First Nations: Law

Open October 3 - October 31, 2016

There was a legal relationship, an interaction between European and First Nations legal systems, that existed at the foundation of European settlement in northern North America, enshrined in the written treaties and in First Nations peoples' oral and visual record of those treaties.

Subject Matter Experts

JF Arteau
Partner
Kesserwan Arteau

Jim Miller
Professor Emeritus of History
University of Saskatchewan

What role could First Nations legal traditions play in Canadian law?

Discussion Overview

Some have argued that First Nations legal traditions can and should be accommodated within the Canadian legal system, alongside common law and civil law, and that such an inclusion would be a step toward true justice. Could First Nations legal traditions help us address some persistent problems in Canadian law?

Jim Miller (Subject Matter Expert) • September 13, 2016 at 10:38 am
As you can see in the "Resources and News Articles" section, on September 12 the Globe and Mail published an editorial about Canada and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Briefly, the G&M was critical of the federal government for not adopting a clear and consistent position on implementing UNDRIP in Canada.

Whether or not the editorial was accurate in what it said about the government's stance, it did raise important questions about Canada and UNDRIP:

-how should government go about aligning federal laws with the Declaration? -does UNDRIP's assertion that Indigenous peoples must give "free, prior, and informed consent" prior to economic development of resources in their traditional territories mean that Indigenous peoples have a veto over such development? -should the government adopt a process of negotiating with Indigenous leaders in accordance with what it has described as "a nation-to-nation relationship"? -what role, if any, should provinces play in the process of incorporating UNDRIP into Canadian law?

What do you think?

William Innes • September 18, 2016 at 01:40 pm

More questions: -- What are traditional territories? it seems very loose definition — does one person using ten years ago qualify? " Nation to nation" nice catchy phrase — does it just mean that the federal government does the negotiating, or is there an accepted definition of nation? -- is every one of the 600+ bands a nation? — if so the likelihood of near term progress seems remote — are there agreed aggregations within the First Nations like the Cree Nation which would form a reasonable structure for discussion?
It would seem that for anything meaningful to be achieved, there need to be accommodations by all parties to create a space where some common principles could be agreed.
• Post Awarded 30 DR

Jim Miller (Subject Matter Expert) • September 18, 2016 at 06:19 pm
Good questions, William. I think several of them would apply to many areas of government-First Nations relations.

As well, what will be the role/place of the provinces in nation-to-nation discussions/ Since the provinces have jursidiction over crown lands and natural resources, it's hard to imagine any territorial question being settled by the federal government and First Nations by themselves.

Jim Miller

JF Arteau (Subject Matter Expert) • September 22, 2016 at 11:23 am
William Innes wrote on September 18:
More questions: -- What are traditional territories? it seems very loose definition — does one person using ten years ago qualify? " Nation to nation" nice catchy phrase — does it just mean that the federal government does the negotiating, or is there an accepted definition of nation? -- is every one of the 600+ bands a nation? — if so the likelihood of near term progress seems remote — are there agreed aggregations within the First Nations like the Cree Nation which would form a reasonable structure for discussion?

It would seem that for anything meaningful to be achieved, there need to be accommodations by all parties to create a space where some common principles could be agreed.

Thank you for your interesting question William. To add to what Jim mentioned in addition to a potential role that provinces or even territories might play in territorial discussions, what would be the role, if any, of a Regional Government, that is by definition non-ethnic and does not then represent an aboriginal nation. Would it be more for the communities themselves or for their national birthright organization to lead the discussions?
• Post Awarded 5 DR

JF Arteau (Subject Matter Expert) • October 1, 2016 at 04:17 pm
What is Aboriginal law

While Canadians recognize the importance of the Aboriginal Peoples of Canada, many do not understand the specificity of the Aboriginal Law within the whole Canadian Law system. What is Aboriginal Law? What does it concern? How is it interpreted by the courts?

Generally speaking, Aboriginal Law concerns issues related to the Aboriginal Peoples of Canada, such as rights to land, traditional practices, aboriginal and treaty rights and the famous fiduciary relationship between the Crown and the Aboriginal Peoples. The Common Law and Court decisions have built the Aboriginal Law as we understand it today.

First Nations, Inuit and Metis all fall under the term Aboriginal Peoples as it appears in the Canadian Constitution.

