 women voted against Durand (Elections Canada 1997, 28). The reformers never forgot this defeat and led the change in the law. Some conservatives like Sir Allan McNabb made a strong point of voting against the change (Martin and Wilson 2013).

#### **4.3 Distinctive Nature of Exclusions in Lower and Upper Canada**

The Acts in other areas of pre-confederation Canada modelled the British Reform Act of 1832 in creating a male qualification, but the 1834 Act in Lower Canada was drafted very differently and explicitly stipulates women’s exclusion from all elections. The 1849 Act in the United Province of Canada mirrored that 1834 approach so why these differences in tone in first Lower Canada and then United Canada? One factor is surely that it suggests further evidence that women were exercising the vote frequently. It also could be interpreted as a clear assertion that though referred to as a ‘petticoat polity’ previously, politics in the province was from then on to be a purely masculine preserve.

Radical Patriote leaders like Papineau and Viger were initially very much in support of women voting (Garner 1969: 158; Elections Canada 1997: 22), though the traditionalist Patriotes were not. Despite his initial support Papineau is often given sole blame for this attempt in 1834 to remove the vote from women. It is claimed it was a part of his political agenda (Bradbury 2012: 227; Garner 1969: 158; Greer and Radforth 1992: 7).<sup>23</sup> It is true that the Controverted Elections Bill which introduced the qualification was Papineau’s Bill but the amendment which removed the vote from women was put forward by John Neilson who had parted company with the Patriotes in 1830. It seems from the debate on the Bill that this amendment rather than being supported by Papineau was just something he ‘went along with’ in order to get his Bill through. In the debate Papineau initially said he was capitulating to his rival, Mr Neilson, on what he referred to as this “trifling point,” because there were more serious issues on which he wished to engage (*Quebec Gazette* 1834: Vol. 71, nineteenth January). Later when challenged in his change of approach Papineau claimed that he was

concerned only to protect women from the increasingly violent eruptions at election (Garner 1969: 158). Papineau said that it was ridiculous to suggest that he had ever said that women who voted at elections were ‘guilty of indecency (impudicite)’ rather he had said that the scenes of women being dragged to the polls were indecent (*Quebec Gazette* Vol. 71, nineteenth January 1834).

The election in question became infamous for its violence yet James Jackson contends that the election was not inherently violent and that there had been no need to read the Riot Act at this election; rather it was political move to close the polls because the Loyalist candidate was losing (Jackson 2009). Evidence to support this also comes from the voting record. Mr Goedlike noted that at the time Mr Culliver called the Special Constables his own wife went to vote for Bagg. He concluded that Mr Culliver must be extremely partial to the Loyalist candidate if he was prepared to send his own wife to vote for him when there was such danger (Parliamentary Report, Lower Canada 1833: 41). The implication being that Mr Culliver knew there was no danger to her at all and he actually had no reason to call the Special Constables.

Evidence to the hearing on this election also suggests that women were not ‘dragged’ or pressed to attend the polls. One woman whose vote was sought explained that she had not admitted visitors to her house in this period ‘to avoid troublesome people.’ She was laughing while she said this suggesting the quest for her vote was not intimidating. (Parliamentary Report, Lower Canada 1833: 53)

A further reason for the Patriotes failure to continue to support women’s votes may have been a belief that the Loyalists benefitted more from women’s votes. In the 1832 West Montreal election, Loyalists only made marginally more use of women’s votes than Patriotes, 104 to 95 (Parliamentary Report, Lower Canada 1833: 41). Yet evidence given to the enquiry suggests that it was ‘believed’ if not actually the case that married women’s votes increasingly favoured parties other than the Patriotes. In the Parliamentary Report on the election, it was noted (p16) that there were differences in the practice of marriage contracts which affected property holding among women in Lower Canada. Mr Larocque giving



evidence to the hearing said he was not sure whether women, in similar circumstances to those who voted for the Loyalist Mr Bagg, had been refused an opportunity to vote for the Patriote Mr Tracey but he noted that

