

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

Spring 2026  
Time: Tuesdays 3:00-5:40  
Place: Jepson 108  
Phone: 287-6494 (office)

David E. Wilkins, Prof.  
Office: Jepson 133  
Office Hours: Tuesdays 12-2:00  
E-mail: [dwilkins@richmond.edu](mailto:dwilkins@richmond.edu)

**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?<sup>1</sup> 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 two major sections. In Part I 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 aim to explain the *interinstitutional* (vis-a-vis the other branches of government) role of the court, and the court's role in national *policymaking*. We then examine a seminal question: whether 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 two readings on possible trends and directions this research area may be headed.

---

<sup>1</sup>Native individuals who belong to Native nations are citizens not only of their own nation, but are also entitled to many of the benefits and 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.

**REQUIREMENTS (Each of these four requirements counts as 25% of your grade):**

- 1) Over the course of the semester, each student will be the **lead discussant** of assigned articles, books, or court opinions. I will make these assignments at the appropriate times. If you are leading the discussion, you must submit your critical analysis or legal brief in writing to me no later than 5pm on Monday the day before you are scheduled to speak. I encourage sharing your reviews/briefs with your classmates as soon as they are completed.  
We'll discuss the requirements and format for your *legal brief* in class.  
For your *critical analysis* be sure to **analyze**, not merely **summarize**, what you've read. In other words, scrutinize the work to identify and describe the author(s) main question or thesis.
  - What kind of data was used to make their argument?
  - Does this reading relate to other readings?
  - Did you find it to be substantial or significant? Why or why not?
  - What did you learn from this reading?
  - Is there something the author(s) missed or should have covered in greater detail?
- 2) As the **lead discussant** you will then be expected to guide our class discussion of the essay, chapter, or case you wrote about. Your **class presentation** will be graded separately from your written analysis/brief.  
The in-class presentation may simply be a straight-forward discussion of your critical assessment; a substantive PowerPoint; or some other approach of your choosing that informs and guides the discussion.
- 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."
- 4) There will be a comprehensive **final exam**. This test will consist of two broad essay questions. You'll choose one and write a comprehensive answer in class.

We will also view and discuss documentaries during the semester.

OTHER EXPECTATIONS:

**Computers, tablets, and cell phones may never be used during class** as they are distracting and interrupt the flow of our seminar discussions. Make sure your device is silent and never visible during class. I will ask you to step out if this rule is violated.

**Artificial Intelligence tools, such as, but not limited to, ChatGPT may not be used to complete any assignment for our class. As a student at the UR, you are bound by the Honor Code, and I will refuse any work submitted without the honor pledge or that relied on generative AI for any stage of the work from conception to completion.**

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 weigh the above requirements as follows:

Undergraduates:

Critical Analysis or Legal Briefs	= 25%
Classroom presentation	= 25%
Weekly 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. You will be notified in advance of any changes.

As you can see, I expect a high level of intellectual discussion. I also maintain a professional learning environment that is grounded in 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 on 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 many of my generation (Jurassic Age) I am still learning and getting accustomed to more inclusive identifications and will do my best to address everyone appropriately.

REQUIRED TEXTS (All Students):

Carole Goldberg, Kevin K. Washburn, and Philip P. Frickey. *Indian Law Stories*. (NY: Thompson Reuters/Foundation Press, 2011).

David M. O'Brien. *Storm Center: The Supreme Court in American Politics*. 12th ed. (New York: W.W. Norton & Co., 2020).

David E. Wilkins and Tsianina Lomawaima. *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman, OK: University of Oklahoma Press, 2001).

ADDITIONAL READINGS (All Students):

The Supreme Court cases are available in hard copy at the Law Library. You will also find them on the internet under Lexis/Nexis. Other helpful websites include: [www.oyez.org](http://www.oyez.org), [www.supreme.justia.com](http://www.supreme.justia.com), [www.law.cornell.edu/supremecourt/text](http://www.law.cornell.edu/supremecourt/text), or [www.caselaw.findlaw.com/us-supreme-court](http://www.caselaw.findlaw.com/us-supreme-court).

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:

Robert A Williams, Jr. *Linking Arms Together: American Indian Treaty Visions of Law & Peace, 1600-1800* (NY: Oxford University Press, 1997): Introduction and Chapter 1, pgs. 3-39.

Carole Goldberg and Kevin K. Washburn, *Indian Law Stories* (Oklahoma Press, 2016): Introduction.

David E. Wilkins and Tsianina Lomawaima, *Uneven Ground* (2001): Introduction.

Vine Deloria, Jr., "Laws Founded in Justice and Humanity: Reflections on the Content and Character of Federal Indian Law," *Arizona Law Review* 31 (1989): 203-223.

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

READ:

Clinton Rossiter, ed. *The Federalist Papers* (New York: Mentor, 1961, 1999): Numbers 78-82, pages 432-463.

Robert Dahl, "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker" *Journal of Public Law* 6 (1957): 279-295.

David M. O'Brien. *Storm Center: The Supreme Court in American Politics* (Norton, 2020). Preface and Chap's 1, 4, 5 & 6.

