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Law, Land, and Legitimacy: A Comparative Inquiry into Indigenous Rights in Canadian and International Legal Regimes

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Abstract
This study undertakes a comparative inquiry into the recognition and implementation of Indigenous land rights within Canadian and international legal regimes[1]. Through an interpretivist thematic analysis and case study approach, it argues that despite progressive jurisprudential developments, the Canadian framework remains constrained by its foundation in Crown sovereignty and Western property concepts[2], failing to comply with Indigenous relationships to land. Conversely, international instruments, particularly the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[3], offer a more holistic paradigm centered on self-determination and Free, Prior, and Informed Consent (FPIC)[4]. By synthesizing theoretical frameworks ***of Indigenous Institutional Theory and Indigenous Standpoint Theory***, the analysis reveals core tensions between state sovereignty and self-determination, and between property rights and relational worldviews. The study concludes that transformative reconciliation necessitates a plurinationalism future that moves beyond incremental reform to genuinely implement UNDRIP's standards, thereby centering Indigenous jurisdiction and epistemologies in the governance of traditional territories.

Keywords: Indigenous Land Rights, Comparative Legal Regimes, UNDRIP, Transformative Reconciliation, Self-Determination

Introduction

Context: In modern jurisprudence, interactions between Indigenous peoples and their traditional territories represent a grave concern that transcends Western conceptions of property and ownership, encompassing

[1] Pentassuglia G, 'Towards a Jurisprudential Articulation of Indigenous Land Rights' (2011) 22 European Journal of International Law 165
[2] Andrew Fitzmaurice, 'Introduction' (2014) 1 Cambridge University Press eBooks 1.
[3] United Nations, 'United Nations Declaration on the Rights of Indigenous Peoples' (2007) 1 United Nations Declaration On The Rights Of Indigenous Peoples <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.
[4] IHRB, 'What Is Free, Prior and Informed Consent (FPIC)?' (*Institute for Human Rights and Business*2022) <https://www.ihrb.org/resources/what-is-free-prior-and-informed-consent-fpic>.

spiritual identity, cultural continuity, and political self-determination[5]. From the vast Arctic territories inhabited by Inuit communities to the rainforests of Amazonia managed by ancestral tribal nations, Indigenous peoples have articulated competing visions of legitimacy and governance that challenge the dominant legal paradigms of nation-states[6]. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007 and implemented in various national contexts, including Canada, represents a watershed moment in this ongoing negotiation between state sovereignty and Indigenous self-determination[7].

This relationship overspread Western ideas of property and ownership; it includes spiritual identity, cultural continuity, and political self-determination. Indigenous peoples have articulated competing ideas of legitimacy and governance that challenge the mainstream legal paradigms of nation-states[8]. These visions range from the vast Arctic areas inhabited by Inuit communities to the jungles of Amazonia administered by ancient tribal nations. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was passed in 2007 and is now being used in Canada and other countries, is a turning point in the continuous struggle between state sovereignty and Indigenous self-determination[9].

Problem statement: For contemporary nation-states, the basic relationship between Indigenous peoples and their ancestral lands poses a significant and unsolved existential and legal dilemma. A persistent gap still exists between the recognition of rights on paper and their substantive realization on the ground, even with major jurisprudential advancements like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) being adopted internationally and the constitutional entrenchment of Aboriginal and treaty rights in Canada[10]. Indigenous epistemologies, which see land as an essential, living entity that is essential to cultural identity, spiritual practice, and political sovereignty, are frequently not completely understood or accommodated by state legal systems, which are primarily based on Western conceptions of property and sovereignty.

A crisis of legitimacy results from this dissonance, as Indigenous claims are usually presented as dangers to the territorial integrity of the state, while state laws are generally seen by Indigenous people as illegitimate impositions[11]. Therefore, this study explores the fundamental issue of how and why current legal frameworks in Canada and around the world still fail to fairly address Indigenous land rights, as well

[5] Gaetano Pentassuglia, 'Towards a Jurisprudential Articulation of Indigenous Land Rights' (2011) 22 European Journal of International Law 165.

[6] NICFI, 'Breakthrough for Indigenous Governance in the Colombian Amazon – Norway's International Climate and Forest Initiative' (*Norway's International Climate and Forest Initiative*21 March 2025) <https://www.nicfi.no/2025/03/21/breakthrough-for-indigenous-governance-in-the-colombian-amazon/>.