Who should be primarily concerned by the Aboriginal Law? Aboriginal Peoples? The Federal Government? The Provinces and the Territories? All Canadians? .

William Innes • October 2, 2016 at 06:04 pm
JF Arteau wrote on October 1:
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You seem to define aboriginal law as Canadian law as it applies to aboriginal issues, which probably defines the status quo. However some have suggested that there should be a separate aboriginal civil code such as exists in Quebec, which would better reflect aboriginal concepts of justice. Are there substantive distinctions in aboriginal concepts of justice which would be more relevant to the aboriginal condition; or is it simply a case of identifying the legal system more closely with those impacted by it, in which case the case might be made for other distinct communities in Canada? Having said this, the claim of aboriginal peoples for distinction in Canada is clearly different as a founding nation, and recognizing a distinct aboriginal legal code could be an important accommodation in building our relationships.

JF Arteau (Subject Matter Expert) • October 2, 2016 at 11:14 pm
William Innes wrote on October 2:

thank you William for your very interesting comment. The question you raise of a specific code for Aboriginal Peoples of Canada is a huge issue. I propose that I get back to this in a next post. For this moment, I would like to share with you this recent example of Akwasasne Mohawk Community

regarding a culturally appropriate proposed modification to the Legal System. Let me know what your thoughts are on this:

"Akwesasne's council decided to mix aspects of Canada's justice system with Mohawk values and principles such as considering the talents of the offending party and using them to benefit the community.
For example, if someone spraypaints graffiti on a school wall and the offender is a great lacrosse player, the law stipulates the person can be ordered to teach students how to play the sport. "It's not just looking at penalizing," said Bonnie Cole, Akwesasne's sole permanent prosecutor. "That's old thinking — that's outside thinking.

"This law looks at the person, what offence they committed and how they can restore balance between the (offender), the victim, and the community as well."
"http://www.ctvnews.ca/mobile/canada/akwesasne-creates-first-indigenous-court-in-canada-for-and-by-indigenous-people-1.3098222

William Innes • October 2, 2016 at 11:49 pm
JF Arteau wrote on October 2:
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The Akwasasne sample is fascinating, and I can see a lot of merit in differing principles in sentencing which are more consistent with aboriginal culture. However, there would seem to be some careful thought needed about the circumstances under which aboriginal justice would apply and some overarching principles which need to guaranteed — such as the independence of the judiciary, the right to representation etc.

Stephanie Dotto • October 5, 2016 at 11:42 am
JF Arteau wrote on October 2:

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This seems like a fascinating and promising way of approaching justice, and is very much needed, given how the Canadian justice system seems to fail Aboriginal peoples regardless of whether they are victims, defendants, or claimants.

I read on Chelsea Vowel's website — http://apihtawikosisan.com/about/ — that there is a difference between Aboriginal Law, which refers to Canadian law as applied to Aboriginal people and issues, and Indigenous Law, which refers to the systems developed by Indigenous peoples themselves. Before reading this I didn't realize the two terms referred to two very different things. I am curious to know more about Indigenous law in particular. I imagine, for example, given the diversity of Indigenous peoples, that there was great diversity amongst their approaches to justice. Pre-colonialism, were there common threads identifiable in legal thought across the various Nations and peoples?

Jim Miller (Subject Matter Expert) • October 6, 2016 at 05:02 pm
An excellent example of bringing Indigenous law into Canadian law - or, more accurately, blending the two forms of law - is the work of University of Victoria Law faculty member John Borrows. His Recovering Canada: The Resurgence of Indigenous Law (University of Toronto Press, 2002) is a fine example of bicultural scholarship, both in its methodology and its argument. Borrows does his research in, and presents his arguments with, evidence from both Indigenous (oral accounts, wampum) and European (archival sources, government publications) traditions. Morever, the argument of his book is that Indigenous legal systems can and should be brought more fully into mainstream Canadian law.

