



IDEALISTS REALISTS.
CATALYSTS FOR CHANGE.

Native Americans & the Law 2024 Fall

Professor Mia Montoya Hammersley

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Course Syllabus

Welcome to Native Americans and the Law! This 3-credit survey course focuses on the constitutional, statutory, and jurisprudential rules of law which make up the field of federal Indian law. Attention will be given to the historical framework from which the rules were derived. The course explores the legal and political relationship between the United States and American Indian and Alaska Native Nations. We will cover the principles governing tribal property and treaty rights, tribal sovereignty, Congressional plenary power, the Trust responsibility, and civil and criminal jurisdiction in Indian Country. We will also cover the basics of both tribal law and International Indigenous human rights law.

Course Materials

The required casebook for the course is GETCHES, WILKINSON, WILLIAMS, AND FLETCHER, CASES AND MATERIALS ON FEDERAL INDIAN LAW (7th ed. 2017). A copy will be on reserve at the library. Additional materials will be posted on Canvas.

We will also rely heavily on SAVAGE ANXIETIES: THE INVENTION OF WESTERN CIVILIZATION by Robert A. Williams Jr. and AN INDIGENOUS PEOPLES' HISTORY OF THE UNITED STATES by Roxanne Dunbar-Ortiz. Select materials will be provided in Canvas, but obtaining your own copies is optional. We will also listen to several podcast episodes of the [All My Relations Podcast](#).

Course Schedule

We will meet in person in Oakes Hall, Classroom 208 on Mondays and Wednesdays from 12:45pm to 2:00pm.

Learning Outcomes (ABA Standard 302)

The primary goal of this course is to foster an understanding of the unique political and legal status of federally recognized American Indian and Alaska Native Nations under U.S. law. This course focuses on domestic U.S. law, but also involves an introduction to tribal law and international human rights law. By the end of the course, a student should be able to:

- (1) Articulate the historical sources and context within which the principles of federal Indian law were developed.
- (2) Understand the legal basis for the distinctive political status of federally recognized American Indian and Alaska Native Nations.
- (3) Understand the jurisdictional authorities governing Indian and non-Indian conduct within “Indian Country.”
- (4) Understand the nature of tribal governments as sovereigns, including the reach of their legislative and adjudicatory authority within Indian Country, the scope of tribal sovereign immunity, and the authority of tribal governments to enter into intergovernmental agreements.
- (5) Differentiate the rights of Indigenous peoples to self-determination under international human rights law and understand how that concept aligns with the domestic U.S. construction of tribal self-determination.

Grading

- **Participation and Professionalism (15%):** Regular and punctual attendance, demonstrated engagement with assigned materials, and respectful engagement with your peers is required. Absences, tardiness, and low class participation will impact your grade.
 - o You may also earn participation credit by emailing one-page substantive reading reflections to Professor Montoya at mmontoya@vermontlaw.edu no later than 5PM the evening before any class. The reflection should demonstrate some substantive analysis of the material, rather than a summarization. Reading reflections are not required but are another option for earning participation credit for those who are less comfortable speaking up in class.
 - o In addition, every student will have one “pass” for participation that you can use by emailing me at least an hour before class. You do not need to explain why you would like the pass. It’s there for the times that you want

to come to class but may not be prepared to speak for reasons beyond your control.

- o Adhering to the classroom community agreements outlined below is also important for your participation grade.
- **Midterm Assignment (25%)**
- **Final paper (60%)**

Advanced Writing Requirement

You can choose to satisfy the Advanced Writing Requirement (AWR) in this class. If you do, you will need to secure an alternative faculty advisor and propose a series of deadlines for your outline, first draft, and final draft to be submitted to me by the second week of class. If you do not complete first draft by the date agreed upon, you will not be allowed to continue with your AWR and will instead be required to complete the final paper assignment.

Attendance Policy

Students are required by Vermont Law and Graduate School and by the ABA to maintain regular and punctual attendance in all classes:

- Students who are absent from twenty percent (20%) of the regularly scheduled classes or who fail to complete required hours for other work shall be automatically withdrawn from the course with a grade of F-Wd.
- Instructors are required to notify the registrar's office of any student who misses more than the allowed classes.
- Students are responsible for monitoring their own compliance with this policy.
- Individual faculty cannot authorize absences in excess of those permitted under this policy.
- If you have questions about VLGS's attendance policy, contact Vice Dean for Students Professor Joe Brennan, jbrennan@vermontlaw.edu, 802-831-1244.

