

“The Imperative of 'Culture' in a Colonial and *De Facto* Polity”

Shauna McRanor
Ph.D. Candidate
Interdisciplinary Studies
University of Victoria

Speaking Notes
IGOV Ph.D. Colloquium
20 January 2005

Good evening, everyone. Thanks so much for being here tonight.

As the poster for this session indicates, I've given my presentation the title “The Imperative of 'Culture' in a Colonial and *De Facto* Polity.” Now, the colonial and *de facto* polity that I'm specifically referring to here is Canada, but, of course, as we know, this description could apply to many other polities elsewhere.

In any event, what I'd like to lay out for you in the short time I have available are my reasons for that title, a title which not only captures the essence of the work I've done up until this point, but also motions toward where I am now in my thinking and indicates the direction in which I'd like to go from here.

But first I have to say that this title represents more than just an academic pursuit.

In keeping with the themes that Paulette has just so eloquently outlined, the work I am presenting here is an outgrowth of my own process of decolonization, a rendering of the discomforting and disquieting experiences that I have had and ought to continue to have as a non-indigenous person living in this part of the world.

Indeed, it is important that I ought to feel this way; important that I refuse to believe that I will reach some sort of state of grace wherein I am finally freed from all the colonial baggage that me and my family, as newcomers to this place, carry with us. That is to say, the struggle to acknowledge and challenge my own racism, my own abuses of power, is necessarily, I think, a lifelong exercise of vigilance, of resisting the retreat into a zone of comfort and complacency, into what might be called the luxury of being white; of fighting off that which a belief in a state of grace might mask.

While what I will be talking about tonight, then, focuses on a wider political problem between indigenous peoples and settlers, there is a very personal and ongoing journey of decolonization at its heart, one that, with a multitude of other journeys like it, is key to addressing colonialism and the condition of indigenous unfreedom in a broader way.

So, to begin. First, I'll give you an overview of the argument, then get into its finer points.

As I see it, and I'm not alone in this, the dominant but by no means only problem in contemporary indigenous-settler politics is this: That indigenous freedom is widely understood to be something that obtains not by resisting the liberal state or social order in its modern democratic mode, but by instead actively enlisting that order and its system of law to secure certain rights, and specifically those often termed "minority" or "cultural" rights.

In previous work, I drew this understanding of indigenous freedom into question by examining how the concept of culture works at the intersection of liberal political theory and liberal state practice, and, in particular, in the liberal culturalism of Will Kymlicka — the political-theory part of the analysis — and in selected Canadian case law on aboriginal rights — the state-practice part of the analysis.

I argued in previous work, and will again argue tonight, that, even though these theoretical and practical treatments appear to protect and promote indigenous freedom through the recognition of cultural difference, they nonetheless take for granted the legitimacy of the liberal social order through which this difference is purportedly recognized, and therefore fail to address adequately the ongoing colonial and *de facto* status of the Canadian settler state.

Moreover, since I contend that the understanding of "culture" used in these theoretical and practical treatments mark indigenous peoples as normatively different — that is, as politically inferior to the settler population — I further contend that it is precisely this understanding of the concept that facilitates the representation of indigenous peoples in these treatments as "naturally" or inevitably subject to settler authority.

As such, insofar as this liberal political theory and Canadian state practice leave uncomplicated both the concept of culture that they invoke, and the standpoint of the liberal social order from which the concept is mobilized, they reinscribe rather than interrogate the relations of power that currently exist. That is to say, they declare colonialism dead at the precise moment they provide it with a means to live on.

For indigenous freedom, then, to be realized, I argue that the assumption that the liberal social order constitutes a legitimate limit to the exercise of that freedom, and the assumption that this limit ought to be interpreted as cultural rights, should be entirely abandoned.

That's my argument in a nutshell.

Now I'll expand on, and attempt to explain more fully, some of what I've just said. The points I wish to focus on are these: first, the nature of the "indigenous freedom" that I refer to; and, second, the implications that a problematic view of culture has for that freedom.

So, first, what do I mean by "indigenous freedom"?

I mean the freedom already enjoyed — theoretically, anyway — by the non-indigenous group forming the majority of the settler-state population.