[7] United Nations, 'United Nations Declaration on the Rights of Indigenous Peoples | Division for Inclusive Social Development (DISD)' (*United Nations*2007) <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples> accessed 5 September 2025.

[8] Catherine Iorns, 'Issue 2 1992 Iorns, Indigenous Peoples and Self Determination: Challenging State Sovereignty, 24 Case W. Res' (1992) 24 Case Western Reserve Journal of International Law <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1631&context=jil>.

[9] Government of Canada, 'Backgrounder: United Nations Declaration on the Rights of Indigenous Peoples Act' (*Government of Canada*10 December 2021) <https://www.justice.gc.ca/eng/declaration/about-apropos.html>.

[10] Katja Göcke, 'Protection and Realization of Indigenous Peoples' Land Rights at the National and International Level' (Goettingen n Journal of International Law 2013) <https://digitallibrary.un.org/record/3924462/files/state-of-worlds-indigenous-peoples-vol-v-final.pdf> accessed 13 September 2025.

[11] Jessica Hallenbeck and others, 'Red Skin, White Masks: Rejecting the Colonial Politics of Recognition' (2016) 4 The AAG Review of Books 111.

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as what theoretical and practical avenues might result in a more transformative and legitimate reconciliation.

Research Objectives: Three underlying objectives serve as the foundation for this investigation. The first objective of the study is to critically compare the development, organization, and application of Indigenous land rights within the Canadian legal system and important international legal frameworks, such as the UNDRIP and ILO Convention 169. Within and between these regimes, this research will enlighten areas of convergence, divergence, and enduring structural impediments. Second, using an interpretivist thematic and case study methodology, the research aims to interpret and synthesize Indigenous peoples' lived experiences and strategic engagements with these legal systems. Understanding how Indigenous groups negotiate, oppose, and take advantage of these frequently flawed mechanisms in order to exercise their rights and preserve their relationships to the land is at the heart of this goal. Third, the study aims to create and suggest a coherent theoretical framework that integrates legal pluralism, Standpoint Theory, and Indigenous Institutional Theory in order to map out a new course for the future. This framework is intended to overspread critical analysis and provide an ethical consideration to a legal system that truly accepts ***"plurinationalism***", fully enacts free, prior, and informed consent (FPIC), and acknowledges Indigenous nations' inherent jurisdiction over their ancestral lands.

Scope of the study: This work is essential because it comes at a time when Indigenous rights law is enduring a transformative period. A potentially groundbreaking advancement in domestic legislation is Canada's 2021 UNDRIP implementation. There is a dynamic interaction between national and international legal systems as a result of international organizations' growing recognition of Indigenous land rights as human rights. Through a critical lens, this paper analyzes these advances, recognizing the field of law and policy's progressive potential as well as its enduring difficulties[12].

Methodology

Theoretical underpinning

In order to analyze Indigenous land rights, theoretical approaches that prioritize Indigenous viewpoints and experiences must be adopted, surpassing Western legal frameworks. This study combines two interrelated frameworks: Indigenous Institutional Theory and Indigenous Standpoint Theory, that together offer a strong basis for comparative analysis. By putting Indigenous epistemologies and agency front and center, these methods enable a critical analysis of both Canadian and international legal systems.

Indigenous Institutional Theory: Understanding how Indigenous peoples negotiate, oppose, and change Western legal systems is made easier with the help of Indigenous Institutional Theory. In order to recognize the intricate relationship between Indigenous agency and institutional frameworks, this theoretical framework combines Western Institutional Theory with Indigenous Standpoint Theory[13]. Since it acknowledges how Indigenous peoples function within "the cultural interface" where Western and Indigenous knowledge systems converge, the framework, which was first created for study on Indigenous leadership in higher education, has wider applicability to legal analysis[14].

[12] United Nations, 'The Foundation of International Human Rights Law' (*United Nations*2025) <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>.

[13] Stacey Kim Coates, Michelle Trudgett and Susan Page, 'Indigenous Institutional Theory: A New Theoretical Framework and Methodological Tool' (2022) 50 The Australian Educational Researcher <https://link.springer.com/article/10.1007/s13384-022-00533-4>.

[14] Kathy Absolon, 'Indigenous Wholistic Theory: A Knowledge Set for Practice' (2010) 5 First Peoples Child & Family Review 74.

