THE DYNAMICS OF RECOGNITION: POWER AND TRANSFORMATION

GRADUATE STUDENT CONFERENCE
LAUNCHING THE 4TH ANNUAL WORKSHOP OF THE
CONSORTIUM ON DEMOCRATIC CONSTITUTIONALISM

PROGRAM AND SPEAKERS' ABSTRACTS

Thursday, February 28, 2008
University of Victoria

Organizers:
Glen Coulthard: PhD Candidate, Political Science, University of Victoria
Andrée Boisselle: PhD Candidate, Law, University of Victoria
Rémi Léger: PhD Candidate, Political Science, Queen's University
Location: University of Victoria, Fraser Building (Law), Room 152

THE DYNAMICS OF RECOGNITION: POWER AND TRANSFORMATION

GRADUATE STUDENT CONFERENCE
UNIVERSITY OF VICTORIA   THURSDAY, FEBRUARY 28, 2008

8:30-8:45   **Registration:** University of Victoria, Faculty of Law, Fraser Building, Room 152

8:45-9:00   **Words of Welcome** from Glen Coulthard (PhD Candidate, Political Science, UVic)

9:00-10:45   **I. SELF-RECOGNITION. «LOOKING WITHIN» AS THE ESSENTIAL PRE-CONDITION TO FRUITFUL CROSS-CULTURAL INTERACTION**

- **Matthew Wildcat** (MA Candidate, Indigenous Governance, UVic)
Problems of Recognition and Self-Recognition

- **Kelly LaRocca** (LLM Candidate, Law, UVic)
Moving Beyond the State of Exception

- **Kirsty Gover** (JSD Candidate, NYU School of Law)
Tribal Concepts of Indigeneity: Inter-indigenous Recognition and Tribal Membership Governance in the Western Settler States

Discussant: **Mathieu Gagnon** (MA Candidate, Philosophy, Université Laval)
Chair: **Robert Lee Nichols** (PhD Candidate, Political Science, U. of Toronto)

10:45-11:00   **Break**

11:00-12:45   **II. RECOGNITION AS «ACKNOWLEDGING ONE'S OWN OTHERNESS». AT THE HEART OF IDENTITY FORMATION: THE RELATION BETWEEN SELF AND OTHER**

- **Marie-Joie Brady** (PhD Candidate, School of Political Studies, Ottawa University)
Conflict, Hospitality and Friendship: Agonistic Democracy and Constitutional Debates in Canada

- **Mary Butterfield** (MA Candidate, Philosophy, UVic)
The Relevance of Pornography to R. *v.* Ewanchuk

Chair: **Charles Horn** (PhD Candidate, Political Science, UVic)
Discussant: **Jackie Steele** (PhD Candidate, School of Political Studies, Ottawa University)

12:45-13:45   **Lunch Break**

13:45-15:30   **III. IMPLEMENTING RECOGNITION: THREE ANGLES OF CRITICAL APPRAISAL**

- **Tom McMorrow** (Doctoral Candidate, Law, McGill) and **Coel Kirkby** (LLM Candidate, Law, McGill)
  The Neglected Influence of Private Economic Relations on Identities in the Canadian Politics of Recognition

- **François Boucher** (PhD Candidate, Philosophy, Queen's)
  The Cultural Heritage of Indigenous Peoples: From Protection to Self-Determination

- **Astrid Tirel** (MA Candidate, Sociology, UQAM) and **Jean-Mathieu Lamothe** (MA Candidate, Sociology, UQAM)
  The Representation of the Indigenous Contemporary Subject in the Institutions of Art in Québec and in Canada

  Chair: **Sébastien Malette** (PhD Candidate, Political Science, UVic)
  Discussant: **John Douglas Crookshanks** (PhD Candidate, Political Science, U. of Alberta)

15:30-15:45   **Break**

15:45-17:30   **IV. EXPLODING THE BOUNDARIES OF THE TAKEN-FOR-GRANTED: EXPLORING FORMS OF RECOGNITION, BEYOND THE STATE AND «SELF-DETERMINATION»**

- **Zoran Oklopcic** (SJD Candidate, Law, U. of Toronto)
  Eight Theses on Self-Determination: From Self-Determination of Peoples to Principles of Polity-Formation

- **Maria Koblanck** (PhD Candidate, Political Science, UVic)
  Same, Same but Different

- **Doris Farget** (PhD Candidate, Law, U. de Montréal)
  The Legal Protection of Lifestyles as a Way for Cultural and Social Self-Determination

