

American Indian Law

LAW A565

Professor Addie Rolnick

Winter 2021

Course Policies & Syllabus

Class Meetings: Tuesdays & Thursdays, 1:30-3:20

Course Description: This course provides an overview of federal Indian law. It covers the basic conflicts among sovereign governments that define the field, especially conflicts over criminal, civil adjudicative, and regulatory jurisdiction. The first segment of the class, which will be followed by an examination, will cover the status and sovereign powers of Indian nations as recognized under United States law, federal plenary power and the trust responsibility, jurisdictional conflicts, and definitional and equal protection issues posed by federal and state legislation singling out Indian nations and tribal members. The second segment of the course will take a seminar-style approach to specific laws and issues, and students will be expected to present as part of a group on one of the assigned topics. Students will gain a critical understanding of the basic tenets of federal Indian law, the bases of tribal sovereignty, the structure of the federal-tribal relationship and its history, the unique principles governing Indian law cases, and a sense of future directions. They will also gain important practical knowledge relevant to future work with tribal or Native American clients. Grading for the course will be based on the examination, class participation, and the group project.

Learning Outcomes: Students successfully completing Federal Indian Law will be able to demonstrate knowledge, skills or abilities in the following areas:

1. Legal Reasoning: Understand the historical and legal bases for modern tribal sovereignty, as well as the position of indigenous nations within power struggles among other sovereigns (European, federal, state) and U.S. government branches.

2. Legal Reasoning: Be familiar with the jurisdictional rules that govern this relationship today.
3. Problem Solving: Be able to apply jurisdictional rules to novel problems and identify arguments and authority supporting competing arguments.
4. Diversity and Equity: Gain a basic understanding of certain differences in worldview that are common among Native American cultures and distinct from European/white American ones and how those difference affect indigenous legal rights.
5. Contextualize Law: Understand and critique the major policy shifts that have occurred with regard to the relationship between the federal government and indigenous nations.

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6. Contextualize Law: Have a sense of what that sovereignty looks like and means today and how Native nations and people are affected by, and affecting, federal laws.
7. Contextualize Law: Understand that there are over 500 different recognized Indian tribes in the U.S., including 29 tribes in Washington, as well as the legal significance of being recognized and the legal situation of unrecognized indigenous peoples.
8. Oral Communication: Synthesize complex material and present it clearly to an audience.
9. Collaborate Effectively: Research and design presentations in small groups.

COURSE POLICIES

Texts and Readings:

Robert T. Anderson, Sarah A. Krakoff & Bethany R. Berger, *American Indian Law: Cases & Commentary* (4th ed. 2019) (required)

Carole Goldberg, Kevin K. Washburn, and Philip P. Frickey, eds. *INDIAN LAW*

STORIES (2011) (optional)

William C. Canby, AMERICAN INDIAN LAW IN A NUTSHELL (7th ed. 2020)

(optional)

Most of the assigned readings will come from the casebook (indicated as CB on the syllabus). I will also assign articles or excerpts from the INDIAN LAW STORIES text (indicated as ILS) and supplemental materials (indicated as SM). These will be posted on the Canvas page. Students are expected to check the page regularly for updates. The Nutshell provides a useful overview; I will not assign readings from it.

Technology: Students will need (a) a computer or other device with a camera, audio, and keyboard, (b) a Zoom account for lecture and discussion sessions, and (c) a Canvas account for access to course materials and messaging. Please note that course materials will not be posted to the Boyd Portal after the first week of classes; students should access Canvas directly, not through the Portal.

Assignment Submission: Students may turn in written assignments digitally by uploading them to Canvas. Assignments should be submitted via email only in extenuating circumstances. Anonymous assignments should never be emailed directly to the professor. Unless otherwise indicated, assignments are generally due at 11:59 p.m. on the due date.

Recording: Class sessions will be recorded and archived for asynchronous viewing. I will do my best to post recordings immediately after class, subject to technological limitations.

Recordings will be deleted at the end of the semester. Recordings, including any recordings, clips, or screenshots made by students for personal use, should be used only

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for educational purposes and should not be shared with anyone outside the course absent the express permission of the instructor.

Virtual Classroom Rules:

1. This class will be conducted in a casual setting, meaning that I will not impose any rules about Zoom backgrounds, avatars, attire, or location. Humor is fine, but please exercise caution and avoid using pictures or slogans that might make others

uncomfortable. If any issues arise, I reserve the right to adopt rules restricting backgrounds, avatars, and attire.

