

NATIVE AMERICANS & THE LAW

NAS 50/Government 69

Dartmouth College

Spring Term 2014 10A

X-hour; Wed. 3:00 - 3:50 p.m.

N. Bruce Duthu

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Native American Studies

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Office Hours: 8:30-10:00 am

Tues & Thurs.

CLASS SYLLABUS

Required Texts:

AMERICAN INDIAN LAW: CASES & COMMENTARY 2nd Ed., Robert T. Anderson, Bethany Berger, Philip P. Frickey, & Sarah Krakoff (2010) (hereinafter CB).

N. Bruce Duthu, AMERICAN INDIANS AND THE LAW (2008) (hereinafter Duthu).

Recommended Texts:

Charles Wilkinson, AMERICAN INDIANS, TIME & THE LAW: NATIVE SOCIETIES IN A MODERN CONSTITUTIONAL DEMOCRACY (1987).

Frank Pommersheim, BROKEN LANDSCAPE: INDIANS, INDIAN TRIBES AND THE CONSTITUTION (2009);

Frank Pommersheim, BRAID OF FEATHERS: AMERICAN INDIAN LAW & CONTEMPORARY TRIBAL LIFE (1995).

Robert A. Williams, Jr. THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST (1990).

Robert A. Williams, Jr. LIKE A LOADED WEAPON (2005).

David E. Wilkins, AMERICAN INDIAN SOVEREIGNTY & THE US SUPREME COURT: THE MASKING OF JUSTICE (1997).

William C. Canby, AMERICAN INDIAN LAW IN A NUTSHELL (3rd. ed. 1998).

COURSE GOALS

Upon completion of this course, students should be able to:

- *Understand the foundational doctrinal rules and principles that govern relations among federal, tribal and state governments;

- *Appreciate the historical context within which the predominate rules and principles in the field of federal Indian law were developed and enforced;

- *Critically assess the nature and integrity of rule-making by governing bodies in accordance with prevailing constitutional, legal, and moral standards in this field;

- *Analyze and assess an emerging conflict in the field and propose solutions in accordance with the relevant and prevailing legal principles;

- *Discern salient connections between the legal, historical and political developments in this field and the broader concerns of American constitutional law, government and history;

- *Articulate the place of American Indian tribes within America's constitutional democracy.

COURSE REQUIREMENTS

There are four primary course requirements: (1) a research paper (40%); (2) a mid-term examination (25%); (3) a final examination (25%); (4) class participation (10%).

Research Paper: A research paper of about 15 pages in length (type-written, double-spaced, 12 pt. font, exclusive of cover page, endnotes & bibliography) is **DUE ON OR BEFORE 4:00 p.m. TUESDAY, JUNE 3rd** (the last day of final exams for spring term). More details on paper submissions will be provided later in the term but in general, papers must be submitted in hard copy (NO email submissions) at Sherman House by the due date. NOTE: Late submissions after the stated deadline will **NOT** be accepted in the absence of compelling reasons that are beyond the student's control (e.g. a sudden and unexpected medical emergency that requires medical treatment for which documentation is or can be made available). Students are permitted to write on any topic related to the course subject matter, whether discussed in class or not. Suggested paper topics will be offered early during the term to assist you in developing a topic and thesis. Papers must have a clearly identified, developed and supported thesis. Final papers must include a cover page containing title, student's name, course and date; endnotes or footnotes; and a bibliography of sources. The Dartmouth College Honor Code is in full effect for all aspects of your research. Sources must be properly and fully cited.

Mid-Term & Final Examination: These are in-class exams each containing short essay questions and problem-solving exercises. The latter problems are typical of law

school exam questions where students will be presented with hypothetical situations and asked to provide an analysis of the problem utilizing the body of law developed in the class. The **mid-term examination will take place on Thursday, April 24** during regular class times. The final exam will be cumulative, covering the breadth of material discussed throughout the course. The final exam period for spring 2014 is **May 30 - June 3**.

Class Participation: Class attendance is required. I expect to see enrolled students at every class absent compelling reasons which require your absence. I expect students to have read all assigned materials and come to class prepared to engage in active, thoughtful and productive discussion. I expect vigorous, healthy and respectful discourse on issues raised in class; critical analysis, not consensus, is a prime objective of these discussions.

READING ASSIGNMENTS

PART I: AMERICAN INDIANS, COLONIALISM & FEDERAL INDIAN POLICY

March 25 (Tuesday)

Introduction: American Indians Today

CB 1 – 13;
Duthu - Intro.