Your health and wellness are important. Please reach out to Professor Montoya ahead of time if you are struggling and need support or need to miss a class due to an illness or emergency.

Although viewing the course on Teams does not count towards your attendance, I encourage you to do so in support of your studies when you are not able to attend in person.

Please do your part to care for yourself and our community by either staying home or wearing a mask if you have cold or flu symptoms.

Accommodations

Vermont Law and Graduate School is required by Section 504 of the Rehabilitation Act and the Americans with Disabilities Act to provide reasonable accommodations for students with disabilities if such accommodations are necessary to provide equitable access to programs and services. If you seek accommodations, please contact VLGS's Section 504 Coordinator, Associate Dean of Diversity, Equity, and Inclusion Lisa Ryan, lryan@vermontlaw.edu, 802-831-1079.

More information about accommodations at VLGS is available at <https://www.vermontlaw.edu/community/students/academic-success/accommodations>.

I also commit to shaping a classroom environment that challenges ingrained ableism.

Classroom Community Agreements

This course engages a difficult history and set of issues and requires discussion of topics that might be challenging or triggering for some students. Your wellbeing is of the utmost importance, and I strive to make this class a space for students to engage difficult issues and learn from their peers. I encourage robust discussion of all our cases and issues. In order to foster a safe and fruitful learning environment, students must adhere to the following community agreements as a condition of taking this course:

- Listen and respond to all perspectives with respect.
- Strive to approach disagreements with curiosity.
- Take the lessons, leave the stories—please do not take any part of sensitive classroom discussion out of the room in a way that compromises student identities.
- Make an effort to understand and engage with arguments in class that you personally disagree with. This is an important learning exercise, and it is a crucial skill for becoming an excellent attorney or advocate. In the words of Sun Tzu, “If you know yourself but not the enemy, for every victory gained you will also suffer a defeat.”
- Challenge yourself not to become defensive.
- Engage in difficult conversations with care for your own boundaries.

Together, we can create a learning community that is inclusive and respectful.

Course Outline and Assignments

The following reading assignments are tentative, and adjustments may be made as the semester progresses.

Week 1 August 26, 2024 (Monday)	The Origins of Federal Indian Law <ul style="list-style-type: none">• Casebook pages 1–32 (through Robert A. Williams, Jr., Columbus’s Legacy: The Rehnquist Court’s Perpetuation of European Cultural Racism Against American Indian Tribes)• An Indigenous Peoples’ History of the United States Introduction & Chapter 1• All My Relations Podcast Episodes: Can a DNA test make me Native American? and Beyond Blood Quantum
August 28, 2024 (Wednesday)	The Doctrine of Discovery & Colonizing Legal Theory <ul style="list-style-type: none">• Casebook Chapter 2, pages 47–70 (stop at <i>Johnson v. McIntosh</i>)• Savage Anxieties Introduction & Chapter 11 (posted on Canvas)• All My Relations Podcast Episode: Native Mascots
Week 2 September 2, 2024 (Monday)	Campus closed for Labor Day; No Class
September 4, 2024 (Wednesday)	The Marshall Trilogy <ul style="list-style-type: none">• Casebook Chapter 2, pages 71-83 (<i>Johnson v. McIntosh</i>)• Additional readings: “Joint Statement of the Dicasteries for Culture and Education and for Promoting Integral Human Development on the “Doctrine of Discovery”” and review the United Nations Declaration on the Rights of Indigenous People (UNDRIP)

