

## Canada S Indigenous Constitution

"Compact, Contract, Covenant" is renowned historian of Native-newcomer relations J.R. Miller's exploration and explanation of more than four centuries of treating-making. Canada's Indigenous Constitution University of Toronto Press

"This book contains an in-depth discussion of the aboriginal and treaty rights recognized and affirmed by section 35 of the Constitution Act, 1982, the provisions of the Indian Act regarding reserves and band councils, recent self-government regimes, the recognition of indigenous legal traditions, division of powers, taxation as well as the application of the child welfare and criminal justice systems. It also covers recent developments, such as the duty to consult and accommodate or the adoption of the United Nations Declaration on the Rights of the Indigenous Peoples."--pub. desc. The book introduces and describes the principal characteristics of the Canadian constitution, including Canada's institutional structure and the principal drivers of Canadian constitutional development. The constitution is set in its historical context, noting especially the complex interaction of national and regional societies that continues to shape the constitution of Canada. The book argues that aspects of the constitution are best understood in 'agonistic' terms, as the product of a continuing encounter or negotiation, with each of the contending interpretations rooted in significantly different visions of the relationship among peoples and societies in

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Canada. It suggests how these agonistic relationships have, in complex ways, found expression in distinctive doctrines of Canadian constitutional law and how these doctrines represent approaches to constitutional legality that may be more widely applicable. As such, the book charts the Canadian expression of trans-societal constitutional themes: democracy; parliamentarism; the rule of law; federalism; human rights; and Indigenous rights, and describes the country that has resulted from the interplay of these themes. 'The Constitution of Canada is a masterpiece – an outstanding and original study of the Canadian constitutional experience by one of Canada's leading legal scholars. Webber explains the history, characteristics and resourcefulness of the living constitution in non-technical and illuminating language. He also shows how the constitution is shaped by the engagement and interaction of the diverse people of Canada, who are simultaneously subjects and active citizens of it – a dynamic he calls “agonistic constitutionalism”.' James Tully, Distinguished Professor, University of Victoria 'Jeremy Webber has given us a rich, contextual account of Canada's constitution. Webber moves beyond the confines of constitutional texts and judicial decisions and grounds his account in the circumstances of the country's history. Only such an account can capture the deep diversity that is the hallmark of Canada's constitutional culture.' Peter Russell, Professor Emeritus, University of Toronto "This book emerged from a number of papers originally written for a conference held in Vancouver in 1998 by the Congress of Aboriginal Peoples"--Introduction.

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The Truth and Reconciliation Commission urged a better understanding of Aboriginal law for all Canadians. This book responds to that call, outlining significant legal developments in straightforward, non-technical language. Jim Reynolds provides the historical context needed to understand the relationship between Indigenous peoples and settlers and explains key topics such as sovereignty, fiduciary duties, the honour of the Crown, Aboriginal rights and title, treaties, the duty to consult, Indigenous laws, and international law. He concludes that rather than leaving the judiciary to sort out essentially political issues, politicians need to take responsibility for this crucial aspect of building a just society.

Law's Indigenous Ethics examines the revitalization of Indigenous peoples' relationship to their own laws and, in so doing, attempts to enrich Canadian constitutional law more generally. Organized around the seven Anishinaabe grandmother and grandfather teachings of love, truth, bravery, humility, wisdom, honesty, and respect, this book explores ethics in relation to Aboriginal issues including title, treaties, legal education, and residential schools. With characteristic depth and sensitivity, John Borrows brings insights drawn from philosophy, law, and political science to bear on some of the most pressing issues that arise in contemplating the interaction between Canadian state law and Indigenous legal traditions. In the course of a wide-ranging but accessible inquiry, he discusses such topics as Indigenous agency, self-determination, legal pluralism, and power. In its use of Anishinaabe stories and methodologies drawn from the emerging

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field of Indigenous studies, Law's Indigenous Ethics makes a significant contribution to scholarly debate and is an essential resource for readers seeking a deeper understanding of Indigenous rights, societies, and cultures.

