The syllabus and copies of this notice are available from Ms. Nancy Watkins, Rm 318 (civil clinic office suite). I will make assignments by reference to the syllabus. I plan to have a Webcourse for this class. The syllabus will then be available on line, and assignments will be made that way.

The casebook is Clinton, Goldberg & Tsosie, American Indian law: Native Nations and the Federal System (4th ed., 2003) (page cites are to this book unless otherwise noted).

Assignments for the first two weeks:

Tuesday, 8/17
We shall meet, but there is no assignment for this first class. However, please note the large number of pages for the second class (about two classes’ worth).

Wednesday, 8/18
I. Background
A. Introduction
19-49 [background and history of U.S.- Indian nations relations; you’ll need to keep this material in mind throughout the semester]
Ball, Stories of Origin..., 87 Mich. L. Rev. 2319 (1989) (excerpts, on Library electronic reserve (hereinafter LER)) [a bird’s eye view of my take of the subject]
Ball, Budding Translation, 99 Mich. L. Rev., 1265 (2001) (LER) (reprints available from Ms. Nancy Watkins, Rm 318 (Civil Clinic office)) [on Black Elk Speaks and what it may speak to our subject, also some of the case history]

Monday, 8/23
B. Foundational cases at the beginning
Johnson, 57-61, nn. 61-65 [read Johnson carefully. Read through the notes with attention to the excerpt from Jennings in n. 1 and to Kades in n.2]; ABF 23-29 [including fn. 132]
Cherokee Nation, 65-69; n. 1 69-72 9 (to n. 2) [interesting material, especially since it involves incidents and land not far from Athens]; ABF 29-30

Tuesday, 8/24
Finish Mon. material as necessary
Worcester v. Georgia, 76-85, nn. 85-90 [one of the most famous Supreme Court cases, with critical continuing importance, especially for the tribes; the notes following are also important]; ABF 31-34

Wednesday, 8/25
C. A brief look ahead: What happened?
1. The Court: Incorporation, ABF 34-39 (incl. fnn.)
2. Court and Congress: Conquest (tribal “deficiency”; Congress’ “plenary power"
Crow Dog, 96-99, nn. 99-103 (to n. 3)
Kagama, 439-43, nn. 443-46
Lone Wolf, 446-49, nn. 449-50, ABF 50 (last par.) - 55 (to B). Tee-Hit-Ton 1023-31]
Indian Law (U.S. Law and Native Americans)  
Professor Milner S. Ball  
Fall Semester, 2004

Syllabus

Casebook: Clinton, Goldberg & Tsosie, American Indian law: Native Nations and the Federal System (4th ed., 2003) (page cites are to this book unless otherwise noted)  

I. Background

A. Introduction  
CB19-49  

B. Foundational cases at the beginning  
Fletcher v. Peck; New Jersey v. Wilson, in Ball, Constitution, Court, Indian Tribes 23  
Johnson, 57-61, nn. 61-65; ABF 23-29  
Cherokee Nation, 65-69, nn. 69-72 (to n. 2); ABF 29-30  
Worcester, 76-85, nn. 85-90; ABF 31-34

C. A brief look ahead: What happened?  
1. The Court: Incorporation, ABF 34-39 (incl. fnn.)  
2. Court and Congress: Conquest (tribal “deficiency”; Congress “plenary power”)  
Crow Dog, 96-99, nn. 99-103 (to n. 3)  
Kagama, 439-43, nn 443-46  
Lone Wolf, 446-49, nn 449-50  
ABF 50 (last par.) - 55 (to B)  
Tee-Hit-Ton, 1023-31; Newton, 1031-36; ABF 101  
3. Scholars  
ABF 13 (last par. & fn 55), ABF 43-46 (to III)  
4. Recent word: U.S. v. Lara (No. 03-107, 4/19/04), 72 USLW 4237, at 4283-87  
(Thomas, J., concurring)

Tim Coulter, in Ball, The Word and the Law 49-60 (hereinafter TWATWL) (LER)  
Indian Law Resource Center, Annual Reports (various years) (Lib.res.)

1 It is likely that the pp. will require amendment, i.e. downward adjustment. It may also omit materials that will be included or include some that will have to be omitted.
II. Recurring Issues

A. What is a Tribe/Indian Nation 120-29

B. What is an Indian 129-37

C. What is Indian Country
   McCluhan, compiler, Touch the Earth 1-2 (unnumbered), 8, 15, 23,36, 42 (& 177 n. to p. 42),
   54, 71, 77, 96-97, 106-07, 120, 138-39, 152, 159 (Lib.res)
   CB 137-42

D. What is a Dependent Indian Community 143-50

E. Reservation boundaries
   Outside land 150
   Determining boundaries 151-53
   Solem 153-63, Note163-73

F. Equal Protection
   Morton 175-82, nn. 182-86, 194-201

G. Indian law canons of construction 212-16 (1,2); 217-18 (4)

   Mark Abley, Six Nations, TLS (2001) (LER)