  Chair: **Rémi Léger** (PhD Candidate, Political Science, Queen's University)
  Discussant **Janique Dubois** (PhD Candidate, Political Science, U. of Toronto)

17:30   **Concluding Words** from Andrée Boisselle (PhD Candidate, Law, UVic)

After conference: Food and drinks at the Bent Mast Pub (512 Simcoe St., James Bay, Victoria)

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UNIVERSITY OF VICTORIA   THURSDAY, FEBRUARY 28, 2008

LAUNCHING THE 4TH WORKSHOP ON DEMOCRATIC CONSTITUTIONALISM

ABSTRACTS

I. SELF-RECOGNITION. «LOOKING WITHIN» AS THE ESSENTIAL PRE-CONDITION TO FRUITFUL CROSS-CULTURAL INTERACTION

- **Matthew Wildcat** (MA Candidate, Indigenous Governance, UVic)

  Problems of Recognition and Self-Recognition

The concept of recognition presupposes a boundary over which groups might recognize or be recognized. While this boundary may be somewhat porous, shifting and fluid, it is also infused with asymmetrical relations of power. Due to the uneven power relationships that occur over this boundary, it is difficult for people in privileged positions to properly assess and tear down their privilege in order to combat unjust relations of power between different groups. My presentation will be composed of the following two parts. First, I will use the work of Andrea Smith on spiritual appropriation to highlight how even well-intentioned individuals seeking to recognize Indigenous people often entrench, instead of combat, colonial relationships. The main point here will be that the power-infused boundary over which recognition occurs tends to render recognition from a dominant problematic. In the second part of my presentation, I will discuss how different groups might overcome the problems associated with group interactions and recognition. My main point here will be to discuss how undertaking a continual process of self-recognition at the individual and group level is needed for constructive interactions between groups.

- **Kelly LaRocca** (LLM Candidate, Law, UVic)

  Moving Beyond the State of Exception

Borrowing from the work of philosopher Giorgio Agamben, this paper will first explore how, in the eyes of Canadian law, Indigenous peoples are "homo sacer" and the Indian Act represents a constant "state of exception". Given that the Indian Act represents a pernicious and prolonged state of exception for Indigenous peoples and is a complete assault on legal pluralism, what are our options? While applying "deep diversity" models to Indigenous communities might first appear appealing, it may well prove practically problematic. This paper will conclude that the only solution to the state of exception and the paradoxes of deep diversity is to understand our respective Indigenous identities. This will not only entail the revitalization of languages, narratives and ceremonies, but a deep investigation into the methods by which we resolve our disputes.

- **Kirsty Gover** (JSD Candidate, NYU School of Law)

Tribal Concepts of Indigeneity: Inter-indigenous Recognition and Tribal Membership Governance in the Western Settler States

The paper will consider the use of inter-indigenous recognition practices in forming the public category of indigeneity. It will be drawn from the first chapter of my dissertation. In brief, I argue that community recognition is missing from the definitions of indigeneity used by settler governments. I point to evidence in tribal constitutions in Canada, Australia, New Zealand and the U.S. that show that tribes recognize non-member indigenous peoples, including non-tribal indigenous peoples, and that they prefer indigenous persons in recruiting non-descendants to the tribe. Then I sketch an institutional form for operationalizing these forms of inter-indigenous recognition in public policy.

II. Recognition as «acknowledging one's own otherness». At the heart of identity formation: the relation between Self and Other

- **Marie-Joie Brady** (PhD Candidate, School of Political Studies, Ottawa University)

    Conflict, Hospitality and Friendship: Agonistic Democracy and Constitutional Debates in Canada

Drawing on the works of Chantal Mouffe, William Connolly and Jacques Derrida, I will put forward a model of agonistic democracy that uses conflict, hospitality and friendship as a way to think about intercultural relations in Canada, particularly those between Francophones and Anglophones and between Settlers and Indigenous peoples. These concepts will be used to address some of the power dynamics at play in Canadian politics and the challenges these dynamics create for relations between Self and Other. The context for this discussion is the last constitutional debates that took place in Canada, namely those related to the Meech and Charlottetown Accords.

