

FEDERAL INDIAN LAW

Troy A. Eid
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University of Denver-Sturm College of Law
Spring 2021
Mondays & Wednesdays, 2:45 – 4 p.m. Mountain Time

COURSE DESCRIPTION: The sovereign status of the 574 Federally recognized Native American and Alaska Native tribal nations predates the United States and is the foundation for thousands of Federal statutes and court decisions collectively known as Federal Indian law.

COURSE MATERIALS: Robert T. Anderson, Bethany Berger & Sarah Krakoff, *AMERICAN INDIAN LAW: CASES AND COMMENTARY* (.4th Ed., 2019); and Carole Goldberg, Kevin K. Washburn & Philip P. Frickey, eds., *INDIAN LAW STORIES* (2011).

GRADING: 75 percent of each student's grade shall be based on the writing and presentation of a substantial paper, not less than 25 pages double-spaced in length, on an original topic developed and selected by the student and approved by Professor Eid. The remaining 25 percent of students' grades shall be based on class participation.

CONTACT INFORMATION: I am most easily accessible by email eidt@gtlaw.com. My cell phone is 303-918-6298. You may also contact me at my downtown Denver office at 303-572-6521 or through my assistant, Ms. Hanh Nguyen, at nguyenha@gtlaw.com.

Disabilities/Medical Issues: If you have a disability/medical issue protected under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act and need to request accommodations, please visit the Disability Services Program website at www.du.edu/disability/dsp. You may also call 303.871.2372, or visit in person on the 4th floor of Ruffato Hall, 1999 E. Evans Ave. <http://www.du.edu/studentlife/disability-services/faculty-staff/index.html>.

COURSE SYLLABUS

Jan. 20th: Prelude: 'The Vanishing American' Who Didn't

Readings for class: *AMERICAN INDIAN LAW*, Chapter 1 (pp. 1-13); and "The Repatriation of Human Remains & Artifacts, Excavated at Mesa Verde in 1891 by Gustaf Nordenskiöld, to Native American Tribes," A Conversation with Cliff Spencer, Superintendent, Mesa Verde National Park, The Mesa Verde Foundation, October 2020, accessible at

<https://bluejeans.com/playback/s/CE7xzFRfNkHfZr oL2EP8SobKuxDoKkkNbbsUjzWKg1ySiZdfmnmvNnd FwXsYL3I6>.

Jan. 25th: Johnson v. M'Intosh: The Doctrine of Discovery

Reading for class: *AMERICAN INDIAN LAW*, Chapter 2 (pp. 15-43).

Jan. 27th: Johnson v. M'Intosh: The Doctrine of Discovery (continued)

Reading for class: Lindsay G. Robertson, "The Judicial Conquest of Native America: The Story of *Johnson v. M'Intosh*," *INDIAN LAW STORIES*, Chapter 1 (pp. 29-59).

Feb. 1st: Tribal Sovereignty and the Cherokee Cases

Readings for class: *AMERICAN INDIAN LAW*, Chapter 2 (pp. 44-75); and Rennard Strickland, "The Tribal Struggle for Indian Sovereignty: The Story of the *Cherokee Cases*," *INDIAN LAW STORIES*, Chapter 2 (pp. 62-80).

Feb. 3rd: The Reservation Era

Reading for class: *AMERICAN INDIAN LAW*, Chapter 3 (pp. 77-103).

Feb. 8th: Allotment, Assimilation and Congressional Plenary Power

Reading for class: *AMERICAN INDIAN LAW*, Chapter 3 (pp. 104-126).

Guest Presenter: Kyle Montour (St. Regis Mohawk) (DU Law '15) Greenberg Traurig, LLP, Denver and Associate Appellate Judge, St. Regis Mohawk Court of Appeals

Feb. 10th: Wellness Day – No Class

Feb. 15th: Allotment, Assimilation and Congressional Plenary Power (continued)

Reading for class: Angela R. Riley, "The Apex of Congress' Plenary Power over Indian Affairs: The Story of *Lone Wolf v. Hitchcock*," *INDIAN LAW STORIES*, Chapter 6 (pp. 189-228).

Feb. 17th: The 'Indian New Deal'

Reading for class: *AMERICAN INDIAN LAW*, Chapter 3 (pp. 126-138).

Feb. 22nd: Termination

Readings for class: *AMERICAN INDIAN LAW*, Chapter 3 (pp. 138-147); and Duane Champagne and Carole Goldberg, *CAPTURED JUSTICE: NATIVE NATIONS AND PUBLIC LAW 280* (Carolina Academic Press, 2012), Chapter 1 (pp. 3-25) (provided).

Feb. 24th: The Tribal Self-Determination Movement

Reading for class: *AMERICAN INDIAN LAW*, Chapter 3 (pp. 147-162).

Mar. 1st: Indians, Tribes & Indian Country

Readings for class: *AMERICAN INDIAN LAW*, Chapter 5 (pp. 251-284); Gerald Torres, "Who Is an Indian? The Story of *United States v. Sandoval*," *INDIAN LAW STORIES*, Chapter 6 (pp. 109-145).