‘ ... it was so evident to all, that in admitting such persons to vote it was favouring Mr Bagg’s Party since it is very seldom that marriage contracts are made among the Canadians, which contain clauses for a division (separation) of goods between man and his wife. On the contrary, that often occurs among the English and Scotch Traders , who were all, with the exception of a very few Partisans, disposed in favour of Mr Bagg.’ (Parliamentary Report, Lower Canada 1833: 16)<sup>24</sup>

Significantly the exclusions can also be tied in to wider ideological changes and the claim both of the fitness of the Patriotes to rule in Lower Canada, and of the wider claims to independent rule of first the Province of Canada and then a Confederated Canada.

Exclusions based on gender were also paralleled by exclusions based on race (Elections Canada 1997).<sup>25</sup> The linking of exclusions based on sex and race if contextualised within the changing ideology of empire also reveal a rationale for Patriote support for limiting the franchise to white male electors. Masculinist rhetoric grew in eighteenth-century Europe and was coupled with a discourse supporting the idea of separate spheres for men and women (Levine 2004: 9; Shoemaker 1998). Choquette has suggested that we can see in the passage of the first Lower Canada exclusion in 1834 an indication that liberalism, with its insistence in separate spheres for men and women, had finally made the transition from Europe to Quebec (Choquette 1997: 298).

The treatment of women within a society was also used as an indicator of its masculinism and fitness to rule. It was “assumed that a critical function of society was to care for and protect women, an idea which logically assumed that women would be defined by men and compared against male behaviours.” (Levine 2004: 6) Thus, as Levine has noted, in this period:

“The British found equally faulty societies ... where they saw women, as they understood it, caged and isolated and those ... where women displayed what the British regarded as excessive independence. The behaviour, demeanour, and the position of women thus became a fulcrum by which the British measured and judged those they colonised. Women became an index and a measure less of themselves than of men and of societies.” (Levine 2004: 7)

Contemporary criticisms of indigenous women's position perpetuated the myth of European woman as a symbol for civilisation, and portrayed the independence of women as a sign of the inferiority of indigenous society (Leacock 1980; Devens 1992; Turpel 1993). Gender evidenced though either masculinism or effeminacy was used, not only to distinguish the different spheres of activity for men and women, but also to delineate and distinguish whole races and nations. Societies might be deemed "female" as a consequence of the colour, religion, or nationality of their people. Non-white, non-British, non-Protestant societies were deemed "effeminate," by the British who used this designation as a reason to refuse their claims for self-rule. The direct and explicit exclusion of women from the franchise, first in 1834 at a time of growing unrest in Lower Canada, and then again in 1849, fits into this wider picture and also explains the Patriote support for exclusion.

In 1834 Patriotes were arguing for greater independence for Lower Canada and were resisting unification with Upper Canada. They needed to establish Lower Canada as a community with power to control their own affairs rather than as men subject to a 'petticoat polity' and only fit to be ruled. The explicit colour and race distinctions added to franchise qualifications also emphasised this distance from those peoples 'colonised' or 'ruled'. As Upper Canada was flooded with Loyalists it became symbolised as English and "male," while in comparison the distinctive Canadian culture of Lower Canada was aligned as "effeminate"<sup>26</sup> because of its association with France, Ireland (King 2007) and indigenous interests. In this time of heightened tensions any association by the Patriotes with women's franchise would only increase their designation as effeminate and any incidence of women voting strengthen the designation of Lower Canada as "female." The distancing of French-Canadian politicians like Papineau from women's rights to vote prior to the Lower Canada rebellions, suggests an attempt to assert the masculinism of French-Canada in the context of the application of these distinctions, and the threat of Unification and control by an English majority.

