

SYLLABUS
37010-31 FEDERAL INDIAN LAW

Professor Carole Goldberg
Spring, 2006
Mondays and Tuesdays from 1:15-2:45

Coverage. This course provides an overview of Federal Indian Law, including the nature and history of the tribal↔federal legal and political relationship; basic legal definitions within federal Indian law (such as what is “Indian country”); equal protection issues posed by federal Indian legislation; canons of construction unique to Indian law; tribal sovereignty and its protection; basic questions of federal and state authority within Indian country; tribal, federal, and state jurisdiction in Indian country according to default rules as well as special statutory regimes; and an introduction to Indian property rights.

Course materials. The book for this course is Clinton, Goldberg, and Tsosie, American Indian Law: Native Nations and the Federal System, Revised 4th Edition, 2005, and 2005 Statutory Supplement. There is also a Cumulative Update for the casebook that is available at <http://www.lexisnexis.com/lawschool/study/texts/#indian>.

Office hours and other contacts. Absent an emergency, I will be available in my office on Tuesdays from 10:00 to 12:00. You may also make an appointment to see me, in person, by phone, or via email. I also encourage questions and comments via email.

Grading and paper. Your grade will be based 70% on an open-book, three-hour final examination and 30% on a paper that will be due on the last day of class (May 2) no later than 4:30 P.M. **Class performance/participation will be taken into account.**

The paper will consist of your analysis of law review writing(s) or a book dealing with Indian law, which you may choose from the list attached to this syllabus. **Please identify your first, second, and third preferences and return the list to me no later than Tuesday, February 28 or send me an email message with your selections by the end of that day.** I will be happy to discuss with you individually (in person, by phone, or via email) the various options for reading. The selections will be allocated on a random basis in cases where several students are interested in the same reading and few copies of the material are available. The paper you submit should be no longer than five pages, double-spaced, and should draw connections between what you have read and the material studied in class. Some of the questions you could choose to explore in your paper are:

- Did the reading contradict, supplement, or offer a critical perspective on the material?

- Did it illustrate particular points discussed in class in an especially vivid way?
- Did it demonstrate how aspects of economics or social structure affected the actual administration of the law?
- Did it give you a better sense of how the law came to be as it is?
- Did it offer a new solution to problems raised in the material?

Please try to do your reading as early as possible during the semester, so you can integrate the new information and perspectives into class discussion, and test your ideas out with your classmates and the professor. As we come to places in the course where particular readings are especially relevant, I will ask you to share some of your learning.

**Reading List (indicate top three choices)
37010-31 Federal Indian Law**

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1. S. James Anaya, *Indigenous Peoples in International Law* (2d ed. 2004) _____
2. Milner Ball, "Constitution, Court, Indian Tribes," 1987 *American Bar Foundation Research Journal* 1 (1987) _____
3. Russel Barsh and James Henderson, *The Road: Indian Tribes and Political Liberty* (1980) _____
4. Stuart Benjamin, "Equal Protection and the Special Relationship: The Case of Native Hawaiians," 106 *Yale Law Journal* 537 (1996) _____
5. Thomas Berger, *Village Journey* (1985) (about Alaska Natives) _____
6. Thomas Biolsi, *Deadliest Enemies: Law and the Making of Race Relations On and Off Rosebud Reservation* (2001) _____
7. Paul Brodeur, *Restitution* (1985) (about Eastern land claims) _____
8. Jack Campisi, *The Mashpee Indians: Tribe on Trial* (1991) _____
9. Robert Clinton, "There Is No Federal Supremacy Clause for Indian Tribes," 34 *Arizona State Law Journal* 113 (2002) & Robert Odawi Porter, "The Inapplicability of American Law to the Indian Nations," 89 *Iowa Law Review* 1595 (2004) _____

10. Stephen Cornell, *The Return of the Native: American Indian Political Resurgence* (1988) _____
11. Angie Debo, *And Still the Waters Run* (1946, 1972) (about allotment era) _____
12. Vine Deloria, Jr. and Clifford Lytle, *The Nations Within* (1998) _____
13. Vine Deloria, Jr. and David Wilkins, *Tribes, Treaties, and Constitutional Tribulations* (1999) _____
14. Robert Doherty, *Disputed Waters: Native Americans and the Great Lakes Fishery* (1990) _____
15. Diane Engelstad and John Bird, eds. *Nation to Nation: Aboriginal Sovereignty and the Future of Canada* (1992) _____
16. Donald Fixico, *The Invasion of Indian Country in the Twentieth Century* (1998) _____
17. Philip Frickey, "Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law," 107 *Harvard Law Review* 381 (1993) and "A Common Law for Our Age of Colonialism: The Judicial Divestiture of Indian Tribal Authority over Nonmembers," 109 *Yale Law Journal* 1 (1999) _____
18. David Getches, "Conquering the Cultural Frontier: The New Subjectivism of the Supreme Court in Indian Law," 84 *California Law Review* 1573 (1996) _____
19. Sidney Haring, *Crow Dog's Case* (1994) (Indian sovereignty in the nineteenth century) _____
20. John Hylton, ed., *Aboriginal Self-Government in Canada: Current Trends and Issues* (1994) _____
21. Steven Andrew Light and Kathryn R.L. Rand, *Indian Gaming and Tribal Sovereignty: The Casino Compromise* (2005) _____
22. Mark Edwin Miller, *Forgotten Tribes: Unrecognized Indians and the Federal Acknowledgment Process* (2004) _____
23. Kenneth Philp, ed., *Indian Self-Rule: First-Hand Accounts of Indian-White Relations from Roosevelt to Reagan* (1986) _____
24. Frank Pommersheim, *Braid of Feathers* (1995) (studies of Indian law) _____

