

INDIGENOUS LAW 101

Applications

* Basis for governance & environmental management within Indigenous Peoples' Territories.

* Applicable to real, messy, human communities, to help solve mundane, every day problems.

Resources

• Kinship Roles • Songs • Stories • Elders
• Dreams • Conventions
• Language • Oral Histories • Practices • Artifacts
• Personal memories and experiences • Historical + Anthropological Research • Trial Transcripts

Indigenous legal traditions usually involve interaction of two or more sources.

Sources

Laws from Divine or from outside human beings and interpreted by humans.

The Sacred

The Natural World

Customary Law

Deliberative Law
aka. proximate source

Positivist Law

Social Interactions

learning our obligations from how we treat each other.

INDIGENOUS LAW IS:

"The intellectual process of deliberating & reasoning to apply rules according to context"

* A way for large groups of people to collectively govern themselves.

Process for solving problems, making decisions, creating safety, maintaining and repairing relationships.

* Societally informed. As many distinct Indigenous legal traditions as there are nations.

* Alive but not always intact or explicitly in use. At this time in history requires articulation, recognition, rebuilding and revitalization.

5. Implementation & evaluation

4. Synthesis & organizing within a legal framework

Methodology

1. Specific research question
workshop

2. Analysis of existing resources

3. New focus groups & ground truthing
story analysis

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Some reading for those who want more...

Indigenous Law is...

Val Napoleon & Hadley Friedland, "Indigenous Legal Traditions: Roots to Renaissance" in Markus D. Dubber & Tajana Hörnle, eds, *The Oxford Handbook of Criminal Law*, 1st ed (Oxford: Oxford University Press, 2014) 225.

Val Napoleon. "Thinking About Indigenous Legal Orders" in René Provost & Colleen Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism* (Dordrecht: Springer, 2013) 229.

Sources...

John Borrows. *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 6-22, and 23-58.

John Borrows. *Drawing Out Law: A Spirit's Guide* (Toronto: University of Toronto Press, 2010) at 75-90, 216-227.

Methodology...

John Borrows, "Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education" (2016) 61:4 McGill LJ 795.

Hadley Friedland, "Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws" (2012) 11:1 Indigenous Law Journal 1.

Hadley Friedland & Val Napoleon, "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" (2015-2016) 1:1 Lakehead Law Journal 17.

Rebecca Johnson & Lori Groot, "Learning Indigenous Law: Reflections on Working with Western Inuit Stories" (2017) 2:2 Lakehead Law Journal 118.

Val Napoleon & Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions Through Stories" (2016) 61:4 McGill LJ 725.

Resources and Applications...

Jessica Asch, Kirsty Broadhead, Georgia Lloyd-Smith, & Simon Owen, *Secwépemc lands and resources Law Research Project*. Report prepared for the Indigenous Law Research Unit, Shuswap Nation Tribal Council, 2016, online: ILRU < <https://www.uvic.ca/law/assets/docs/ilru/SNTC%20Law%20Book%20July%202018.pdf> >

Hadley Friedland, Bonnie Leonard, Jessica Asch, & Kelly Mortimer, "Porcupine and Other Stories: Legal Relations in Secwépemcúlecw" (2018) 48 R.G.D. 153.

Hadley Friedland, *Accessing justice and reconciliation: Cree Legal Summary*. Report prepared for the Indigenous Law Research Unit, Indigenous Bar Association, Law Foundation of Ontario, & Truth and Reconciliation Commission of Canada, 2014, online: Indigenous Bar Association < http://indigenousbar.ca/indigenoulaw/wp-content/uploads/2013/04/iba_ajr_final_report.pdf >

Hadley Friedland. *The Wetiko Legal Principles: Cree and Anishinabek Responses to Violence and Victimization* (Toronto: University of Toronto Press, 2018).

Val Napoleon, "Demanding More from Ourselves: Indigenous Civility and Incivility" in Dimitrios Karmis et al, eds, *Civic Freedom in an Age of Diversity* [forthcoming 2019].

Emily Snyder, Val Napoleon, & John Borrows, "Gender and Violence: Drawing on Indigenous Legal Resources" (2015) 48:2 UBC Law Review 593.

Lara Ulrich & David Gill, "The Tricksters Speak: Klooscap and Wesakechak, Indigenous Law, and the New Brunswick Land Use Negotiation" (2016) 61:4 McGill LJ 979.