III. Tribal Sovereignty

A. Governing authority
   Talton, Wheeler 219-28, NN. 228-29
   Mazurie 230-33, nn. 233-35 (1" 2 paras. p. 235)

   IRA 296-321
   Hopi constitution 314-18
   Note 327-31
   Separation of powers: courts 335-43
   David Harding, in Ball, The Word and the Law 38-49 (LER & Lib.res.)
   Sources of law 363-69
   Sovereign immunity 371 (D)
   Oklahoma Tax Comm’n 378-84
   Membership 391-94

IV. Federal and state incursions on tribal sovereignty
A. Federal
   1. Background 415-17, 436-77 (2), 439 (4)
   2. Plenary Power
      [Kagama 439-46]
      [Lone Wolf 446-54]
      Sandoval 454-56, nn 456-60
      John 460-61
      Delaware Tribal Business Council 463-65, nn. 465-68
      Dion 469-75 [nn. 475-81]
   3. ICRA
      Santa Clara Pueblo v. Martinez 481-89, NN. 489-92 (to 4)
   4. BIA 493-94
   5. Trust 497-500; ABF 61-66
      White Mountain Tribe 512-14
      Navajo Nation 514-1
      Note 517-25; ABF 82-84 (water)
   6. Incorporation
      Oliphant 540-50
      Duro 551-58, nn. 558-67
      Montana 567-72, nn. 572-75
      Strate 575-84
      Stoney Tribe, A New Path in the Mountains (Lib.res.)

B. State
   1. Introduction 586-87 (to Note). 590 (1st par. n. 2 only)
   2. Courts
      Williams v. Lee 601-03, nn. 604-06 (nn. 2-5)
   3. Tax and regulation
      Colville 607-17
      California v. Cabazon Band 617-23, nn. 623-28, 630-34
   4. Jurisdiction outside Indian Country
      Mescalero, Kake, Oklahoma Tax Comm’n 634-53
      In the Light of Reverence (video)

V. Another Look at Sovereignty and Jurisdiction in Indian Country

A. Introduction 645-48 (to U.S. V. Roberts), 652-57

B. Criminal Jurisdiction
   1. Federal and state 657-89
   2. Tribal
      Wheeler 696-701
      Notes 701-06
C. Civil Jurisdiction
   1. Regulation, tax 708-09
      a. Tribal
         Kerr-McGee 708-11
         Atkinson Trading Co., 712-18 nn. 718-20
         Brendale 720-23, 735-36 (to n. 2)
      b. Federal 748-49
      c. State 751
         Central Machinery 752-54
         White Mountain Apache Tribe v. Bracker 755-63
         Cotton Petroleum 763-79, nn. 779-80 (to n. 2), 783 (n. 4), 785-86 (n. 6)
         Mescalero 787-96 (to n. 2)
   2. Adjudication
      a. Federal
         Intro. 797-800
         National Farmers Union 800-04
      b. Tribal 818-19, 828-30
         Nevada v. Hicks 830-53, nn. 853-55
      c. State 873-74

Smoke Signals (film)

D. Statutory Allocation of Jurisdiction 874-76
   1. PL 280 876-85
      Bryan 885-90, nn. 890-91 (to n. 4), 907-09
   2. ICWA 909-13
      Mississippi Band v. Holyfield 913-29, nn. 929-30 (to N. 2)
   3. IGRA 952-57
      Rumsey Indian Rancheria 957-66
      Seminole Tribe 966-69 (nn. 969-76)
   4. Liquor 976-83

E. Agreements 983-86, 997-99 (to n. 4)

VI. Tribes: Land and Culture

A. Property
   1. Aboriginal title 1007-08, 1019-23
      [Tee-Hit-Ton 1023-36]
      Dann 1038 (begin at n. 4) - 42, nn. 1042-49
   2. Non-intercourse Acts
Oneida 1049-59, 1063-64
3. Recognized title
   U.S. v. Shoshone 1066-69
   Sioux Nation 1069-81, nn. 1081-84, ABF 116-19
4. Executive Order reservations 1085, 1092-93 (n5)
5. Submerged lands 1101-02 (n.1)
6. Allotted lands
   Black Hills Institute 1108-10, 113-14 (n. 4)

B. Culture 1133-35
1. Religion 1133-35, 1146-47 (note), 1165-67 (note 1); Peyote Road (video)
2. Property 1172-73, 1186-87 (n. 1)
3. Burial 1188-89, 1206-07 (nn. 1, 2)
4. IP 1211-17

VII. Reserved Rights

A. Hunting, Fishing, Gathering 1219-22
   1. On reservation
      Menominee Tribe 122-25, nn. 1228-36 (to n. 9)
   2. Off reservation 1238-41, 1244-49
      Washington, 1249-61, 1262-62 (nn. 1,2), 1263-66 (n. 4)

B. Water
   Winters 1269-72
   Arizona 1272-75, nn. 1275-77 9thru 1st par. n. 3), 1281-89

VIII. Economic Development

A. Overview 1339-40, 1348-66

B. Control
   Gaming 1411-13

C. Environmental protection 1416-21 (to last 2 lines), 1424-25, 1430-31

IX. International Perspectives 1447-48

Anaya 1451 (1st par.), 1460 (Note), 1479-83 (to n. 4)
Frickey 1883-89
Coffey and Tsosie 1597-1604
Hawaii 1695-06
The Hawaii Tribunal (video)