As the author acknowledges in the book's concluding chapter, the ICCJ will not appear anytime soon. However, merely unearthing its potential will galvanize a critical mass into thinking it is possible. Recent populist uprisings around the world have illustrated that convincing a critical mass is quite possible and perhaps not as difficult as once thought. If not insurmountable, convincing powerful TNCs and the governments of capital-exporting states who benefit financially from cross-border trade and investment will be the more difficult part. Even if this book has been an initial step, it is this direct discourse on how to engage TNCs and governments that sits at the root of its audacity.

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Braiding Legal Orders: Implementing the United Nations Declaration on the Rights of Indigenous Peoples. Edited by John Borrows, Larry Chartrand, Oonagh E. Fitzgerald & Risa Schwartz. Montreal & Kingston: McGill-Queen's University Press, 2019. 236 + xvi pages.

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Adopted over a decade ago, the *United Nations Declaration on the Rights of Indigenous Peoples* (*UNDRIP*) needs no introduction.[1] The declaration is an attempt by the international community to recognize and codify the rights of Indigenous peoples in parallel with rules in domestic and Indigenous law that affect how the declaration should be implemented. Edited by John Borrows, Larry Chartrand, Oonagh Fitzgerald, and Risa Schwartz, *Braiding Legal Orders* seeks to harmonize these rules and approaches to implementation by braiding domestic, international, and Indigenous legal traditions together. The editors explain that, while braiding has importance in different Indigenous traditions, the purpose of the metaphor in this volume is to "see the possibilities of reconciliation from different angles and perspectives" and to "reimagine what a nation-to-nation relationship" in Canada might mean.[2] A vital feature of the book is its inclusion of theories of

[1] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/61/49 (2008) at 15–25 [*UNDRIP*].

[2] Larry Chartrand, Oonagh Fitzgerald & Risa Schwartz, "Preface" in John Borrows et al, eds, *Braiding Legal Orders: Implementing the United Nations Declaration on the Rights of Indigenous Peoples* (Montreal & Kingston: McGill-Queen's University Press, 2019) ix at xv.

Indigenous law revitalization across the spectrum,[3] with the editors making space for different theoretical perspectives without detracting from the primary focus of the book and the common goal of Indigenous self-determination.

The book is divided into four parts, focusing on international, Indigenous, and domestic law perspectives and considerations in implementing the declaration into Canadian law. Chapters in each section are succinct and explore topics to different depths. Each chapter provides context through government statements and essential constitutional cases. While repetitive at times, it allows each chapter to exist independently, making the work an invaluable tool for practitioners and students seeking content on specific topics. A notable feature of the book is the effort undertaken by the contributors to curate various statements regarding *UNDRIP* made by the Canadian government. In providing this collection of statements, the contributors and editors provide the reader with further clarity. An important caveat, however, is that many of the statements are made with reference to a bill that, in essence, would have adopted the *UNDRIP* into domestic law but was ultimately rejected by the Senate. This is not to say that the commentary on this bill is outdated but, rather, that the reader ought to bear this in mind when analyzing the value of the statements provided.

Part 1 focuses on international law perspectives in implementing the *UNDRIP*. As the book's opening chapter, James (Sa'ke'j) Youngblood Henderson's account as a direct participant in the history and drafting of the declaration provides an excellent overarching context for the rest of the book. By focusing on a new order of humanity based on promoting and protecting inherent rights, Henderson suggests current struggles will decolonize existing governance and legal systems and, more importantly, reminds the reader not to give up on the braiding project.

Sheryl Lightfoot then provides a succinct explanation as to why a legislative framework is needed to implement the declaration, drawing a connection between prospective laws and improved judicial interpretations. She highlights that, while implementation is an ongoing issue at the international level, the former UN special rapporteur on the rights of Indigenous peoples has stated explicitly that Canada's implementation has been insufficient.[4] Lightfoot sets out what she identifies as the international community's expectations for implementation, thus providing additional context for the chapters that follow discussing domestic implementation options.