This idea sheds light on how the state legal system conserves unique cultural identities and systems of government through interactions with Indigenous communities. Indigenous peoples as passive subjects of the law acknowledge their active participation in forming institutional arrangements and legal discourses. This theoretical lens enables us to analyze how Indigenous communities strategically use both domestic and international legal procedures to support Indigenous legal traditions related to land stewardship and advance their territorial claims, particularly with regard to land rights[15].

Indigenous Standpoint Theory (IST): According to Indigenous Standpoint Theory, which serves as the epistemological basis for this study. IST analysis must start with the lived experiences and viewpoints of Indigenous peoples rather than with Western legal systems[16]. Indigenous researchers like Moreton-Robinson and Nakata (2007) developed IST, which combines Indigenous understandings of representation, power, and knowledge. It originated from feminist perspective theory. IST acknowledges that Indigenous peoples must continually navigate a "contested knowledge space" between their own knowledge systems and Western legal frameworks[17].

Synthesis: In this study, IST refers to giving Indigenous voices and perspectives a central place in the analysis of land rights regimes, whether the focus is on international human rights procedures or Canadian jurisprudence. It calls into question the ostensible neutrality of state legal systems and examines how they represent specific cultural presumptions on property, sovereignty, and land acquisition[18] ***Indigenous Institutional Theory*** and ***Indigenous Standpoint Theory are*** intertwined theoretical frameworks that align with a holistic approach by prioritizing Aboriginal perspectives. They shed light on postcolonial contexts by acknowledging the legal interactions.

Table 1: Theoretical Frameworks for Analyzing Indigenous Land Rights

Framework	Key Concepts	Application to Land Rights
Indigenous Institutional Theory	Cultural interface, hybridity, institutional engagement	How Indigenous communities navigate and transform state legal systems for land claims
Indigenous Standpoint Theory	Positionality, lived experience, epistemic justice	Centering Indigenous perspectives on territory and relationship to land
Legal Pluralism	Normative diversity, interlegality, mutual constitution	Interaction between state law, Indigenous legal traditions, and international norms

[15] Stacey Kim Coates, Michelle Trudgett and Susan Page, 'Indigenous Institutional Theory: A New Theoretical Framework and Methodological Tool' (2022) 50 The Australian Educational Researcher <https://link.springer.com/article/10.1007/s13384-022-00533-4>.

[16] Pat Dudgeon and others, 'ABORIGINAL PARTICIPATORY ACTION RESEARCH: AN INDIGENOUS RESEARCH METHODOLOGY STRENGTHENING DECOLONISATION and SOCIAL and EMOTIONAL WELLBEING Discussion Paper and Literature Review' (2020) <https://www.lowitja.org.au/wp-content/uploads/2023/05/LI_Discussion_Paper_P-Dudgeon_FINAL3.pdf>.

[17] Riyadh Abdullah, 'PhD-Comparative Literature Course \ Academic Year 2024-2025 Indigenous Standpoint Theory: A Comprehensive Examination' (*ResearchGate*30 September 2024) <https://www.researchgate.net/publication/384467846_PhD-Comparative_Literature_Course_Academic_Year_2024-2025_Indigenous_Standpoint_Theory_A_Comprehensive_Examination> accessed 5 September 2025.

[18] Pat Dudgeon and others, 'ABORIGINAL PARTICIPATORY ACTION RESEARCH: AN INDIGENOUS RESEARCH METHODOLOGY STRENGTHENING DECOLONISATION and SOCIAL and EMOTIONAL WELLBEING Discussion Paper and Literature Review' (2020) <https://www.lowitja.org.au/wp-content/uploads/2023/05/LI_Discussion_Paper_P-Dudgeon_FINAL3.pdf>.

Data Sources

This study uses a qualitative methodology that blends comparative case study analysis with interpretivist thematic analysis. This method is especially well-suited to analyzing intricate legal issues in many jurisdictions while emphasizing Indigenous peoples' interpretations and experiences. The approach is based on an interpretivist paradigm that highlights how legal concepts are socially produced and how crucial it is to comprehend the subjective meanings that actors give to legal procedures and results[19].

