POL484F (2019)
Indigenous-Settler Relations in Canada:
Monitoring Progress toward Reconciliation

Professor: Melissa S. Williams
Email: melissa.williams@utoronto.ca
Office hours: Monday, 4-6 PM, Sidney Smith Hall, Room 3040
Seminar: Monday, 10 AM - 1 PM, Larkin 213

Course description

This course critically examines the goal of Indigenous-Settler reconciliation in Canada as read through the Calls to Action of the Truth and Reconciliation Commission (TRC) of Canada. Our focus will be on the TRC call to use the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as the framework for reconciliation. After problematizing the concept of "reconciliation" and examining the TRC framework for achieving it, we will study UNDRIP's construction of Indigenous rights, with a focus on the relationship between human rights, rights against discrimination, and collective rights. We will examine the principle of collective self-determination, its connection to Indigenous legal and political traditions, and the enormous gap between that principle and the legal order established by the Indian Act. We will also focus on UNDRIP's standard of "free, prior and informed consent" as the standard of legitimacy for state and non-state actors' activities on traditional Indigenous territory. Finally, we will examine the treaty-making tradition as a resource for rethinking the relationship between Indigenous and settler societies. Throughout, we will reflect on how the goal of reconciliation presses us to re-examine common understandings of modern state sovereignty.

In addition to these conceptual and theoretical themes, the course has a hands-on practical purpose: to contribute to the Canadian Political Science Association's Reconciliation project, "Monitoring Progress on the Road to Reconciliation."[1] Students will prepare original research papers on the degree to which municipal, provincial and federal governments have responded to TRC Calls to Action 43 and 44:

> 43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.
>
> 44. We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the United Nations Declaration on the Rights of Indigenous Peoples.[2]

[1] For further information on the CPSA's Reconciliation Initiatives, see https://www.cpsa-acsp.ca/committee.php.
[2] Truth and Reconciliation Commission of Canada, "Calls to Action" (Winnipeg: Truth and Reconciliation Commission of Canada, 2015)(available at: http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf).

Each student will choose a specific level of government or jurisdiction and a specific Article of UNDRIP as the topic of their final research project for the course. Alternatively, students may choose to focus on a particular Indigenous community to analyze Canadian governments' success or failure at implementing the TRC recommendations as they pertain to that community. The class as a whole will refine the list of research topics, negotiate which student will undertake which topic, and co-develop a common presentation framework to ensure that the cumulative research output of the course contributes meaningfully to the CPSA Reconciliation agenda.

Course readings:

All course readings are available through Quercus or online through UofT Libraries.

Course requirements:

- Participation. Each member of the seminar is expected to attend every class having carefully studied the readings and having read response essays on the Quercus site. Active, informed, and thoughtful participation in class discussion, based on a thorough reading of the assigned works, will count for 20 percent of your mark in the course. Should you be unable to attend class because of illness, please let me know in advance, via the Quercus mailbox function.
- Response essays. Three times during the semester, each student will prepare a 2-page (500 word) critical response to the week's readings. These essays must be posted on the course Blackboard site no later than 6:00 PM the evening before class. Each essay will be worth 5 percent of your final mark, for a total of 15 percent. Late response essays will not be accepted.
- Term paper proposal. Due on Quercus, October 21, 2019, by 10:00 AM. Write a four-page (~ 1000 word) proposal for your term paper, stating your thesis question and including a bibliography of the main sources you will be relying upon. Your bibliography should be comprised of at least two or three major works from the syllabus, but should also include sources from the wider literature to which you have been guided through your research. Proposals must be posted on the class website prior to the due date. This proposal is worth 10 percent of your final mark. Late penalties will accrue at the rate of 1 percent per day, including weekends.
- Comments on other students' proposals. Students will be assigned to provide commentaries of 1-2 pages (250-500 words) each on two other students' proposals. These comments must be posted on the Quercus site by November 11, 2019, in order that your colleagues can take them into account in preparing their final papers. These comments will be assessed for the thoughtfulness and incisiveness of their responsiveness to proposals, and will count toward your participation mark for the course.
- Brief presentation of final paper, December 5, 2019 ("Make-up Monday"). The time allotted to your presentation will depend on the number of students enrolled in the course. Your presentation will be worth 5 percent of your final mark.
- Term papers, due by 11:59 PM on Friday, December 6, 2019, via Turnitin.com on the Quercus portal. Undergraduate term papers should be 15-20 pages in length; graduate papers should be 25-30 pages. The term paper is worth 40 percent of your final mark in the course. Late penalties will accrue at the rate of 1 percent per day, including weekends.

