

PHILOSOPHY 490 A01 /LAW 343 A01  
Spring 2019

**The United Nations Declaration on the Rights of Indigenous Peoples**

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Office Hours: Thursdays 3:30 pm-4:30 pm  
or by appointment

Course Description

The federal government has committed to implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). What exactly does this require? How would final passage of Bill C-262, the proposed *United Nations Declaration on the Rights of Indigenous Peoples Act* impact this commitment? This course provides a comprehensive introduction to UNDRIP as an international human rights document. The goal is for you to develop an understanding of the type of obligation that human rights documents such as UNDRIP create and of the specific obligations that UNDRIP sets out. In your final research paper you will be asked to discuss specific policies and/or legal regimes within Canada that are implicated by the obligations set out in UNDRIP

This course is reading-intensive and writing-intensive. Required components include a short research paper, a group presentation and a long research paper. You will be expected to complete all the assigned reading and to actively participate in both the seminar and the group presentation.

Evaluation

1-page reflection on readings (x5)	15%
#1 due before class begins Jan 10	
#2 due before class begins Jan 17	
#3 due before class begins Jan 24	
#4 due before class begins Jan 31	
#5 due before class begins Feb 7	
5-7 page paper	25%
due before 4 pm Tues Feb 26	
Group presentation	20%
Scheduled Mar 18-28	
12-18 page research paper	40%
due before 4 pm Wednesday April 10	

**Late assignments and papers will be penalized in the amount of 5% per 24 hours they are late to a maximum of 30%.**

Grading Scale:

100-90 = A+, 85-89 = A, 80-84 = A-, 77-79 = B, 73-76 = B-, 70-72 = B-, 65-69 = C+, 60-64 = C, 50-59 = D, 0-49 = F

**1-page reflection on readings due before class begins on the date they are due. Reflections handed in after class begins will be considered late.**

The 5-7 page paper and 12-18 page paper may be handed in as a paper copy to my metal mailbox in the Philosophy Department or electronically by email or to CourseSpaces.

### N Grades

**Students who have completed both the 5-7 page paper and the 12-18 page paper will be considered to have completed the course and will be assigned the percentage achieved from the components completed.** Failure to submit one of the papers will result in a grade of “N” regardless of the cumulative percentage on other elements of the course. N is a failing grade and factors into GPA as a value of 0.

### CourseSpaces

A CourseSpaces page has been set up for this course. You may access it by signing in with your netlink id. This page will be used to post announcements, to give you online resources, handouts and assignment sheets and to construct the groups and facilitate communication for the group presentation. Please note that I will not be monitoring any online chats or billboards that CourseSpaces enables. This means that **you cannot rely on me to catch and correct mistakes in postings by fellow students**, nor can you rely on me to ensure a civil tone. That said, the University’s Policy on Human Rights, Equity, and Fairness, and the Discrimination Harassment Policy apply to all activity on CourseSpaces as well as in our classroom. For more information about the responsibilities of all members of the UVic community, including students, to create and maintain a respectful and productive learning environment please see the “General University Policies” section of the academic calendar (<https://web.uvic.ca/calendar2019-01/general/policies.html> ).

### Learning Supports

I encourage all students to take advantage of the extensive range of learning supports available on campus. Many of these, such as the Research Help Desk (<http://www.uvic.ca/library/research/refdesk/> ) and the Centre for Academic Communication (<http://www.uvic.ca/learningandteaching/students/home/centre/> ) may be found in the Learning Commons, located on the main floor of the McPherson Library, (<http://www.uvic.ca/library/locations/home/learning/> ).

### Academic Integrity

Any and all sources used in preparing work that is submitted for evaluation must be acknowledged. This includes websites and other students’ work. **Failing to acknowledge sources that have been used and/or where in your work material taken from these sources appears constitutes plagiarism. Plagiarism and other forms of cheating, as well as aiding others to cheat by posting assignments and lecture notes to note-sharing sites such as CourseHeroes is contrary to the University’s academic regulations, and shows a profound lack of respect for myself, for fellow students and for the university as an institution of higher learning. It will not be tolerated.**

The University’s expectations, procedures and the penalties for academic dishonesty are set out in the Policy on Academic Integrity. You can find this Policy in the Undergraduate Calendar (<http://web.uvic.ca/calendar/FACS/UnIn/UARe/PoAcl.html>). The University Library has information designed to assist students in understanding and adhering to the University’s expectations with respect to plagiarism

(<http://www.uvic.ca/library/research/citation/plagiarism/>). I strongly advise you to consult both the Policy on Academic Integrity and the Library's resources on proper citation.

