



Poli-3351 FA Indigenous Peoples and the Law

Instructor: Ms. Erika Halverson
Room: AT 2006
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Office Hours: by appointment
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Fall 2022

Mondays 7:00pm-10:00pm

Course Description

This course will provide a critical examination into the historical, legal and historical-political context of Indigenous Peoples and law. The course will focus on engaging students with an overview of the concepts and theories within the scope of Canadian Law, while examining the unique legal position of the Indigenous population in Canada. The course will review historic colonial structures, indigenous identity in Canada, treaties and jurisdiction (both pre and post confederation), land claims, governance, prominent Supreme Court cases and a critical review of the Indian Act.

Course Format

Lectures for this course will focus on the assigned readings from the required readings as well as any other readings listed. Students are to attend class regularly, do the assigned readings and be able to participate in discussions. Students should note that lectures are not meant to be a summary of the course reading material, but merely a guide. Students should ensure to read all outlined material prior to class, as the class will focus on engaging students and encourage participation based on the weekly readings. Students are responsible for all required reading material. Recommended Readings are not required to be read prior to class, however, are encouraged.

Course Material

Required Text(s)

- There is no required textbook for this class. Readings will be available to students either through D2L or the Library Portal.

Course Evaluation

1. Attendance & Participation: 20%: Students that attend and participate have an opportunity to earn up to 20% of their final grade.
2. Mid Term Exam 40%: Mid-term exam will be completed in class. It will consist of two questions. Students will complete two short essays during class time. **Mid-term exam is on October 17th. More information will be provided in class.**
4. Final Paper: 40% - Students will have the option to choose a research essay or a legal case study. More details will be discussed in class. Assignment is due December 9th no later than 4:00pm. Assignment will be submitted via D2L.

Research Essay

Students are required to complete a critical research paper. The focus of the paper is to provide critically engage in the topics discussed during the course. Students will focus on providing a clear research question and focus on providing a rationalized argument and using academic sources to support their argument throughout their paper. Students should ensure they are critically engaging with the issues covered in lectures and class discussions.

Students are to use academic sources (Please DO NOT use sources such as Wikipedia, Canadian Encyclopedia, etc.). Students are also to cite all sources used throughout the paper. Students should ensure they are citing facts that are not common knowledge, but also citing all ideas borrowed from authors. Please note that plagiarism will NOT be tolerated.

The format of the essays will be in Times New Roman 12-point font and double-spaced. Students will ensure that standard margins are being used. Essays should be free of any grammatical and spelling errors. Students will also include a complete bibliography and appropriate citations throughout the paper. Paper will be 10-12 pages in length.

Students will include a title page with their name, date, course number and my name. Title pages and bibliography will NOT count towards page count.

Students should refer to proper formatting (MLA, APA, Chicago). It is recommended students use MLA format. Students are also encouraged to utilize reference books and articles on proper citation styles.

Legal Case Study

Students will review one of the cases listed (see below). In choosing the case you wish to analyze, consider the length of the case, its complexity, the clarity of its writing, and of course your own thoughts and interests. The case study will be roughly 10-12 pages in length, not including title page, bibliography, etc. If students wish to choose a case outside the cases listed, please speak with me prior.

For the case study students will:

1. Outline the case – what are the important details?
2. What is the legal, historical, political, and cultural context of this case?

3. What are the key legal issues and arguments?
4. What form, or forms, of justice are present in this case?
5. Offer a critical assessment of the case.

The focus of the legal case study assignment is to provide an original thought, argument and an analysis of the case. The assignment is **NOT** to simply summarize the case. While a brief summary will be necessary to provide a basic overview of what is going on in the case for the reader, if the entirety of your assignment is a summary of the case your mark will reflect that. While there is not a set limit for the number of sources other than your topic case that you must utilize, it is likely that you will want to utilize and refer to some other sources, such as legislation, or journal articles, to help develop your analysis. Please ensure that the analysis is properly formatted (APA, MLA, Chicago) you are free to choose whichever formatting style you prefer for your assignment. Please use footnotes rather than endnotes or in-text citations, students are also to ensure that a complete bibliography of all sources is provided.