Canada is covered by a system of law and governance that largely obscures and ignores the presence of pre-existing Indigenous regimes. Indigenous law, however, has continuing relevance for both Aboriginal peoples and the Canadian state. In his in-depth examination of the continued existence and application of Indigenous legal values, John Borrows suggests how First Nations laws could be applied by Canadian courts, and tempers this by pointing out the many difficulties that would occur if the courts attempted to follow such an approach. By contrasting and comparing Aboriginal stories and Canadian case law, and interweaving political commentary, Borrows argues that there is a better way to constitute Aboriginal / Crown relations in Canada. He suggests that the application of Indigenous legal perspectives to a broad spectrum of issues that confront us as humans will help Canada recover from its colonial past, and help Indigenous people recover their country. Borrows concludes by demonstrating how Indigenous peoples' law could be more fully and consciously integrated with Canadian law to produce a society where two world views can co-exist and a different vision of the Canadian constitution and citizenship can be created.

Shedding light on Canadian law and policy as they relate to Indigenous peoples, *Drawing Out Law* illustrates past and present moral agency of Indigenous

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peoples and their approaches to the law and calls for the renewal of ancient Ojibway teaching in contemporary circumstances.

The Ecological Constitution integrates the insights of environmental constitutionalism and ecological law in a concise, engaging and accessible manner. This book sets out the necessary components of any constitution that could be considered "ecological" in nature. In particular, it argues that an ecological constitution is one that codifies the following key principles, at a minimum: the principle of sustainability; intergenerational equity and the public trust doctrine; environmental human rights; rights of nature; the precautionary principle and non-regression; and rights and obligations relating to a healthy climate. In the context of the global environmental crisis that characterises the current Anthropocene era, these principles are important tools for changing consciousness and driving pragmatic policy reforms around the world. Re-imagining constitutions along these lines could play a vital role in the collective project of building a sustainable future for humans, animals, ecosystems and the biosphere we all share. This book will be of great interest to students and scholars of environmental law, ecological law, environmental constitutionalism, sustainability and rights of nature.

Indigenous peoples in Canada are striving for greater economic prosperity and

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political self-determination. Investigating specific legal, economic, and political practices, and including research from interviews with Indigenous political and business leaders, this collection seeks to provide insights grounded in lived experience. Covering such critical topics as economic justice and self-determination, and the barriers faced in pursuing each, *Wise Practices* sets out to understand the issues not in terms of sweeping empirical findings but through particular experiences of individuals and communities. The choice to focus on specific practices of law and governance is a conscious rejection of idealized theorizing about law and governance and represents an important step beyond the existing scholarship. This volume offers readers a broad scope of perspectives, incorporating contemporary thought on Indigenous law and legal orders, the impact of state law on Indigenous peoples, theories and practices of economic development, and grounded practices of governances. While the authors address a range of topics, each does so in a way that sheds light on how Indigenous practices of law and governance support the social and economic development of Indigenous peoples.

Indigenous traditions can be uplifting, positive, and liberating forces when they are connected to living systems of thought and practice. Problems arise when they are treated as timeless models of unchanging truth that require unwavering

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deference and unquestioning obedience. Freedom and Indigenous Constitutionalism celebrates the emancipatory potential of Indigenous traditions, considers their value as the basis for good laws and good lives, and critiques the failure of Canadian constitutional traditions to recognize their significance. Demonstrating how Canada's constitutional structures marginalize Indigenous peoples' ability to exercise power in the real world, John Borrows uses Ojibwe law, stories, and principles to suggest alternative ways in which Indigenous peoples can work to enhance freedom. Among the stimulating issues he approaches are the democratic potential of civil disobedience, the hazards of applying originalism rather than living tree jurisprudence in the interpretation of Aboriginal and treaty rights, American legislative actions that could also animate Indigenous self-determination in Canada, and the opportunity for Indigenous governmental action to address violence against women. In *Daniels v. Canada* the Supreme Court determined that Métis and non-status Indians were "Indians" under section 91(24) of the Constitution Act, 1867, one of a number of court victories that has powerfully shaped Métis relationships with the federal government. However, the decision (and the case) continues to reverberate far beyond its immediate policy implications. Bringing together scholars and practitioners from a wide array of professional contexts, this volume

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demonstrates the power of Supreme Court of Canada cases to directly and indirectly shape our conversations about and conceptions of what Indigeneity is, what its boundaries are, and what Canadians believe Indigenous peoples are “owed.” Attention to Daniels v. Canada’s variegated impacts also demonstrates the extent to which the power of the courts extend and refract far deeper and into a much wider array of social arenas than we often give them credit for. This volume demonstrates the importance of understanding “law” beyond its jurisprudential manifestations, but it also points to the central importance of respecting the power of court cases in how law is carried out in a liberal nation-state such as Canada.