- Monitoring report, based on the template the class develops, due on Quercus by 11:59 PM on Friday, December 6, 2019. The report should be based on the research presented in your term paper. It is worth 10 percent of your final mark in the course. Late penalties will accrue at the rate of 1 percent per day, including weekends.

Academic integrity:

Academic integrity is fundamental to learning and scholarship at the University of Toronto. Participating honestly, respectfully, responsibly, and fairly in this academic community ensures that the U of T degree that you earn will be valued as a true indication of your individual academic achievement, and will continue to receive the respect and recognition it deserves.

Please make sure you are familiar with the University of Toronto's *Code of Behaviour on Academic Matters* (http://www.governingcouncil.utoronto.ca/policies/behaveac.htm). It is the rule book for academic behaviour at UofT, and you are expected to know the rules. I take plagiarism very, very seriously.

Normally, students will be required to submit their course essays to turnitin.com for a review of textual similarity and detection of possible plagiarism. In doing so, students will allow their essays to be included as source documents in the Turnitin.com reference database, where they will be used solely for the purpose of detecting plagiarism. The terms that apply to the University's use of the Turnitin.com service are described on the Turnitin.com web site.

Schedule of Class Meetings and Course Readings

Week 1: Introduction
Sept. 9, 2019

Required reading:

- Deborah McGregor, "From 'Decolonized' to Reconciliation Research in Canada: Drawing from Indigenous Research Paradigms," *ACME: An International Journal for Critical Geographies* 17(3): 810-831 (2018).
- Peter H. Russell, "Monitoring Progress on the Road to Reconciliation," Paper presented at the Roundtable on Reconciliation, Canadian Political Science Association Annual Meeting, Ryerson University (May 31, 2017).

Recommended reading:

- Joyce Green, "Enacting Indigenous Human Rights," Paper presented at the Canadian Political Science Association Annual Meeting, University of Calgary (May 31, 2016).
- Eve Tuck and K. Wayne Yang, "Decolonization is Not a Metaphor," *Decolonization: Indigeneity, Education & Society* 1(1): 1-40 (2012).
- Arthur Manuel and Grand Chief Ronald Derrickson, *The Reconciliation Manifesto: Recovering the Land, Rebuilding the Economy*, esp. chapters 1 ("The Second Coming") and 43 ("The Six-Step Program to Decolonization")(Toronto: James Lorimer & Co., 2017).

Week 2: The TRC Framework for Indigenous-Settler Reconciliation
Sept. 16, 2019

Required readings:

- Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015)(available at: http://www.myrobust.com/websites/trcinstitution/File/Reports/Executive_Summary_English_Web.pdf)
    - Introduction (pp. 1-22)
    - The history (pp. 37-134)
    - The challenge of reconciliation (selection, pp. 183-219)
    - Calls to Action (pp. 319-337; see esp. Calls 43 & 44)

Recommended readings:

- John Borrows, "Canada's Colonial Constitution," in John Borrows and Michael Coyle, *The Right Relationship: Reimagining the Implementation of Historical Treaties* (Toronto: University of Toronto Press, 2017), pp. 17-38.
- Peter Russell, *Canada's Odyssey: A Country Based on Incomplete Conquests* (Toronto: University of Toronto Press, 2017), chs. 3 and 8, pp. 42-53, 167-211.

Week 3: What is Reconciliation?
Sept. 23, 2019

Required readings:

- Lee Maracle, "Conversation 13: Reconciliation and Residential School as an Assimilation Program," in *My Conversations with Canadians* (Toronto: BookThug, 2017), pp. 133-137.
- John Borrows and James Tully, "Introduction," in Michael Asch, John Borrows and James Tully, *Resurgence and Reconciliation* (Toronto: University of Toronto Press, 2018), pp. 3-25.
- John Borrows, "Earth-Bound: Indigenous Resurgence and Environmental Reconciliation," in Asch, Borrows, and Tully, *Resurgence and Reconciliation*, pp. 49-81.
- James Tully, "Reconciliation Here on Earth," in Asch, Borrows, and Tully, *Resurgence and Reconciliation*, pp. 83-129.

