

# Canada

RECOVERING

**The Resurgence of Indigenous Law**

John Borrows



# Recovering Canada The Resurgence Of Indigenous Law

**Katrin Roots**



## **Recovering Canada The Resurgence Of Indigenous Law:**

**Recovering Canada** John Borrows, 2002-12-15 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 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 **Flawed**

**Precedent** Kent McNeil, 2019-06-01 In 1888 the Judicial Committee of the Privy Council ruled in St Catherine s Milling and Lumber Company v The Queen a case involving the Saulteaux people s land rights in Ontario This precedent setting case would define the legal contours of Aboriginal title in Canada for almost a hundred years despite the racist assumptions about Indigenous peoples at the heart of the case In *Flawed Precedent* preeminent legal scholar Kent McNeil provides a compelling account of this contentious case He begins by delving into the historical and ideological context of the 1880s He then examines the trial in detail demonstrating how prejudicial attitudes towards Indigenous peoples influenced the decision He further discusses the effects that St Catherine s had on law and policy until the 1970s when its authority was finally questioned in *Calder* then in *Delgamuukw* Marshall Bernard Tsilhqot in and other key rulings He also provides an informative analysis of the current judicial understanding of Aboriginal title in Canada now driven by evidence of Indigenous law and land use rather than by the discarded prejudicial assumptions of a bygone era *The Age of Insecurity* Astra

Taylor, 2023-09-05 Finalist 2024 Governor General s Literary Award for Nonfiction Finalist 2024 Writers Trust Shaughnessy Cohen Prize for Political Writing These days everyone feels insecure We are financially stressed and emotionally overwhelmed The status quo isn t working for anyone even those who appear to have it all What is going on In this urgent cultural diagnosis author and activist Astra Taylor exposes how seemingly disparate crises rising inequality and declining

mental health the ecological emergency and the threat of authoritarianism originate from a social order built on insecurity From home ownership and education to the wellness industry and policing many of the institutions and systems that promise to make us more secure actually undermine us Mixing social critique memoir history political analysis and philosophy this genre bending book rethinks both insecurity and security from the ground up By facing our existential insecurity and embracing our vulnerability Taylor argues we can begin to develop more caring inclusive and sustainable forms of security to help us better weather the challenges ahead *The Age of Insecurity* will transform how you understand yourself and society while illuminating a path toward meaningful change

*The Oxford Handbook of Comparative Environmental Law* Emma Lees, Jorge E. Viñuales, 2019 This Handbook brings together the foremost authorities from around the world to provide the first comprehensive account of comparative environmental law It examines in detail the methodological foundations of the discipline as well as the substance of environmental law across countries

**The Right Relationship** John Borrows, Michael Coyle, 2017-03-17 The relationship between Canada's Indigenous peoples and the Canadian government is one that has increasingly come to the fore Numerous tragic incidents and a legacy of historical negligence combined with more vehement calls for action is forcing a reconsideration of the relationship between the federal government and Indigenous nations 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 nature of treaty partnership in the twenty first century The diverse perspectives offered in this volume examine how Indigenous people's own legal and policy frameworks can be used to develop healthier attitudes between First Peoples and settler governments in Canada While considering the existing law of Aboriginal and treaty rights the contributors imagine what these relationships might look like if those involved pursued our highest aspirations as Canadians and Indigenous peoples This timely and authoritative volume provides answers that will help pave the way toward good governance for all

*Trauma-Informed Youth Justice* Judah Oudshoorn, 2015-12-01 Most youth who come in conflict with the law have experienced some form of trauma yet many justice professionals are ill equipped to deal with the effects trauma has on youth and instead reinforce a system that further traumatizes young offenders while ignoring the needs of victims By taking a trauma informed perspective this text provides a much needed alternative one that allows for interventions based on principles of healing and restorative justice rather than on punishment and risk assessment In addition to providing a comprehensive historical overview of youth justice in Canada Judah Oudshoorn addresses the context of youth offending by examining both individual trauma including its emotional cognitive and behavioural effects and collective trauma The author tackles some of the most difficult problems facing youth justice today especially the ongoing cycles of intergenerational trauma caused by the colonization of Indigenous peoples and patriarchal violence and demonstrates how a trauma informed approach to youth justice can work toward preventing crime and healing offenders victims and communities Featuring a foreword written by Howard Zehr case stories