Mar. 3rd: Indians, Tribes & Indian Country (continued)

Reading for class: *AMERICAN INDIAN LAW*, Chapter 5 (pp. 284-304).

Mar. 8th: Oliphant & Criminal Jurisdiction in Indian Country

Readings for class: *AMERICAN INDIAN LAW*, Chapter 8 (pp. 541-559); and *AMERICAN INDIAN LAW*, Chapter 5 (pp. 316-330).

Mar. 10th: Oliphant & Criminal Jurisdiction in Indian Country (continued)

Readings for class: Sarah Krakoff, "Mark the Plumber v. Tribal Empire, or Non-Indian Anxiety v. Tribal Sovereignty? The Story of *Oliphant v. Suquamish Indian Tribe*," *INDIAN LAW STORIES*, Chapter 8 (pp. 261-296); and Troy A. Eid, "No Surrender: Fighting for Native American Justice," 9 *FLORIDA INTERNATIONAL UNIVERSITY LAW REVIEW* 211 (Spring 2014), pp. 211-225 (provided).

Mar. 15th: Criminal Jurisdiction & Treaty Rights

Readings for class: *McGirt v. Oklahoma*, No. 18-9526 (Supreme Court of the United States, July 9, 2020) (provided).

Guest Presenter: Jennifer H. Weddle, Co-Chair, American Indian Law Practice Group, Greenberg Traurig, LLP & counsel of record to former United States Attorneys amici in *McGirt*.

Mar. 17th: Tribes' Civil Jurisdiction: The *Montana* Doctrine

Reading for class: *AMERICAN INDIAN LAW*, Chapter 8 (pp. 559-576).

Mar. 22nd: Tribes' Civil Jurisdiction: The *Montana* Doctrine (continued)

Readings for class: *AMERICAN INDIAN LAW*, Chapter 8 (pp. 577-600); and John P. LaVelle, "Beating a Path of Retreat from Treaty Rights and Tribal Sovereignty: The Story of *Montana v. United States*," *INDIAN LAW STORIES*, Chapter 16, pp. 535-572.

Mar. 24th: Tribes' Civil Jurisdiction: The *Montana* Doctrine (continued)

Reading for class: *AMERICAN INDIAN LAW*, Chapter 8 (pp. 600-619)); and John P. LaVelle, "Beating a Path of Retreat from Treaty Rights and Tribal Sovereignty: The Story of *Montana v. United States*," *INDIAN LAW STORIES*, Chapter 16, pp. 572-590).

Mar. 29th: The Federal Trust Responsibility

Reading for class: Charles Wilkinson, *INDIAN TRIBES AS SOVEREIGN GOVERNMENTS* (2004), Chapter 3 ("Tribes and the Federal Trust Relationship"), pp. 51-62 (provided).

Guest Presenter: Peter Ortego, General Counsel, Ute Mountain Ute Tribe, Towaoc, Colorado.

Mar. 31st: Federal Takings of Native American Property

Readings for Class: *AMERICAN INDIAN LAW*, Chapter 4 (pp. 204-232); and Joseph William Singer: "Erasing Indian Country: The Story of *Tee-Hit-Ton Indians v. United States*," *INDIAN LAW STORIES*, Chapter 7, pp. 229-259.

STUDENTS' DRAFT PAPER TOPIC DESCRIPTIONS DUE

Apr. 5th: Tribal Breach of Trust Claims Against the Federal Government

Reading for Class: *AMERICAN INDIAN LAW*, Chapter 4 (pp. 232-244).

Apr. 7th: The Cobell v. Norton Settlement

Reading for Class: *AMERICAN INDIAN LAW*, Chapter 4 (pp. 244-250).

Guest Presenter: David Smith, Legal Department Director, Southern Ute Indian Tribe, Ignacio, CO; lead counsel to the late Louise Cobell.

Apr. 12th: American Indian Religious, Spiritual & Cultural Resource Protection

Readings for Class: *AMERICAN INDIAN LAW*, Chapter 11 (pp. 811-824); and Amy Bowers and Kristen A. Carpenter, "Challenging the Narrative of Conquest: The Story of *Lyng v. Northwest Indian Cemetery Protective Association*," *INDIAN LAW STORIES*, Chapter 15 (pp. 489-533).

STUDENTS' PAPER TOPIC DESCRIPTIONS DUE

Apr. 14th: Tribal Water Rights & the Winters Doctrine

Reading for Class: Judith V. Royster, "Water, Legal Rights, and Actual Consequences: The Story of *Winters v. United States*," *INDIAN LAW STORIES*, Chapter 3 (pp. 81-107).

Apr. 19th: Student Paper Presentations & Discussion

Apr. 21st: Student Paper Presentations & Discussion

Apr. 26th: Student Paper Presentations & Discussion

Apr. 27th – May 4th: Reading Days

May 5th – May 20th: Final Examination Period

May 20th: PAPERS DUE (DEADLINE IS 5 P.M. MT)