[3] For commentary on Indigenous law revitalization theories, see Robert Clifford, "Listening to Law" (2016) 33 Windsor YB Access Just 47 especially at 57–60.

[4] *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) at para 81.

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John Borrows considers two primary challenges to what he refers to as Canada's Indigenous Constitution, identifying these challenges as the legal tests in *R v Van der Peet*[5] and the application of a theory of "constitutional originalism" to Indigenous rights. Borrows suggests using the *UNDRIP* to challenge the *Van der Peet* tests as well as to inform actions where the honour of the Crown is applicable. Most importantly, he argues that the *UNDRIP* must be implemented into the constitutions of Indigenous communities so as to ensure respect for the principle of self-determination and human rights regardless of which governmental authority is responsible.

Joshua Nichols then explores using the *UNDRIP* to achieve the desired nation-to-nation relationship through the abandonment of the doctrine of discovery that he sees as being enshrined in the current constitutional framework. Of note is Nichols' attack on ignoring external self-determination questions and the continued reliance on the Westphalian state model while advocating for reconciliation. By using the *UNDRIP* to remove colonial theories, Nichols suggests Canada finds true reconciliation by transitioning to a post-Westphalian state.

As many have argued, the foundation for effective *UNDRIP* implementation remains the willingness of Canada to embrace stronger legal pluralism, and so it is welcoming to read Gordon Christie's response in his chapter. To begin braiding legal traditions, Christie first suggests internal and external changes that the Crown must undertake. Christie is remarkably self-aware of the future resistance to his suggestions, but he fortifies his argument by noting that without a fundamental restructuring of the Canadian legal regime, the colonial project will be furthered.

Brenda L. Gunn then addresses the need to approach the *UNDRIP*'s implementation through a gendered approach to ensure the promotion of women's rights throughout the self-determination process. Gunn provides an interesting analysis of the un-marginalized traditional role of women in Indigenous legal traditions and the impacts of colonization, while also calling for protection against fundamentalism in the revitalization of Indigenous law. Her recommendation to implement *UNDRIP* in tandem with other international instruments is worthy of further consideration.

Part 2 of *Braiding Legal Orders* then offers the reader a variety of topics related to both the *UNDRIP* and different Indigenous traditions. Sarah Morales provides an excellent overview of the concept of free, prior, and informed consent and the duty to consult in Canada. She criticizes confrontational issues in the field, such as Indigenous institutions clogging processes and the ominous issue of an Indigenous "veto." According to Morales, if free, prior, and informed consent is essential to operationalizing self-determination, space must be made for Indigenous legal traditions. Morales

[5] [1996] 2 SCR 507.

makes explicit the need to consider the relationship between the *UNDRIP* and the principle of self-determination, a concept that is important in understanding not only the other contributions in the book but also the theory of braiding as a whole.

Larry Chartrand then provides an overview of theories of reconciliation. His work serves to draw a contrast between section 35 constitutional rights and a nation-to-nation relationship, identifying Canada's shortcomings in recognizing Indigenous rights within the international human rights framework. The importance of his contribution lies in the arguments he makes regarding changing precedents on Aboriginal law in order to give effect to the *UNDRIP*. Chartrand sees the legislature as being unwilling to change such precedents, and he instead calls upon the Supreme Court of Canada to denounce colonial tests on the basis of either the *UNDRIP* or changing societal values.

Lorena Sekwan Fontaine's contribution focuses on language rights, including the Indigenous laws surrounding them, as well as the status of language as a sacred inalienable right. Fontaine recognizes that certain languages have achieved quasi-constitutional status but that they lack adequate resources. In particular, she predicts the emergence of a loophole that will serve to limit access to language education for off-reserve Indigenous children. If true, this prediction should serve as a red flag for leaders and practitioners, who should push for a more inclusive framework.

