

**U.S. Federal Indian Policy Syllabus**  
**Student Led Discussion Class for Spring 2015**  
**Mondays 1:15-4:15 Trotter 303**

This course is an overview of the legal relationship between tribal nations and the American federal government. Each week would focus on different seminal cases and legislation in Indian policy, progressing from the early period of American law to contemporary events. Class would be structured into a discussion format which will involve one presenter and leader of the discussion materials for each week. At the end of the semester students will prepare a comprehensive project to present to the class: synthesizing an idea that developed throughout the course, looking at another case not studied and describing its relationship in this history, etc. The course will be worth 1 credit in political science, and will be graded as CR/NC, but is not applicable toward political science majors. Students are expected to attend all classes and turn in all homework to get credit.

**Weekly Homework**

Each student is expected to do the readings uploaded on Moodle before class. Students will write a 450 to 600 word response to the readings. Pick a topic that you find interesting in that weeks readings and write a critique, do not summarize the reading. Since this is a discussion based class please come prepared by completing all readings, we cannot move forward as a class if students do not do the readings.

**Weekly Leaders**

Each week a different student will prepare to lead the class discussion, in addition to doing the above, the student must come up with at least 5 questions regarding the most recent readings to stimulate discussion.

**Midterm**

A 1200 to 1450 word paper will be due, the prompt TBA due **MARCH 16th** at the beginning of class.

**Final Presentation**

A final paper of 1800 to 2000 words on a a topic of the students choosing relating to Indian law will be due **MAY 7th** at noon. An in class presentation will be given by each student on their topic on the last day of class **APRIL 27th**.

Extensions or missed classes due to illness or other needs can be worked out if the student emails Sage Wagner [swagner1@swarthmore.edu](mailto:swagner1@swarthmore.edu).

**Required Texts**

The Rights of Indians and Tribes. Stephen L Pevar. Fourth Edition  
American Indian Politics and the American Political System. David E. Wilkins.  
Custer Died for Your Sins. Vine Deloria Jr.

*"[Indian] policy seems no worse today than it did in earlier eras of American history. But is it worse today than it was yesterday?" -Vine Deloria JR, American Indian Policy in the Twentieth Century*

Course Outline

**The Marshall Trilogy** – The Marshall Trilogy refers to “the three famous opinions of Chief Justice John Marshall that expounded for the first time in the halls of the United States Supreme Court the bases for federal Indian common law.”  
Matthew L. M. Fletcher, *The Iron Cold of the Marshall Trilogy*  
*Johnson v M'Intosh* 1823  
*Worcester v Georgia* 1832  
*Cherokee Nation v Georgia* 1832

Week 1 Readings:

*The Iron Cold of the Marshall Trilogy*, Matthew L.M Fletcher  
*History of Tribal Federal Relationships* pg. 43-74

## The Rights of Indians and Tribes Chapters 1 & 2

***Standing Bear v Crook 1879*** - "It was the first time a judge had ever recognized a Native American's right to sue out the writ of habeas corpus in a federal court." Mary Kathryn Nagle, *Standing Bear v. Crook: The Case for Equality Under Waaxe's Law*. We will view PBS's film "Standing Bear's Footsteps" in class.

### Week 2 Readings:

*Standing Bear v the United States* a summary of the case from National Park Service's website  
Standing Bear v Crook: The Case for Equality under Waaxe's Law  
The Rights of Indians and Tribes Chapter 3 & 4

***Crow Dog 1883*** – "The much-examined case of Ex parte Crow Dog illustrates a tribal restorative justice remedy in the criminal context. . . The use of tradition and custom in handling such a case was seen as "primitive" by those outside the local law of the tribes." Barbara Creel, *Tribal Court Convictions and Sentencing Guidelines*

### Week 3 Readings:

*Crow Dog 1883* Supreme Court Reporter  
*Crow Dog's Case* Chapter 1 by Sidney L. Harring  
*Major Crimes Act 1885 Offenses committed within Indian Country*  
*Tribal Court Convictions and the Federal Sentencing Guidelines: Respect for Tribal Courts and Tribal People in Federal Sentencing*. Pg 10-12. Barbara Creel, 2011 University of San Francisco School of Law  
The Rights of Indians and Tribes Chapters 5 & 6

***Dawes Act 1887*** – Authored by Henry Dawes, the start of allotment by Congress.

### Week 4 Readings:

*The Legacy of Allotment* Judith V. Royster, 1995 Arizona State Law Journal  
*Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem* Jessica A. Shoemaker, 2003 Wisconsin Law Review  
The Rights of Indians and Tribes Chapters 7, 8, & 10

***Lone Wolf v. Hitchcock 1903*** - This case has been referred to as "the Indians' Dred Scott decision." Although Dred Scott was a "negro [ ] of the African race," and Lone Wolf was a Kiowa of "the Indian race," the similarities within these decisions are chilling.

### Week 5 Readings:

*The More Things Stay the Same: Waiting on Indian Law's Brown v. Board of Education* by Stacy Leeds  
The Rights of Indians and Tribes Chapter 18  
American Indian Politics Chapter 1 & 2

***United States v Winans 1905*** - "The epic *Winans* decision still seems surprising, since it was the product of an era in which assimilation of Indian tribes was the dominant federal policy. . . *Winans*, however, proclaimed that the tribes' treaty fishing rights were enduring, not temporary." Michael C. Blumm & James Brunberg, "Not Much Less Necessary . . . Than the Atmosphere They Breathed": *Salmon, Indian treaties, and the Supreme Court – A Centennial Remembrance of United States v. Winans and Its Enduring Significance*.

