

INDIGENOUS PEOPLES AND INTERNATIONAL LAW

CRIMINOLOGY 429 / FIRST NATIONS STUDIES 429

SPRING 2011

The Professor

Your instructor is Dr. Ted Palys. If you need to get in touch to arrange an appointment, ask a question, or other important matter, you can:

- Send an e-mail to palys@sfu.ca (typically the best alternative);
- Leave an urgent message with the secretaries in the Criminology General Office, at 778-782-3213;
- Leave a note for me at the General Office

The Course

This course will consider how relations between Indigenous and non-Indigenous Peoples framed much of the development of international law from the 15th century onward, and how the nature of that relationship has changed through ages of exploration, colonization, and rights recognition. More specifically, we will examine: (1) the earliest relationships that were established between Indigenous and non-Indigenous Peoples during “the age of exploration” in which the early European nation states set forth to explore and colonize the world; (2) the continuing role that Indigenous-State relations have played in the development of international law; including (3) the 20th century transition that has seen Indigenous Peoples transform themselves from “objects” of law (i.e., entities about which law is made) to “subjects” of law (i.e., participants in the making of international law).

Readings

The text for this course is Sharon Venne’s (1999) *Our Elders Understand Our Rights: Evolving International Law Regarding Indigenous Rights*, which is available as an electronic book through the SFU library. Readings from that book will be supplemented by other web-based readings that will be made available through our course web page (see below).

The Weekly Seminar

For the first two months, our weekly seminar normally will see us discussing the readings that have been assigned for that week. I also will make liberal use of films – documentaries, docudramas and fictional feature films – to help provide a feel for the various time periods we are discussing, and thereby to provide context for our discussions.

Our main task during the first two months will be to explore together the issues framed by the readings. You should prepare for class by considering the week’s assigned readings and being ready to ask and answer questions, and to engage in discussion, related to the course content. The

particular reading(s) to be prepared each week will be identified at the end of the prior class and posted on the course web page. Note that **20%** of the seminar grade will reflect your participation in discussion and evidence of preparation as revealed through that discussion, i.e., the participation grade is *not* simply an "attendance" grade.

The last month of class will be devoted primarily to student presentations that will provide a cross-sectional snapshot of the variety of situations and issues that are faced by Indigenous peoples around the world.

Course Web Page and Email

There are two ways (beyond class) that I will keep in touch with you regarding the course.

- First is via the course web page. This is where you can find the course syllabus, reading lists, what to prepare for next class, and other course-related materials. The direct URL for the course web page is <http://www.sfu.ca/~palys/crim429.htm>
- Also, a class email allows you and/or me to send an email to everyone registered in the course. The class email addresses are crim429-d1@sfu.ca and fnst429-d1@sfu.ca. Note that both addresses will send messages to students' SFU email addresses. If you would rather receive messages at another address you will need to arrange to have your email forwarded. To do this, go to the SFU home page (<http://www.sfu.ca>), go through "SFU Online" to "mySFU," click on "account management" and follow the instructions shown under "Setting email forwarding in SFU Connect."

Evaluation

Your course requirements include three different elements:

- A take-home mid-term assignment in early March in which you will have a week to wax eloquent (for up to 10 pages) in response to two questions that I will pose to you;
- a term project involving an Indigenous People of your choice, for which you will do (i) a 15-20 page paper and (ii) a 15-20 minute presentation of your project; and
- participation points for evidence of preparation and participation in weekly class discussion.

Term Project

Your task in the term research project is to do a 15-20 page paper (roughly 5000 words of actual text excluding title page, references and any appendices) regarding the Indigenous nation/tribe/people of your choice in which you discuss

- who/where these people are and something of their historical identity including the basis on which they consider themselves "Indigenous;"
- their colonial experience;
- their current situation, including such things as their relations with the governing nation state government where they reside (if they do not constitute it themselves) and their involvement in international fora (e.g., courts, tribunals, NGOs, UN structures); and
- whatever other issue(s) you think are important to include that would further connect the People to the themes of this course.

It is difficult beyond this to specify anything more directive given the diversity of experience that different Indigenous Peoples had and do have. The main thing you should be seeking to do is to connect the story of an Indigenous People to the themes of the course, e.g., traditions/customs; colonial experience; issues regarding rights, title, governance. The thing you want to avoid is “travelogue” that never goes beyond the sort of superficial description one finds at Wikipedia. You also should ensure you are sensitive to issues of voice, i.e., to be able to distinguish what is written *about* a people as opposed to what they write about themselves.