Marking the Sesquicentennial of Confederation in Canada, this book examines the growing global influence of Canada's Constitution and Supreme Court on courts confronting issues involving human rights.

On 13 September 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples. It marked the culmination of decades of struggle among indigenous peoples for a universal framework establishing minimum standards to ensure the survival, dignity and well-being of the indigenous peoples of the world. This publication looks back at ten-plus years of the Declaration’s existence—more than ten years both of



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implementation and progress and of unfulfilled expectations.

The Oxford Handbook of the Canadian Constitution provides an ideal first stop for Canadians and non-Canadians seeking a clear, concise, and authoritative account of Canadian constitutional law. The Handbook is divided into six parts: Constitutional History, Institutions and Constitutional Change, Aboriginal Peoples and the Canadian Constitution, Federalism, Rights and Freedoms, and Constitutional Theory. Readers of this Handbook will discover some of the distinctive features of the Canadian constitution: for example, the importance of Indigenous peoples and legal systems, the long-standing presence of a French-speaking population, French civil law and Quebec, the British constitutional heritage, the choice of federalism, as well as the newer features, most notably the Canadian Charter of Rights and Freedoms, Section Thirty-Five regarding Aboriginal rights and treaties, and the procedures for constitutional amendment. The Handbook provides a remarkable resource for comparativists at a time when the Canadian constitution is a frequent topic of constitutional commentary. The Handbook offers a vital account of constitutional challenges and opportunities at the time of the 150th anniversary of Confederation.

In Algonquian folklore, the wetiko is a cannibal monster or spirit that possesses a person, rendering them monstrous. In *The Wetiko Legal Principles*, Hadley

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Friedland explores how the concept of a wetiko can be used to address the unspeakable happenings that endanger the lives of many Indigenous children. Friedland critically analyses Cree and Anishinabek stories and oral histories alongside current academic and legal literature to find solutions to the frightening rates of intimate violence and child victimization in Indigenous communities. She applies common-law legal analysis to these Indigenous stories and creates a framework for analysing stories in terms of the legal principles that they contain. The author reveals similarities in thinking and theorizing around the dynamics of wetikos and offenders in cases of child sexual victimization. Friedland's respectful, strength-based, trauma-informed approach builds on the work of John Borrows and is the first to argue for a legal category derived from Indigenous legal traditions. The Wetiko Legal Principles provides much needed direction for effectively applying Indigenous legal principles to contemporary social issues. John Borrows suggests how First Nations laws could be applied by Canadian courts, and tempers this by pointing out the many difficulties that would occur if the courts attempted to follow such an approach. In *The Right Relationship*, John Borrows and Michael Coyle bring together a group of renowned scholars, both indigenous and non-indigenous, to cast light on the magnitude of the challenges Canadians face in seeking a consensus on the

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nature of treaty partnership in the twenty-first century.

For centuries, Canadian sovereignty has existed uneasily alongside forms of Indigenous legal and political authority. *Canadian Law and Indigenous Self-Determination* demonstrates how, over the last few decades, Canadian law has attempted to remove Indigenous sovereignty from the Canadian legal and social landscape. Adopting a naturalist analysis, Gordon Christie responds to questions about how to theorize this legal phenomenon, and how the study of law should accommodate the presence of diverse perspectives. Exploring the socially-constructed nature of Canadian law, Christie reveals how legal meaning, understood to be the outcome of a specific society, is being reworked to devalue the capacities of Indigenous societies. Addressing liberal positivism and critical postcolonial theory, *Canadian Law and Indigenous Self-Determination* considers the way in which Canadian jurists, working within a world circumscribed by liberal thought, have deployed the law in such a way as to attempt to remove Indigenous meaning-generating capacity.

The essays in this book present important perspectives on the role of Indigenous legal traditions in reclaiming and preserving the autonomy of Aboriginal communities and in reconciling the relationship between these communities and Canadian governments. Although Indigenous peoples had their own systems of

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law based on their social, political, and spiritual traditions, under colonialism their legal systems have often been ignored or overruled by non-Indigenous laws. Today, however, these legal traditions are being reinvigorated and recognized as vital for the preservation of the political autonomy of Aboriginal nations and the development of healthy communities.