Late Policy

Late Papers will be deducted a 5% penalty per day (including weekends) up to 10 days after the due date.

**Exception for late assignments with no penalty will be made only in special cases (i.e., severe illness, bereavement). Students may be required to provide documentation.

Email

Emails will be answered within two-three business days. DO NOT submit assignments via email, unless discussed with me prior to submission or instructed to do so. Email should be used to send quick inquiries about course material or setting up appointments. Students are required to use their Lakehead University student email, as other commercial emails will not be answered. It is your responsibility to ensure that your Lakehead University email is in working order.

Accessibility

Students with diverse learning needs and styles are welcome to participate in this course. Lakehead University is committed to achieving full accessibility for persons with disabilities. Part of this commitment includes arranging academic accommodations for students with disabilities and/or medical conditions to ensure they have an equitable opportunity to participate in all their academic activities. If you are a student with a disability and think you may need accommodations, you are strongly encouraged to contact Student Accessibility Services (SAS) and register as early as possible. For more information, please contact Student Accessibility Services <http://studentaccessibility.lakeheadu.ca> (SC0003, 343-8047 or sas@lakeheadu.ca).

Lakehead University Policy on Academic Dishonesty

Students are expected to always uphold academic honesty. Cheating, collusion, plagiarism etc., will NOT be tolerated. Students are also advised to familiarise themselves with the university policy on academic dishonesty, especially in relation, to plagiarism, cheating, impersonation etc. Violation of this policy can lead to serious consequences and will be strictly enforced. It is worth noting that plagiarism involves presenting another's work, ideas, theories, or interpretation as one's own.

Some tips to avoid plagiarism:

1. Put quotation marks around any words from sources
2. Paraphrase material completely; changing (with the help of a thesaurus) or rearranging a few words or the tense of a verb is not paraphrasing.
3. Give accurate and complete citations for all material including paraphrased material.
4. Avoid borrowing entire arguments or approaches to a subject from another writer. Make it 'original' while staying close to the assignment requirements

For more information regarding the policy: <https://www.lakeheadu.ca/students/student-life/student-conduct/academic-integrity>

Tentative Outline

Weekly schedule subject to change

Week 1: (September 12th) Introduction to the Course

- No required reading
- Review of Course Outline, Expectations, Housekeeping
- A Brief Overview of The Robinson Superior Treaty Area

Week 2: (September 19th) Origins of the Canadian Legal Context and Indigenous People: The Royal Proclamation

Required Reading

Wolfe, Patrick. (2006). "Settler Colonialism and the Elimination of the Native." *Journal of Genocide Research* 8(4) (2006): 387-409.

Slattery, Brian. (2015). "The Royal Proclamation of 1763 and the Aboriginal Constitution" in *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights and Treaties in Canada*. Jim Aldridge, Terry Fenge. McGill-Queens University Press. P. 14-32

Borrows, John. (1997). "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government." *Aboriginal Treaty Rights in Canada: Essays of Law, Equality, and Respect for Difference*, edited by Michael Asch. Vancouver: University of British Columbia Press, 155-172.

Recommended Reading(s)

Newton, Melanie J. "Counterpoints of Conquest: The Royal Proclamation of 1763, the Lesser Antilles, and the Ethnography of Genocide." *The William and Mary Quarterly* 79, no. 2 (2022): 241-282. [doi:10.1353/wmq.2022.0022](https://doi.org/10.1353/wmq.2022.0022).

Week 3: (September 26th) Understanding Indigenous Identity

Required Readings

Corntassel, Jeff. "Who Is Indigenous? 'Peoplehood' and Ethnonationalist Approaches to Rearticulating Indigenous Identity." *Nationalism and Ethnic Politics* 9, no. 1 (March 1, 2003): 75–100. doi: 10.1080/13537110412331301365

Fagan, Christina. "Tewatatha:wi: Aboriginal Nationalism in Taiaiake Alfred's 'Peace, Power, Righteousness: An Indigenous Manifesto.'" *American Indian Quarterly* 28, no. 1/2 (2004): 12–29. <https://doi.org/10.1353/aiq.2005.0006>.