Lord Durham's Report discussed the inferiority of the non-English peoples in Lower Canada and suggested that governance problems were due to '...races not classes...' (Durham 1973: 23) He recommended subjecting Lower Canada to '... the vigorous rule of an English majority...' (Durham, 1973:150) This was acted on and the controversial process of unification of Upper and Lower Canada in itself brought an end Lower Canada's claims for independence, by asserting the dominance of the culture of English dominated Upper Canada.<sup>27</sup>

De La Cour, Morgan and Valverde argue that while the consolidation of masculine power this period in the 1830's and 1840's was crucial to the formation of the Canadian state. Women in this period were not just excluded from politics but also experienced other exclusions. Exclusion '... from medicine, reproductive decisions through the criminalising of abortion, and others went hand in hand with a complex fragmentation of women as a group along racial, class and moral/ sexual lines.'(de la Cour et al 1992:184) They argue that the state became so successful in constituting ' itself and most of the public sphere as masculine,' that it became unlikely '... anyone would even ask where the mothers of the confederation were, ...'(de la Cour et al 1992:184).

This situation is a parallel of the situation in the former colonies in the US post-independence. Delaware and New Jersey were the only two colonies not to exclude women immediately after the revolution. When New Jersey did remove women's franchise in 1807, the limitation to 'free white male citizens' was justified as necessary to clarify that 'aliens' 'negros' 'slaves' and 'married women' could not be included (Turner 1915: 184). Ratcliffe notes that as the USA became more 'democratic' in one sense in that it increased the numbers of men who could vote, but it also became more ' racist and sexist as women and backs were stripped of rights.'(Ratcliffe 2013: 247)

These same arguments around unfitness for rule were exercised in the later nineteenth century and early twentieth century in debates around women's suffrage in Britain. It was said that if women gained the vote the British would be perceived as weakened and it would lead to rebellion in the 'empire' (Curzon 1908: Reasons 8, 9, and 15). A majority of women in

suffrage movements in Britain and Canada adopted this view themselves. In Britain early feminist movements utilised the same rhetoric of 'the advancement of women' that other imperial projects had used to justify the codification of law and interference in the lives of their colonial subjects and indigenous peoples (Midgely 2001). For example suffragists suggested that a failure to recognise women's suffrage was incompatible with 'civilisation' (Midgely 2001: 4). Drawing on stereotypes of Other women, in Turkish 'harems' and in polygamous relationships, feminist tracts were '... imbued with analogy' (Midgely 2001: 4) between the position of European women and those 'subjugated' non-European women. Improvements in women's status, and the grant of female suffrage were '... presented ... as the culmination of a European social progress from savagery to civilisation.' (Midgely 2001: 6). In Canada the suffrage movement also held up '... idealised white women, in effect colonial ladies ...' as worthy of franchise (Strong-Boag 2002: 80). Women's suffrage was argued as '... part of a larger scheme of civilisation progress for white societies' (Brydon and Schagerl 2005:194).

In pre-confederation Canada once women's voting rights were lost they were slow to be regained. Although women as a group in Quebec gained a right to vote in federal elections in 1919 they did not regain a provincial right to vote until 1944. Until its amendment in 1951 women of 'Indian status' were excluded from voting or standing in Band Elections by the Indian Act 1876 which imposed unequal status on relations between men and women designated as of 'Indian status' (Voyageur 2008). Until 1960 the Indian Act also stated that no 'Indian' (sic) person male or female, could vote in federal elections unless they renounced their 'Indian' status.

## **5. CONCLUSION**

This article has examined an alternative history of women's suffrage, its exercise, and then the exclusion of franchise in the first half of the nineteenth century as Canada moved to self-rule and confederation . It concludes that the orthodox claims that Common Law 'convention' prevented women from voting cannot be justified either by reference to the

position in Britain or the British colonies including Lower Canada. Instead I have argued that it was the 19<sup>th</sup> century adjudication in the UK and British North America which imposed a less favourable understanding of women's position under the Common Law than had originally been the case. Until *Chorlton v Lings* exclusion of women from the franchise was only achieved in Britain and British North America, as it had earlier in the US through statutory bar.