Aimée Craft provides the first "deep dive" into Indigenous legal traditions in the book by using *anishinaabe inaakonigewin* to highlight the shortcomings of domestic law in protecting water. She helpfully provides the necessary context for understanding this Indigenous legal tradition, breaking down the essence and sources of Indigenous law. Craft produces an interesting argument that links the protection of a spiritual relationship with rights to traditional lands and self-determination,[6] which in turn requires the revitalization of Indigenous languages.

Cheryl Knockwood explores the requirements from the federal, provincial, and Mi'kmaw governments for nation-to-nation reconciliation. Her position is founded upon the Mi'kmaw worldview and the concept of shared responsibility. Knockwood is notably self-aware, recognizing the need for a Mi'kmaw summit to rebuild the nation. Critically, she recommends the creation of a process for implementing rights based on the report of the 1996 Royal Commission on Aboriginal Peoples.[7]

[6] *UNDRIP*, *supra* note 1, arts 3, 25.

[7] Canada, *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back*, vol 1 (Ottawa: Canada Communication Group, 1996) (René Dussault & Georges Erasmus, co-Chairs); *Report of the Royal Commission on Aboriginal Peoples: Restructuring the Relationship*, vol 2 (Ottawa: Canada Communication Group, 1996) (René Dussault & Georges Erasmus, co-Chairs); *Report of the Royal Commission on Aboriginal Peoples: Gathering Strength*, vol 3

In her second contribution, Sarah Morales provides a feminist perspective on the extractive industries in Canada, calling for a gendered approach to the consultation process. Key takeaways from this chapter include the role of Indigenous women in resource governance within different legal traditions and the combination of racism and sexism that exists in the extractive industries. Morales focuses on the need to include women in traditional knowledge-sharing exercises while acknowledging the destruction that these industries have caused. This destruction of traditional knowledge, and of women's cultural and religious relationships with the land, has ultimately uprooted traditional legal practices.

Part 3 is the most intriguing section for many lawyers, as it systematically addresses how the *UNDRIP* will be implemented and how Indigenous legal traditions will be recognized. The contributors focus on what is seen as the hindering existence of section 35 of the *Constitution Act, 1982* in achieving a nation-nation relationship that respects both the *UNDRIP* and Indigenous legal traditions.[8] Brenda L. Gunn sees the *UNDRIP* as an opportunity to reinvent the judicial interpretation of section 35 in a way that will recognize Indigenous laws. She calls upon the Supreme Court of Canada to revisit its decision in *Van der Peet*, but she makes clear that she is not calling for all judicial decisions concerning section 35 to be set aside, as many critics of the *UNDRIP* argue. Instead, she argues that space needs to be made within section 35 for Indigenous laws, as interpreted by Indigenous institutions, to flourish.

Joshua Nichols further develops this theme with his argument that the Court's jurisprudence since *R v Sparrow*[9] creates a colonial foundation that prohibits viewing section 35 as a jurisdictional right. For Nichols, this jurisdictional right approach is fundamental to achieving the nation-nation relationship. In examining the "box of rights" theory, Nichols brilliantly states that it is not a question of whether the box is empty or full, but that it is simply the wrong box. Equally important, he clarifies that in reading section 35 as a jurisdictional right, Crown sovereignty would not be erased but, rather, the basis for it would be repositioned.

Jeffery G. Hewitt addresses the need to ensure that the *UNDRIP*'s implementation does not result in another "empty box of rights" and provides potential solutions to ensure Indigenous legal traditions are included.

(Ottawa: Canada Communication Group, 1996) (René Dussault & Georges Erasmus, co-Chairs); *Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, vol 4 (Ottawa: Canada Communication Group, 1996) (René Dussault & Georges Erasmus, co-Chairs); *Report of the Royal Commission on Aboriginal Peoples: Renewal: A Twenty-Year Commitment*, vol 5 (Ottawa: Canada Communication Group, 1996) (René Dussault & Georges Erasmus, co-Chairs).

[8] *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Constitution Act, 1982*].

[9] [1990] 1 SCR 1075.