### Week 6 Readings:

*Putting Flesh on the Bones of United States V. Winans: Private Party Liability Under Treaties That Reserve Actual Fish For the Tribal Taking*  
*The Friends of Celilo Falls History of Celilo Falls*  
*Not Much Less Necessary Than the Atmosphere They Breathed*  
*Ed's Article*  
The Rights of Indians and Tribes Chapter 11 & 12

***United States v Sandoval 1913*** - "One of the most important issue that arose in *Sandoval* litigation was the role of race as a defining characteristic of Indian identity. . . The one thing that *Sandoval* makes clear is that for purposes of federal law, Congress gets to make the decision. . ." Gerald Torres, *Who is an Indian? The story of United states v. Sandoval*

Week 7 Readings:

*Who is An Indian? The Story of United States v. Sandoval* Gerald Torres  
*Cohen's Handbook of Federal Indian Law* Chapter 4.07 "Pueblo Indians"  
*United States v Joseph*  
*United States v Sandoval*  
American Indian Politics Chapters 3 & 4

***Tee-Hit-Ton v United States 1955*** - ". . . [T]he question of whether Native Americans had a constitutional right to compensation for the extinction of aboriginal title had not been clearly answered prior to 1955. Rather than breaking new ground in defense of Native American rights, the Court issued one of the most retrograde Indian law decisions of the twentieth century . . ." Earl M. Maltz, *Brown and Tee-Hit-Ton*

Week 8 Readings:

*Brown and Tee-Hit-Ton* Earl M. Maltz  
American Indian Politics Chapters 5, 7, & 10

***Indian Civil Rights Act 1968*** - "ICRA applied a modified version of the Bill of Rights to tribal governments, imposed a limitation on the sentencing authority of tribes, and explicitly allowed federal habeas review for tribal court orders." Barbara Creel, *Tribal Court Convictions and Sentencing Guidelines*

Week 9 Readings:

*Civil Rights in Tribal Courts: The Indian Bill of Rights at Thirty Years* Robert J. McCarthy  
The Rights of Indians and Tribes Chapters 13 & 14

***American Indian Religious Freedom Act 1978*** - "On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions . . ."

*Lyng v Northwest Indian Cemetery*

Week 10 Readings:

*Challenging the Narrative of Conquest: The Story of Lyng v. Northwest Indian Cemetery Protective Association*  
Amy Bowers and Kristin Carpenter  
*Free Exercise of Religion and Indian Burial Grounds – Lyng v. Northwest Indian Cemetery Protective Association*  
*Protection and Preservation of traditional religions of Native Americans*  
*Joint Resolution on American Religious Freedom*  
The Rights of Indians and Tribes Chapter 15

***Oliphant v Squamish Indian Tribe 1978*** – "the basic holding of *Oliphant* is a straightforward as its facts: Indian tribes have no criminal jurisdiction over non-Indians." Judith V. Royster, *Oliphant and Its Discontents: An Essay Introducing the Case for Reargument before the American Indian Nations Supreme Court*

*Violence Against Women Act 2013*  
*Tribal Law and Order Act 2010*

Week 11 Readings:

*Oliphant and Its Discontents: An Essay Introducing the Case for Reargument before the American Indian Nations Supreme Court*, Judith V. Royster  
Tribal Law and Order Act  
*Violence Against Women Act 2010*  
*VAWA Update 2014*  
Custer Died for Your Sins Chp 1-4

***United States v Sioux Nation of Indians 1980*** - "In 2011, the poorest American Indians in the United States refused to accept over one billion dollars from the United States government. They reiterated their long-held belief that money--even \$1.3 billion--could not compensate them for the taking of their beloved Black Hills." Kirsten Matoy Carlson, *Priceless Property*

Week 12 Readings:

*Priceless Property*, Kirsten Matoy Carlson  
*Oglala Sioux to consider negotiating with Obama over Black Hills Claim* Daniel Simmons-Ritchie, 2013 Rapid

City Journal  
Custer Died for your Sins Chp 5-8

***Native American Graves Protection and Repatriation Act 1990*** – A “. . . major purpose of the statute is to provide greater protection for Native American burial sites and more careful control over the removal of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony on Federal and tribal lands.” National Park Services Website *the Native American Graves Protection and Repatriation Act*

Week 13 Readings:

*Native American Graves Protection and Repatriation Act*

*You're Not Native American—You're Too Old!: Bonnichsen v United States Exposes the Native American Graves Protection and Repatriation Act* Will R. Ripley

*“Kennewick Man” or “Ancient One”? - A Matter Of Interpretation* Maura A. Flood

*The Native American Graves Protection and Repatriation Act at the Margin*, Robert Van Horn

\_\_\_\_\_ Custer Died for your Sins Chp 9-12

Week 14 **Final Project Presentations**

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"About the History of Celilo Falls." *The Friends of Celilo Falls*. Web. 9 Nov. 2014.  
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"Handbook of Federal Indian Law by Felix S. Cohen." *Handbook of Federal Indian Law*. Web. 9 Nov. 2014.  
<<http://thorpe.ou.edu/cohen.html>>

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## Additional Resources

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