It contains some twenty-three papers from representatives of the aboriginal people's organizations, of governments, and of a variety of academic disciplines, along with introductions and an epilogue by the editors and appendices of the key constitutional documents from 1763.

Canada's Indigenous Constitution reflects on the nature and sources of law in Canada, beginning with the conviction that the Canadian legal system has helped to engender the high level of wealth and security enjoyed by people across the country. However, longstanding disputes about the origins, legitimacy, and applicability of certain aspects of the legal system have led John Borrows to argue that Canada's constitution is incomplete without a broader acceptance of Indigenous legal traditions. With characteristic richness and eloquence, John Borrows explores legal traditions, the role of governments and courts, and the prospect of a multi-juridical legal culture, all with a view to understanding and improving legal processes in Canada. He discusses the place of individuals,

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families, and communities in recovering and extending the role of Indigenous law within both Indigenous communities and Canadian society more broadly. This is a major work by one of Canada's leading legal scholars, and an essential companion to *Drawing Out Law: A Spirit's Guide*.

In the last two decades there has been positive change in how the Canadian legal system defines Aboriginal and treaty rights. Yet even after the recognition of those rights in the Constitution Act of 1982, the legacy of British values and institutions as well as colonial doctrine still shape how the legal system identifies and interprets Aboriginal and treaty rights. The eight essays in *Aboriginal and Treaty Rights in Canada* focus on redressing this bias. All of them apply contemporary knowledge of historical events as well as current legal and cultural theory in an attempt to level the playing field. The book highlights rich historical information that previous scholars may have overlooked. Of particular note are data relevant to better understanding the political and legal relations established by treaty and the Royal Proclamation of 1763. Other essays include discussion of such legal matters as the definition of Aboriginal rights and the privileging of written over oral testimony in litigation.

Faced with a constant stream of news reports of standoffs and confrontations, Canada's "reconciliation project" has obviously gone off the rails. In this series of

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concise and thoughtful essays, lawyer and historian Bruce McIvor explains why reconciliation with Indigenous peoples is failing and what needs to be done to fix it. Widely known as a passionate advocate for Indigenous rights, McIvor reports from the front lines of legal and political disputes that have gripped the nation. From Wet'suwet'en opposition to a pipeline in northern British Columbia, to Mi'kmaw exercising their fishing rights in Nova Scotia, McIvor has been actively involved in advising First Nation clients, fielding industry and non-Indigenous opposition to true reconciliation, and explaining to government officials why their policies are failing. McIvor's essays are honest and heartfelt. In clear, plain language he explains the historical and social forces that underpin the development of Indigenous law, criticizes the current legal shortcomings and charts a practical, principled way forward. By weaving in personal stories of growing up Métis on the fringes of the Peguis First Nation in Manitoba and representing First Nations in court and negotiations, McIvor brings to life the human side of the law and politics surrounding Indigenous peoples' ongoing struggle for fairness and justice. His writing covers many of the most important issues that have become part of a national dialogue, including systemic racism, treaty rights, violence against Indigenous people, Métis identity, the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and the duty to consult. McIvor's message is consistent and powerful: if Canadians are brave enough to confront the reality of the country's colonialist past and present and insist that politicians

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replace empty promises with concrete, meaningful change, there is a realistic path forward based on respect, recognition and the implementation of Indigenous rights. In *From Recognition to Reconciliation*, twenty leading scholars reflect on the continuing transformation of the constitutional relationship between Indigenous peoples and the Canadian state.

Implementation in Canada of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a pivotal opportunity to explore the relationship between international law, Indigenous peoples' own laws, and Canada's constitutional narratives. Two significant statements by the current Liberal government - the May 2016 address by Indigenous Affairs Minister Carolyn Bennett to the Permanent Forum on Indigenous Issues at the United Nations and the September 2017 address to the United Nations by Prime Minister Justin Trudeau - have endorsed UNDRIP and committed Canada to implementing it as “a way forward” on the path to genuine nation-to-nation relationships with Indigenous peoples. In response, these essays engage with the legal, historical, political, and practical aspects of UNDRIP implementation. Written by Indigenous legal scholars and policy leaders, and guided by the metaphor of braiding international, domestic, and Indigenous laws into a strong, unified whole composed of distinct parts, the book makes visible the possibilities for reconciliation from different angles and under different lenses.