JF Arteau (Subject Matter Expert) • October 8, 2016 at 09:52 pm
Stephanie Dotto wrote on October 5:
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You are absolutely right. There is a substantial difference between Aboriginal Law and Indigenous Law or Traditional Law. Traditional Law is the term or notion we refer to when we want to explain or emphasize how the law system is experienced and built within the communities and by the community members. Integration into the Canadian Law of some principles of traditional law is certainly not an easy task as any reference must be culturally appropriated. As a recent example of this, the Government of Quebec announced last week that it would bring modifications to the Civil Code to integrate customary adoption principles. See this link for Minister of Justice, Stephanie Vallée's Press Release.
http://www.fil-information.gouv.qc.ca/Pages/Article.aspx?aiguillage=ajd&type=1&idArticle=2410064891&lang=en

Paul Vincent Groarke • October 13, 2016 at 07:03 pm
{QUOTE(thread_id=>311)}What is Aboriginal law
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Paul Vincent Groarke • October 13, 2016 at 07:26 pm
Allow me to go back to the beginning. While I appreciate the comments of the Globe & Mail, they seem very typical to me. Although the UN declaration may serve as a reminder, It is not a matter of living up — in some very technical sense — to a commitment to the United Nations. It is a matter of allowing indigenous people to govern themselves, under their own law. Really it is a matter of returning government to them. There is no reason why this has to turn itself into a mare's nest of inter-jurisdictional squabbles. I was originally troubled by the use of the term "Aboriginal law" here, but really this seems to be a matter of terminology, and the term "traditional law" is fine. Surely, that is what needs to be discussed. The indigenous or aboriginal law was there long before the common law and in fact the common law tradition comes out of a tribal tradition, which was fundamentally the same around the world, and functioned on the basis of a customary law. There are precedents for this in

Africa, for example, where local, tribal, and customary law (which is often misunderstood as religious law) functions within the larger legal system. It is fundamentally a matter of letting local people deal with local matters in the way that they have traditionally dealt with them. It is a mistake to try and over-manage everything, in the way that our governments tend to do, and create empty conceptual arrangements which never deliver the goods. The strength of tribal life around the world is that it deals with social issues from the perspective of the community that is immediately affected. That's where the focus needs to be. Having said that, allow me to add that it is good to see you having this discussion.

JF Arteau (Subject Matter Expert) • October 13, 2016 at 08:39 pm
Paul Vincent Groarke wrote on October 13:
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Let me first thank you for your very relevant comment. I fully share what you said and I also think that the legal system should be more a reflection of what social interactions are than a cold and distant system that we have to abide by. In that sense, Hans Kelsen, whom you probably know already had some interesting comments in his book about the Theory of Norms. I also very much prefer to use a specific terminology when we refer to the justice framework as it is presented within a given Aboriginal or Indigenous Community. Traditional Law impose an in se distinction with the Canadian Law system while staying away from proposing a hierarchy. Would you allow me to ask you to share your thoughts about the inherent right to self-determination? Thank you once again and please stay active in our discussion.

Jim Miller (Subject Matter Expert) • October 14, 2016 at 10:54 am
We can agree, as I do, on the desirability of respecting and making space for the operation of traditional law. As was pointed out, there are other places in the world where that already happens. But at some point, Canada as a society will have to deal with the question of what to do when traditional law and Euro-Canadian law collide. We have had some experience of such collisions in Ontario over the application of family and child-protection law. Is it good enough to handle such collisions on a case-by-case basis? Does anyone have any suggestion(s) as to what we should do in cases where a group's traditional law and mainstream society's law are incompatible?

Jim Miller

Paul Vincent Groarke • October 14, 2016 at 05:02 pm

JF Arteau wrote on October 13:

