NATIVE PEOPLES AND THE U.S. SUPREME COURT  
(LDST 301-01)

Spring 2024  
Time: Mondays 3:00-5:40
Place: Jepson 108
Phone: 287-6494 (office)

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COURSE DESCRIPTION:
The decisions of the U.S. Supreme Court have had a profound impact on the lives, liberties, and properties of Indigenous peoples. At times, the Court’s rulings have worked to protect Native peoples’ rights; at other times, the decisions have had devastating consequences. The purpose of this course, broadly put, is to explore the following question: What is the role and what has been the practice of the U.S. Supreme Court as a policy-making institution when dealing with Indigenous nations and their citizens?\(^1\) Such an inquiry invites us to think politically, historically, legally, and theoretically; to ask about the origins and exercise of federal judicial power; and to examine the application of federal law to Indigenous peoples and Native citizens in various areas of law.

APPROACH:
We will use several methods of analysis to study the relationship between the Court and Native nations and individuals: theoretical, behavioral, institutional, and case studies. The course will be divided into three sections. We begin by creating a philosophical and theoretical framework in which to evaluate both the role of the Court and its decisions. First, we will briefly look at Indigenous legal and political traditions and discuss how these influenced and were in turn influenced by western legal, political, and cultural traditions. We then turn to an examination of the Supreme Court as a uniquely situated “political” institution. Then we assess the various theories which purport to explain the interinstitutional (vis-a-vis the other branches of government) role of the court, and the court's role in national policy-making. We then examine a seminal question: whether or not Native nations are, in fact, an inherent part of the American constitutional matrix. With the historical, theoretical, and philosophical framework in place, in Part II we will read and analyze a substantial number of important Supreme Court decisions dealing both explicitly and implicitly with Indigenous nations and their citizens. Finally, we end the course with some readings on possible trends and directions this research area may be

\(^1\)Native individuals who belong to Native nations are citizens not only of their own nation, but are also entitled to the benefits and many of the responsibilities of the federal government and the state they officially reside in. This so-called treble citizenship status is one of the many complicating factors animating the study of federal Indian law and politics.
headquartered.

**REQUIREMENTS:**

1) Each student will be required periodically to be the **lead discussant** of an assigned article, book, or court opinion. I will make these assignments at the appropriate times. If you are leading the discussion on a given assignment you must submit your briefing comments in writing to me the day **before** you are scheduled to speak. I encourage you, class size and your budget permitting, to distribute your briefs to your classmates as soon as they are completed. (25%)

2) All students will also be required to submit two broad questions **every other week** to my email account no later than 5pm each Sunday. These questions should address pertinent issues raised or not raised in the week's readings. [**Note:** If you are the lead discussant of a particular reading you are exempt from questions for that class.] These questions should reflect your ability to compare and contrast information, to differentiate between facts and opinions, and to recognize and evaluate author or institutional bias. They should also indicate your competence to make critical judgments and draw firm conclusions about the materials read. If you agree or disagree with an author’s findings I will want to know why. I don’t always agree with some author’s viewpoints so I’ll be interested in your perspective. This exercise will help you focus on the readings and sharpens critical thinking. Because you will have already analyzed the materials, you will be prepared for class and more confident about engaging in substantive discussion. This is meant to be an opportunity for real engagement with these topics, not a way to find flaws. My goal is that you express your ideas confidently, but your remarks must be based in knowledge, not raw opinion. Submit your questions by e-mail. Always bring a copy of your questions to class. (25%)

3) As our class is small and meets only once a week, we will operate as a seminar. This means that each student will be expected to participate in critical discussions of each week’s readings. Your insights and your ability to share them are central to your academic development. As a former colleague once put it: “I see you as intellectual producers of knowledge; not as mere consumers of knowledge.” (25%)

4) There will be a **final exam.** These tests will consist of two broad essay questions. You’ll choose one and write a comprehensive answer in class. (25%)

**OTHER EXPECTATIONS:**

**Cell phones may never be used during class. Laptops are not allowed either,** with one exception: if you have a documented need recognized by the university’s Disability Service office. You must have paperwork verifying the same.