Thematic Analysis Based on Interpretivism: A flexible yet methodical way to finding, examining, and summarizing patterns (themes) in qualitative data is provided by thematic analysis. As per the six-phase approach proposed by Braun and Clarke, this research entails the following steps: (1) becoming acquainted with legal texts and case materials; (2) creating preliminary codes; (3) looking for themes; (4) evaluating themes; (5) identifying and labeling themes; and (6) creating the analysis. With consideration for the social and historical context of legal discourses, the interpretivist viewpoint means that themes are not just recognized as being in the data but are seen as arising from the interaction between the researcher and the texts[20].

Government and Indigenous policy pronouncements, secondary literature examining Indigenous land rights in Canadian and global contexts, and primary legal documents (legislation, court rulings, treaty texts) comprise the data for thematic analysis. The study pays close attention to how terms like "property," "sovereignty," and "rights" are formulated under several legal systems, to determine either support or contradict Indigenous conceptions of their relationship to the land[21].

A Comparative Approach to Case Studies: The case study component looks at particular instances of Indigenous land rights disputes and claims in Canadian and foreign settings. The application of the UNDRIP through the United Nations Declaration on the Rights of Indigenous Peoples Act and the historical and current handling of Indigenous land rights in Canadian jurisprudence are two examples of Canadian case studies. The implementation of international instruments such as ILO Convention 169[22] and the Inter-American human rights[23] system's stance on Indigenous territory are examples of international case studies.

Synthesis: Examining the similarities and differences between several legal systems' approaches to Indigenous land rights is made easier by the comparative method. This approach makes it possible to examine how Indigenous groups use both domestic and international processes to further their claims, as well as how transnational legal norms like the UNDRIP are domesticated in particular national contexts. The case study technique grounds the theoretical discussion in particular legal fights and outcomes by offering tangible examples of the larger issues discovered through thematic analysis.

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[19] Shana Ponelis, 'Using Interpretive Qualitative Case Studies for Exploratory Research in Doctoral Studies: A Case of Information Systems Research in Small and Medium Enterprises' (2015) 10 International Journal of Doctoral Studies 535.

[20] Elizabeth Yardley, 'Braun and Clarke Thematic Analysis - How to Do the Six-Step Process in Your Qualitative Research Project' (*Degree Doctor*2024) <https://www.thedegreedoctor.com/blog/braun-and-clarke-thematic-analysis-how-to-do-the-six-step-process-in-your-qualitative-research-project>.

[21] Cher Weixia Chen, 'Indigenous Rights in International Law' (2014) 1 ResearchGate.

[22] Peter Bille Larsen and Jérémie Gilbert, 'Indigenous Rights and ILO Convention 169: Learning from the Past and Challenging the Future' (2020) 24 The International Journal of Human Rights 83.

[23] OAS, 'Organization of American States: Democracy for Peace, Security, and Development' (*www.oas.org*1 August 2009) <https://www.oas.org> accessed 10 September 2025.

Reflexivity and Positionality: This study upholds critical reflexivity with respect to the researcher's positionality and the ways that Indigenous knowledges have been neglected by Western academic traditions, which is consistent with Indigenous Standpoint Theory. By giving preference to Indigenous sources and interpretations where possible, the research aims to uphold Indigenous sovereignty over knowledge and adhere to Indigenous data sovereignty ideals. In addition to examining how legal analysis may support the larger endeavor of decolonization and Indigenous self-determination, this research, whenever feasible, highlights Indigenous-led projects and solutions[24].

Results and Findings

The Canadian Legal System

Development and Current Issues: Although this path is still incomplete and contested, the Canadian approach to Indigenous land rights has changed dramatically over time, moving from open rejection to growing acceptance. In the context of ongoing Indigenous activism and political negotiation, the legal landscape of Canada today is defined by the intricate interactions between statutory frameworks, negotiated accords, court rulings, and constitutional provisions[25].

Foundations of the Constitution and Developments in Jurisprudence: The Constitutional Act of 1982 acknowledged and upheld "existing Aboriginal and treaty rights", marking a turning point in Canadian Indigenous law[26]. This clause served as the cornerstone for later court rulings that profoundly influenced the nature of Indigenous land rights. Aboriginal title is a proprietary interest in property that encompasses the right to exclusive use and occupation for a range of purposes, not just traditional customs, according to the Supreme Court of Canada's ruling in ***Delgamuukw vs. British Columbia (1997)***[27]. The first declaration of Aboriginal title in Canadian history was made more recently in "***Tsilhqot'in Nation vs. British Columbia (2014)***", which confirmed that Indigenous nations maintain authority over named lands. Notwithstanding these developments in jurisprudence, the Canadian model nevertheless has significant limitations. When planned acts could negatively impact existing or potential Aboriginal rights, the government must consult and provide accommodations, as established in decisions such as ***"Haida Nation v. British Columbia (2004)***[28]***".*** This obligation, however, has been applied unevenly in various settings and does not fully acknowledge Indigenous control. Indigenous ideas of territory and Western property