If it was not the case that the absence of Common Law convention led to higher levels of voting in Lower Canada what did? This article has argued that we see in this different behaviour a recognition of the higher status of women in Lower Canada. In part because of the significant contribution of the few European women who founded New France, and their commitment to women's education. Also because the distance from first the French then British colonial centres meant that the ideological changes in the political centre which marginalised middle class women (Choquette 1997; Markoff 2003) might not have been adopted, or might have been slower to manifest themselves, than they were within areas of Canada that had received a big influx of people from the US. Finally and most importantly because more egalitarian Indigenous culture had a stronger influence in the settlement of Lower Canada, women's political activity found greater acceptance and was reflected in higher levels of voting by women.

These different cultural norms eventually gave way to the marginalisation of women which had occurred to some extent in Britain and in the USA, tied in part also to the desire to assert a particular masculinity. For in the nineteenth century British North America was a society moving away from being colonists subject to colonial rule and looking to gain independent control as self-governing colonisers. In this period clear lines were drawn to forge a difference between those 'nations' which were seen as less masculine, sometimes precisely because of women's egalitarian position. This historical process then led to a worsening of women's political status in the nineteenth century.

It is important to recognise this history of exclusion: first, because it is important in the current period to recognise that women's empowerment is not always coexistent with

modernity; and second, to recognise the contribution of Indigenous culture in creating expectations in relation to women's equality in Canada. Finally it is important because, as I discussed in the introduction, a flawed discourse about the location and source of women's rights still has a resonance in Canada today.

In the 19<sup>th</sup> century the response of the Canadian government to rapes of indigenous women was to blame those women as resistant to modernity and progress, and behaving in an 'abandoned and wanton' manner (Carter 2016: 347). This has been echoed in the 20<sup>th</sup> and 21<sup>st</sup> century as a response to the current problems experienced by Indigenous women. Levels of violence experienced by Indigenous women are 3.5 higher than those experienced by Canadian women classified as 'non-aboriginal women.' (CEDAW 2016: Para 3) In contrast to violence against women classified as 'non-aboriginal' violence is much more likely to come from strangers rather than intimates and to come from outside Indigenous communities and ethnic groups. (Palmer 2015) Despite this the contrast in the enjoyment of rights by middle class 'white' Canadian women and Indigenous Canadian women is presented as a failure of assimilation and as the 'persistence of the pre-modern' in Indigenous societies (FAFIA and NWAC 2015, p. 18). International human rights committees recognise this approach as 'institutional stereotyping' (CEDAW 2016, Para 205; IACHR 2014: Para 305-306) and victim blaming and instead locate the cause of this violence by state and non-state actors, in the '... lasting consequences of the sexual and racial discrimination against the Aboriginal Community [sic] during the colonial and post-colonial periods.' (CEDAW 2016: Para 130). The analysis of the exercise of early suffrage as discussed in this article refutes the understanding of the history of women's rights in Canada as purely linear and as located in the move to 'modernity.' It provides a powerful illustration to challenge this problematic discourse.

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<sup>1</sup> For one example see the syllabus aimed at grade 11 for the History of Canada. Defining Contemporary Canada states that ‘The history of Canadian citizenship is characterized by an ongoing struggle to achieve equality and social justice for all.’

[https://www.edu.gov.mb.ca/k12/cur/socstud/history\\_gr11/cluster5.pdf](https://www.edu.gov.mb.ca/k12/cur/socstud/history_gr11/cluster5.pdf)

<sup>2</sup> The term Indigenous in the context of Canada includes, First Nations, Metis and Inuit peoples.

<sup>3</sup> For full discussion of the background and consequences of the case see Robert Sharpe and Patricia McMahon, *The Persons Case: The Origins and Legacy of the Fight for Legal Personhood* (Toronto: University of Toronto Press, 2007).

<sup>4</sup> “Female participation in rural protest and street politics was disturbingly visible to contemporaries if not to subsequent historians.” (Mendelson and Crawford 1998, 388)

<sup>5</sup> Note in *Chorlton v Lings* counsel for the appellant suggested that Coke had said that women could not be compelled to attend the “tourn.”

