

**POLI/INDI 3351 WDE**  
**Indigenous Peoples and the Law**  
**“Legal Pluralism”**  
**Fall 2021**

Monday & Wednesday: 10:00 – 11:30 am

Room: UC – 1017

Professor: Dr. Toby Rollo

Office: RB – 2033

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Phone: 807-343-8284

Office Hours: On request.

**1. Course Description**

This course will be a primarily lecture-based course examining how the socio-legal tradition of legal pluralism can help us understand the relationship between the distinct but overlapping legal orders of Indigenous peoples and Canada. The field of legal pluralism examines the coexistence of normative orders that govern our conduct. State law is but one normative order that interacts with and competes with other non-state orders. State law can have its own pluralism as well, with customary, religious, common and civil laws all applying within a single jurisdiction. In a world that is having to deal seriously with diverse political and legal claims, including those of Indigenous peoples, interest in legal pluralism has exploded. This course begins by introducing students to the main concepts and debates within legal pluralism. Students will read early studies on the sociology of law as well as important contemporary articles on non-state normative orders found in cultural and religious groups, economic communities, and even sports. The second part of the course analyses case studies of overlapping Indigenous jurisprudences and jurisdictions, with a focus on the complimentary and conflictual relationship between various Indigenous and Canadian claims.

**2. Required Texts**

None! All readings and other materials will be linked or posted on the D2L Courselink site for this course.

**3. Grading, Expectations, and Assignments**

Your grade for the course will be based on the following 4 required components:

Participation and Attendance:	20%
Critical Reflections:	20%
Mid-Term Paper:	25%
Final Paper:	35%
Total	100%

**1. Participation and Attendance (20%):** Students who attend and participate have an opportunity to earn up to 20% for their time and effort. Attendance is more heavily weighted than participation.

**2. Critical Reflections (20%):** Students must write 4 one- or two-page critical reflection papers, worth 5% each, on the readings for any weeks of their choosing.

**2. Mid-Term Paper (25%):** A short written analysis **due October 6, 2021**. Must be roughly 2-3 pages in length, not including the title page, bibliography, etc. (approx. 500 to 750 words). I will provide detailed instructions for this assignment on a separate document.

**4. Final Paper (35%):** A medium-length written analysis **due December 1, 2021**. Must be roughly 5-7 pages in length, not including the title page, bibliography, etc. (approx. 1250 to 1750 words). I will provide detailed instructions for this assignment on a separate document.

#### **4. E-mail**

E-mail will be answered within two business days.

I welcome e-mail queries and comments. All students are required to have a valid Lakehead e-mail address. It is your responsibility to maintain your e-mail address in good working order. The University expects you to correspond with me through your official e-mail address, and not through a commercial e-mail account.

Failure to receive important class announcements and messages from me because of a faulty e-mail account (for example, an account which screens out my e-mails as junk mail; bounced messages because of overloaded caches) are not legitimate excuses.

Forwarding your Lakehead email to a Hotmail, Gmail, Yahoo or other type of e-mail account is not advisable. In some cases, messages from your Lakehead addresses sent to Hotmail, Gmail or Yahoo accounts are filtered as junk mail, which means that e-mails from me may end up in your spam or junk mail folder.

#### **5. Accessibility**

Students with diverse learning styles and needs are welcome in this course. If you have a disability/health consideration that may require accommodations, please feel free to approach Accessibility Services. The sooner you let us know your needs the quicker we can assist you in achieving your learning goals in this course.

#### **6. Essays**

You are to complete two essays, one in first section, and one in the second. The goal of each essay is to provide a clear, concise response (argument) to the research question backed by rational consideration of the evidence.

Summarize your response (argument) in a sentence or two – the thesis statement – and appear in the first paragraph of your essay. Be explicit. The reader should be clear on what you are arguing. Assume an educated reader. Do not spend more than a few paragraphs providing background information. Focus on providing information that advances your argument. While the balance of the paper will defend your argument, you should also acknowledge counterarguments and seek to demonstrate that your argument is more convincing.

#### **7. Formatting bibliographies, references**

You can use whatever citation style you prefer in your paper, but make sure to use is correctly and consistently throughout the paper. The written assignments should all be double-spaced in 12pt Times New Roman font with standard margins. Essays should be free of spelling and grammatical errors. They must include appropriate citations and complete bibliography. Include a title page with your name, the date, the course number, and my name.