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Well. I didn't really expect to meet Hans Kelsen here and in fact I think a lot of the problems on terminology come out of legal positivism and the work of HLA Hart. This is because the legal positivists essentially re-defined the concept of law. I could say more if you were interested. The important observation here is that their conception of law is inherently political, and doesn't apply in a traditional context — in the context of tribes — because the distinguishing feature of tribes is that they function without the kind of centralized government that we associate with the state. The older conception of law is free-standing, and is based on the customs and values of the people, rather than the actions of the political arm of government. I realize that there will have to be accommodations, to recognize the existing legal system, and everything has to work within the constitution. But I don't think you can bring in the traditional law from the top down. That's not how it works. You have to go from the ground up. It has become very difficult to speak about these matters in a meaningful way because there are political red flags everywhere. So as soon as you talk about sovereignty, for example, the conversation deteriorates and people's guards go up. Yes I think there is an inherent right to self-government, and no, I don't see any reason to ring the alarm bells. There are plenty of complications, of course, but In many cases, we are talking about isolated communities, which in many senses are already autonomous and there is a very good argument that the traditional ways gave people a sense of esteem that they lost with marginalization. The psychology of the traditional law is different than the psychology of the rules-based, over-regulated system that we are familiar with, and I would think that it would help to counter some of the social problems on reserves. As to the legal and practical problems, I would raise three issues. One is that we have a problem of over-reach, in areas like the criminal law, and I don't see how you can bring in the traditional law in a meaningful way unless the federal government relaxes its jurisdiction and allows communities to deal with some of the issues that arise in such a context. I think that this can probably be accomplished, to some extent, by prosecutorial discretion, so it may be possible to navigate around that difficulty. The courts in other countries have recognized the authority of the traditional law (which is usually referred to as the customary law), and that should be investigated. I can give you a cite if you like. The second issue far more difficult. The Indian Act is a problem, from a traditional perspective, and I have always wondered how the band council structure in the Act can be justified, since it was — as I understand it — imposed on the first nations. I have never looked into the history of the Indian Act, or the law in this regard, so I would have to look further into the matter, but in some cases, at least, the traditional law contemplates a different form of governance. This of course raises exactly the kind of unproductive legal, constitutional, and technical battles that are very hard to resolve.

Scott Smith • October 16, 2016 at 05:19 pm
I wonder if perhaps instead of nation to nation, the Assembly of First Nations be granted "provincial" powers? Would that not allow them to make specific laws to suit themselves just like the provinces and territories do? Would it not make them equals with the other provinces at the table when negotiating with the feds and participating in decisions that affect Canada as a whole? I think the federal government should be recognized as the highest "authority" in the country and that would hopefully simplify things.

Jim Miller (Subject Matter Expert) • October 17, 2016 at 11:52 am
Hello Scott

Thank you for your post and suggestion. It is one on which federal governments have acted at times in the past. One major difficulty, though, is that many First Nations reject the idea of province-like status as beneath them and their historic claims to nationhood status. Many see themselves as sovereign nations who are entitled to be treated accordingly. On the other hand, many of the northern First Nations included in the Yukon land claim agreement have self-governing powers that in many ways are like those of provinces. It is, as often noted, a complex question. It helps, I think, to have people such as yourself propose solutions. The more Canadians there are who are thinking about the issue, the greater the likelihood of finding a workable solution. At least I hope that's the case. Jim Miller

JF Arteau (Subject Matter Expert) • October 20, 2016 at 08:11 pm
Scott Smith wrote on October 16:
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Bonsoir Scott,

I would first like to thank you for your post and for proposing a new approach to our issue. Your proposal would certainly worth in-depth discussion but let me say, as Jim rightly pointed out, many first nations and Inuit consider themselves as nations just as the canadian nation is. To grant them a status of a province would be seen as a step backward. How about developing a specialized tribunal mandated to deal with Aboriginal Law and Tradionnal Law? Would that make any sense? What would be the pros and cons? Would it be seen as a innovative way to include First Nations traditions and customs to the current legal system? I would like to have your thoughts on this

John lacey • October 20, 2016 at 08:37 pm
The more I read about First Nations issues the less I seem to understand them. I am not an expert by any stretch of the imagination wherein I think lies the problem because most Canadians are like myself and do not understand how the Treaties work who signed them and for what rights. Is it just land rights or right to govern also. When I first came to Canada I could not understand the logic of different rules for what I thought were all Canadians. To a large degree I still do not understand it when First Nations go

into Cities and Towns that in my mind are not governed by treaties and aboriginal law and feel they can break Canadian Law. Reading all of these comments I think I have a better understanding. I believe that First Nations should have a right to Govern their own lands agreed to in treaties. I believe we should leave it to them to decide whether it should be on a National, Provincial or Municipal form, and they could meet to discuss the laws they wish to have. The only provision I would make is that any form of corporal punishment needs to be discussed with our Federal Government. Their Laws and Land Titles should be respected by us and our Laws and Land Titles should be respected by First Nations. This is not meant to be a ramble and not meant to divide I believe we need to come closer together and understand each others prospective and become friends, each maintaining their own identity that hopefully will eventually be one. And this is only Law there are a whole bunch of other issues, we have a long road I feel.