25. Robert Porter, "A Proposal to the Hanodaganyas to Decolonize Federal Indian Control Law," 31 University of Michigan Journal of Law Reform 899 (1998) _____
26. Judith Resnik, "Dependent Sovereigns: Indian Tribes, States, and the Federal Courts," 56 University of Chicago Law Review 671 (1989) _____
27. Elmer R. Rusco, A Fateful Time: The Background and Legislative History of the Indian Reorganization Act (2000) _____
28. Petra Shattuck and Jill Norgren, Partial Justice: Federal Indian Law in a Liberal Constitutional System (1991) _____
29. Gail Sheffield, The Arbitrary Indian: The Indian Arts and Crafts Act of 1990 (1997) _____
30. Rebecca Tsosie, "Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge," 21 Vermont Law Review 225 (1996) _____
31. Lawrence Watters, ed., Indigenous Peoples, the Environment and Law (2004) _____
32. Charles Wilkinson, Blood Struggle: The Rise of Modern Indian Nations (2005) _____
33. Robert Williams, Jr., "The Algebra of Federal Indian Law: The Hard Trail of Decolonizing the White Man's Indian Jurisprudence," in 1986 Wisconsin Law Review 219 and responses by Robert Laurence and Williams in 30 Arizona Law Review 413, 439, and 459 (1988)
34. Robert Williams, Jr., Linking Arms Together (1997) (historical study of Indian treaties from a Native perspective) _____
35. Mary Christina Wood, "Indian Land and the Promise of Native Sovereignty: The Trust Doctrine Revisited," 1994 Utah Law Review 1471 and "Protecting the Attributes of Native Sovereignty: A New Trust Paradigm for Federal Actions Affecting Tribal Lands and Resources," 1995 Utah Law Review 109 _____

Name _____

READING ASSIGNMENTS

All readings are from Robert N. Clinton, Carole E. Goldberg, & Rebecca Tsosie, American Indian Law: Native Nations and the Federal System (Rev. 4th ed. 2005 printing), as augmented by the 2004-2006 Cumulative Update available online (see above). Please incorporate the Update as you carry out all of your reading for this class.

Week 1 (Feb. 6 & 7)

The Tribal↔Federal Relationship and Foundational Cases

Chapter 1, pp. 1-49; 51-52; 57-95

Week 2 (Feb. 13 & 14)

Treaty Relations and the Origins of Federal Plenary Power

Chapter 1, pp. 95-106; Chapter 4, pp. 439-463

Week 3 (Feb. 20 & 21)

Federal Definitions of Indian Nations and Indian Country

Chapter 2, pp. 119-129; 137-173

Week 4 (Feb. 27-28)

Equal Protection Issues, Indian Law Canons, and Nature of Tribal Sovereignty

Chapter 2, pp. 173-218; Chapter 3, pp. 219-230

Week 5 (Mar. 6 & 7)

Inherent and Federally Supported Tribal Authority; Federal Judicial Restrictions Preempting Inherent Tribal Authority

Chapter 3, pp. 240-247; pp. 230-235; Chapter 5, pp. 731-735; Chapter 4, pp. 540-586

Week 6 (Mar. 13 & 14)

Federal Judicial Restrictions and Congressional Acknowledgment of Inherent Tribal Authority; Interjurisdictional Respect and Recognition

Chapter 5, pp. 831-855; United States v. Lara and accompanying notes from Update, pp. 16-33; Chapter 3, pp. 267-296

Week 7 (Mar. 20 & 21)

Modern Tribal Governments; the Indian Civil Rights Act; Tribal Taxing and Regulatory Authority

Chapter 3, pp. 296-314; 328-334; Chapter 4, pp. 481-493; Chapter 5, pp. 709-739

March 27 & 28 Spring Break

Week 8 (April 3 & 4)

Tribal Sovereign Immunity; Sources, Scope, and Limits of Federal Power over Indian Affairs

Chapter 3, pp. 371-391; Chapter 4, pp. 415-439; 460-481

Week 9 (April 10 & 11)

Federal Trust Responsibility; Federal Civil Jurisdiction over Indian Country Claims

Chapter 4, pp. 493-540; Chapter 5, pp. 797-818

Week 10 (April 17-18)

Criminal Jurisdiction; State Claims to Authority in Indian Country

Chapter 5, pp. 657-707; Chapter 4, pp. 586-607

Week 11 (April 24-25)

State Claims to Authority in Indian Country (cont'd); Public Law 280

Chapter 4, pp. 607-634; Chapter 5, pp. 751-763; 876-906

Week 12 (May 1 & 2)

Tribal Property Rights and Claims

Chapter 6, pp. 1005-1084