2. Please have your camera on when you are attending class unless circumstances prevent you from doing so. I understand that attending class remotely from home presents challenges for students with family responsibilities and/or in shared living quarters. If you need to tend to a family-related issue, feel free to temporarily turn off your camera until you are able to return your focus to class.

3. Please keep your microphones on mute once class begins except when speaking. This helps minimize background noise.

Course Requirements: 15% of the final grade will be based on attendance and participation. 50% of the final grade will be based on a mid-term examination. 35% of the final grade will be based on a group project.

Attendance (10% of final grade): Regular and punctual attendance is required at all class sessions in accordance with ABA standards and law school policy. Thorough preparation and active, engaged participation are critical in a course with a small enrollment, such as this one. I do not grade participation separately in online courses because students experience unique difficulties that may affect their ability to participate. Nevertheless, I expect students to come prepared and to voluntarily contribute to class discussions. I will also occasionally solicit participation by calling on students in class or by assigning topics or cases to particular students in advance. Students wishing not to be called upon during any particular day may indicate that to me before class or simply pass when called upon.

I understand that circumstances may arise that will require students to miss class on occasion. I appreciate, but do not require, students notifying me in advance if they will need to miss class. However, excused and unexcused absences will be treated the same for purposes of counting attendance. Exceptions may be granted to this policy on a very limited case by case basis, usually when a student needs to miss multiple classes for a medical reason or in accordance with the University's religious leave policy (see below).

Students may make up for missed classes by either (a) watching the recorded lecture and submitting a short paragraph summary and response or (b) attending outside events related to the course material and submitting a response paper

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describing the event (including date, time, and title or presenter name) and reacting to it. I will post announcements of related events, and students may also suggest additional outside events on or off campus so long as they are academic in nature and related to course themes.

Peer Feedback (5% of final grade): Students are expected to fill out short feedback quizzes in Canvas after each student presentation, except their own. These quizzes are not graded, but failure to complete them all in a timely manner may impact your grade.

Examination (50% of final grade): The examination will be given as a take-home, open-book, open-note examination. Further information (e.g., coverage, time and/or page limits) will be provided prior to the examination.

Group Project (35% of final grade): Students will be assigned in groups of 3-4 to teach specific cases and topics throughout the quarter. My goal in this portion of the course is to give each student (as part of a group) the opportunity to learn in more detail about a particular area of interest and to help students develop the skills of presenting complex material to an audience and working collaboratively.

Rules and requirements are as follows:

Presentation. Each group is expected to prepare a short presentation on its assigned case/topic (maximum 50 minutes, including presentation, discussion, and Q&A). Presentations should (a) provide a general overview of the relevant doctrine (b) discuss the context and details of the specific case or cases, (c) explain how the relevant doctrine applies in the specific case, and (b) provide information on recent developments, subsequent cases, or impacts.

Presentations can take any format, including but not limited to a staged debate, a slide presentation, a lecture, or a led discussion (in which presenters pose questions to the class and guide discussion). Feel free to be creative. While video and audio clips are permitted, presentations should not consist entirely of audio or video prepared by someone else.

Presenters can expect that the class has read the assigned materials; they are not responsible for summarizing the highlighted readings for others. Group presentations should focus instead on helping the class understand the assigned topic as applied and/or on introducing the class to the novel or specific issues presented by the case.

Projects should be prepared and presented as a group. However, each group is free to divide the tasks of presenting, preparing, and writing the summary among members as they see fit. Groups may also assign members to focus on different sub-topics, and discuss those sub-topics separately in class, as Prof. Addie Rolnick Law A565 Federal Indian Law Winter 2021

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long as it is clear that the group has worked together to identify common themes.

Preparation. I recommend that each group read ahead to cover the materials for the group's assigned unit. Each group should then schedule at least one meeting with me prior to the presentation so that we can discuss topic coverage, plan the allotment of class time, and identify additional materials as needed. The syllabus includes basic readings necessary for background, but students typically read beyond the syllabus as part of their research for group presentations.

Groups should highlight in advance which readings the rest of the class should focus on and may also assign additional relevant readings. Any new readings should be posted at least one week before the class. Any presentation materials should be posted to Canvas the day before class.

Written Analysis. Each group must provide a written summary analysis (at least 500 words but not more than 1000) of its topic using the materials assigned for the session. Analyses should be posted to Canvas the day before class.