<p>Week 3</p> <p>September 9, 2024 (Monday)</p>	<p>The Marshall Trilogy Continued: the Cherokee Cases & Justifications for Removal</p> <ul style="list-style-type: none"> • Casebook pages 116–154 (<i>Worcester v. Georgia & Cherokee Nation v. Georgia</i>) • An Indigenous Peoples' History of the United States Chapter 6
<p>September 11, 2024 (Wednesday)</p>	<p>The Federal-Tribal Treaty Relationship</p> <ul style="list-style-type: none"> • Casebook pages 85–114 (<i>County of Oneida v. Oneida Indian Nation</i>) • An Indigenous Peoples' History of the United States Chapter 5
<p>Week 4</p> <p>September 16, 2024 (Monday)</p>	<p>Modern applications of the Marshall cases: Treaty rights as “reserved rights” and the Indian law canons of Construction</p> <ul style="list-style-type: none"> • Casebook pages 154–165 (<i>Washington, Winans</i>), 937-952 (<i>Mille Lacs</i>)
<p>September 18, 2024 (Wednesday)</p>	<p>Modern applications of the Marshall cases Continued: Treaty rights as “reserved rights” and the Indian law canons of Construction</p> <ul style="list-style-type: none"> • Casebook pages 893 – 921 (<i>skip Winans, stop at Washington</i>); 942 – 953 • All My Relations Podcast Episode: Food Sovereignty – A Growing Movement
<p>Week 5</p> <p>September 23, 2024 (Monday)</p>	<p>Tribal Water Rights: Federal Reserved Rights and Water Adjudications</p> <ul style="list-style-type: none"> • Casebook pages 815 – 863 • Additional assignments TBD
<p>September 25, 2024 (Wednesday)</p>	<p>Tribal Water Rights: Continued</p> <ul style="list-style-type: none"> • Casebook pages 864 – 891 • Report: Federal Barriers Limit Native American Benefits from Water Right Settlements

<p style="text-align: center;">Week 6</p> <p style="text-align: center;">September 30, 2024 (Monday)</p> <p><i>*Orange Shirt Day*</i></p>	<p>Allotment & Assimilation</p> <ul style="list-style-type: none"> • Casebook pages 167 – 180, 194 – 212 • All My Relations Podcast Episode: Native Children Belong in Native Homes • Watch: After 140 Years, Native Youth Lead Return of 10 Children’s Remains from Carlisle Indian School in PA (youtube.com) <p><i>*Trigger Warning</i> – this week’s readings and discussion may include heavy topics involving child abuse and sexual assault. Please reach out to me ahead of time if you need to modify your participation on this day.</p>
<p style="text-align: center;">October 2, 2024 (Wednesday)</p>	<p><i>Guest Speaker:</i> Tribal Law & Tribal Courts</p> <ul style="list-style-type: none"> • Casebook pages 415–431; 465–473 (Stop at “Raymond D. Austin, ADR and the Navajo Peacemaker Court”); 489–500 (Alternative Tribal Dispute Resolution Mechanisms to Tribal Code Development)
<p style="text-align: center;">Friday, October 4th</p>	<p style="text-align: center;">Midterm Assignment Posted</p>
<p style="text-align: center;">Week 7</p> <p style="text-align: center;">October 7, 2024 (Monday)</p>	<p><i>Guest Speaker:</i> International Indigenous Human Rights</p> <ul style="list-style-type: none"> • Casebook pages 1100 – 1128 • Review UNDRIP • Additional readings TBD
<p style="text-align: center;">October 9, 2024 (Wednesday)</p>	<p>Treaty Relations and the Origins of Federal Plenary Power</p> <ul style="list-style-type: none"> • Casebook pages 180 – 214 (<i>Ex parte Crow Dog, Kagama, Sandoval, Lonewolf</i>)

Friday, October 11th	Midterm Assignment due by 5:00 pm EST
Week 8 October 14, 2024 (Monday)	No class today; school closed for fall break.
October 16, 2024 (Wednesday)	Indian Reorganization Act to Termination to Self-Determination <ul style="list-style-type: none"> • Casebook pages 216 – 255 • An Indigenous Peoples' History of the United States Chapter 7

Weeks 9-15:

I will distribute an updated Assignment Sheet for Weeks 9-15 over the fall break. During the remainder of the semester, we will cover the following topics:

- Tribal Sovereignty
- The Federal Trust Responsibility
- Tribal Sovereign Immunity
- Criminal Jurisdiction in Indian Country
- Civil Jurisdiction in Indian Country
- Taxation and Regulatory Jurisdiction in Indian Country
- The Indian Child Welfare Act
- The Indian Gaming Regulatory Act & Tribal Economic Development
- Cultural Resources Protection