

FINAL SYLLABUS TO BE DISTRIBUTED PRIOR TO THE FIRST WEEK OF CLASS

The Evergreen State College
Master Public Administration – Tribal Governance
Elective Course - Indigenous Justice Systems
Fall Quarter 2011
Wednesday Evenings 6 – 10 PM
4 Credits

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Sem. II E 2108
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Course Overview and Learning Objectives

This four hour elective course considers administrative practices designed to improve justice delivery systems in tribal and indigenous courts within domestic and international settings. Students will examine the types of justice systems currently operating in Indian Country, primarily in the areas of adult, juvenile, family, and tribal wellness and healing. Alternative dispute resolution models employed by tribal nations will also be considered. Existing resources and training available to tribal courts will be identified, and discussions will be directed to tailor those resources to meet the specific needs of individual tribal and indigenous communities today. Issues regarding tribal jurisdiction and opportunities to establish and strengthen tribal/state collaboration will be examined alongside possible systemic changes required to achieve sustainable justice systems for future generations. Undergraduates will be accepted with junior or senior status.

This fall quarter has several specific learning objectives:

1. Students will gain historical, legal, political, and contextual understanding of Indigenous justice systems operating in the United States in the 21st century, under the backdrop of tribal sovereignty and self-determination, and separate from state jurisdictional intrusion.
2. Students will gain an understanding of the comparative differences between western justice systems based on an adversarial model and individual rights, and traditional Indigenous systems predicated on restorative concepts of justice designed to protect interdependent communities the group rights of these communities.
3. Students will gain an understanding of the historical context regarding the advancement of emerging international human rights norms articulated in the United Nations International Declaration on the Rights of Indigenous Peoples, and other international conventions intended to promote self-determination within Indigenous political, social and legal institutions.

COURSE REQUIREMENTS

This course is open to both graduate students and undergraduate students who have attained junior or senior class status by the beginning of this quarter. The course requirements have therefore been weighted slightly differently, depending on the student's academic status. All written assignments must be turned in on time, and on the dates indicated in the course schedule below, regardless of the student's academic status.

SEMINAR PAPERS

Students are expected to bring their seminar papers to class with them on the dates indicated. Seminar papers shall not exceed two pages. These papers should contain your thoughts on the readings assigned, indicate your understanding of the authors' work, rather than simply provide a summation of the readings assigned. Each student will have the opportunity to share with their classmates their thoughts on the authors' writings during each weekly class. It is the instructor's intention that the seminar papers will serve to enhance the evaluation process at the end of the quarter.

CLASS ACTIVITIES

To enliven, and hopefully enlighten, students' understanding and appreciation of Indigenous justice systems, the class will engage in role playing activities during class on two separate weeks. These activities, TBA, will focus on two case type situations involving criminal and civil subject matter. Students will be assigned in groups to represent, i.e. The Geoduck Nation, the perpetrator(s) and victim(s); and a civil matter to TBA. Participation in these activities is required.

FINAL PAPERS AND PRESENTATIONS

Graduate student papers shall be fifteen pages in length, including footnotes and bibliography. Graduate students are expected to follow APA Guidelines, and are encouraged to arrange a meeting with the instructor early in the quarter to begin identifying a research topic, methodology, and advisement regarding resources relevant to their research topic.

Undergraduate student papers shall be ten pages in length, including footnotes and bibliography, consistent with the writing style manual the student is most accustomed using. A meeting with the instructor is highly encouraged, but is not required.

The last week of the quarter is reserved for presentations and potluck. We will discuss presentations in more detail when we meet as a class the first week of the quarter.

Expectations

Students

- Attend every class; be on time and comply with TESC Student Conduct Code: "Having respect for others is fundamental to having open, educational dialogue. All students are expected to support and contribute to a well functioning MPA classroom learning community. Behavior that disrupts the learning community may be grounds for disciplinary action, including dismissal from the MPA program."
- <http://apps.leg.wa.gov/WAC/default.aspx?cite=174-120>
- Writing is expected to be of the highest quality, clear with accurate grammar and spelling. Students are encouraged, and may be required, to work with the Graduate Writing Assistant.
- Full credit and a positive evaluation depend on timely completion and submission of ALL assignments and regular attendance and participation in class.
- Students are required to have an Evergreen e-mail account for communication about class work and to participate in program list serves and to bring their own equipment (laptops or flash drives, etc) to make presentations for class. Laptops are only for note-taking and making presentations. **Surfing or doing non-class work on them is considered non-participation in class activities by faculty and will affect your evaluation.**
- Computer and Internet access are required outside class.
- Electronic devices other than laptops (excepting translation devices or those devices needed by students with special access needs that are registered with the college) are not allowed in class. **Cell phones should be turned off during class.**
- Students are expected to complete and submit a self-evaluation to faculty at the last class. Student evaluations of faculty must be submitted at the evaluation conference to the seminar faculty or to the program secretary, **Tricia Bateman INSERT OFFICE AND PHONE NUMBER**
- Any deviation from these expectations must receive prior approval from your instructor.

Faculty

- Faculty members are expected to be prepared for class, responsive to student questions, and to promptly return student work.
- Faculty members can be expected to be reasonably available to students. They may not be available during school breaks.