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

READ:

Vine Deloria, Jr., "The Application of the Constitution to American Indians," in Lyons and Mohawk, eds. *Exiled in the Land of the Free* (Santa Fe, NM: Clear Light Publishers, 1992): 281-315.

David E. Wilkins and Tsianina Lomawaima, *Uneven Ground* (2001): Chapters 3-5.

PART TWO

**D. Indigenous Status, Federal Relations, "Dependency," Trust, and Plenary Power**

READ:

David Wilkins and Tsianina Lomawaima, *Uneven Ground* (2001): Chapter 2.

Rennard Strickland, "The Tribal Struggle for Indian Sovereignty: The Story of the *Cherokee Cases*" in Goldberg, Washburn & Frickey (2011), pgs. 61-80. (**Skim**)

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

*Worcester vs. Georgia*, 31 U.S. (6 Pet.) 515 (1832)

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

Angela R. Riley, “The Apex of Congress’ Plenary Power over Indian Affairs: The Story of *Lone Wolf v. Hitchcock*,” in Goldberg, Washburn & Frickey (2011), pgs. 189-228. **(Skim)**

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

*U.S. vs. Lara*, 541 U.S. 193 (2004)

*Yellen v. Confederated Tribes of the Chehalis Reservation*, 594 U.S. \_\_\_\_ (2021)

## **E. Aboriginal Land Title and Indian Country**

READ:

David Wilkins and Tsianina Lomawaima, *Uneven Ground* (2001): Chapter 1.

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

Lindsay G. Robertson, “The Judicial Conquest of Native America: The Story of *Johnson v. M’Intosh*,” in Goldberg, Washburn & Frickey (2011), pgs. 29-59. **(Skim)**

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

Joseph William Singer, “Erasing Indian Country: The Story of *Tee-Hit-Ton Indians v. United States*,” in Goldberg, Washburn & Frickey (2011), pgs. 229-259. **(Skim)**

*McGirt v. Oklahoma*, 591 U.S. \_\_\_\_ (2020)

## **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)

Sidney L. Haring, “The Distorted History that Gave Rise to the “So-Called” Plenary Power Doctrine: The Story of *United States v. Kagama*,” in Goldberg, Washburn & Frickey (2011), pgs. 149-188. **(Skim)**

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

*Oliphant vs. Suquamish Tribe*, 435 U.S. 191(1978)

Sarah Krakoff, “Mark the Plumber v. Tribal Empire, or Non-Indian Anxiety v. Tribal Sovereignty?: The Story of *Oliphant v. Suquamish Indian Tribe*,” in Goldberg, Washburn & Frickey (2011), pgs. 261-296. **(Skim)**

*Oklahoma vs. Castro Huerta*, 597 U.S. 629 (2022)

## **MARCH 6-15—SPRING BREAK**

### ***Civil Cases:***

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

Bethany R. Berger, “Sheep, Sovereignty, and the Supreme Court: The Story of *Williams v. Lee*,” in Goldberg, Washburn & Frickey (2011), pgs. 359-387. **(Skim)**

*Montana vs. U.S.* 450 U.S. 544 (1981)

John P. Lavelle, “Beating a Path of Retreat from Treaty Rights and Tribal Sovereignty: The Story of *Montana v. United States*,” in Goldberg, Washburn & Frickey (2011), pgs. 535-590. **(Skim)**

*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)

Judith V. Royster, “Water, Legal Rights, and Actual Consequences: The Story of *Winters v. United States*,” in Goldberg, Washburn, & Frickey (2011), pgs. 81-107. **(Skim)**  
*Menominee Tribe vs. U.S.*, 391 U.S. 404 (1968)

*Arizona v. Navajo Nation*, 599 U.S. \_\_\_\_ (2023)

### **H. Indigenous Rights in other areas: Citizenship, Preference, Religion, Children, and peoples of Alaxsxaq and Kānaka Maoli and Final Thoughts**

READ:

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

*U.S. vs. Nice*, 241 U.S. 591 (1916)

*Morton vs. Mancari*, 417 U.S. 535 (1974)

Carole Goldberg, “What’s Race Got to Do With It? The Story of *Morton v. Mancari*,” in Goldberg, Washburn & Frickey (2011), pgs. 389-420. (**Skim**)

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

Gloria Valencia-Weber, “Three Stories in One: The Story of *Santa Clara Pueblo v. Martinez*,” in Goldberg, Washburn & Frickey (2011), pgs. 451-488. (**Skim**)

*Lyng vs. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988)

Amy Bowers and Kristen A. Carpenter, “Challenging the Narrative of Conquest: The Story of *Lyng v. Northwest Indian Cemetery Protective Association*,” in Goldberg, Washburn & Frickey (2011), pgs. 489-533. (**Skim**)

*Haaland v. Brackeen*, 599 U.S. \_\_\_\_ (2023)

David E. Wilkins, *Indigenous Governance: Clans, Constitutions, and Consent*. (NY: Oxford University Press, 2024): Chapter 14 “Peoples of Alaxsxaq and Kānaka Maoli.”

## **I. Final Thoughts?**

READ:

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

Walter R. Echo-Hawk, *In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided* (Golden, CO: Fulcrum Publishing, 2010): Chapter 15.

**FINAL EXAM (April 21st)**