Taiaiake Alfred, "Sovereignty - An Inappropriate Concept,"
from PEACE, POWER AND RIGHTEOUSNESS: AN
INDIGENOUS MANIFESTO (1999)

Blackboard

March 27 (Thursday)

Foundations of Federal Indian Law: The Marshall Trilogy

The Discovery Doctrine - *Johnson v. McIntosh*

CB 15-44;
Duthu Ch. 4

Treaties & Measured Separatism - *The Cherokee Cases*

CB 44-77;
Duthu Ch. 1

PART II: LOCATING SOURCES OF AUTHORITY IN INDIAN COUNTRY

April 1 (Tuesday): No Class

***April 2 (Wed.) X-Hour**

Defining "Tribe" & "Indian Country"

CB 253-260

"Tribe:" *US v. Sandoval*; *Fed. Acknowledgment process* CB 253-260
& 272-73

"Indian Country:"

Solem v. Bartlett; *AK v. Village of Venetie* CB 274-298

April 3 (Thursday)

Doctrinal Roots of Federal/Tribal/State Power in Indian Country:

Federal Power in Indian Country: Source(s), Scope & Limits

The Federal "Plenary Power" Doctrine

Historical Cases CB 79-120
Ex Parte Crow Dog, *US v. Kagama*, *Lone Wolf v. Hitchcock*

20th Century US-Indian policy; background information CB 128-158

April 8 (Tuesday)

Modern era Cases CB 194-209
Morton v. Mancari; *Rice v. Cayetano*

April 10 (Thursday):

Remedies for Breach of Federal Obligations CB 210-251
US v. Tee-Hit-Ton; *US v. Sioux Nation*; *US v. Mitchell (I & II)*; *Cobell v. Norton*

Tribal Power in Indian Country: Source(s), Scope & Limits

April 15 (Tuesday)

Tribal Powers of Self-Governance CB 323-355
Talton v. Mayes; *US v. Wheeler*;
Santa Clara Pueblo v. Martinez

April 17 (Thursday)

Tribal Sovereign Immunity CB 356-360
Kiowa Tribe v. MTI; *Bay City v. MI* (2014)
Blackboard

April 22 (Tuesday)

State Authority in Indian Country CB 393-414;
Williams v. Lee; *AZ v. McClanahan & PL 280* Duthu Ch. 2

April 24 (Thursday)

MID-TERM EXAM (in class; open-book)

PART III: TRIBAL SOVEREIGNTY: A CLOSER LOOK

April 29 (Tuesday)

Tribal Authority over Individuals

CB 517-521

Criminal Jurisdiction:

CB 522-535 &

Oliphant v. Suquamish; Duro v. Reina;

593-628

*US v. Lara;**2013 ReAuthorized Violence Against Women Act**Duthu, SHADOW NATIONS: TRIBAL SOVEREIGNTY**& THE LIMITS OF LEGAL PLURALISM, CH. 5* Blackboard**May 1 (Thursday)***Civil & Regulatory Jurisdiction:*

CB 536-555; 574-

Montana v. US; Merrion v. Jicarilla Apache;

593; Duthu Ch. 3

*Atkinson Trading Co. v. Shirley; Nevada v. Hicks***May 6 (Tuesday)***Indian Child Welfare Act (1978); Holyfield*

CB 494-515;

Individual Rights v. Communitarian Rights

Duthu Ch. 7

*Baby Veronica case (2013)***May 8 (Thursday)**

Tribal Governments as Stewards of the Natural World

Duthu Ch. 5

Land Ownership & Environmental Regulation

CB 639-653

Albuquerque v. Browner ; AZ v. EPA

Hunting & Fishing Rights

CB 668-689

*Washington v. WA Comm. Fishing Vessel Assoc.***May 13 (Tuesday)**

Tribal Authority over Reservation Economies

Modern Day Tobacco Wars

CB 428-440

*WA v. Colville***May 15 (Thursday)**

Gambling, Casinos & IGRA

CB 454-459; 468-

470; Duthu Ch. 6

PART IV: TREATY & CONSTITUTIONAL RIGHTS**May 20 (Tuesday)**

Religion & Culture

CB 779-818

*Lyng v. NW Indian Cemetery; Employment Div. of OR v. Smith;**Navajo Nation v. US Forest Service*

May 22 (Thursday)

Cultural and Intellectual Property Rights
US v. Hardman (& Wilgus)

CB 818-838

May 27 (Tuesday): No Class

FINAL EXAM PERIOD: May 30 - June 3, 2014

FINAL RESEARCH PAPERS: DUE BY 4:00 P.M. TUESDAY, JUNE 3, 2014

NOTE: Other materials may be added and/or changed during the course of the semester. Students will be provided adequate notice thereof.