REQUIRED READINGS

CASES AND STATUTES

NOTE: The following cases and statutes will be offered in redacted form in order to spare students the agony of reading the entire opinion or statute.

Ex Parte Crow Dog, 109 U.S. 556 (1883)

United States v. Claypox, 35 F. 575 (D.C. Or. 1888)

Major Crimes Act, (23 Stat. 362, 385, codified as amended at 18 U.S.C. § 1153)

United States v. Kagama, 118 U.S. 375 (1886)

Oliphant v. Suquamish Indian Tribe 435 U.S. 191 (1978)

Talton v. Mayes, 163 U.S. 376 (1896)

The Indian Civil Rights Act of 1968, (codified as amended at 25 U.S.C. § § 1301-1303)

Santa Clara v. Martinez, 436 U.S. 49 (1978)

Mexican v. Circle Bear, 370 N.W. 2d 737 (S.D. 1985)

ARTICLES

(Many, if not all of the following articles will be accessible through the course Moodle site. This site should be up and functioning shortly. The articles below are not listed in the order they will be assigned, and may not be inclusive.)

Pathways to Justice: Building and Sustaining Tribal Justice Systems in Contemporary America http://law.und.edu/_files/docs/tji/docs/pathways-report.pdf

<http://www.nij.gov/topics/courts/restorative-justice/perspectives/reemergence-tribal.htm>

<http://www.nij.gov/nij/topics/courts/restorative-justice/organizational-change/welcome.htm>

The Role of Distinctive Tribal Governments in the 21st Century
Brakel, Charles, American Indian Tribal Courts: The Cost of Separate Justice.

Pommersheim, The Contextual Legitimacy of Adjudication in Tribal Courts and the Role of The Tribal Bar as an Interpretative Community: An essay, 18 New Mexico Law Review 49, (1988)

Tso, Tom, C.J., The Process of Decision Making in Tribal Courts, 31 Arizona Law Review 225-36 (1989)

<http://www.nij.gov/nij/topics/courts/restorative-justice/organizational-change/welcome.htm>

<http://www.aidainc.net/CRD%20Envir.pdf>

Zuni-Cruz, Christine [*Tribal Law as Indigenous Social Reality and Separate Consciousness: \[Re\] Incorporating Customs and Traditions into Tribal Law*](#), 1 Tribal L. J. (Jan. 2001).

Domestic Violence and Tribal Protection of Indigenous Women in the United States, 69 ST. JOHN'S L. REV. 69 (1995), reprinted in Readings in American Indian Law, Recalling the Rhythm of Survival, 264 (Jo Carillo ed., 1997).

Recognizing and Enforcing State and Tribal Judgments: A Round Table Discussion of Law, Policy and Practice, 18 AM. INDIAN L. REV. 239 (1994).

Great Law of Peace <http://www.tuscaroras.com/graydeer/influenc/page4.htm> comparison to US constitution

United Nations Universal Declaration on the Rights of Indigenous Peoples, (relevant sections)

ADDITIONAL READINGS—Handouts and other additional readings may be posted on the website or given out in class.

Class Schedule

Evening class schedule will generally take the following format:

6:00-7:30 Seminar concerning assigned readings

7:30-7:45 Break

7:45-10 pm, guest speakers, video, or group/class activities

Guest speakers will be joining the class throughout the quarter. Dates and speakers TBA. In addition, we will discuss taking field trips to visit tribal court systems in Washington. The National Congress of American Indians Mid-year Conference is scheduled to meet in Portland, Oregon, October 31-November 4. Depending on NCAI's agenda, and the class' feelings on the subject, we may make a field trip to Portland that week.)

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| Class I Sept 28 Introduction to Indigenous Justice Systems |
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Readings; Carey N. Vicente, Chief Judge, Jicarilla Apache Tribe, The Reemergence of Tribal Society and Traditional Justice Systems <http://www.nij.gov/topics/courts/restorative-justice/perspectives/reemergence-tribal.htm>;

Brakel, Charles; American Indian Tribal Courts: The Cost of Separate Justice The Role of Distinctive Tribal Governments in the 21st Century;

Pommersheim, Frank; The Contextual Legitimacy of Adjudication in Tribal Courts and the Role of The Tribal Bar as an Interpretative Community: An essay, 18 New Mexico Law Review 49, (1988)

Video: Dead Man

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| Class II October 5 |
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Readings; Pathways to Justice: Building and Sustaining Tribal Justice Systems in Contemporary America <http://law.und.edu/files/docs/tji/docs/pathways-report.pdf> Ex Parte Crow Dog, 109 U.S. 556 (1883)

Class/group activity focusing on alternative dispute resolution, TBA

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| Class III October 12 |
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Reading;

Video, Activity, Guest:

Class IV October 19

Reading;
Video, Activity, Guest:

Class V October 26

Reading;
Video, Activity, Guest:

Class VI November 2

Reading;
Video, Activity, Guest:

Class VII November 9

Reading, Video, Guest:

Class VIII November 16

Reading;
Video, Activity, Guest:

Class IX November 30 Emerging international human rights norms concerning Indigenous peoples

Reading;
Video, Activity, Guest:

Class X December 7 Student Presentations and Class Potluck
DUE: Oral presentations. Final papers due by end of quarter.