### Texts

- Thomas Isaac, *Aboriginal Law, 5<sup>th</sup> edition* (Thomson Reuters 2015)
- *United Nations Declaration on the Rights of Indigenous People*. U.N. Doc A/61/L.67 and Add.1. 13 September 2007  
[https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (also posted to CourseSpaces)
- Asia Pacific Forum of National Human Rights Institutions and the Office of the United Nations High Commissioner for Human Rights. *United Nations Declaration on the Rights of Indigenous Peoples A Manual for National Human Rights Institutions* (August 2013).  
<https://www.ohchr.org/documents/issues/ipeoples/undripmanualfornhri.pdf> (also posted to CourseSpaces)
- Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum: The situation of indigenous peoples in Canada*, UN Doc A/HRC/27/52/Add.2 4 July 2014.  
<https://www.deslibris.ca/ID/242575> (also posted to CourseSpaces)
- Inter-American Commission on Human Rights, *Indigenous And Tribal Peoples' Rights Over Their Ancestral Lands And Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System* OAS Doc OEA/Ser.L/V/II. Doc. 56/09 30 December 2009. <http://www.cidh.org>, (also posted to CourseSpaces)
- *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*. 2016 CHRT 2. January 26, 2016 <https://fncaringsociety.com/sites/default/files/2016%> (also posted to CourseSpaces)
- Coursepack

### Schedule of Readings

The following is the anticipated schedule of readings and assignments. Dates and readings may be modified over the course of the year. Such changes will be announced ahead of time.

Jan 7, 10

David Bilchitz, "Fundamental Rights as Bridging Concepts: Straddling the Boundary Between Ideal Justice and an Imperfect Reality", *Human Rights Quarterly*, 40: 1, (February 2018), 119-143.

Sabine C. Carey, Mark Gibney and Steven C. Poe, *The Politics of Human Rights: The Quest for Dignity*, pp. 31-37

Julie Rowland, "The New Legal Context of Indigenous Peoples' Rights: The United Nations Declaration on the Rights of Indigenous Peoples" *American Indian Culture and Research Journal* 37:4 (2013), 141-156.

Cindy Holder, "Indigenous Rights to Land" in *Encyclopedia of Global Justice*, Deen Chatterjee, ed. (Springer: 2011), pp 534-538.

Thomas Isaac, *Aboriginal Law, 5<sup>th</sup> edition* (Thomson Reuters 2015)  
"1.9 International Law", pp 59-64

**1-page reflection on readings #1 due Jan 10 at beginning of class**

Jan 14, 17

*United Nations Declaration on the Rights of Indigenous People*. U.N. Doc A/61/L.67 and Add.1. 13 September 2007

Asia Pacific Forum of National Human Rights Institutions and the Office of the United Nations High Commissioner for Human Rights. *United Nations Declaration on the Rights of Indigenous Peoples A Manual for National Human Rights Institutions* (August 2013), Part I, pp. 1-42.

Shelbi Nahwilet Meissner and Kyle Powys Whyte, "Theorizing Indigeneity, Gender, and Settler Colonialism" in *the Routledge Companion to the Philosophy of Race*. (Routledge 2017), chapter 12.

Rudolph R yser, "Applying Fourth World Diplomatic Knowledge and Implementing the UN Declaration on the Rights of Indigenous Peoples", *Fourth World Journal* (Winter 2015), 67-75.

Irene Watson and Sharon Venne, "Talking up Indigenous Peoples' original intent in a space dominated by state interventions" in *Indigenous Rights in the Age of the UN Declaration*. Cambridge University Press 2012, pp. 87-10.

**1-page reflection on readings #2 due Jan 17 at beginning of class**

Jan 21, 24

Alejandra Gait n-Barrera & Govand Khalid Azeez. "Beyond recognition: autonomy, the state, and the Mapuche Coordinadora Arauco Malleco", *Latin American and Caribbean Ethnic Studies*, ( 2018) 1-22.

Shannon Speed, *Rights in Rebellion*, "Neither Rights nor Human': The Vicissitudes of Local Appropriation" (Stanford University Press: 2008), pp. 57-82.