Recommended reading:

- Leanne Betasamosake Simpson, "Land & Reconciliation: Having the Right Conversations," *Electric City* (March 5, 2016), available at: http://www.electriccitymagazine.ca/2016/01/land-reconciliation/

<u>Week 4: United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)</u>
Sept. 30, 2019

Required readings:

- *United Nations Declaration on the Rights of Indigenous Peoples* (2007).
- Government of Canada, "Principles Respecting the Government of Canada's Relationship with Indigenous Peoples" (2018).
- Sheryl Lightfoot, *Global Indigenous Politics: A Subtle Revolution* (Abingdon: Routledge, 2016), chs. 1 and 2, pp. 1-71.
- Rauna Kuokkanen, "Indigenous Women's Rights and International Law: Challenges of the UN Declaration on the Rights of Indigenous Peoples," in C. Lennox and D. Short (eds.), *Routledge Handbook of Indigenous Peoples' Rights* (Abingdon: Routledge, 2016), pp. 129-145.

<u>Week 5: UNDRIP in Canada</u>
Oct. 7, 2019

Required readings:

- Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples* (as passed by the House of Commons, May 30, 2018), pp. 1-3.
- Sheryl Lightfoot, *Global Indigenous Politics*, ch. 7, pp. 169-198.
- James Anaya, "The Situation of Indigenous Peoples in Canada," Report of the Special Rapporteur on the Rights of Indigenous Peoples, UN A/HRC/27/52Add.2 (New York: United Nations General Assembly, 2014).
- James (Sa'ke'j) Youngblood Henderson, "The Art of Braiding Indigenous Peoples' Inherent Human Rights into the Law of Nation-States," in Oonagh Fitzgerald and Risa Schwartz, *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws* (Waterloo: Centre for International Governance Innovation, 2017), pp. 10-19.
- Gordon Christie, "Indigenous Legal Orders, Canadian Law and UNDRIP," in Fitzgerald and Schwartz, *UNDRIP Implementation*, pp. 48-55.
- Sarah Morales, "Braiding the Incommensuable: Indigenous Legal Traditions and the Duty to Consult," in Fitzgerald and Schwartz, *UNDRIP Implementation*, pp. 63-80

Recommended reading:

- Mauro Barelli, *Seeking Justice in International Law: The Significance and Implications of the UN Declaration on the Rights of Indigenous Peoples* (Abingdon: Routledge, 2016), ch. 6, esp. secs. 1-2.
- John Borrows, "Revitalizing Canada's Indigenous Constitution: Two Challenges," in Fitzgerald and Schwartz, *UNDRIP Implementation*, pp. 20-28.

<u>Oct. 14: Thanksgiving Holiday (no class)</u>

Week 6: The Right to Indigenous Self-Determination (UNDRIP Articles 3-5)
Oct. 21, 2019

Paper proposal due today, via Quercus, before class.

Required readings:

- James Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford University Press, 1996), chs. 3-4, pp. 75-125.
- Rauna Kuokkanen, *Restructuring Relations: Indigenous Self-Determination, Governance, and Gender* (New York: Oxford University Press, 2019), Introduction & ch. 1, pp. 1-59.

Recommended reading:

- Royal Commission on Aboriginal Peoples (RCAP), *Final* Report, vol. 2, ch. 3 ("Governance") (Ottawa: Government of Canada, 1996), pp. 105-407.

Week 7: UNDRIP vs. Sec. 35(1) of the Canadian Charter of Rights and Freedoms
Oct. 28, 2019

Required readings:

- John Borrows, "Challenging Historical Frameworks: Aboriginal Rights, The Trickster, and Originalism," *Canadian Historical Review* 98(1): 114-135 (2017).
- Kiera Ladner, "Take 35: Reconciling Constitutional Orders," in Annis May Timpson (ed.), *First Nations, First Thoughts: The Impact of Indigenous Thought in Canada* (Vancouver: UBC Press, 2009), pp. 279-300.
- Jeff Corntassel, "Re-envisioning Resurgence: Indigenous Pathways to Decolonization and Sustainable Self-Determination," *Decolonization: Indigeneity, Education & Society* 1(1): 86-101 (2012).

Recommended readings:

- Frances Abele and Michael J. Prince, "Four Pathways to Aboriginal Self-Government in Canada," *American Review of Canadian Studies* 36(4): 568-595 (2006).