Scott Smith • October 20, 2016 at 10:12 pm
JF Arteau wrote on October 20:
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To be honest I have a hard time wrapping my head around the concept of more than 1 nation in a country. It is no wonder that there is a lot of confusion regarding the relationship between Canada and First Nations when on one hand they wish to deal "nation to nation" yet they seem to be bound to conditions under the Indian Act as a lesser entity than the Crown. Would it not be in everyone's interest to clearly define the Canada-First Nations relationship in a way all parties agree to and ensure all the populace is educated so that there is true understanding of cultural differences and commonalities in order to move forward in a partnership of all Canadians instead of confrontation.

Marc Gauthier • October 22, 2016 at 08:28 am
La grande quantité en prison est du a la drogue et a l'alcool, et a ce qui en découle. Si on remonte aux années d'avant la colonisation la tradition ne pouvais pas prévoir un mal qui n'existait pas comme tel (pas comparable avec ce qu'il y avait). Si une victime pourrais se servir du système traditionnel pour la justice, l'effet "village" pourrais l'y contraindre aussi, de la même façon que le silence s'obtient.

Jim Miller (Subject Matter Expert) • October 22, 2016 at 05:52 pm
John Lacey has raised a number of pertinent, important, and difficult points. I find it useful when trying to understand the treaties to step back a bit from the detailed questions and ask "What is the underlying nature (or central character) of the treaties"? I think the answer to that question is that the treaties stretching from the 1700s until fairly recently were all about forging a relationship between Indigenous and immigrant peoples that would enable both to share territory, maintain good relations, and provide mutual assistance. From the First Nations' perspective, these agreements were not contracts between

two parties (Crown and First Nations) but covenants in which those two parties participated along with the deity (Creator, Great Spirit, or God). To First Nations, the fact that they were covenants made them sacred, solemn, and inviolable. The other central feature of treaty-making for First Nations was that they were based on creating a sort of kinship between the two parties through the use of First Nations' ceremonies (formal welcome, exchange of gifts, eating together, smoking the pipe, etc). That was how First Nations operated - i.e. by making kin of strangers - before the Europeans arrived. And they continued to behave that way - for example in the fur trade - after the Europeans were on the scene. What's most interesting to me, though it is seldom acknowledged, is that the Europeans fell in with the First Nations' way of creating an enduring, productive relationship. The evidence of Europeans and First Nations both using ceremony and ascribed (fictive) kinship is plentiful in the fur trade especially. I haven't dealt with a number of the other points John made, but the interest of conserving space, I think I should stop here.

William Innes • October 22, 2016 at 10:48 pm
This discussion has been a fascinating journey through the complexities of Canada's relationship with the indigenous peoples. I am struck by several things; -- How poorly understood is the nature of the relationship, even by thoughtful Canadians. It would seem that there is a real need for public education if Canadians are to play a substantive role in guiding their elected representatives on this important subject. -- — The aboriginal idea of sharing a kinship still requires some process to express and guide the kinship. The idea of the first nations peoples becoming a province has the obvious problem of being viewed as a subservient level of government, but the idea of some entity representing indigenous peoples with the legitimacy of parliament or the senate seems important if aboriginal interests in the kinship are to be effectively represented and addressed. -- I wonder if the Quebec "Nation within a nation" might be a concept which would be useful in recognizing dual national aspirations.

Jim Miller (Subject Matter Expert) • October 24, 2016 at 11:59 am
You've raised a couple (more) interesting questions, William. A version of the "Nation with a nation" approach was suggested twenty years ago by the Royal Commission on Aboriginal Peoples. The effect of the Commission's ambitious proposals on governance would have been that some sixty to eighty 'nations' of Indigenous people(s) would have been treated in the constitution as nations with protected rights. The RCAP proposals were, in the words of the deputy minister of Indian Affairs of the day, "dead on arrival." Since then, it's been left to the courts (who don't want the responsibility) to define Aboriginal rights, including Aboriginal title. When politicians fail to, or won't, act, the courts must, because citizens cannot be left without their grievances addressed. The other matter that your post raises is the lack of knowledge/understanding in the general public of much of the history of Indigenous peoples and of Native-newcomer relations. It is over thirty years since a major revision of the scholarly understanding of federal 'Indian' policy in the post-Confederation era got under way, more than twenty since that revision achieved consensus in the academic community, And yet, as you correctly say, the relationship is poorly understood "even by thoughtful Canadians." It is twenty years since the Royal Commission on Aboriginal Peoples exposed many of the ills of government policy in regard to residential schools, twenty years since the first substantial history of residential schools was published. And still we are told, as the Truth and Reconciliation Commission's Final Report pointed out, that a large number of Canadians say they do not know what these schools were like. I think academic scholars who work on Indigenous topics need to contemplate how and why they have failed to make their ivory-tower views more widely known.