Grading. Presenters will be graded as a group on these assignments, with all members of the group receiving the same grade unless I hear that there is a serious imbalance in the division of labor and assumption of responsibilities in the group. Students will be scored on the written analysis, preparation, understanding of the material, clarity and effectiveness of presentation, and handling of questions/discussion, but not on personal aspects of presentation style (e.g., tone of voice or stage presence). Extra credit will be given where I can see that a group engaged in significant outside research.

GENERAL POLICIES

Health and Safety. Call SafeCampus at 206-685-7233 anytime – no matter where you work or study – to anonymously discuss safety and well-being concerns for yourself or others. SafeCampus' team of caring professionals will provide individualized support, while discussing short- and long-term solutions and connecting you with additional resources when requested.

More generally, I know that students sometimes face challenges that can impact academic performance (examples include mental health concerns, food insecurity, homelessness, personal emergencies) and that those challenges may be more acute this year. Should you find that you are managing such a challenge and that it is interfering with your coursework, or if you need to talk, please reach out to me and/or to Dean Endter at aendter@uw.edu

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Academic Integrity. The University takes academic integrity very seriously. Behaving with integrity is part of our responsibility to our shared learning community. If you're uncertain about if something is academic misconduct, ask me. I am willing to discuss questions you

might have.

Acts of academic misconduct may include but are not limited to:

- Cheating (working collaboratively on quizzes/exams and discussion submissions, sharing answers and previewing quizzes/exams)
- Plagiarism (representing the work of others as your own without giving appropriate credit to the original author(s))
- Unauthorized collaboration (working with each other on assignments)

Concerns about these or other behaviors prohibited by the Student Conduct Code will be referred for investigation and adjudication by (include information for specific campus office).

Religious Accommodations. Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at Religious

Accommodations Policy (<https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/>). Accommodations must be requested within the first two weeks

of this course using the Religious Accommodations Request form

(<https://registrar.washington.edu/students/religious-accommodations-request/>).

Disability Accommodations. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law. If you have already established accommodations with Disability Resources for Students (DRS), please activate your accommodations via myDRS so we can discuss how they will be implemented in this course.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), contact DRS directly to set up an Access Plan. DRS facilitates the interactive process that establishes reasonable accommodations. Contact DRS at disability.uw.edu.

I strive to structure my classes with few restrictions in order to minimize the need for students to request special accommodations. In general, if you encounter an issue or difficulty, even if you do not have a formal DRS letter, please talk with me about how we can accommodate your situation.

Guidance to Students Taking Courses Outside the U.S. Faculty members at U.S. universities – including the University of Washington – have the right to academic freedom which includes presenting and exploring topics and content that other governments may consider to be illegal and, therefore, choose to censor. Examples may

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include topics and content involving religion, gender and sexuality, human rights, democracy and representative government, and historic events.

If, as a UW student, you are living outside of the United States while taking courses remotely, you are subject to the laws of your local jurisdiction. Local authorities may limit your access to course material and take punitive action towards you. Unfortunately, the University of Washington has no authority over the laws in your jurisdictions or how local authorities enforce those laws.

If you are taking UW courses outside of the United States, you have reason to exercise caution when enrolling in courses that cover topics and issues censored in your jurisdiction. If you have concerns regarding a course or courses that you have registered for, please contact your academic advisor who will assist you in exploring options.

Please continue to the next page for syllabus and reading schedule.

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SYLLABUS & SCHEDULE

The following represents the likely schedule of readings for the semester. I reserve the right to add additional materials and to make changes to the schedule if needed. I therefore advise you not to read more than one week ahead.

Unit I – Basic Principles: Inherent Sovereignty, Treaties & the Tribal-Federal Relationship

Session 1 (Jan. 5) – Treaties, Sovereignty & Doctrine of Discovery

CB: 26, 32-40, 44-48, 52-75, 85-87

1. 1621 League of Peace
2. Kades, The Dark Side of Efficiency
3. Johnson v. M'Intosh
4. 1785 Treaty of Hopewell
5. Cherokee Nation v. Georgia
1. Worcester v. Georgia
2. 1868 Treaty with the Navajo
6. Excerpts from Federal Statutes (SM)