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[24] Ruth Nicholls, 'Research and Indigenous Participation: Critical Reflexive Methods' (2009) 12 International Journal of Social Research Methodology 117 <https://www.researchgate.net/publication/248988682_Research_and_Indigenous_participation_Critical_reflexive_methods> accessed 5 September 2025.

[25] OECD, 'The Importance of Land for Indigenous Economic Development' (*OECD*2025) <https://www.oecd.org/en/publications/linking-indigenous-communities-with-regional-development-in-canada_fa0f60c6-en/full-report/the-importance-of-land-for-indigenous-economic-development_d407d4e9.html>.

[26] Government of Canada, 'THE CONSTITUTION ACTS, 1867 to 1982' (*laws-lois.justice.gc.ca*7 August 2020) <https://laws-lois.justice.gc.ca/eng/const/page-13.html>.

[27] Supreme Court of Canada, 'Delgamuukw v. British Columbia - SCC Cases' (*decisions.scc-csc.ca*11 December 1997) <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1569/index.do>.

[28] Supreme Court of Canada, 'Haida Nation v. British Columbia (Minister of Forests) - SCC Cases' (*decisions.scc-csc.ca*18 November 2004) <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2189/index.do>.

concepts are still complex for the Canadian legal system to reconcile, and Indigenous claims are frequently pushed into frameworks that misrepresent their character and extent.

Structural Restraints and the Indian Act: Despite numerous revisions and reform initiatives, the Indian Act continues to be a significant structural barrier to Indigenous land rights in Canada. The Act, which was first passed in 1876, created a system of government supervision and reservations that significantly limited the authority of Indigenous peoples to govern and administer their ancestral lands[29]. Only in 2008 was Section 67 of the Canadian Human Rights Act abolished, which barred First Nations people from complaining about activities made under the Indian Act. Although its repeal did not instantly change the fundamental framework of the Indian Act regime, it did symbolically eliminate a significant obstacle to contesting discriminatory laws[30].

The relationship of Indigenous women to land and territory has been especially affected by the patriarchal and assimilationist elements of the Indian Act. Before recent changes, marriage to non-status men resulted in Indigenous women losing their status and, with it, their ties to their community and property. The way that Canadian law has imposed Western patriarchal norms on Indigenous nations, upending indigenous governance systems and territorial linkages, is exemplified by these gendered aspects of land dispossession[31].

UNDRIP: The UN Declaration Act's Implementation: In 2021, Canada passed the United Nations Declaration on the Rights of Indigenous Peoples Act, which might revolutionize Indigenous law in Canada. According to the Act, the government must "take all measures necessary to ensure that the laws of Canada are consistent with the Declaration" and consult Indigenous peoples before creating an implementation action plan. Since UNDRIP articles 25–32 uphold Indigenous peoples' rights to own, utilize, develop, and control their ancestral lands as well as to preserve and deepen their spiritual ties to them, this legislation has essential ramifications for land rights[32].

After two years of consultation and collaboration with First Nations, Inuit, and Métis peoples, the action plan for the UN Declaration Act's implementation process was issued in June 2023. This procedure demonstrates the possibilities and difficulties of incorporating international standards into national legal frameworks. Although the Act establishes a framework for improved conformity between Canadian law and international norms, its final effect will rely on the specific actions taken to put it into effect, as well as the government's readiness to participate in Indigenous self-determination actively[33].

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[29] Erin Hanson, 'The Indian Act' (*Indigenous Foundations*2009) <https://indigenousfoundations.arts.ubc.ca/the_indian_act/>.

[30] Canadian Heritage, 'Indigenous Peoples and Human Rights - Canada.ca' (*Canada.ca*2014) <https://www.canada.ca/en/canadian-heritage/services/rights-indigenous-peoples.html>.

[31] Government of Canada, 'National Inquiry into Missing and Murdered Indigenous Women and Girls' (*Rcaanc-cirnac.gc.ca*2010) <https://www.rcaanc-cirnac.gc.ca/eng/1448633299414/1534526479029>.