That freedom, to put it simply, is the freedom of peoples “to participate in shaping the conditions of their collective existence,” as Clarissa Hayward has put it; to help decide how and with whom they will lead their lives; to have a say in and a hand over the ways in which they will govern their interactions amongst themselves and with others, as Jim Tully might phrase it; to be, in a word, self-determining.

While it may be possible to interpret this freedom as one that can be accommodated within the liberal order — and principally via special rights to culture — there is no reason for those who hew to this dominant view of the matter to understand indigenous freedom as anything other than a freedom to challenge that order; to perhaps offer up and inhabit alternative configurations of social life, for example, non-coercive polities and non-market economies; to live, in short, unshackled from the ultimate authority of the settler population.

This sort of freedom — freedom from as opposed to freedom within a larger social order — is not alien to the ideology that informs the liberal configuration of social life. On the contrary, it is precisely the freedom that liberals demand for themselves; precisely, that is, the freedom that settler people in states like Canada desired — and achieved — over and against the ultimate authority of European countries like Britain.

To the liberal mind, the governance and domination of Canada through an imperial social order — or, rather, Canadian self-government within empire, granted in 1867 (that is, at Confederation) — constitutes not a condition of freedom but of unfreedom, a condition that Canadians resisted until 1982, when the *British North America Act, 1867* was finally patriated, and thereupon became the *Constitution Act, 1982*.

So, if this is the way liberals view settler freedom, then it seems reasonable to ask why they limit indigenous freedom to the confines of the liberal social order; why, in other words, they figure indigenous freedom as categorically different from the freedom they assume for settlers and claim to universalize to all “peoples”; why, in short, they selectively apply an otherwise general principle.

Liberals per se are not alone here. Anyone who subscribes to the dominant approach — which is to say, anyone who uncritically accepts the liberal order of the settler state, and, for that matter, the international system of states, as a legitimate point of departure for discussions of indigenous freedom — concedes that the freedom of indigenous peoples is not quite the same as the freedom other peoples enjoy. Indigenous freedom is, as it were, “othered.”

In a preponderance of liberal theory and practice, this “othering” of indigenous freedom is specifically thematized as rights to culture; as the state-regulated protection and promotion of indigenous difference. In Canada, that regulation is filtered through

Section 35, the aboriginal and treaty rights clause of the *Constitution Act, 1982* — again, the touchstone of settler freedom in Canada.

But, by construing the settler state as a rightful regulator of indigenous difference, liberals must at the same time claim that the state is to some degree neutral with respect to culture; they must deny that the liberal social order is itself of culture and partial to its own interests. They must claim that it is cultureless.

So, indigenous peoples have culture, but liberals don't.

And this is what brings me to my problem with certain conceptions of culture; to the discussion of what I think it's doing in the theoretical and practical attempts to "solve" the problem of indigenous unfreedom in liberal terms.

My understanding of "culture" — which is, I think, a fairly typically one — is that it denotes the difference we experience in society, in relationship with one another. As such, it is not something that can be rightly wrought from the social sphere, abstracted from human relationships and the contestation of power, reified, and given a laundry list of traits.

Nor can it be rightly denied. The liberal social order — the settler state — cannot be the cultureless, neutral backdrop that it is often purported and taken to be.

That is because society and culture are mutually constitutive, and the difference we experience and call "culture" is produced and reproduced, made and unmade at the "site" of reciprocity; at the site of interaction between humans themselves, as well as between humans and their environment. Culture is borne of these interactions, these relationships, which are always already political and inflected with power. As such, culture is how power is lived on the ground, in community.

Neither Will Kymlicka, perhaps the world's most widely read political theorist on minority rights, nor Canadian case law sees "culture" this way. I've discussed all the ins and outs of how they actually frame the concept in another paper, and I don't have time to get into those details here.

But, to summarize the bottom line of my argument, the use of the concept in these theoretical and practical liberal examples veils a fundamental belief in the inferiority of indigenous peoples and excuses their continued subjugation to settler authority, an authority which neither treatment questions.

They are, in other terms, racist.

In Kymlicka's political theory and in Canadian case law on aboriginal rights, indigenous peoples are understood as having cultural rights as peoples, but they are not understood as having political rights as peoples; they are culturally entitled, but politically unentitled. In these accounts, culture and politics — or culture and power —

have been dissociated from each other, and from everything else that we live in community with, such as the land.