from the author's own work with victims and offenders questions for reflection and annotated lists of recommended readings this engaging text is the perfect resource for college and university students in the field of youth justice Violence, Imagination, and Resistance Katrin Roots, 2023-05-25 Much of the discussion of social transformation and resistance in socio-legal studies centres around the question of whether and how the law can be used to achieve practical change However the editors of this volume argue that it will never be possible to enact change through the law because it is inseparable from violence be it metaphysical social or political They posit that a just world free from oppressive power relations requires us to imagine communities where the state and its law cease to exist Contributors address the underexplored questions of what alternatives to law could look like how communities could organize their everyday lives and how they could address social and interpersonal conflicts outside of an apparatus of violence These essays contribute to the ongoing interrogation of settler colonialism racism and structural violence in Canada by demonstrating how to expose the violence the law produces how to deconstruct law's power and finally how to identify modes of resistance that have transformative potential **Elgar Concise Encyclopedia of Law and Literature** Robert Spoo, Simon Stern, 2025-01-09 The Elgar Concise Encyclopedia of Law and Literature surveys the intersection between two important fields of study Interdisciplinary in scope the volume showcases the many ways in which literary and legal methods and insights both converge and remain distinct Entangled Legalities Beyond the State Nico Krisch, 2021-11-11 Law is usually understood as an orderly coherent system but this volume shows that it is often better understood as an entangled web Bringing together eminent contributors from law political science sociology anthropology history and political theory it also suggests that entanglement has been characteristic of law for much of its history The book shifts the focus to the ways in which actors create connections and distance between different legalities in domestic transnational and international law It examines a wide range of issue areas from the relationship of state and indigenous orders to the regulation of global financial markets from corporate social responsibility to struggles over human rights The book uses these empirical insights to inform new theoretical approaches to law and by placing the entanglements between norms from different origins at the centre of the study of law it opens up new avenues for future legal research This title is also available as Open Access **In Pursuit of Pluralist Jurisprudence** Nicole Roughan, Andrew Halpin, 2017-09-14 This book presents and evaluates theoretical approaches to pluralist jurisprudence and assesses the viability of theorising law extending beyond the state **Dialogues on Human Rights and Legal Pluralism** René Provost, Colleen Sheppard, 2012-08-10 Human rights have transformed the way in which we conceive the place of the individual within the community and in relation to the state in a vast array of disciplines including law philosophy politics sociology geography The published output on human rights over the last five decades has been enormous but has remained tightly bound to a notion of human rights as dialectically linking the individual and the state Because of human rights dogged focus on the state and its actions they have very seldom attracted the attention of legal pluralists Indeed some may have

viewed the two as simply incompatible or relating to wholly distinct phenomena This collection of essays is the first to bring together authors with established track records in the fields of legal pluralism and human rights to explore the ways in which these concepts can be mutually reinforcing delegitimizing or competing The essays reveal that there is no facile conclusion to reach but that the question opens avenues which are likely to be mined for years to come by those interested in how human rights can affect the behaviour of individuals and institutions The Lens of Ecological Law Carla Sbert,2020-04-24

Containing an in depth study of the emerging theory and core of ecological law this book insightfully proposes a lens of ecological law through which the disparity between current laws and ecological law can be assessed The lens consists of three principles ecocentrism ecological primacy and ecological justice These principles are used within the book to explore and analyse the challenges and opportunities related to the transition to ecological law and to examine three key mining case studies **Human Rights in the Extractive Industries** Isabel Feichtner,Markus Krajewski,Ricarda Roesch,2019-06-13

This book addresses key challenges and conflicts arising in extractive industries mining oil drilling concerning the human rights of workers their families local communities and other stakeholders Further it analyses various instruments that have sought to mitigate human rights violations by defining transparency related obligations and participation rights These include the Extractive Industries Transparency Initiative EITI disclosure requirements and free prior and informed consent FPIC The book critically assesses these instruments demonstrating that in some cases they produce unwanted effects Furthermore it highlights the importance of resistance to extractive industry projects as a response to human rights violations and discusses how transparency participation and resistance are interconnected **Language, Democracy, and the Paradox of Constituent Power** Catherine Frost,2021-04-19