<sup>6</sup> Seymour and Frary also stated, writing in 1918, that it defies the modern historian. Stuart Anderson also notes the variation from borough to borough Seymour and Frary 1918: I: 70; Anderson 2010: 430)

<sup>7</sup> Though D’Ewes considered that there were times when it was dishonourable for men to “make use of their voices.”

<sup>8</sup> Burgage rights were rights to vote based on a ‘burgage hold’. This was a type of tenure requiring fees or services to be given to a landlord. They could be easily be transferred and bought and sold. The properties often included residences and sometimes the residence was necessary to exercise the voting right. Holdings could be more unusual. Seymour and Frary note that one franchise in Droitwich was based on the burgage hold “being seized in fee of a small quantity of salt water rising out of a pit.” (Seymour and Frary 1918: 72)

<sup>9</sup> A Sexton was an official in charge of church property, buildings and graveyards. In addition they sometimes rang the bell and buried the dead.

<sup>10</sup> These cases are also cited in Stopes 1894, 95. Yet in *Chorlton v. Lings* it was stated that there were no printed reports of these cases.

<sup>11</sup> Quebec was not formally “founded” until 1608, but there was contact and settlement prior to this.

<sup>12</sup> Van Kirk suggests that the prejudices of the fur-traders meant that they greatly exaggerated the degradation of ‘Indian’ women (Van Kirk 1983: 8).

<sup>13</sup> Devens notes that one of the criticism perceived by the Jesuits was the lack of centralised authority, societies were too egalitarian (Devens 1992).

<sup>14</sup> Williams notes that this was case with the Iroquios (Williams 1989: 1040).

<sup>15</sup> Note also that the first Constitution of the Pitcairn Islands codified the existing practice of the Polynesian inhabitants when in 1838 it provided explicitly election by the ‘free votes of every native born on the island both male and female over the age of 18’ (‘Pitcairn Islands’ 2017)

<sup>16</sup> This mutual support was not exclusive to North America and was evident in some other nineteenth century suffrage movements, most notably New Zealand, where the movements for women’s rights and Maori rights shared some of the same leaders (Seuffert 2005: 512; Ballara 2017).

<sup>17</sup> One of the issues discussed at this debate was whether women who could currently pass freeman franchise by marriage should be allowed to continue to do so (7 Parl. De, (3<sup>rd</sup> ser.) (1831) 1307).

<sup>18</sup> Section XXVII provides for ‘male’ persons with a 10 shilling freehold to vote in Boroughs

<sup>19</sup> S XVIII refers to “ persons”

<sup>20</sup> An Act to Amend the Representation of the People Act 1832 2 and 3 William IV c. 45 section XVIII.

<sup>21</sup> 5 & 6 William IV c. 76.

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<sup>22</sup> Though earlier instructions issued to polling stations stipulated that voters must be male (Klein 1996: 71).

<sup>23</sup> Garner refers to Papineau as ‘vehemently in favour of disenfranchisement.’ (Garner 1969: 158)

<sup>24</sup> This conflicts with the perspective put by Cec Jennings who suggested that it was French Canadian women who were more likely to own their own property (Jennings 2015)

<sup>25</sup> While property qualifications, and the status of “Indian land,” undoubtedly formed an indirect discrimination on the grounds of race, exclusions on this ground became explicit and widespread after Canadian confederation. Only Nova Scotia had explicitly excluded “Indians” before confederation; this latter criterion excluding ‘Indians’ was brought in at the same time that universal white male suffrage was introduced in 1854. Length of residency and “Englishness” also became issues, in order to distinguish resident Canadians from French and Irish immigrants and Canadians of ‘other’ heritage.

<sup>26</sup> This association persisted so that Lower, writing a history in 1946, described French Canadians as “a feminine people, who should be wooed as a womanly woman.” (quoted in Martin 1995, 3).

<sup>27</sup> It also sees that other restrictions were placed on women’s rights as a result of this process. For instance Bettina Bradbury notes that an ordinance restricting the practice of more generous rights of inheritance in Lower Canada was passed prior to union between Upper and Lower Canada (Bradbury 2012: 131)