John lacey • October 24, 2016 at 09:05 pm
As a Country we have made many bad mistakes for supposedly good reason at the time. Taking away Japanese property and putting them in camps being one of them during the war.. The reason I bring that up is somebody of government decided that residential schools would be good for our country, or that is what I assume. They obviously did not realize the damage that this would do to the relationship between First Nations people and others and the children themselves plus the cruelty of it.. The fur trade was a shining example of First Nations and Europeans working together with a common goal. It was probably the most interesting 100 years of Canadian history and opened up Canada. First Nations fought alongside us against the United States who tried to invade us and at that time it was both our lands. That is not to say there were not some problems with greedy people but we survived it. We have gone backwards since then and the situation has become very complicated. What we need is some common goal. Maybe working towards having laws that suit both parties would be a first step towards common goals again or maybe it needs to another issue. I truly feel that without working on some important issue together with a common goal is what we need to do and move on from there. Throwing money at a problem with no concrete plan (which is what I believe we have done for the past decades) will not solve a problem. This is true of any problem scientific, education, health care and human relations.

Paula Estanislau • October 25, 2016 at 07:38 pm
JF Arteau wrote on October 1:
What is Aboriginal law

While Canadians recognize the importance of the Aboriginal Peoples of Canada, many do not understand the specificity of the Aboriginal Law within the whole Canadian Law system. What is Aboriginal Law? What does it concern? How is it interpreted by the courts?

Generally speaking, Aboriginal Law concerns issues related to the Aboriginal Peoples of Canada, such as rights to land, traditional practices, aboriginal and treaty rights and the famous fiduciary relationship between the Crown and the Aboriginal Peoples. The Common Law and Court decisions have built the Aboriginal Law as we understand it today.

First Nations, Inuit and Metis all fall under the term Aboriginal Peoples as it appears in the Canadian Constitution.

Who should be primarily concerned by the Aboriginal Law? Aboriginal Peoples? The Federal Government? The Provinces and the Territories? All Canadians?

I assume at least all Canadians

Jim Miller (Subject Matter Expert) • October 26, 2016 at 10:53 am
John Lacey points out that the relationship began positively and deteriorated later on. Many historians suggest that the early relationship was based on economic cooperation in the fur trade and shared strategic interests in fending off a common foe. These bases for cooperation both disappeared in eastern Canada in the space of a few decades of the early nineteenth century. First, the amalgamation

of the Hudson's Bay Company and North West Company as a new Hudson's Bay Company in 1821 meant the end of the fur trade that the Nor'Westers had conducted out of Montreal. The economic cooperation in the trade that had prevailed in eastern parts of British North America disappeared. And shortly after the end of the War of 1812, Britain and the United States concluded the Rush-Bagot Convention that normalized relations between the two previous rivals and demilitarized the Great Lakes. That pact effectively meant that British strategic planners no longer saw First Nations as important diplomatic partners and potential military allies. Finally, beginning in the 1820s in Upper Canada, heavy immigration from Britain overwhelmed the Indigenous population demographically. The newcomers now wanted to make farms and towns, not trade in furs. The consequence of these changes was that First Nations went from being perceived as essential partners to obstacles to economic growth. Agriculture and Indigenous hunting-gathering were not compatible, as their roles in the fur trade and the military had been. As I said, that interpretation is now widespread, especially since the Royal Commission on Aboriginal Peoples endorsed it in its Final Report in 1996. As John said, we need a new basis for cooperation. For a while in the 1990s some observers thought working together to protect the environment might be that common platform. Non-Natives increasingly recognized the need, and Indigenous peoples' philosophy provided an ideological foundation for a healthier relationship with the environment. That optimistic view has not (yet) taken hold, it seems. Are there other potential bases for cooperation out there?