In completing the written assignments, students must cite all facts and figures that are not common knowledge and must cite all ideas that are borrowed from other authors. Students must use a recognized standard format correctly in their bibliographies, references, and footnotes. Failure to do so will result in a penalty in calculating your assignment grade.

#### **8. Academic Integrity**

The University takes instructional offences (including plagiarism) very seriously. Please make sure that you are familiar with the regulations regarding instructional offences. Also, it is not acceptable to submit the same assignment in two different courses.

#### **9. Late Penalties**

Assignments are due on the dates specified in the course outline. Late papers will be subject to a penalty of 2% a day including weekends. Assignments will not be accepted two weeks after the due date. If you require an extension or accommodation, please email me.

#### **10. Course Schedule**

The first class of each week – the Monday - will be a lecture.

The second class of each week – the Wednesday – will be a short lecture followed by class discussion.

### **SECTION ONE: LEGAL PLURALISM**

#### **Week 1 (September 8) General Introductions**

Syllabus Review  
Questions and Answers

#### **Week 2 (September 13 & 15) Early Studies in Legal Pluralism**

Tamanaha, "Legal Pluralism in Historical Context"

Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global"

**Week 3 (September 20 & 22) The Field of Study**

Merry, "Stateless Law: Before, Inside, and Outside the Law of the State"

Anker, "Law in Time and Space"

**Week 4 (September 27 & 29) Concepts and Criticism**

Cotterrell, "Still Afraid of Legal Pluralism?"

Jukier, "The Impact of 'Stateless Law' on Legal Pedagogy"

**Week 5 (October 4 & 6) States and other Sites of Law Making**

*First Paper Due*

Tamanaha, "Postcolonial Legal Pluralism"

***Week 6 (October 11 & 13) Break/Reading Week - No Classes!***

**SECTION TWO: CASE STUDIES**

**Week 7 (October 18 & 20) Cultural Contexts I**

Simon, "The Best Interests of the Child in a Multicultural Context: A Case Study"

Weyrauch, "Autonomous Law Making: The Case of the 'Gypsies'"

Tas, "On State, Plural Options: Kurds in the UK"

**Week 8 (October 25 & 27) Cultural Contexts II**

Shapiro, "Law in the Kibbutz: A Reappraisal"

Feldman, "The Tuna Court: Law and Norms in the World's Premier Fish Market"

Cavender "A Note on Voodoo as an Alternative Mechanism for Addressing Legal Problems"

**Week 9 (November 1 & 3) Cultural Contexts III**

Ellickson, "The Resolution of Cattle Trespass Disputes"

Parker, "Law Honour and Impunity in Spanish America: The Debate over Duelling"

CBC, "The Code: Documentary on Fighting in Hockey"

<https://www.youtube.com/watch?v=qwe6LgsPn-A>

***NOVEMBER 5: Deadline for Course Withdrawal!***

**SECTION THREE: INDIGENOUS LAW IN CANADA**

**Week 10 (November 8 & 10) Indigenous Peoples and Pluralism**

Webber, "Legal Pluralism and Human Agency"

Borrows "Living law on a Living Earth: Aboriginal Religion, Law, and the Constitution"

**Week 11 (November 15 & 17) Indigenous and Human Rights**

Otis, "Individual Choice of Law for Indigenous People in Canada: Reconciling legal Pluralism with Human Rights?"

McMillan, "Colonial Traditions, Co-optations, and *Mi'kmaq* Legal Consciousness"

**Week 12 (November 22 & 24) Treaty Rights**

"Constitutional Recognition of Aboriginal and Treaty Rights: A New Framework for Handling Legal Pluralism in Canada?"

Gover, "Indigenous Jurisdiction as a Provocation of Settler State Political Theory"

**Week 13 (November 29 and December 1) Aboriginal Law**

*Second Paper Due*

Manley-Casimir, "Toward a Bijural Interpretation of the Principle of Respect in Aboriginal Law"

Borrows, "Nitam-Miigwewein Zaagi'idiwin (Gift One: Love) Love: Law and Land in Canada's Indigenous Constitution"

**Week 14 (December 6)**

Conclusions