



CANADA'S INDIGENOUS CONSTITUTION

JOHN BORROWS

Canada S Indigenous Constitution

Joseph Eliot Magnet

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Canada's Indigenous Constitution John Borrows, 2010-01-01 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 *Canada's Indigenous Constitution* John Borrows, 2010-03-06 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 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 *Indigenous Difference and the Constitution of Canada* Patrick Macklem, 2001-12-15 There is a unique constitutional relationship between Aboriginal people and the Canadian state a relationship that does not exist between other Canadians and the state It s from this central premise that Patrick Macklem builds his argument in this outstanding and significant work Why does this special relationship exist What does it entail in terms of Canadian

constitutional order There are Macklem argues four complex social facts that lie at the heart of the relationship First Aboriginal people belong to distinctive cultures that were and continue to be threatened by non Aboriginal beliefs philosophies and ways of life Second prior to European contact Aboriginal people lived in and occupied North America Third prior to European contact Aboriginal people not only occupied North America they exercised sovereign authority over persons and territory Fourth Aboriginal people participated in and continue to participate in a treaty process with the Crown Together these four social conditions are exclusive to the Aboriginal people of North America and constitute what Macklem refers to as indigenous difference Exploring the constitutional significance of indigenous difference in light of the challenges it poses to the ideal of equal citizenship Macklem engages an interdisciplinary methodology that treats constitutional law as an enterprise that actively distributes power primarily in the form of rights and jurisdiction among a variety of legal actors including individuals groups institutions and governments On this account constitutional law refers to an ongoing project of aspiring to distributive justice disciplined but not determined by text structure or precedent Far from threatening equality constitutional protection of indigenous difference promotes equal and therefore just distributions of constitutional power The

book details constitutional rights to Aboriginal people that protect interests associated with culture territory sovereignty and the treaty process and explores the circumstances in which these rights can be interfered with by the Canadian state. It also examines the relation between these rights and the Canadian Charter of Rights and Freedoms and proposes extensive reform of existing treaty processes in order to protect and promote their exercise. Macklem's book offers a challenge to traditional understandings of the constitutional status of indigenous peoples relevant not only to Canadian debates but also to those in other parts of the world where indigenous peoples are asserting greater autonomy over their collective futures. [Home and Native Land](#) Michael Asch, 1984 Section 35 of the Constitution Act expressly acknowledges for the first time that there are aboriginal people and aboriginal rights. What then are the implications for Canada of the inclusion of this section in our constitution? Central to this question is the definition of aboriginal rights and whether they include such special political rights as self-determination. [Home and Native Land](#) is divided into two major sections. The first focuses on definitions and provides a detailed account of the meaning of the phrase aboriginal rights as used by the two main actors, the government and the aboriginal peoples. The second is devoted to the question of political rights and the means by which this issue can be resolved.

[The Oxford Handbook of the Canadian Constitution](#) Peter Crawford, Oliver, Patrick Macklem, Nathalie Des Rosiers, 2017. 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.

Indigenous Peoples' Rights in Australia, Canada, & New Zealand Paul Havemann, 1999. Indigenous Peoples' Rights in Australia, Canada, and New Zealand aims to provide a contemporary and contextual survey and analysis of the legal and political interaction between the British settler states of Australia, Canada, and New Zealand and the indigenous First Nation peoples they dispossessed. [Constitutional Law of Canada: Federalism, Aboriginal Peoples, procedure and remedies](#) Joseph Eliot Magnet, 2001. **Aboriginal People and Canadian Law** Thomas Isaac, 1996. [Canadian Constitutional Development Since 1535](#) H. Raymond Samuels, H. Raymond Samuels II., 2002. This could be the most comprehensive book ever published about the social constitutional development of Canada. Well-researched, highly recommended. Includes Canada's first

constitution and also reproductions of two Canadian constitutional documents in their original presentation. Featured in the March 2003 edition of the New York Review of Books *Canada's First Nations* Olive Patricia Dickason, David McNab, 2009. Canada's First Nations is a comprehensive history of Canada's original inhabitants. Using an interdisciplinary approach that combines techniques from history, anthropology, archaeology, biology, sociology, and political science, the story of the more than 50 First Nations of Canada is carefully woven together. A central argument in the text is that Amerindians and Inuit have responded to persistent colonial pressures through attempts at co-operation, episodes of resistance and politically sophisticated efforts to preserve their territory and culture. The fourth edition has been fully updated to include current topics such as the effects of global warming on the Innu, the Ipperwash Inquiry and the Caledonia land claims dispute. This is a text that transcends the familiar and narrow focus on Native-White relations to identify the history of the First Nations as a separate and proud tradition. **University of British Columbia Law Review** University of British Columbia, 2015.

Freedom and Indigenous Constitutionalism John Borrows, 2016-05-12. 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 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. *Aboriginal Self-government in Canada* Yale Deron Belanger, 2008. Building on the success of the first two editions, this volume briefly recaps the historical development and public acceptance of the concept of Aboriginal self-government, then proceeds to examine its theoretical underpinnings, the state of Aboriginal self-government in Canada today, and the many practical issues surrounding implementation. Topics addressed include justice innovations, initiatives in health and education to grant greater Aboriginal control, financing and intergovernmental relations, Aboriginal municipal government relations, developing effective Aboriginal leadership, and self-government aspirations, the intersection of women's rights and self-government, and international perspectives. Various self-government arrangements already in existence are examined, including the establishment of Nunavut, the James Bay Agreement, Treaty Land Entitlement settlements, the Alberta Métis settlements, and many other land claims settlements that have granted Aboriginal communities greater control over their affairs. Pub. website. **Australian**

Indigenous Law Reporter ,2001 The Law and Custom of the Constitution Sir William Reynell Anson,1911 *Report of the Royal Commission on the Constitution* Australia. Royal Commission on the Constitution,1929 Reports on the powers of the Commonwealth under the Constitution and the working of the Constitution since Federation Report on Aboriginesp 219 mentions exclusion of Aborigines from section 51 xxvi Commonwealth has no power to make laws affecting Aboriginal people discussion of arguments for and against Commonwealth control of Aboriginal affairs mention that Australia s reputation may be affected by its treatment of Aborigines p 220 desirable that the treatment of Aborigines should be in the states which control their lands example given of protection system in state of Queensland as being the most satisfactory in the Commonwealth refers to Bleakley Report of 1929 cattle theft reduced by cattle from Moola Bulla Station in Western Australia being killed daily to feed visiting Aborigines Recommendations of majority p 270 propose that section 51 xxvi not be amended to empower the Commonwealth to make laws with respect to Aborigines Minority report p 303 recommendsCommonwealth control of Aboriginal affairs **Readings in Aboriginal Studies: Aboriginal people and Canadian law** Samuel Walter Corrigan,1991 **Survey of Current Affairs** ,1982 *International Conference on the Rights of Indigenous Peoples* ,1999 **Index de Périodiques Canadiens** ,2002

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