In this book Catherine Frost uses evidence and case studies to offer a re examination of declarations of independence and the language that comprises such documents Considered as a quintessential form of founding speech in the modern era declarations of independence are however poorly understood as a form of expression and no one can completely account for how they work Beginning with the founding speech in the American Declaration Frost uses insights drawn from unexpected or unlikely forms of founding in cases like Ireland and Canada to reconsider the role of time and loss in how such speech is framed She brings the discussion up to date by looking at recent debates in Scotland where an undeclared declaration of independence overshadows contemporary politics Drawing on the work of Hannah Arendt and using a contextualist comparative theory method Frost demonstrates that the capacity for renewal through speech arises in aspects of language that operate beyond conventional performativity Language Democracy and the Paradox of Constituent Power is an excellent resource for researchers and students of political theory democratic theory law constitutionalism and political history *Seen but Not Seen* Donald B. Smith,2020-12-11 Based on decades of extensive archival research *Seen but Not Seen* uncovers a great swath of previously unknown information about settler Indigenous relations in Canada **Reasons of Identity** Avigail Eisenberg,2009-08-27 The current legal and political

context is perhaps more congenial than ever before to considering claims made by minorities for the protection of some aspect of their identity This book argues that diverse societies depend for their success on having courts and legislatures which are capable of assessing these identity claims in a fair and transparent manner Despite the ubiquity of these claims today how public decision makers assess minority identity claims in the course of decision making is only vaguely understood and mostly ignored in normative political theory and public policy analysis This book examines several key approaches used by national and international institutions to assess the identity claims of religious cultural and Indigenous minorities today It takes up the central challenges to the public assessment of identity claims which raise concerns about the incommensurability and questionable authenticity of such claims and about the risks of essentializing and domesticating the identities of the people who advance identity claims It develops a guide to aid in the fair assessment of identity claims which is grounded on the requirements that public institutions must respect what people claim is deeply important to their self understandings and ways of life without merely accepting such claims at face value or deferring to claimants in every case and public institutions must have the capacity to reflect on their own unfair biases The guide developed in this book aims at interrogating the strength of any identity claim on bases that are respectful of differences without being blinded by them

*Truth and Conviction* L. Jane McMillan, 2018-11-01 The name Donald Marshall Jr is synonymous with wrongful conviction and the fight for Indigenous rights in Canada In *Truth and Conviction* Jane McMillan Marshall s former partner an acclaimed anthropologist and an original defendant in the Supreme Court s Marshall decision on Indigenous fishing rights tells the story of how Marshall s fight against injustice permeated Canadian legal consciousness and revitalized Indigenous law Marshall was destined to assume the role of hereditary chief of the Mi kmaw Nation when in 1971 he was wrongly convicted of murder He spent more than eleven years in jail before a royal commission exonerated him and exposed the entrenched racism underlying the terrible miscarriage of justice Four years later in 1993 he was charged with fishing eels without a licence With the backing of Mi kmaw chiefs he took the case all the way to the Supreme Court to vindicate Indigenous treaty rights in the landmark Marshall decision Marshall was only fifty five when he died in 2009 His legacy lives on as Mi kmaq continue to assert their rights and build justice programs grounded in customary laws and practices key steps in the path to self determination and reconciliation Translation Studies beyond the Postcolony Ilse Feinauer, Kobus Marais, 2017-01-06

This edited volume explores the role of postcolonial translation studies in addressing issues of the postcolony It investigates the retention of the notion of postcolonial translation studies and whether one could reconsider or adapt the assumptions and methodologies of postcolonial translation studies to a new understanding of the postcolony to question the impact of postcolonial translation studies in Africa to address pertinent issues The book also places the postcolony in historical perspective and takes a critical look at the failures of postcolonial approaches to translation studies The book brings together 12 chapters which are divided into three sections namely Africa the Global South and the Global North As such the volume is

able to consider the postcolony and even conceptualisations beyond the postcolony in a variety of settings worldwide Law and Society Steven Vago, Adie Nelson, Veronica Nelson, Steven E. Barkan, 2017-09-26 Law and Society provides a balanced and comprehensive analysis of the interplay between law and society using both Canadian and international examples This clear and readable text is filled with interesting information ideas and insights All materials and supporting statistics have been carefully updated This edition includes an expanded discussion of the law and First Nations people recent developments impacting LGBTIQ2S persons and persons with disabilities and a new section on civil procedures Each chapter is structured similarly with an outline learning objectives key terms chapter summaries critical thinking questions and an array of additional resources



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