Recommended Reading(s)

The Indian Act: <https://laws-lois.justice.gc.ca/PDF/I-5.pdf>

LAWRENCE, BONITA. "Gender, Race, and the Regulation of Native Identity in Canada and the United States: An Overview." *Hypatia* 18, no. 2 (2003): 3–31. <https://doi.org/10.1111/j.1527-2001.2003.tb00799.x>

Patrick Thornberry. (2013). Who is indigenous? Concept, definition, process. In *Indigenous peoples and Human rights* (p. 33–61). Manchester University Press. <https://doi.org/10.7228/manchester/9780719037931.001.0001>

Week 4: (October 3rd) Treaties/Jurisdiction

Required Reading

Starblanket, Gina. "The Numbered Treaties and the Politics of Incoherency." *Canadian Journal of Political Science* 52, no. 3 (2019): 443–59. <https://doi.org/10.1017/S0008423919000027>.

Walters, Mark D, "Rights and Remedies within Common Law and Indigenous Legal Traditions: Can the Covenant Chain be Judicially Enforced Today?" in *The Right Relationship: Reimagining the Implementation of Historical Treaties*, ed John Borrows and Michael Coyle. 187-207 University of Toronto Press, 2017

McCrossan, & Ladner, K. L. (2016). Eliminating Indigenous Jurisdictions: Federalism, the Supreme Court of Canada, and Territorial Rationalities of Power. *Canadian Journal of Political Science*, 49(3), 411–431. <https://doi.org/10.1017/S0008423916000822>

Week 5: (October 10th) No Class- Thanksgiving/Reading Week

- No class/ No required reading

Week 6- (October 17th) –Mid Term Examination

- Midterm exam will be completed during class time
- No required reading

Week 7: (October 24th): Recognition

Coulthard, Glen. "Place Against Empire: Understanding Indigenous Anti-Colonialism." *Affinities: A Journal of Radical Theory, Culture, and Action* 4, no. 2 (2010): 79-83.

Coulthard, Glen S. "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada." *Contemporary Political Theory* 6, no. 4 (2007): 437-60.
<https://doi.org/10.1057/palgrave.cpt.9300307>.

Koivurova, Timo. "From High Hopes to Disillusionment: Indigenous Peoples' Struggle to (re)Gain Their Right to Self-Determination." *International Journal on Minority and Group Rights* 15, no. 1 (2008): 1-26. <https://doi.org/10.1163/138548708X272500>.

Recommended Reading(s)

Coulthard, Glen Sean. 2014. "The Politics of Recognition in Colonial Contexts" *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota Press.

Eve Tuck and Wayne Yang, "Decolonization is not a Metaphor" *Decolonization: Indigeneity, Education & Society* 1:1 (2012): 1-40

Week 8: (October 31st) Gender, Children, and Indigenous Child Welfare

Hurley, Mary C., and Tonina Simeone. "Bill C-3: Gender Equity in Indian Registration Act." *Aboriginal Policy Studies (Edmonton, Alberta, Canada)* 3, no. 3 (2014).
<https://doi.org/10.5663/aps.v3i3.22232>.

Cindy Blackstock. "Residential Schools: Did They Really Close or Just Morph into Child Welfare?" *Indigenous Law Journal* 6 (2007): 71-78.

Blackstock, Cindy. "SOCIAL MOVEMENTS AND THE LAW: ADDRESSING ENGRAINED GOVERNMENT-BASED RACIAL DISCRIMINATION AGAINST INDIGENOUS CHILDREN." *Australian Indigenous Law Review* 19, no. 1 (2015): 6-19.
<https://doi.org/10.3316/ielapa.465561864082982>.

Recommended Reading(s)

Snyder, Emily. "Indigenous Feminist Legal Theory." *Canadian Journal of Women and the Law* 26, no. 2 (2014): 365-401. <https://doi.org/10.3138/cjwl.26.2.07>.