- **Mary Butterfield** (MA Candidate, Philosophy, UVic)

    The Relevance of Pornography to R. *v.* Ewanchuk

My purpose here is to provide a full account of what I see as the relationship between pornography, women and the law. The motivation for my project is what I see as a connection between the law and pornography with respect to crimes specifically victimizing women. I begin with a discussion of metaphysical understandings of the acquisition of ideas and the creation of individual identity, relying on the work of David Hume and Charles Taylor, respectively. I argue that the views of these two philosophers are surprisingly compatible with regard to telling a story about identity that depends on experience in the world and with other people. I take this to lead naturally into Jennifer Nedelsky's work on relational autonomy; given our situatedness and dialogical constitution, it is not inconsistent to suggest that traditional ideas of autonomy as independence are incoherent. Of special interest to me is what a relationally dependent individual means both in discussions of pornography and within the context of Canadian law. I rely on the work of Catherine MacKinnon to fill out my understanding of pornography, concluding that her work demands the inclusion of the perspective of women in the formation of law, especially laws concerning sex and sexuality. While Taylor's idea of recognition highlights the process of oppression that pornography supports, in its support of autonomy as relational, Taylor also gives us a means to transform law and societal values and to move forward. I am committed here to a view of law as a tool for progress and for transformation and I look to Supreme Court case R. v. Ewanchuk (1999) to support my view. Law can, simultaneously, be something that reflects societal values and also be something that helps to change them. I argue, then, that we ought to be attentive to the shaping aspect of the law in order that we might design laws that truly respect the autonomy and dignity of all citizens and do not just

fulfill this function from one point of view.

III. IMPLEMENTING RECOGNITION: THREE ANGLES OF CRITICAL APPRAISAL

- **Tom McMorrow** (Doctoral Candidate, Law, McGill) and **Coel Kirkby** (LLM Candidate, Law, McGill)

  The Neglected Influence of Private Economic Relations on Identities in the Canadian Politics of Recognition

It is often observed that First Nations' claims for recognition must fit within the parameters set by the dominant society. Thus the Delgamuukw-era quest for self-determination has proceeded by securing Aboriginal rights and title in constitutional litigation in Canadian courts. This form of political action, however, silences questions of private economic relations within First Nations, and between First Nations and the greater Canadian society (and, indeed, the world). Yet economic relations are not only shaped by a community's identity; they also shape that very identity. A community' patterns of economic relations enable and/or constrain that polity's ultimate form. If economic relations inform a community's identity, then the current discourse of identity politics through public law marginalizes private law questions and leads to an impoverished account of communal self-determination. In the politics of indigenous identity, this problem is ignored or caricatured by an individual (non-indigenous) – communal (indigenous) property rights dichotomy. The authors use the example of private property law to argue that private economic law considerations should return to the fore of academic attention. This is especially true now that many First Nations have, or are negotiating, a real measure of self-governance. By highlighting the importance of private economic law (such as its early historical role in mediating claims of recognition between indigenous and non-indigenous communities), the authors conclude that any current recognition of indigenous self-determination is flawed since it does not address the private economic relations (and law) located within First Nation communities and their neighbours.

- **François Boucher** (PhD Candidate, Philosophy, Queen's)

  The Cultural Heritage of Indigenous Peoples : From Protection to Self-Determination

I will assess the idea of Indigenous peoples' collective property of their heritage. I will first show how the difficulties of adapting the current language of intellectual property to the issue of the protection of Indigenous peoples' heritage has led to the idea that our conception of intellectual property should be reshaped in order to accommodate indigenous claims. I will especially focus on the case of copyrights and Indigenous artistic productions (songs, drawings, sculptures, tales, etc.). I will then confront the case for indigenous collective intellectual property rights over their heritage to the critique of "essentialism". This critique states that the project of implementing a legal protection of Indigenous peoples' heritage is based on a flawed view that fixes and essentializes their identity and unjustifiably constrains the practices of indigenous as well as non-indigenous artists. I will finally argue that, in order to avoid this critique, theorists of recognition should shift from the language of cultural protection to the language of [cultural] self-determination. Our discussions about recognition, intellectual property and traditional knowledge should not be guided by the requirement of protecting indigenous culture and knowledge from any change or sharing (as some authors seems to suggest), but by the promotion of the capacity of Indigenous peoples to control their destiny and the becoming of their culture.

- **Astrid Tirel** (MA Candidate, Sociology, UQAM) and **Jean-Mathieu Lamothe** (MA Candidate,

Sociology, UQAM)

The Representation of the Indigenous Contemporary Subject in the Institutions of Art in Québec and in Canada

While, on the international scene, Canada refuses to recognize the United Nations Declaration on the Rights of Indigenous people, multiculturalism and interculturalism try laboriously to cohabit across the politics of art in Québec. Even if the frameworks proposed by federal and provincial governments are based on different points of view, the criteria and discourses of both constitute a kind of assignation to identity for indigenous artists in Québec. They have to compose with partners which for the representation of the indigenous subject is qualified in a way to preserve their own national identities. But an artist is defined by his capacity to create, transform and re-think the world and, for that, he transgress the framework. In comparison, the subventional institutions of art in Québec and in Canada for an indigenous theatrical company of Québec, we'll try to show the inevitable process of shared creation of identity between Indigenous, Québecois and Canadian in a way to define a new kind of belonging.