An investigation of the unique constitutional relationship between Aboriginal people and

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the Canadian state, a relationship that does not exist between Canada and other Canadians.

With characteristic richness and eloquence, John Borrows explores legal traditions, the role of governments and courts, and the prospect of a multi-juridical legal culture, all with a view to understanding and improving legal processes in Canada. He discusses the place of individuals, families, and communities in recovering and extending the role of Indigenous law within both Indigenous communities and Canadian society more broadly."--pub. desc.

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An integral part of Canada's political culture, constitutional monarchy has evolved since Confederation to become a uniquely Canadian institution. How has it shaped twenty-first-century Canada? How have views on the monarchy changed? Eleven experts on the history of Canada's Crown take up these questions from diverse perspectives.

The United Nations Declaration on the Rights of Indigenous Peoples is seen primarily



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as an international human rights instrument. However, the Declaration also encompasses cultural, social and economic rights. Taken in the context of international trade and investment, the UN Declaration is a valuable tool to support economic self-determination of Indigenous peoples. This volume explores the emergence of Indigenous peoples' participation in international trade and investment, as well as how it is shaping legal instruments in environment and trade, intellectual property and traditional knowledge. One theme that is explored is agency. From amicus interventions at the World Trade Organization to developing a future precedent for a 'Trade and Indigenous Peoples Chapter', Indigenous peoples are asserting their right to participate in decision-making. The authors, both Indigenous and non-Indigenous experts on trade and investment law, provide needed ideas and recommendations for governments, academia and policy thinkers to achieve economic reconciliation.

*Bead by Bead* examines the parameters that current Indigenous legal doctrines place around Métis rights discourse and moves beyond a one-size-fits-all approach. Contributors to this volume address the historical denial of Métis concerns with respect to land, resources, and governance. Tackling such themes as the invisibility of Métis women in court decisions, identity politics, and racist legal principles, they uncover the troubling issues that plague Métis aspirations for a just future. By revealing the diversity of Métis identities and lived reality, this critical analysis opens new pathways to respectful, inclusive Métis-Canadian constitutional relationships.

The Anishinabek Nation's legal traditions are deeply embedded in many aspects of customary

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life. In *Drawing Out Law*, John Borrows (Kegedonce) skillfully juxtaposes Canadian legal policy and practice with the more broadly defined Anishinabek perception of law as it applies to community life, nature, and individuals. This innovative work combines fictional and non-fictional elements in a series of connected short stories that symbolize different ways of Anishinabek engagement with the world. Drawing on oral traditions, pictographic scrolls, dreams, common law case analysis, and philosophical reflection, Borrows' narrative explores issues of pressing importance to the future of indigenous law and offers readers new ways to think about the direction of Canadian law. Shedding light on Canadian law and policy as they relate to Indigenous peoples, *Drawing Out Law* illustrates past and present moral agency of Indigenous peoples and their approaches to the law and calls for the renewal of ancient Ojibway teaching in contemporary circumstances. This is a major work by one of Canada's leading legal scholars, and an essential companion to *Canada's Indigenous Constitution*.

150 years after Confederation, Canada is known around the world for its social diversity and its commitment to principles of multiculturalism. But the road to contemporary Canada is a winding one, a story of division and conflict as well as union and accommodation. In *Canada's Odyssey*, renowned scholar Peter H. Russell provides an expansive, accessible account of Canadian history from the pre-Confederation period to the present day. By focusing on what he calls the "three pillars" of English Canada, French Canada, and Aboriginal Canada, Russell advances an important view of our country as one founded on and informed by "incomplete conquests". It is the very incompleteness of these conquests that have made Canada what it is today, not just a multicultural society but a multinational one. Featuring the scope and vivid characterizations of an epic novel, *Canada's Odyssey* is a magisterial work by an astute

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observer of Canadian politics and history, a perfect book to commemorate the 150th anniversary of Confederation.

Drawing on the insights of Indigenous feminist legal theory, Emily Snyder examines representations of Cree law and gender in books, videos, graphic novels, educational websites, online lectures, and a video game. Although these resources promote the revitalization of Cree law and the principle of miyo-wîcêhtowin (good relations), Snyder argues that they do not capture the complexities of gendered power relations. The majority of these resources either erase women's legal authority by not mentioning them, or they diminish their agency by portraying Cree laws and gender roles in inflexible, aesthetically pleasing ways that overlook power imbalances and other forms of oppression.

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