JF Arteau (Subject Matter Expert) • October 27, 2016 at 02:20 pm

John lacey wrote on October 24:

As a Country we have made many bad mistakes for supposedly good reason at the time. Taking away Japanese property and putting them in camps being one of them during the war.. The reason I bring that up is somebody of government decided that residential schools would be good for our country, or that is what I assume. They obviously did not realize the damage that this would do to the relationship between First Nations people and others and the children themselves plus the cruelty of it.. The fur trade was a shining example of First Nations and Europeans working together with a common goal. It was probably the most interesting 100 years of Canadian history and opened up Canada. First Nations fought alongside us against the United States who tried to invade us and at that time it was both our lands. That is not to say there were not some problems with greedy people but we survived it. We have gone backwards since then and the situation has become very complicated. What we need is some common goal. Maybe working towards having laws that suit both parties would be a first step towards common goals again or maybe it needs to another issue. I truly feel that without working on some important issue together with a common goal is what we need to do and move on from there. Throwing money at a problem with no concrete plan (which is what I believe we have done for the past decades) will not solve a problem. This is true of any problem scientific, education, health care and human relations.

Good Day John, I appreciate a lot your valuable comment. As you point out, many wrongs were done in the past and the consequences of these dark chapters in the history of Canada are horrific. Common goal is certainly something that we should all aim at. I, for my part, strongly believe that the laws should reflect the values of a given community at a given time and that it should not be the other way around meaning that the laws create a new behaviour on the part of the Canadian citizens. Money would not solve this issue. I suggest that words such as respect, faith, confidence and trust would be more useful. What do you think?

Greg Wollersheim • October 27, 2016 at 06:22 pm

Jim Miller wrote on September 13:
As you can see in the "Resources and News Articles" section, on September 12 the Globe and Mail published an editorial about Canada and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Briefly, the G&M was critical of the federal government for not adopting a clear and consistent position on implementing UNDRIP in Canada.
Whether or not the editorial was accurate in what it said about the government's stance, it did raise important questions about Canada and UNDRIP:

-how should government go about aligning federal laws with the Declaration? -does UNDRIP's assertion that Indigenous peoples must give "free, prior, and informed consent" prior to economic development of resources in their traditional territories mean that Indigenous peoples have a veto over such development? -should the government adopt a process of negotiating with Indigenous leaders in accordance with what it has described as "a nation-to-nation relationship"? -what role, if any, should provinces play in the process of incorporating UNDRIP into Canadian law?

What do you think?

i have a question for you when is canada going to update the treaties and start treating everyone equally ?

John lacey • October 27, 2016 at 08:32 pm
JF Arteau wrote on October 27:
Good Day John, I appreciate a lot your valuable comment. As you point out, many wrongs were done in the past and the consequences of these dark chapters in the history of Canada are horrific. Common goal is certainly something that we should all aim at. I, for my part, strongly believe that the laws should reflect the values of a given community at a given time and that it should not be the other way around meaning that the laws create a new behaviour on the part of the Canadian citizens. Money would not solve this issue. I suggest that words such as respect, faith, confidence and trust would be more useful. What do you think?

We obviously both agree money will not solve the issues, but I must add to that. It can if spent wisely which it has not in the past decades. I also agree that the laws of a country should reflect their values of a country. Herein lies the problem. How do we become a country when most non First Nations Canadians do not understand what the First Nations problems are and in the reverse First Nations do not understand the problems on the other side. I count myself in that as I certainly do not understand it all. I am told that First Nations youth have the highest rate of suicide in Canada. What a shame that you take your life because you have nothing to look forward to in life. My strong opinion is that we need to be able to compromise more and come together. That can only happen if First Nations and non First Nations understand that we both need something from the environment we live in. So if we are going to spend money let us spend it on education in respect of each other and a way out for First Nations youth who feel I think feel trapped in a way of life that does not satisfy their needs. We have already started to have First Nations history taught in some of our schools we should do the same for them. We must not poison the young peoples minds because they will be the solution to our problems if some of us can show an example of the things you said, respect, trust, confidence and trust. I would add one more issue that I think is important self respect and self support.
• Post Awarded 5 DR