So, culture has no power; power has no culture.

That's where my thinking has been. Now I'd quickly like to tell you a bit about where I'm at and where I'm headed.

In my other, non-Ph.D. student life, I engage in a lot of archival research, mainly to do with commercial fishing by indigenous groups on the west coast of so-called Vancouver Island — by the Nuu-chah-nulth peoples — and largely in the context of Section-35 litigation.

What has become evident to me in carrying out this kind of research is that prior to 1982, before the Constitution was patriated, there was always a lot of talk about rights, but very little talk about “culture” — at least not in so many words, and definitely not in the sense invoked by the theoretical and practical treatments I've just discussed.

For instance, described and defined in petition after petition — ones addressed to the departments of Indian Affairs and Fisheries and bearing long lists of indigenous signatories — are rights to commercial fishing. The following example dates to 1957:

{Quote} We the Indian fishermen of the West Coast of Vancouver Island address this petition to Mr. A.J. Whitmore, Supervisor of Fisheries. ...

...We are strictly opposed to the closing of the fishing season from October 31 to April 15. We feel that this closure is an encroachment on the aboriginal rights of the Native Indians of the West Coast of British Columbia whose livelihood is mainly derived from commercial fishing. ...

...
...Since we are the first fishermen on this Coast our desires and suggestions in these regards deserve prime consideration by your department {Unquote}.

Moving back in time to the mid-1930s, indigenous fishermen, again Nuu-chah-nulth, write:

{Quote} We, the undersigned, do hereby assert our claim for our fishing rights which [have] been unduly forfeited from us. ...

...On the Grounds that:

...To us as true natives and aborigines of this country, Fishing and Hunting is our birthright[;] it is our Heritage and it is the source of our sustenance {Unquote}.

In both of these examples, at least in the way I read them, the petitioners are not sourcing their rights to their difference per se, but rather to their status as peoples. In other words, they are not talking about the right to be different in a “distinctive” way —

as liberal rights to culture prescribe — but the right to simply be themselves, whomever they themselves choose to be.

And I should note that this desire to simply be themselves was not just described and defined in documents such as these; they were also practiced and asserted daily on the ground, despite federal government rules outlawing their exercise, and physical attempts to shut those activities down.

I don't have time to provide specific examples, but there are many.

What I want to emphasize here is this: The rights that these documents outline — documents that, significantly, pre-date the *Constitution Act, 1982* by, in some cases, decades — are referred to in a way that is markedly different from the way rights have been defined by the courts of Canada under Section 35 of that statute, and, in effect, from the way many indigenous peoples now speak about their rights as well.

Indeed, those petitions were produced in an era when litigating against the government was either not done (i.e., the 1957 document), or was still, in fact, illegal (i.e., the 1934 document). Their signatories had never heard of Section 35, a clause that would define their rights in terms of how well a requisite degree of cultural difference is met, subject always to settler authority.

In setting out rights this way, the words of the Chief Inspector of Fisheries for B.C., writing in 1934 in response to yet another petition, can still be heard. As he wrote:

{Quote} There has been a great deal of difficulty in preventing Indians from taking sockeye and other salmon from the Somass, Anderson, Serita [*sic*] and other rivers in the Barclay Sound dist. [that is, on the west coast of Vancouver Island], for the purposes of sale to commercial interests. In dealing with this situation we cannot afford to have our authority questioned.... {Unquote}.

The fact of the matter, however, is that this authority has always been questioned. “Culture” has merely become the latest way for the settler state to avoid that political truth; to deal “with this situation.”

The situation I'm now dealing with at this point in my work, then, is this: Do these historical accounts have something to tell us about how to resist rather than enlist a colonial order?

In posing this question, I do not wish to suggest that archival sources are the only sources that might provide insight on this point; rather, I think that, when so much contemporary political theory seems to ignore the past in its ruminations over where we ought to go from here, they are significantly underutilized.

To close, I want to ask you some questions that I'd like you to consider and get your feedback on.

First, how do you think of “culture”?

Second, in a colonial context, how do you think one can discern an “authentic” indigenous voice from an “assimilated” one? Or, as Taiaiake Alfred has put it before, an indigenist perspective from an aboriginalist one?