Nov. 4: Fall Reading Week (no class)

Week 8: The Indian Act
Nov. 11, 2019

Comments on colleagues' proposals due today.

Required readings:

- Frances Abele, "Like an Ill-Fitting Boot: Government, Governance and Management Systems in the Contemporary Indian Act," Research Paper for the National Centre for First Nations Governance (2007).

- Rauna Kuokkanen, *Restructuring Relations*, ch. 2, pp. 60-96.
- Office of the Prime Minister of Canada, "Government of Canada to Create Recognition and Implementation of Rights Framework" (Ottawa, 2018)(available at: https://pm.gc.ca/eng/news/2018/02/14/government-canada-create-recognition-and-implementation-rights-framework)
- Hayden King and Shiri Pasternak, "Canada's Emerging Indigenous Rights Framework: A Critical Analysis" (Toronto: Yellowhead Institute, 2018).

Recommended readings and videos:

- RCAP Final Report, vol. 1, ch. 9 ("The *Indian Act*")(pp. 239-312).
- John Milloy, "Indian Act Colonialism: A Century of Dishonour, 1869-1969," Research Paper for the National Centre for First Nations Governance (2008).
- John Borrows, "Seven Generations, Seven Teachings: Ending the Indian Act," Research Paper for the National Centre for First Nations Governance (2007).
- Videos: "Canadian Aboriginal History: Did You Know?" Aboriginal Peoples' Television Network (2008?) https://www.youtube.com/watch?v=i8QmxU6IZHw & https://www.youtube.com/watch?v=9gVCSIHq6cc

Week 9: Gender and Indigenous Self-Determination
Nov. 18, 2019

Required readings:

- National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report* (2019), pp. 1-19, 53-76, 79.
- Rauna Kuokkanen, *Restructuring Relations*, chs. 4-6, pp. 138-235.

Recommended videos:

- National Inquiry into Missing and Murdered Indigenous Women and Girls, Key Moment Videos, available at: https://www.mmiwg-ffada.ca/video-clips/

Week 10: UNDRIP Articles 19 and 32: Free, Prior and Informed Consent
Nov. 25, 2019

Required readings:

- Cathal M. Doyle, *Indigenous Peoples, Title to Territory, Rights and Resources: The Transformative Role of Free, Prior and Informed Consent* (Abingdon: Routledge, 2015), Introduction (pp. 1-10) & ch. 9.
- Martin Papillon & Thierry Rodon, "Proponent-Indigenous Agreements and the Implementation of the Right to Free, Prior and Informed Consent in Canada," *Environmental Impact Assessment Review* 62: 216-224 (2017).
- James Anaya, "Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples Have in Lands and Resources," *Arizona Journal of International and Comparative Law* 7(18): 7-17 (2005).

<u>Week 11: UNDRIP Article 37: Treaties</u>
Dec. 2, 2019

Required readings:

- Michael Asch, "Confederation Treaties and Reconciliation: Stepping Back into the Future," in Asch, Borrows, and Tully, *Resurgence and Reconciliation*, ch. 1, pp. 1-48.
- J.R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009), ch. 10 ("'We are All Treaty People'"), pp. 283-309.
- Joshua Nichols, "*Sui Generis* Sovereignties: The Relationship between Treaty Interpretation and Canadian Sovereignty," (Waterloo: CIGI Series Canada in International Law at 150 and Beyond, 2018).
- Alan Corbiere, "'Their Own Forms of Which They Take the Most Notice:' Diplomatic Metaphors and Symbolism on Wampum Belts," in Alan Ojiig Corbiere, Mary Ann Naokwegijig Corbiere, Deborah McGregor, and Crystal Migwans, eds., *Anishinaabewin Niiwin: Four Rising Winds* (M'Chegeeng, ON: Ojibwe Cultural Foundation, 2014), pp. 47-64.

Recommended reading and video:

- RCAP vol. 2, ch. 2 ("Treaties")(pp. 12-104)
- Michael Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada* (Toronto: University of Toronto Press, 2014), chs. 1, 7, 9, pp. 3-9, 116-133, 152-165.
- Video: Alan Corbiere Lecture, "250th Anniversary of the Treaty of Niagara," available at: https://www.youtube.com/watch?v=aGMIyGtyT7E

<u>Week 12: Research presentations</u>
Thursday, Dec. 5, 2019 – Make-up Monday