[32] Legislative Services Branch, 'Consolidated Federal Laws of Canada, United Nations Declaration on the Rights of Indigenous Peoples Act' (*laws-lois.justice.gc.ca*21 June 2021) <https://laws-lois.justice.gc.ca/eng/acts/u-2.2/FullText.html>.

[33] Government of Canada, 'What We Heard: Indigenous Advisory Process Final Recommendations and Feedback' (*Sac-isc.gc.ca*2024) <https://www.sac-isc.gc.ca/eng/1747426714271/1747426785478>.

Table 2: Key Developments in Canadian Indigenous Land Rights Law

Legal Instrument	Year	Significance	Limitations
Constitutional Act, s. 35	1982	Recognized and affirmed existing Aboriginal and treaty rights	Left scope and content of rights to be determined by courts
Delgamuukw v. BC	1997	Established Aboriginal title as a proprietary interest	Set high standard of proof for establishing title
Haida Nation v. BC	2004	Established duty to consult and accommodate	Does not require consent for all actions affecting rights
Tsilhqot'in Nation v. BC	2014	First declaration of Aboriginal title	Implementation remains challenging
UN Declaration Act	2021	Creates framework for implementing UNDRIP	Dependent on political will for implementation

International Legal Systems: Normative Structures and Diverse Applications

As a vital normative contrast to domestic systems, international law provides ideas that typically run counter to state-centric notions of sovereignty and property. This section compares and contrasts the Canadian situation with the global framework.

Essential International Tools: A legally binding international agreement, ILO Convention 169 (1989) requires engagement through representative institutions and highlights the unique commitment of Indigenous peoples to their territory. In stark contrast to its recent endorsement of the UNDRIP, Canada has long been hesitant to be bound by stringent international duties on this issue, as seen by its non-ratification of C169[34].

UNDRIP is a strong expression of international agreement and is not legally obligatory. Its extensive land rights articles (Articles 25–32) uphold the rights of traditional lands to be owned, used, developed, and controlled. More importantly, however, they mandate FPIC before any project that impacts these lands can move forward.

International Law: The System of Human Rights in the Americas: Frequently going beyond Canadian jurisprudence, the Inter-American Court of Human Rights (IACHR) has been a trailblazer in interpreting international law in support of Indigenous land rights.

According to the historic Mayagna (Sumo) Awas Tingni Community v. Nicaragua (2001) decision, Indigenous customary land tenure systems are protected property under the US Convention on Human Rights[35]. States were required by the Court to legally demarcate and title these areas. The 2006 case Sawhoyamaxa Indigenous Community v. Paraguay upheld the idea that states have a positive obligation to return traditional lands to Indigenous communities and that traditional land possession has the same legal weight as state-granted title[36].

[34] Jasper Doomen, '20 Years of the Estonian Constitution' (2021) 1 Juridica International <https://media.voog.com/0000/0038/9691/files/ji_16_1Cover.pdf> accessed 11 March 2019.

[35] Oxford Publishing International Law, *Mayagna (Sumo) Awas Tingni Community v Nicaragua Case* (Oxford Publishing International Law 2020).

[36] Sergio García-Ramírez and others, 'Inter-American Court of Human Rights Case of the Sawhoyamaxa Indigenous Community v. Paraguay Judgment Of' (2006) <https://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf>.

Table 3: Comparative Analysis of Legal Approaches to Indigenous Land Rights

Aspect	Canadian Legal Approach	International Legal Approach (UNDRIP/IACHR)
Foundation of Rights	Based on historic use and occupation, reconciled with Crown sovereignty (s.35).	Inherent rights derived from pre-existing sovereignty, spiritual connection, and self-determination.
Key Mechanism	Duty to Consult and Accommodate (often procedural).	**Free, Prior, and Informed Consent (FPIC)** (substantive and procedural).
Nature of Title	*Sui generis* (unique) property right within the Canadian constitutional framework.	Right to ownership, development, and control, rooted in collective human rights.
Role of the State	Crown retains underlying title; fiduciary duty to protect Indigenous interests.	State obligation to recognize, demarcate, and title territories; avoid infringement.
Remedy for Dispossession	Negotiated treaties, specific claims, financial compensation, potentially land back.	Restitution of traditional lands (preferred), or just and fair compensation.