Your written paper is due on the Monday following our last class, i.e., Monday, April 11, and will be submitted electronically as an email attachment according to instructions that will be posted on our course web page.

Presentation

You will also prepare a presentation version of your term project. The presentation will be no longer than 20 minutes in length (aim for 15), and should NOT be an overview of your entire paper. Instead, you should choose one or (at most) two interesting issues about the People who are the subject of your paper and, after some brief background or other contextualizing information, focus in on that/them for the brief time you have. For the most part this will involve making explicit how the group/people connect to themes of the course, e.g., you might want to focus on their colonial experience; or discuss a current issue that the group is trying to get resolved; or talk about a court case in which they were or are involved; or you might use the opportunity to talk about the question of “who are “Indigenous” peoples” and how your group fits (or doesn’t) within contemporary definitions. Give yourself sufficient time over the course of the semester to find something you believe is “interesting” about the group, and understand that it may take time to gather information that reflects the People’s perspective. The easiest material to find will be material that reflects the Nation State’s perspective; wherever possible, you need to get beyond that.

Grading for the presentation will be done on the basis of (a) substantive content; (b) success in connecting the people’s experience and perspective to one or more themes of the course; (c) presentation style/quality (d) response to questions. Students wishing to distribute a short (no more than 1-2 page) handout to the class are welcome to contact me before their presentation and, time permitting, I will endeavour to get copies made within the department. A computer with sound and ethernet connection will be available for your use if you need it for your presentation (e.g., if you decide to use Powerpoint or want to include a Youtube video).

Evaluation Summary

Element	Contribution to Grade
Preparation and Participation	20%
Take-home "mid-term" to be handed out in early March	25%
Term Research Project on an Indigenous People	Oral Presentation: 25% Written Paper: 30%

Course Structure/Readings

	Topics for Discussion; Relevant Readings
1	First Contact: Spaniard-Arawak/Mayan/Aztec Relations <ul style="list-style-type: none"> • Papal Bulls: Romanus Pontifex (1455) and the <i>Inter Caetera</i> (1493) • The Spanish <i>Requerimiento</i> (1510)
2	Natural Justice and International Law: <ul style="list-style-type: none"> • Francisco de Vitoria: <i>On the Indians Lately Discovered</i> (1532) • Bartolome de Las Casas: <i>Brief Account of the Devastation of the Indies</i> (1542)
3	Nation States and the "Other" <ul style="list-style-type: none"> • The <i>Treaty of Westphalia</i> (1648) • Thomas Hobbes: <i>The Leviathan</i> (1651)
4	Aboriginal Rights and Title in early Canada and U.S. <ul style="list-style-type: none"> • <i>The Royal Proclamation</i> (1763) • The Marshall Decisions: <ul style="list-style-type: none"> ○ <i>Johnson v. M'Intosh</i> (1823) ○ <i>Cherokee Nation v State of Georgia</i> (1831) ○ <i>Worcester v Georgia</i> (1832)
5	Positivist Law and Colonialism <ul style="list-style-type: none"> • International Court Decisions <ul style="list-style-type: none"> ○ <i>Island of Palmas</i> (1928) ○ <i>Legal Status of Eastern Greenland</i> (1933)
6	International Institutions <ul style="list-style-type: none"> • Deskaheh at The League of Nations (1920) • The <i>Charter of the United Nations</i> (1945) • The <i>Universal Declaration of Human Rights</i> (1948) • ILO Conventions #107 (1957) and #169 (1989)
7	Contemporary UN Structures Focussed on Indigenous Peoples <ul style="list-style-type: none"> • Working Group on Indigenous Populations • Permanent Forum on Indigenous Issues • Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples Expert Mechanism on the Rights of Indigenous Peoples
8	An Indigenous Diplomatic Corps <ul style="list-style-type: none"> • Chief George Manuel and the World Council of Indigenous Peoples • Grand Chief Ted Moses and the Grand Council of the Cree • J. Wilton "Willie" Littlechild; Sharon Venne; Kenneth Deer
9	"Self-Determination" and "Peoples" <ul style="list-style-type: none"> • <i>Declaration on the Rights of Indigenous Peoples</i>
10	A Snapshot of the Worlds' Indigenous Peoples <ul style="list-style-type: none"> • Student presentations