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Sources and Resources of Indigenous Law

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SOURCES AND RESOURCES OF INDIGENOUS LAW

Introduction2

Indigenous Constitutional and Legal Theory2

The Tangle-Rooted Plurality of Canadian Constitutionalism4

From Constitution to Specific Laws: Sources and Resources6

Conclusion9

INTRODUCTION

As there is a 'renaissance' of Indigenous legal traditions within Canada, First Nations are dealing with common challenges of how to address the imposition of law on the social, economic, legal, and spiritual lives of Indigenous peoples, while ensuring the legal ordering of their communities is recognized and understood by non-Indigenous peoples.¹ One of the largest challenges is *structural ignorance*; where the inability of the forms of Canadian law to recognize Indigenous legal process and principles inhibits an Indigenous legal tradition from either challenging the imposition of state law, or finding natural areas of co-existence and co-recognition, a state that should exist in all pluralities.² This has implications on the recognition of Canada's pluralistic jurisdiction generally as it closes the door on opportunities for Indigenous and state legal systems to communicate and ultimately operate in conjunction with each other. Lawyers, judges, and other practitioners have a duty to engage with Indigenous laws. In order to challenge the structural ignorance that implicitly exists within Canadian legal forums and the legal system generally, a constitutive approach. That is, we should encourage and facilitate the raising up of Indigenous legal traditions, through an examination of broad constitutionalism. The remainder of this brief introduces Indigenous constitutional and legal theories and examines how these can inform how a practitioner approaches Indigenous legal traditions.

INDIGENOUS CONSTITUTIONAL AND LEGAL THEORY

As I proceed here, I should introduce the theory of constitutionalism this brief is founded upon. While you may be more familiar with 'constitutionalism' within a Canadian political context, where the constitution is comprised of formal and informal understandings and agreements located in founding texts, as well as time-worn conventions, a broader tact needs to be taken to consider Indigenous constitutions. For example, I consider the constitutionalism of my relations, the nêhiyawak, (Plains Cree peoples) as encapsulating a totality of ideals, principles, and aspirations arising out of the ontologies and epistemologies that further a shared understanding of what it

¹ Val Napoleon and Hadley Friedland, "From Roots to Renaissance" in Markus Dubber, ed., *Oxford Handbook of Criminal Law* (Oxford: Oxford University Press, 2015).

² I write more at length of structural ignorance and its barrier towards Indigenous good living in "Miyo Pimatisiwin and the Politics of Ignorance: Advancing Indigenous 'Good Living' Through Dismantling our Mediated Relations" in Robert Hamilton et. al, eds., *Wise Practices: Exploring Indigenous Economic Justice and Self-Determination* (Forthcoming 2020).