IV. EXPLODING THE BOUNDARIES OF THE TAKEN-FOR-GRANTED: EXPLORING FORMS OF RECOGNITION, BEYOND THE STATE AND «SELF-DETERMINATION»

- **Zoran Oklopcic** (SJD Candidate, Law, U. of Toronto)

Eight Theses on Self-Determination: From Self-Determination of Peoples to Principles of Polity-Formation

This paper challenges the concept of self-determination through the elaboration of eight theses. It argues that self-determination is inoperative in new instances of polity-formation after the end of the Cold War (1). Then it claims that, logically speaking, the principle may be redundant (2) and that it distorts the conceptual architecture of polity-formation (3) while at the same time possessing motivational, aspirational and inflammatory potential (4 and 5). Furthermore, the distorting lens of self-determination hides possible normative principles that might be invoked in the process of polity-formation (6) and its abandonment would shed light on the crucial role played by outside actors in polity-formation (7). Finally, the shaky edifice of self-determination impels us to reconsider its conceptual foundations, which, in turn, present themselves as ambiguous and contradictory (8).

- **Maria Koblanck** (PhD Candidate, Political Science, UVic)

Same, Same but Different

Claims for recognition of social, political or ethnic particularity are almost always articulated and rearticulated in legal language. A question that the moment of recognition brings to the fore, and that is often overlooked by scholarship within both the field of law and politics, is how the force of law and the force of state power interact and sustain each other— and how this interaction necessarily brings into play a hierarchical relation between different systems of norms and different ways of social organization. To engage with the moment of recognition necessitates a move beyond the analytically comfortable boundaries of the nation state, since most instances of recognition derive their legal and political rationale not only from the realm of the national but also from the realm of the international. Opening up a discussion of the interaction of the force of law and the force of state power as well as international forces, serves several purposes. The first is to destabilize the idea that the nation state is the only and the natural locus of sovereignty.

I will explore some of the aspects of recognition in relation to the Sami - the indigenous people of Fennoscandia (an area covering the northern part of the Scandinavian and the Kola peninsulas, Karelia and

Finland). As a transnational, nomadic and Indigenous people (but by now well-contained within the particular nation states of Norway, Sweden, Finland and Russia), the Sami living in Sweden have long fought for legal recognition of their status as an indigenous people. However, recently Sweden has agreed to work on a Nordic Sami Convention that would not only fully recognize the rights of the Sami people vis-a-vis the individual states, but also that Norway, Sweden and Finland would collectively carry responsibilities towards the Sami as the Indigenous people of the whole region. By looking at the situation of the Sami, I believe that it will be possible to start questioning some of the presumptions and conclusion of the discourses on recognition; for example, why we have a tendency to look for the solution to the perceived problems linked to recognition solely in law and its development.

- **Doris Farget** (PhD Candidate, Law, U. de Montréal)
  The Legal Protection of Lifestyles as a Way for Cultural and Social Self-Determination

A lifestyle is a particular way of living, thinking and being. It refers to the cultural, social, spiritual or economic behaviours of one people, as a group or as individuals. The definition of lifestyle is closely connected with the notion of culture, but not only that. It allows the peoples concerned to adapt to the environment in which they are living, too. Thus it is composed of customs, practices and uses specific and adapted to an area, a climate and geographical specificities. This means that a lifestyle evolves through time, space and environment. It also evolves through the modification of the environment and space, and with the changing morals and rules of a group.

Indeed, the legal protection of lifestyles, through the acknowledgment of a right to respect traditional ways of life, by international and regional courts, is a form of recognition. Moreover, it is a path for self-determination as well, in its cultural and social meanings. Consequently, this new right fits with different aspects of the self-determination process. This process has four dimensions: the main one is political, but there are economical, social and cultural aspects as well. Each one complements the others.

As a consequence, the purpose of my presentation is to demonstrate how the establishment of a protection for Indigenous and minorities' lifestyles is a way to promote self-determination and to demonstrate how the cultural and social aspects of this process complement the political one.