

**University of California Berkeley,
Legal Studies Department
LS110, Human Rights: The Indigenous Experience, Fall 2019**

Course and Contact Information

Instructor: Elizabeth Tejada

Class Days/Time: Tuesday/Thursday 5:00 – 6:30PM

Course Description

“The United States of America is the greatest nation on earth, or so it is said. This expression reflects homage to the visionary founders and the democratic innovation they implanted, a fundamental faith in the country’s political and economic system, and celebration of a common ethos of liberty and equality that is understood to mark American identity.” (*Walter R. Echo-Hawk, In the Light of Justice, vii*)

Yet, “it is simply a matter of fact, with which Americans must contend, that the claim to exceptional greatness is wed to historical processes that defy it.” (*Id.*) Yet, few discuss it, and fewer work to resolve it. Instead, the legacy of conquest and colonialism is implanted “into the American mindset, institutions, and legal regime so deeply that we are blinded to its presence.” (*Id.* at 105.)

“While most acutely felt by the indigenous peoples of the country, these wounds are also afflictions on the country as a whole.” (*Id.*) This course helps us understand why the achievement of human rights requires that we, as a nation, confront the combined injustices of the past and present.

This course explores:

- How are concepts of an individual’s “human rights” created by and implemented for society?
- Can human rights be considered “inalienable” when history reveals the denial of the rights society members?
- What are the barriers to achieving universal human rights?
- What do human rights campaigns tell us about the solutions to achieve human rights?

While this course explores these issues through the indigenous framework, you will discover the themes of oppression apply across all settings. The course is divided into learning modules.

First, you explore the creation of “human rights” as a legal doctrine. You examine theories of human rights, including positive and natural law. You then examine how and why human rights came to be accepted as an international obligation. The focus is on international doctrines that aim to define human rights: Universal Declaration of Human Rights (UDHR) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

You examine the historical context in which the international human rights doctrines occur — e.g., as a response to the decolonization and world wars. By tracing the development of international human rights, you discover the context of UNDRIP: an effort of retribution and restorative rights. You use this legal framework for an informed discussion to navigate case studies.

Through case study reviews, you survey the cultural, political, and legal stature of indigenous peoples in the U.S. Each analyzes themes and strategies of oppression: colonialism and conquest. You critically examine the bias and cultural injustices that underlies U.S. policies and stifles progress. We review case studies of each:

Affairs of the Living

- How the Indians Lost Legal Title to America - Johnson v. M’Intosh
- Shutting the Courthouse Doors– Cherokee Nation v. Georgia
- Were the Indian Wars Legal – Connors v. U.S. and Cheyenne Indians
- Breaking the Treatise – Lone Wolf v. Hitchcock
- Rule by Guardianship – U.S. v. Sandoval
- Taking the Kids – In re Adoption of John Doe v. Heim

The Spirit World

- Taking the Dead – Wana the Bear v. Community Construction
- Taking the Religion – Employment Division
- Taking the Holy Places – Lyng v. Northwest Indian Cemetery Association
- Confiscating Indigenous Habitat – Tee-Hit-Ton Indians v. U.S.

Echo-Hawk calls these, “The Ten Worst Indian Law Cases Ever Decided.” Each study reveals the question facing all nations, including the U.S.: to what extent should indigenous peoples be secure in their land, cultural integrity, political and economic rights. Through this review, you critically analyze whether human rights can ever be achieved for *all*.

You end the course on a hopeful note: A Call to Justice. You discover the successes of those that persevere to achieve human rights and justice. You explore varying views of “advocacy,” largely through everyday people and efforts. By doing so, you discover the avenues to continue mining this new-found interest in advocacy and human rights.

Textbooks:

- In the Light of Justice: The Rise of Human Rights in Native America and the UN Declaration on the Rights of Indigenous Peoples, by Walter R. Echo-Hawk, ISBN 978-1555916633, approx. \$15
- In the Courts of the Conqueror, by Walter R. Echo-Hawk, ISBN 9781936218011, approx. \$20

Optional/Suggested: An Indigenous Peoples' History of the United States, by Roxanne Dunbar-Ortiz. ISBN 9780807000403, approx. \$10

Grading Information

Course Grade	Collective total points possible
Midterm Exam/Analysis (take-home)	15
Final Exam/Analysis (take-home)	30
Case Recitation (in class)	10
Module Reflection Report (ongoing, includes the 10 cases)	30
Participation/Reflections/Short Answer (ongoing)	46
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Total points offered for course	131

• Grading Scale

Your final grade is based on these percentages of your final points earned from a point scale of **125 points**:

A 100– 94	A- 93 – 90	
B+ 89 – 87	B 86 – 83	B- 82 – 80
C+ 79 – 77	C 76 – 73	C- 72 – 70
D+ 69 – 67	D 66 – 63	D- 62 – 59
F 58 or below		

❖ Midterm and Final Analysis

Each exam is a take-home analysis papers. You may be presented with a hypothetical fact pattern you must prepare a response to. Your paper serves as each:

(a) **Analysis Essay**: you are presented with a question you must write an expositive analytical essay with your course materials.

(b) **Case Study**: you are presented with a case study that poses a problem you must prepare an explanatory advice by using your course materials as your support.

(c) **Advocate's Argument**: You are presented with a dilemma you must write a responding argument with supporting evidence from your course materials.

You are graded on your analysis and use of the course materials. It tests your comprehension of the fundamental ideas, key terms, basic historical events, and important concepts from the course. The clarity of your answer and the examples you use shows you understand the course concepts and their relationship to one another. Irrelevant, inaccurate, and/or loosely-related excerpts will result reduced or no points.

❖ Case Recitation

This course examines ten (10) case topics as outlined above. For each case studies, several students serve as the primary resource for the discussion. You are given a chance to sign up for your recitation based on your interest and availability.

For the case study you are assigned to present, you must:

Before class: submit your written answers to the questions that correspond to the case presentation. The instructions list them.

In class: you are responsible for summarize the facts, identify the pertinent questions or issues and discuss (with fellow students and the instructor) the analysis or reasoning of the assigned case studies.

Your grade includes your ability to: show you understand the reading, identified and meaningfully discussed the pertinent issues raised in it, and can tie it to the course topics. You earn no points if you are absent or unprepared on the day you are assigned. **Since the presentation schedule is set at the beginning of the course, there are no make-up presentations.**

❖ **Module Reflection Report**

The goal of this course is not for you to memorize isolated incidents of oppression. Rather, in this critical analysis course, you are challenged to explore themes of oppression as reflected in the case studies.

As you progress through the course , you must step back to see the big picture of how one account or incident fits into the larger strategy of oppression. In these stories, you find that even though the motivations, tactics, and institutions that drive these different colonial powers differ, the resulting oppression may be the same.

So, in this course, you are graded on your ability to critically analyze how these incidents evidence the various institutions of oppression: slavery, economic, political, legal, and religious. You prepare a summary and reflection of each module.

You are not graded on how much you write or how elaborate the prose is. Instead, you are assessed on the substance. It must reflect your ability to read the text with a critical eye. Question what it says and how you feel about it. And show the depth of your knowledge through choosing on-point examples and accounts to answer the questions. You earn no points for a list of unrelated or unexplained quotes from your book or classmates.

❖ **Participation/Reflections/Short Answer**

For each discussion session, you test your knowledge of the lesson by submitting low-stakes brief assignments. These assignments allow you to assess honestly whether you understood the lesson material and to identify questions you have.

Your grade includes your ability to: show you read the material, explain your opinion on the topic, and your use of specifically cited examples from your reading and classmates' recitations to support your position.