In addition to the above-mentioned assignments, the only other requirement is that you be
punctual and regularly attend class. Three (3) unexplained absences and you will be administratively dropped from the course.

I weight the above requirements as follows:

**Undergraduates:**
Weekly Questions = 25%
Briefings = 25%
Participation = 25%
Final Exam = 25%

The scale for grades is the typical, albeit imperfect, 10-point system: 94-100 = A; 90-93 = A-; 87-89 = B+; 84-86 = B, etc.

I encourage you to form small groups to discuss the lectures and readings. It also behooves you to take copious notes of each reading. **Hi-liting** particular passages does only that, it **hi-lites**. Retention of the meaning of this often convoluted material will require you to write out detailed notes for each article, book, or case we study.

I do not assign extra-credit projects, I do not loan my notes, and I do not use a curved grading system. I also reserve the right to modify our readings as the semester progresses. If I do make any modifications you will be notified in advance.

As you can see, I expect a high level of intellectual discussion each time we meet. I also maintain a professional learning environment that expects participation and the constructive exchange of ideas. All viewpoints are welcome, as is scrutiny of those viewpoints. Like many others, I continue to learn about and will always show respect for diverse perspectives and identities.

Finally, I have a somewhat formal approach to teaching based in respect for learning and the privacy of my students. Therefore, I will address you by your last name and ask that you let me know your preferred honorific, such as Ms., Mr., or Mx. Like most people of my generation I am still learning and getting accustomed to more inclusive identifications and will do my best to address everyone appropriately.

**REQUIRED TEXTS (All Students):**


David E. Wilkins and Tsianina Lomawaima. *Uneven Ground: American Indian Sovereignty and
ADDITIONAL READINGS (All Students):


Other readings have been placed on Blackboard.

TOPICS AND READINGS
(Read it and Reap!)

[Note: The amount of time devoted to each section will vary depending on the material and student interest]

INTRODUCTION TO THE COURSE

PART ONE

A. Indigenous political and legal traditions and western law

READ:


B. An Overview: The Supreme Court as a Political Institution in a Federal system: Legitimator, Initiator, or Imperial Power?

READ:


C. An Overview: Indigenous Peoples and the U.S. Constitution: Are Native nations constitutional or extra-constitutional polities?

READ:


PART TWO

D. Indigenous Status, Federal Relations, ADependency,@ Trust, and Plenary Power

READ:


*Cherokee Nation vs. Georgia*, 30 U.S. (5 Pet.) 1 (1831)

The Kansas Indians, 72 U.S. (5 Wall.) 737 (1867)


Lone Wolf vs. Hitchcock, 187 U.S. 553 (1903)

U.S. vs. Mazurie, 419 U.S. 544 (1975)


E. Aboriginal Land Title and Indian Country

READ:


Johnson vs. McIntosh, 21 U.S. (8 Wheat.) 543 (1823)


Tee-Hit-Ton Indians vs. United States, 348 U.S. 272 (1955)


SPRING BREAK (March 8-17)

F. Criminal and Civil Jurisdiction

READ:

Criminal Cases:

Ex Parte Crow Dog, 109 U.S. 556 (1883)
U.S. vs. Kagama, 118 U.S. 375 (1886)


Talton vs. Mayes, 163 U.S. 376 (1896)


Civil Cases:

Williams vs. Lee, 358 U.S. 217 (1958)


Nevada vs. Hicks, 533 U.S. 353 (2001)

United States v. Cooley, 593 U.S. ___ (2021)

G. Hunting, Fishing, and Water Rights

READ:

U.S. vs. Winans, 198 U.S. 371 (1905)

Winters vs. U.S., 207 U.S. 564 (1908)


Arizona v. Navajo Nation, 599 U.S. ___ (2023)


READ:

Elk vs. Wilkins, 112 U.S. 94 (1884)


Santa Clara Pueblo vs. Martinez, 436 U.S. 49 (1978)


Haaland v. Brackeen, 599 U.S. ___ (2023)


PART THREE

I. Final Thoughts?

READ:

David E. Wilkins and Tsianina Lomawaima, Uneven Ground (2001): Chapter 7 & Conclusion

FINAL EXAM (April 22)