Session 2 (Jan. 7) – Plenary Power, Self-Determination, Canons of Construction

CB: 90-110, 116-117, 119-122, 147-153, 168-181

1. Ex Parte Crow Dog
2. United States v. Kagama
3. Lone Wolf v. Hitchcock
4. United States v. Clapox (SM)
5. Angela R. Riley, The Apex of Congress' Plenary Power over Indian Affairs: The Story of Lone Wolf v. Hitchcock, 189-228 (ILS)
6. United States v. Winans
7. Richard M. Nixon, Special Message on Indian Affairs
8. Frickey, Marshalling Past and Present
9. Menominee Tribe v. United States
10. United States v. Dion
11. State v. Towessnute (1916 and 2020 opinions) (SM)

Unit II – Tribal Sovereignty: Scope, Limitations & Exercise

Session 3 (Jan. 12) – Tribal Sovereignty

CB 345-353, 357-360, 368-371

1. Santa Clara Pueblo v. Martinez
2. Rina Swentzell, Testimony of a Santa Clara Woman

3. Cherokee Freedmen note
4. Cherokee Nation. v. Nash
5. Jill Doerfler, Those Who Belong: Identity, Family, Blood, and Citizenship Among the White Earth Anishinaabeg (SM)

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Session 4 (Jan. 14) – Inherent and Delegated Power

CB 331-340, 544, 565-572, 881-886

1. Talton v. Mayes
2. United States v. Wheeler
3. Merrion v. Jicarilla Apache Tribe
4. United States v. Mazurie
5. John v. Baker
6. Fisher v. Dist. Ct. (SM)

Session 5 (Jan. 19) – Limits on Tribal Power: Indian Civil Rights Act

CB: 340-354

1. Indian Civil Rights Act
2. Santa Clara Pueblo v. Martinez (review)
3. Winnebago Tribe of Nebraska v. Bigfire (SM)
4. Paul Spruhan, The Meaning of Due Process in the Navajo Nation (SM)
5. United States v. Bryant (SM)

Group 1 Presentation

1. Poodry v. Tonawanda Band of Seneca Indians (SM)
2. Tavares v. Whitehouse (CB 360-368)

Session 6 (Jan. 21) – Criminal Jurisdiction

CB: 545-558, 618-639, 643-644

1. Oliphant v. Suquamish
2. Duro v. Reina
3. United States v. Lara

4. Indian Civil Rights Act as amended by the Tribal Law and Order Act of 2010 and the Violence Against Women Act of 2013 (SM)

5. Proposed 2018 VAWA Amendments (SM)

6. Means v. Dist. Ct. of the Chinle Judicial Dist. (SM)

Group 2 Presentation

1. Kelsey v. Pope (SM)

Session 7 (Jan. 26) – Civil Jurisdiction over Nonmembers

CB: 559-563, 575-576, 587-592, 594-599, 600-607, 610-616

1. Montana v. United States

2. Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation

3. Strate v. A-1 Contractors

4. Atkinson Trading Company v. Shirley

5. Nevada v. Hicks

6. Plains Commerce Bank v. Long Family Land and Cattle Co.

7. Water Wheel Camp Recreation Area v. LaRance (SM)

8. Dollar General Corp. v. Mississippi Band of Choctaw Indians (SM)

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Session 8 (Jan. 28) – Sovereign Immunity

371-378

1. Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla. (SM)

2. Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc. (SM)

3. Michigan v. Bay Mills Indian Community

Group 3 Presentation

1. Lewis v. Clarke (SM)

2. St. Regis Mohawk v. Mylan Pharmaceuticals (SM)

Unit III – Fundamental Definitional Questions

Session 9 (Feb. 2) – “Tribe” and “Indian Country”

251-283, 288-293, 294-299, 301-304

1. United States v. Sandoval
2. Joint Tribal Council of the Passamaquoddy Tribe v. Morton
3. Mashpee Tribe v. Town of Mashpee
4. Federal Acknowledgement of American Indian Tribes & Mandatory Criteria
5. Solem v. Bartlett
6. Nebraska v. Parker
7. Alaska v. Native Village of Venetie
8. Note on Section 465