Hewitt's contribution is appreciated for two reasons: his honest questioning of political will and the international history of implementing human rights for Indigenous peoples, and the comparison he makes to the reverse onus test in *R v Oakes*.[10] The connection drawn between *Sparrow* and *Oakes*, while not new, clearly shows the willingness of the courts to adopt a judicial test for Indigenous rights that would, if applicable, contravene the *Canadian Charter of Rights and Freedoms* in a different context.[11] This stark reality check reminds the reader of the need for this book and of the political nature of Indigenous rights protection in Canada.

The incompatibility of the recognized, asserted, and established rights pursuant to section 35 is further addressed by Robert Hamilton. His exploration of the implementation of the free, prior, and informed consent obligation under the section 35 framework is insightful. He calls for multilateral negotiated settlements to solve both governance- and consent-related issues while also asserting that the current reconciliation framework focuses on Crown unilateralism that is contrary to the spirit of the *UNDRIP*.

Other contributions also focus on specific provisions of the *UNDRIP*. Ryan Beaton, for example, points to the procedural concern that Article 46(2) of the *UNDRIP* creates by allowing justifiable infringements on Indigenous rights. He examines the current test for justifying section 35 infringements under *Sparrow* and the likelihood of the courts basing future infringements on the *UNDRIP*. Beaton, however, identifies Article 27 of the *UNDRIP* as requiring the Crown to justify actions prior to infringement. He admits that, while such a solution is not exactly in line with the concept of free, prior, and informed consent, nor a nation-nation relationship, it would fit within the Court's jurisprudence and provide bargaining power for nations.

Kerry Wilkins addresses how the *UNDRIP* will be enforced under existing Canadian law. He suggests that, in determining to whom and where the *UNDRIP* applies, Indigenous peoples should take the helm to ensure consistency with the declaration. He further suggests a non-uniform approach to implementation, either on an article-by-article basis or through opt-in legislation. He also recognizes the need to expressly bind the Crown in order to ensure the enforceability of affirmative responsibilities, and his contribution reminds us of the need to consider the role for Canadian constitutional law, including federalism, in implementing the *UNDRIP*.

With the *UNDRIP* requiring the inclusion of Indigenous legal traditions, Hannah Askew provides insight into their access and learning by non-Indigenous persons. Vital is her assertion that the obligation to learn Indigenous law does not create an obligation for Indigenous peoples to teach their laws, advocating instead for self-learning. She not only

[10] [1986] 1 SCR 103.

[11] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, *supra* note 8.

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recommends institutional and land-based learning but also identifies other accessible educative avenues including social media. Accepting that some Indigenous nations may offer educational opportunities, Askew reminds the reader that this must be seen as a gift and treated with respect.

The book's concluding essays offer words of hope and caution for the role of the *UNDRIP*. If any chapter is to be read here, it is Christie's, whose deconstruction of ideological concerns provides a sense of clarity for the reader. Knockwood's account of the importance of the *UNDRIP*'s implementation for Mi'kmaw communities and how they are achieving its goals will serve as an inspiration for other community leaders. Finally, Youngblood Henderson's beautifully crafted conclusion on inherent dignity reminds the reader of the necessity of the *UNDRIP* and, more importantly, the role that Indigenous legal traditions need to play in its implementation.

Overall the book is a fantastic introduction to different Indigenous legal traditions but, more specifically, to the role they need to play in implementing the *UNDRIP* within Canada. It focuses not only on consent and natural resource rights but also on language rights and the larger questions concerning self-determination and the goal of a nation-to-nation relationship. The editors should be commended for their willingness to embrace this dialogue on how Indigenous legal traditions should be revitalized in the interests of the future legal landscape of Canada.

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Doing Peace the Rights Way brings together the work of twenty-one researchers, experts, and practitioners in various fields of international law and international relations to honour the work of Louise Arbour, as a judge, prosecutor, and international advocate.[1] By choosing eclectic and sometimes emerging

[1] Fannie Lafontaine & François Larocque, eds, *Doing Peace the Rights Way: Essays in International Law and Relations in Honour of Louise Arbour* (Cambridge: Intersentia, 2019).