

**Transforming Colonial Categories?
Customary Law, Legal Pluralism and the Cultural Heritage of Indigenous Peoples**

IPinCH Working Group on Customary, Convention and Vernacular Legal Forms
York Centre for Public Policy and Law, York University
Main Workshop January 28-29, 2012

**Graduate Student Workshop
January 27, 2012**

All daytime events take place in the York Research Tower, Rm. 626

Confirmed Participants for Faculty Workshop: Kirsten Anker (McGill Faculty of Law and Centre on Human Rights and Legal Pluralism); Catherine Bell (Faculty of Law, University of Alberta); Rosemary Coombe (CRC in Law, Communication & Culture, York University); Haidy Geismar (Museum Studies, Anthropology, NYU); Patricia Goff, (Political Science, Wilfred Laurier), Ronald Niezen (McGill University, Department of Anthropology); Brian Noble (Department of Sociology & Anthropology, Dalhousie University); Makere Stewart-Harawira (Educational Policy Studies, University of Alberta); Val Napoleon (Faculty of Law, University of Victoria); Sean Robertson (University of British Columbia).

Graduate Student Participants: Graduate students working with workshop participants include IPinCH Graduate Student fellows Sarah Carr-Locke (Simon Fraser University), Davina Two Bears (Indiana University), Emma Feltes (Dalhousie University), Nicole Aylwin (York University). Other invited students include, Lucie Edwards (Balsillie School of International Affairs), Tate LeFerve (New York University), Eugenia Kisin (New York University), Surinder Multani (York University), Neil Reddekopp (University of Alberta) & Hadley Freidland (University of Alberta). Invitations will also be sent to the York University Sociological Studies, Indigenous Studies graduate students to attend the workshop and to learn about student opportunities with IPinCH

Topical Themes

One consequence of the increased national and international attention devoted to protecting traditional cultural expressions, traditional knowledge, and other forms of 'cultural' intellectual property has been a revitalization of interest in 'customary law' as a viable juridical resource and/or the most appropriate form of governance and regulation for materials of this kind. Customary law has now become a grounding principle in many international and regional legal documents that bring cultural rights to the fore, such as *The Declaration of the Rights of Indigenous Peoples*, *The African Model Law for the Protection of the Rights of Local Communities, Farmers, Breeders and Regulation of Access to Biological Resources* and *The Convention on Biological Diversity*.

As agreements such as these proliferate and minimum standards for the treatment of indigenous peoples are produced through soft-law (Anaya 2004), questions surrounding how to use customary law to protect traditional knowledge are addressed in many international forums and civil society organizations while new actors are introduced to

customary law debates. The purpose of the workshop is to explore in practise and theory the meaning of customary law, its jurisdiction and its potential as a means by which to advance cultural pluralism in jurisprudential practice, including the implementation of customary legal practices at local levels. There are at least three scales (international, national and local) where customary law praxis is at work and there is a great need to understand how international frameworks are being translated from the global level to the local context and to what extent local practices are informing international law and policy (Merry, 2001).

Graduate Student Workshop

In addition to participating in the main workshop, graduate students will be participating in a special one day symposium and workshop providing them with opportunities to provide snapshots of their research and engage in challenging discussions regarding collaborative research and ownership and control of data and products of research.

The Graduate Student Workshop explores, more specifically, what laws, regulations, policy and other instruments and processes affecting traditional cultural expressions, traditional knowledge, and other forms of ‘cultural’ intellectual property might look like if grounded on Indigenous legal principles. The morning session will consist of two panel presentations, one that places issues of indigenous law and sovereignty in a Canadian context, and one that demonstrates the use of Indigenous customary law to, unsettle sovereignty and transform policy and process and protect traditional knowledge at international, national and local levels.

The afternoon session will focus more specifically on what a commitment to legal pluralism may mean in terms of collaborative policy development and academic research practices with Indigenous communities. It will include presentations on collaborative research practises and challenges arising in reconciling Indigenous and Canadian institutional ethical and legal frameworks with examples drawn from the Yukon First Nations Heritage Values and Management project; the Laurier Memorial and Shuswap, Okanagan and Couteau Values as a foundation for collaboration; and examples of the range of methods used to implement degrees of Indigenous control emerging from research conducted by the IPinCH Working Group on Intellectual Property and Research Ethics.

Together we will explore in discussion what, if we take legal pluralism seriously, “collaboration” may mean in its various theoretical and practical manifestations (e.g. Tri-Council guidelines for conducting ethical research, Indigenous laws and protocols, grant transfer agreements, consent forms for ethnographic work, control over data and archives, First Nation research protocols).

Graduate students will also be provided with information about the IPinCH project, some of the student work being conducted on the project, and potential research and funding opportunities available through this project over the next four years (including IPinCH Graduate Student Fellowships, Student Associates, Student Research Assistance and other funding sources for graduate students).

Graduate Student Workshop Program January 27, 2011

9:00am –9:15am

Welcome, Rosemary Coombe, Patricia Goff, Nicole Aylwin and Catherine Bell

9:15-9:45 am

Opening Remarks: Rosemary Coombe, “Intellectual Property, Indigenous Cultural Heritage and the Promise of Customary Law” (30 min.)

9:45-10:30 am

Keynote Address: **Haidy Geismar**: Indigenous Values and Intellectual Property Deliberations in Vanuatu & Atoorea--New Zealand (45 min.)

Break- 10:30-10:45 am

Graduate Student Panels

“Indigenous Law and Legal Pluralism: The Canadian Context” (10:45am-12:15pm)

Moderator: **Patricia Goff**

Neil Reddekopp “Sovereignty and the Limits of the Judicial Imagination in Canadian Aboriginal Rights Law.” (20 mins)

Hadley Freidland “Is there space within the Canadian legal, constitutional and political structure for recognizing multi-juridical legal order?” (20min)

Surinder Multani “Legal Pluralism and its Limits” (20 min)

Moderator Comments & Discussion (30 min)

LUNCH – 12:15-1:15pm

“Spaces and Scales of Sovereignty” (1:15pm-2:45pm)

Moderator: **Nicole Aylwin**

Eugenia Kisin “Indigenous Cultural Activism, Sovereignty, and the Unfinished Legacies of Settler Colonialism” (20 min)

Tate A. Lefvre “Sovereignty and Indigeneity Unsettled.” (20 min)

Lucie Edwards “We are dust: Human Security and the San People of Southern Africa”(20 min)

Moderator Comments & Discussion (30 min)

BREAK: 2:45-3:00pm

Afternoon Workshop (3:00pm- 5:00pm)

Keynote: **Catherine Bell** “Law, Ethics and Products of Research” (25 min)

Emma Feltes “Research Models Founded on Respect Between Sovereigns & Indigenous Legal Principles: The Laurier Example” (20 min)

Sharing our Collective Ideas and Experiences (3 Discussion Groups) (60 min.)

1. What does collaborative research practise look like if we take seriously the idea of legal pluralism as the founding principle of our methodology?
2. What does this mean in terms of considering intellectual property, the risks and benefits of research, and ownership and control over products of research?

Catherine Bell (facilitator): highlights & general feedback (15 min)

Closing Remarks and Discussion (5:00pm-5:30pm)

6:00pm-7:00pm: Graduate Student Hour at local pub (more details to follow)

7:00pm-11:00pm: Welcome Reception at the Underground (more details to follow)