

RESTORATIVE JUSTICE IN INDIGENOUS COMMUNITIES

Vermont Law School
Summer 2019

June 17 – 20 & June 24 – 27, 2019

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COURSE SYLLABUS

Course Description

For Indigenous peoples, the resurgence of traditional Indigenous laws and their accompanying legal structures serve as an important marker of Indigenous self-determination and nation (re)building. This includes the revitalization (or at times, re-development) of Indigenous models of restorative justice that emphasize the values of balance, harmony, and healing. These developments often serve to challenge the long-standing hegemony of the nation-state, particularly the centrality of the state's legal system and the presumption that the state is the sole author and arbiter of law. The resurgence of Indigenous law and legal systems, in short, tests the limits of legal pluralism, the notion that two or more legal systems can co-exist peacefully in shared territories.

This course will examine Indigenous forms and practices of restorative justice, including consideration of indigenous principles and values that provide the moral footing for those practices. The course will focus principally on Indigenous peoples of the United States but for comparative purposes, it will turn brief attention to restorative justice models from Indigenous peoples in Canada and Australia. The course will also explore restorative responses to environmental harms as well as systemic injustices toward indigenous people (e.g. state child welfare systems).

The course will be presented over 8 days of classes. We will begin with an introduction to the basic foundation of tribal nations as political bodies with sovereign powers of self-government operating within the US constitutional system. We will then examine in more detail the Indigenous legal systems operating in the US today, including Indigenous models and practices of restorative justice and their operation alongside (or in lieu of) the tribal adversarial systems of justice. The Navajo Nation's system of peacemaking, as one of the oldest and best-established Indigenous systems of restorative justice in the US, will serve as a principal case study of a restorative justice system in Indigenous communities. For comparative purposes, we will take brief account of Indigenous restorative justice models, values and practices in other countries, principally in Canada and Australia.

Course Objectives

Students who successfully complete this course should be able to:

- * Recognize the structural features of Indigenous restorative justice systems and critically assess their effectiveness in terms of delivering justice;
- * Offer a comparative assessment of Indigenous restorative justice systems in terms of delivering justice when viewed in light of the state's legal system and those of other Indigenous communities;
- * Critically evaluate the merits of legal pluralism in the United States in light of competing commitments to equality, justice and liberty.

Required Assessment Tasks & Grading:

Class Attendance & Participation (20% of final grade)

Class attendance is required. I expect to see all students at every class absent compelling reasons that may excuse your absence. I expect students to have read all assigned materials and to come to class prepared to engage in active, thoughtful and productive discussion. Class participation requires reading the material, analyzing it effectively, and pushing beyond the boundaries of what is presented in the material. Participation will be graded not merely on your speaking up in class, but on your engagement with the material. I will look for evidence that you've actively engaged with all assigned readings and can demonstrate understanding of the key arguments and themes developed within the materials. I expect vigorous, healthy debate on many issues and expect that such discussion will occur in a sophisticated, respectful and civil way. Critical analysis, not consensus of views or perspectives, is a prime objective of these discussions.

Class Presentations (30% of final grade)

Working in small groups or teams, students will present and lead class discussion in the 2nd week of the term on a topic of their choice that relates to, illuminates and/or contrasts with materials covered and discussed in class. Such topics may include a (a) case study of a particular Indigenous nation and its restorative justice practices (different from one covered in class); (b) a comparative assessment of Indigenous restorative justice practices in relation to other Indigenous restorative justice models or western restorative justice models; or (c) an exploration of other course subjects and materials that relate to students' work and experience in other restorative justice courses or professional settings.

Assessment will be based on the clarity and coherence of the presentation; demonstrated ability to identify and address the principle arguments and/or themes developed in the relevant texts and course discussions; capacity to provoke insightful questioning and reflection among students on any assigned reading materials; and the extent to which the presentation embraces and advances at least one of the stated objectives for this course.

Independent Research Paper (50% of final grade)

A research paper of at least **3,000 words in length** (typewritten, double-spaced using 12-point font) is **due on or before 4 p.m. Monday, July 1.**

The subject matter of your paper may explore any of the substantive, thematic or methodological approaches covered in readings and/or discussed in class.

Your papers will be assessed on the basis of substantive content, depth of research, originality, persuasiveness and coherence of the arguments or positions developed; quality of writing (substantively and stylistically); and choice and use of both primary and secondary source material. Your papers should include a cover sheet that contains (minimally) the title of your paper, your name and the date of submission. Remember to number your pages! Please use footnotes as opposed to endnotes and include a bibliography of all sources consulted.

Required Texts

Navajo Nation Peacemaking: Living Traditional Justice, Marianne O. Nielsen & James W. Zion, eds. (University of Arizona Press 2005);

Justice as Healing: Indigenous Ways; Writings on Community Peacemaking & Restorative Justice from the Native Law Centre, Wanda D. McCaslin, ed. (Living Justice Press 2005).

Other readings will be made available on the course TWEN site.

VLS Policies

Please consult the VLS Student Handbook for details on policies regarding attendance; Academic Honor Code; and accommodations on account of student disabilities.

Course Readings and Assignments

Monday, June 17 – Please read prior to our first class.

Introduction & Overview of Tribal Nations as Governments

Oliphant v. Suquamish Indian Tribe (1978);

United States v. Lara (2004);

Duthu, *Federal Indian Law* (Oxford Research Encyclopedias: American History 2014);

Duthu, *The New Indian Wars: Tribal Sovereignty, the US Supreme Court & Judicial Violence*, in THE NATIONS WITHIN, THE NATIONS WITHOUT: INDIGENOUS NATIONS IN THE FEDERAL & CONFEDERAL US & CANADIAN SYSTEMS (French Review of American Studies, Marine Le Puloch & Celine Planchou, eds 2016);

Duthu, SHADOW NATIONS: TRIBAL SOVEREIGNTY and the LIMITS OF LEGAL PLURALISM (Oxford University Press 2013), Chapters 4 & 5

(All readings on TWEN)

Tuesday, June 18 & Wednesday, June 19

Indigenous Legal Systems and Models of Restorative Justice

Readings from JUSTICE AS HEALING: INDIGENOUS WAYS (McCaslin, ed.)
Chapters 3; 9; 10; 13; 14; 16; 19; 22; 28; 35; 37; 41; 42 & 43

Rick Sarre, *Is There a Role for the Application of Customary Law in Addressing Aboriginal Criminality in Australia?* Critical Criminology, Vol. 8, No. 2 (Autumn 1997); (TWEN)

Film: *Circles* (1997)

Thursday, June 20

Peacemaking: Case Study on Indigenous Restorative Justice from the Navajo Nation

Readings from NAVAJO NATION PEACEMAKING: LIVING TRADITIONAL JUSTICE (Nielsen & Zion, eds.), Introduction & Chapters 1; 2; 3; 5; 6; & 8
Film: *Tribal Justice* (2017)

Monday, June 24

Truth & Reconciliation in the State Child Welfare System

Mississippi Band of Choctaw Indians v. Holyfield (1989);

Brackeen v. Zinke (US Dist. Ct. Northern District of Texas 2018);

Morton v. Mancari (1974);

Film: *Dawnland* (2018)

Tuesday, June 25

Environmentalism: Healing Relationships with All Our Relatives

Lyng v. Northwest Cemeteries (1988);

Navajo Nation v. US Forest Service (9th Cir. 2008);

Film: *In the Light of Reverence* (2001)

Wednesday, June 26 and Thursday, June 27

Group Presentations

NOTE: Other materials may be added and/or changed during the course of the term. Every effort will be made to provide students with adequate notice thereof.