Child, Youth and Family Services Act, 2017, S.O. 2017, c. 14, Sched. 1
<https://www.ontario.ca/laws/statute/17c14>

Week 9 (November 7th): Land and Resources

Required Readings

Yazzie, Melanie K., and Cutcha Risling Baldy. "Introduction: Indigenous Peoples and the Politics of Water." *Decolonization: Indigeneity, Education & Society* 7, no. 1 (2018): 1–18.

Moore, Michele-Lee, Suzanne von der Porten, and Heather Castleden. "Consultation Is Not Consent: Hydraulic Fracturing and Water Governance on Indigenous Lands in Canada." *Wiley Interdisciplinary Reviews. Water* 4, no. 1 (2017). <https://doi.org/10.1002/wat2.1180>.

Brenda L. Gunn. "Protecting Indigenous Peoples' Lands: Making Room for the Application of Indigenous Peoples' Laws Within the Canadian Legal System." *Indigenous Law Journal* 6 (2007): 31–69.

Week 10: (November 14th) Duty to Consult/ Indigenous Governance

Required Readings

Morales, Sarah. "Braiding The Incommensurable: Indigenous Legal Traditions and the Duty to Consult" in Schwartz, Risa, Oonagh E. Fitzgerald, Larry N. Chartrand, and John Borrows. *Braiding Legal Orders: Implementing the United Nations Declaration on the Rights of Indigenous Peoples*. Centre for International Governance Innovation, 2019. p. 65-81

Sarson, Leah. "'You Cannot Trade What Is Not Yours': Indigenous Governance and the NAFTA Negotiations." *The American Review of Canadian Studies* 49, no. 2 (2019): 332–47. <https://doi.org/10.1080/02722011.2019.1618616>.

Willmott, Kyle. "From Self-Government to Government of the Self: Fiscal Subjectivity, Indigenous Governance and the Politics of Transparency." *Critical Social Policy* 40, no. 3 (2020): 471–91. <https://doi.org/10.1177/0261018319857169>.

Recommended Reading(s)

Newcomb, Steven T. "The UN Declaration on the Rights of Indigenous Peoples and the Paradigm of Domination." *Griffith Law Review* 20, no. 3 (2011): 578–607. <https://doi.org/10.1080/10383441.2011.10854711>.

Week 11 (November 21st): Criminal Justice

Required Reading(s)

Barkan, Elazar. "HISTORICAL RECONCILIATION: REDRESS, RIGHTS AND POLITICS." *Journal of International Affairs (New York)* 60, no. 1 (2006): 1–15.

Chris Cunneen (2009) Criminology, Criminal Justice and Indigenous People: A Dysfunctional Relationship?, *Current Issues in Criminal Justice*, 20:3, 323-336, DOI: 10.1080/10345329.2009.12035816

Recommended Reading(s)

OIPRD Report- Thunder Bay Police- <https://oiprd.on.ca/wp-content/uploads/OIPRD-BrokenTrust-Final-Accessible-E.pdf>

R. v. Gladue- <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1695/index.do>

Week 12: (November 28th): Decolonization/Reconciliation

Required Reading(s)

Blackburn, Carole. “Producing Legitimacy: Reconciliation and the Negotiation of Aboriginal Rights in Canada.” *The Journal of the Royal Anthropological Institute* 13, no. 3 (2007): 621–38. <https://doi.org/10.1111/j.1467-9655.2007.00447.x>.

Sanderson, Douglas, “Overlapping Consensus, Legislative Reform and the Indian Act” in *From Recognition to Reconciliation: Essays on the Constitutional Entrenchment of Aboriginal and Treaty Rights*. ed. Patrick Macklem and Douglas Sanderson. 320-256 (University of Toronto Press, 2015)

Recommended Reading(s)

Bhandar, Brenna. “Re-Covering The Limits of Recognition: The Politics of Difference And Decolonisation In John Borrows’ *Recovering Canada: The Resurgence of Indigenous Law*.” *The Australian Feminist Law Journal* 27, no. 1 (2007): 125–51. <https://doi.org/10.1080/13200968.2007.10854388>.

Week 13: (December 5th): Final Reflections –

- Review
- Final Assignment Q and A