Michaela Pelican, "Insights from Cameroon: Five years after the Declaration on the Rights of Indigenous Peoples" *Anthropology Today* 29:3 (June 2013), 13-16

Joel Wainwright and Joe Bryan. "Cartography, territory, property: postcolonial reflections on indigenous counter-mapping in Nicaragua and Belize" *Cultural Geographies* 16 (2009), 153-178

**1-page reflection on readings #3 due Jan 24 at beginning of class**

Jan 28, 31

Asia Pacific Forum of National Human Rights Institutions and the Office of the United

Nations High Commissioner for Human Rights. *United Nations Declaration on the Rights of Indigenous Peoples A Manual for National Human Rights Institutions* (August 2013), Part II, pp. 43-98.

Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum: The situation of indigenous peoples in Canada*, UN Doc A/HRC/27/52/Add.2 4 July 2014.

Val Napoleon, "Extinction by Number: Colonialism Made Easy", *Canadian Journal of Law & Society* 16 (2001), 113-145

Matthew Tomm, "Public Reason and the Disempowerment of Aboriginal People in Canada", *Canadian Journal of Law & Society* 28:3 (2013), 293– 314

**1-page reflection on readings #4 due Jan 31 at beginning of class**

Feb 4, 7

Karen Engle, *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy* (Duke University Press: 2010), pp. 67-99.

Alexandra Xanthaki, *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land*, (Cambridge University Press: 2007) chapter 6 , pp 237-279

Inter-American Commission on Human Rights, *Indigenous And Tribal Peoples' Rights Over Their Ancestral Lands And Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System* OAS Doc OEA/Ser.L/V/II. Doc. 56/09 30

December 2009, pp. 14-70. <http://www.cidh.org>,

Cindy Holder, "Culture as an Activity and Human Right: An Important Advance for Indigenous Peoples and International Law", *Alternatives* 33 (2008), 7-28

**1-page reflection on readings #5 due Feb 7 at beginning of class**

Feb 11, 14

Thomas Isaac, *Aboriginal Law, 5<sup>th</sup> edition* (Thomson Reuters 2015):

- Chapter 1. Aboriginal Rights, pp. 1-58
- Chapter 2 Aboriginal Title pp. 65-66, 72-108
- Chapter 3. Treaty Rights – Historic pp. 109-164
- Chapter 4. Modern Treaties and Land Claims pp. 165-201
- Chapter 8. Crown's Duty to Consult Aboriginal Peoples pp. 330-418
- Chapter 9. Metis Rights pp. 419-457

Feb 18, 21 NO CLASS: Reading Break

Feb 25, 28

Thomas Isaac, *Aboriginal Law, 5<sup>th</sup> edition* (Thomson Reuters 2015):

- 5. Federal Authority pp. 202-242
- 6. Indian Reserve Land and Related Tax Matters pp. 243-298
- 7. Provincial and Territorial Authority pp. 299-329

**5-7 page paper due Tuesday Feb 26 before 4 pm**

Mar 4, 7

Colin Samson and Elizabeth Cassell, "The long reach of frontier justice: Canadian land claims 'negotiation' strategies as human rights violations", *The International Journal of Human Rights* 17:1 (January 2013), 35–55.

Dwight Newman, Elisa Ruozi, and Stefan Kirchner, "Legal Protection of Sacred Natural Sites Within Human Rights Jurisprudence: Sápmi and Beyond" in Leena Heinämäki, Thora Martina Herrmann, editors *Experiencing and Protecting Sacred Natural Sites of Sámi and other Indigenous Peoples: The Sacred Arctic* (Springer 201 ), pp 11-26.

Eleni Polymenopoulou, "Indigenous Cultural Heritage and Artistic Expressions: Localizing" Intellectual Property Rights and UNESCO Claims", *Canadian Journal of Human Rights* 6:1 (2017), 87-125.

Mar 11, 14

Francis Mitrou, Martin Cooke, David Lawrence, David Povah, Elena Mobilia, Eric Guimond and Stephen R Zubrick, "Gaps in Indigenous disadvantage not closing: a census cohort study of social determinants of health in Australia, Canada, and New Zealand from 1981–2006", *BMC Public Health* 14 (2014), 14:201-210.

*First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada* (for the Minister of Indian and Northern Affairs Canada). 2016 CHRT 2. January 26, 2016

Graham White, "Governance in Nunavut: Capacity vs. Culture?", *Journal of Canadian Studies* 43:2 (Spring 2009), 57-81.

Mar 18, 21      Group Presentations

Mar 25, 28      Group Presentations

Apr 1, 4          Group Presentations

**12-18 page paper due Wednesday, April 10 before 4 pm**