Thematic Analysis: Cross-Cutting Tensions and Patterns

The complexities in achieving Indigenous land rights can be explained by three recurring, interrelated thematic tensions that emerge from an interpretivist study of the Canadian and international regimes.

Thematic Tension	Manifestation in Canadian Law	Manifestation in International Law	Interpretation through Theoretical Lens
Sovereignty vs. Self-Determination	**Crown Sovereignty** is the starting point; s.35 rights are exercised within Canada's constitutional framework.	**Self-Determination** (UNDRIP Art. 3) is a core right; includes autonomy in internal and local affairs.	**Legal Pluralism:** This tension highlights the clash between monist (state-only) and pluralist (multiple) legal orders. The state seeks to incorporate Indigenous rights, while international law affirms their co-existence.
Property vs. Relationality	Rights are framed as **property interests** (albeit *sui generis*) to be integrated into	Rights are framed as **spiritual relationship**; land as source of identity, culture, and economic	**Indigenous Standpoint Theory:** This tension is epistemological. The Western "property"

Thematic Tension	Manifestation in Canadian Law	Manifestation in International Law	Interpretation through Theoretical Lens
	common law systems.	sustainability (UNDRIP Art. 25).	frame is a translation that often fails to capture the essence of the Indigenous relationship with land, which is holistic and reciprocal.
Process (Consultation) vs. Outcome (Consent)	Focus on the **process** of consultation; accommodation is undefined and consent is not required except in limited title cases.	Focus on the **outcome** of obtaining **FPIC**; a veto power over developments on traditional lands.	**Indigenous Institutional Theory:** Indigenous communities engage with consultation processes (the institution) but strategically use them to pursue the ultimate goal of consent and jurisdiction, demonstrating agency within constrained systems.

Discussion

According to the analysis, the Canadian legal system is nonetheless fundamentally constrained by its roots in Crown sovereignty and its conversion of Indigenous ties into Western property notions, even though it has produced important recognition tools. With a focus on self-determination, FPIC, and spiritual connection, international law—especially through UNDRIP and IACHR jurisprudence offers a more comprehensive and stronger framework that is more in line with Indigenous viewpoints.

These results are summarized in the discussion to support the claim that minor reforms within the current Canadian framework are insufficient. A transformative reconciliation that tackles the fundamental tensions found in the thematic analysis is necessary for the future. This change necessitates a change in perspective and is not only legal but also political and intellectual.

New Future Direction

Current Tension	Limitation it Creates	Proposed Future Direction	Practical Application
Sovereignty vs. Self-Determination	Subordinates Indigenous jurisdiction to Crown authority.	**Embrace Plurinationalism:** Recognize multiple, coexisting governing authorities and legal orders (Indigenous and Crown) within the same territory.	Support self-government agreements and treaties that recognize inherent Indigenous law-making power over land, resources, and citizenship.
Property vs. Relationality	Distorts Indigenous worldviews and minimizes cultural/spiritual loss in impact assessments.	Indigenous-Led Governance and Assessment: Center Indigenous laws, knowledge systems, and definitions of "value" and "impact" in land management.	Mandate and fund Indigenous-led land-use plans and environmental assessments based on Indigenous legal traditions as a required component of approval processes.

The roadmap for this transition is provided by the complete and honest implementation of the UNDRIP, which is guided by the theoretical frameworks of Indigenous Standpoint Theory and Legal Pluralism. At last, it reflects the lived reality and inherent rights of the original peoples of this land, it overspreads merely criticizing Canadian law, and instead uses the international standard as a benchmark.

Conclusion

In conclusion, this comparative analysis underscores a fundamental dissonance between the limited recognition offered by state legal systems like Canada's and the expansive vision of rights affirmed by international law. The path forward requires a decisive break from colonial frameworks of sovereignty and property. Honoring the relationship between Indigenous peoples and their territories demands a transformative approach that embraces legal pluralism, implements FPIC as a substantive right, and restores Indigenous jurisdiction over land. This journey towards a plurinationalism future is not merely a legal imperative but a moral one, essential for building a legitimate and just relationship founded on mutual recognition and the enduring principle that land is not a commodity to be owned, but a resource to be cherished and protected.

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4. Doomen J, ‘20 Years of the Estonian Constitution’ (2021) 1 Juridica International <https://media.voog.com/0000/0038/9691/files/ji_16_1Cover.pdf> accessed 11 March 2019
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