Jim Miller (Subject Matter Expert) • October 28, 2016 at 10:48 am
Thank you for your post, Greg. It seems to me that it contains three implied questions. If you are asking if the treaties can be terminated by one side, for example government, the answer is No. The agreements were intended to be eternal. As negotiators said on several occasions, the treaties were to last as long as the sun shone, the grass grew, and the rivers flowed. If you are asking if they can be modified or reinterpreted, then, the answer is they can by mutual agreement. Again, unilateral action is not valid when the pact was made by two or more parties. And if you are asking why the treaties appear to violate the notion of one law for all, the answer is that Canada has never had a regime of one law (or constitutional provision) for all. If we consider the British North America Act (Constitutional Act 1867) and the Supreme Court Act, two of the founding documents of the federation, we find that Ontario is authorized to provide for separate schools only for Roman Catholics, Quebec is guaranteed one-third of the seats on the Supreme Court, and "Indians" are singled out for distinctive treatment in section 91(24) of the BNA Act. That clause assigns jurisdiction for "Indians and lands reserved for the Indians" to the federal level (Parliament). So, in 1867, the Fathers of Confederation singled First Nations out for separate, inferior treatment. (The courts seem to have broadened the scope of 91(24) to include all the Aboriginal peoples of Canada.) First Nations have suffered from invidious, discriminatory treatment under the Indian Act since 1876. As I said, Canada has never had a regime of one (or the same) law for all.

John lacey • October 29, 2016 at 11:26 am
First I would like to thank Mr Miller and Mr Arteau for hosting the discussion. I have always been interested in why the relationship between First Nations and Non First Nations were not as they should be. The original topic was how can we incorporate First Nations traditions into Canadian Law. I have learnt a lot from these discussions and now have considerable amount of reading should I wish. A lot of different topics were covered. I am not sure anyone really knows what those traditions are and I am sure they differ depending on the area the tribe resides. The most logical solution was from Mr Smith who suggested a provincial level of co-operation with representatives from the First Nations in that Province involved as a sort of M.P.P. Then representatives elected by the First Nations represented at the Federal Level sort of like M.P.'s representing each Nation. From this traditions that are similar to all First Nations may be able to be incorporated into Canadian Law. One would hope we would be able to convince First Nations it is an acceptable compromise as all tribes dealing at a Federal Level is not possible. The other alternative is the sun will shine, the grass will grow and the rivers will flow until another solution is reached. Once again thank you for your time I have enjoyed the learning experience.

JF Arteau (Subject Matter Expert) • October 30, 2016 at 09:39 am
Now that we are approaching the end of this interesting discussion, I would like to thank you all for your active participation. Your comments and questions were relevant and you brought a lot of good suggestions and new ideas. I just wish this type of exchange may continue on this same forum. A special thank to my fellow leader Jim. Thank you very much for your intelligence and excellent comments. It was a great pleasure and a privilege to share with you on this. Stay well and take care!

Jim Miller (Subject Matter Expert) • October 30, 2016 at 11:01 am
Like Jean Francois, as the end of our month of being 'active' on this topic approaches, I have some reflections and thank you's. I've been struck by two things in particular. First, the people who posted on

the topic come from quite a variety of backgrounds and bring differing levels of knowledge about Indigenous peoples and their relations with the rest of Canadians over time. Second, the people who posted are people of good will who very much want to find and take the steps to create a better future, and better relationship, for Indigenous peoples and the rest of us. I find that common characteristic most heartening. I, too, would like to say thank you to my partner on this thread. With his background in the practice of law, Jean Francois brought an invaluable range and depth of opinion to the discussion. I'd also like to thank the staff and volunteers associated with Canadian Difference, including in particular Stephanie, for all their help and guidance. Finally, I want to thank all of you who participated in the interesting discussions we've had over the last month.

Aboriginal Rights and the Canadian Constitution

Discussion Overview

Since the 1982 Constitution Act, a version of the rights of Indigenous peoples has been enshrined in the Canadian Constitution and the Charter of Rights and Freedoms. However, exactly what constitutes “Aboriginal rights” is not clearly defined.

There are no comments yet. Join us to start the discussion.