Group 4 Presentation

9. McGirt v. Oklahoma (SM)
10. Recommended: Listen to "This Land" podcast

Session 10 (Feb. 4) – "Indian" Classifications and Equal Protection

CB: 190-203, 640-643

1. Morton v. Mancari & Notes
2. Note 4 following Lara
3. A.F.G.E. v. United States (SM)

Unit IV – Federal Authority over Indian Country & Indian Affairs

Session 11 (Feb. 9) – Federal Plenary Power and Its Limits

CB: 316-329

1. Delaware Tribal Business Committee v. Weeks (SM)
2. Materials on Federal Criminal Jurisdiction Statutes
3. Wetsit v. Stafne (SM)
4. Addie Rolnick, Untangling the Web: Juvenile Justice in Indian Country (SM)

Group 5 Presentation

1. Idaho v. George (SM)
2. United States v. Nobles (SM)

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Session 12 (Feb. 11) – Federal Civil Jurisdiction & the Trust Responsibility

CB: 305-312, 577-586, 232-248, 788-794

1. National Farmers Union Ins. v. Crow Tribe
2. Iowa Mutual Ins. Co. v. LaPlante
3. United States v. Mitchell
4. Cobell v. Norton
5. Nevada v. United States
6. Ann Carey Juliano, A Step Backward in the Government's Representation of Tribes:

The Story of Nevada v. United States (ILS)

Session 13 (Feb. 16) – Land & Property

CB: 210-232, 813-822, 832-840

1. Tee-Hit-Ton Indians v. United States
2. United States v. Sioux Nation
3. County of Oneida v. Oneida Indian Nation
4. Lyng v. Northwest Indian Cemetery Protective Ass'n
5. Challenging the Narrative of Conquest: The Story of Lyng v. Northwest Cemetery

Protective Ass'n, 492-504, 525-528, ILS

Unit V – State Authority in Indian Country

Session 14 (Feb. 18) – Criminal Jurisdiction

CB: 425-429, 329-330

1. McBratney v. United States (SM)
2. Public Law 280
3. Carole E. Goldberg, Public Law 280: The Limits of State Jurisdiction Over Reservation Indians (SM)
4. Walker v. Rushing (SM)
5. M. Brent Leonhardt, Returning Washington P.L. 280 Jurisdiction to Its Original Consent-Based Grounds, 704-717 (SM)
6. Jurisdiction Problems

Group 6 Presentation

1. Confederated Tribes and Bands of the Yakama Nation v. Yakama County

Session 15 (Feb. 23) – Civil Jurisdiction

CB: 61-70, 410-413, 429-435, 461-465, 466-469

1. Worcester v. Georgia (review)
2. Williams v. Lee
3. Washington Super Court Rule CR 82.5 (SM)
4. New Mexico v. Mescalero Apache Tribe
5. Bryan v. Itasca County
6. California v. Cabazon Band of Mission Indians

Session 16 (Feb. 25) – Tribal-State Tax Conflicts

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CB: 418-422, 442-461, 471-477

1. McClanahan v. Arizona Tax Commission
2. Washington v. Confederated Tribes of the Colville Reservation
3. White Mountain Apache Tribe v. Bracker
4. Cotton Petroleum Corp. v. New Mexico
5. Washington Dep't of Licensing v. Cougar Den

Unit VI – Special Jurisdictional Arrangements

Session 17 (Mar. 2) Indian Gaming Regulatory Act

CB: 479-494, 503-504

1. Rumsey Indian Rancheria v. Wilson
2. In re Indian Gaming Related Cases
3. Lands on Which Indian Tribes May Conduct Gaming
4. Seminole Tribe of Florida v. Florida (SM)
5. California v. Iipay Nation of Santa Ysabel (SM)

Session 18 (Mar. 4) Indian Child Welfare Act

CB: 123-125, 504-539

1. American Indian Boarding Schools
2. House Rep. 95-1386

3. Indian Child Welfare Act
4. Mississippi Band of Choctaw Indians v. Holyfield
5. Adoptive Couple v. Baby Girl
6. In re A.J.S. (SM)

Group 7 Presentation

1. Brackeen v. Bernhardt (SM)

Session 19 (Mar. 9) Alaska & Hawaii

CB: 873-88, 888-892, 897-901, 906-921

1. Alaska Native Claims Settlement Act
2. Title VIII of ANILCA
3. Alaska v. Babbitt
4. A Road Map for Making Native American Safer (SM)
5. Simmonds v. Parks (SM)
 1. Joint Res. to Acknowledge the Overthrow of the Kingdom of Hawai'i
 2. Hawai'i v. OHA
 3. Melody MacKenzie, Native Hawaiian Law (SM)

Final examination available from March 15 to March 20