

Department of Law
Course Outline - Fall 2008

LAWS 4504 - Aboriginal Peoples and the Canadian Criminal Legal System

Class Day & Time: Tuesdays - 2:35-5:25 pm
Room: B 243 LA (Loeb)
Instructor: Jane Dickson-Gilmore, PhD.
Office: D592 Loeb
Office Hours: Thursdays, 12:30-2:00 p.m., or by pre-arranged appointment.
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COURSE DESCRIPTION:

There can be little doubt that the relationship between the Canadian criminal justice system and First Nations peoples is, and long has been, fraught with conflict, tension and for many, an absence of the justice the system claims to embody. It is the goal of this course to deconstruct that relationship and attempt to come to grips with the range of factors which have fed into this fractious relationship and, most importantly, the over-representation of Aboriginal people within Canadian criminal courts and correctional system. Here, analysis will focus upon institutional efforts to ameliorate over-representation as well as the rise of traditional and restorative justice initiatives which exist primarily as amendments to, or outside of, the dominant system. Among those initiatives studied will be sentencing circles, family group/community conferencing, and healing circles.

EVALUATION PROCEDURES:

Participation: 15% Students will be expected to take an active and informed role in class discussions and analysis; no marks will be granted for attendance, as this is a prerequisite to participation.

Term Paper: 25% Students will be expected to prepare and submit a paper of no less than 15 double-spaced pages, exclusive of references and appendices. As a general rule, late papers are not accepted; students who are able to justify late submission through formally documented excuse may be permitted to hand in the paper, but may also face penalties.

Presentation: 20% Students will present their papers to the class in a presentation of approximately 20 minutes; presentations will begin September 23, 2008.

DUE DATES: Students presenting between September 23-October 7 must hand in their papers October 10, 2008; students presenting between October 14-November 4 must hand in their papers November 7, 2008; students presenting between November 11-November 25 must hand in their papers November 25. ALL PAPERS MUST BE

RECEIVED BY 4:30 P.M. IN C473 LOEB ON THE DUE DATE, OR IN CLASS IN THE CASE OF THE NOVEMBER 25, 2008 DEADLINE.

Final Exam: 40% The final examination in this class will be held in the formally scheduled examination session. The examination will be comprehensive and closed book; it will be two hours in duration.

MATERIALS AND TEXTS:

There is a single required text for this course, however, each week the assigned readings will include a small selection of journal articles from which students will be expected to select and read a minimum of one article. These articles may be retrieved from the library or online.

E.J. Dickson-Gilmore and Carol LaPrairie, **Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice and the Challenges of Conflict and Change** (Toronto: University of Toronto Press, 2005)

Course Schedule and Assigned Readings

1. **Course Introduction** - no assigned Readings.
2. **Creating the Context: The Aboriginal Reality in Canadian Society**

Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice and the Challenges of Conflict and Change, pp.5-26.

One of:

1. Carol LaPrairie, "Aboriginal crime and justice: Explaining the present, exploring the future", 34(3) **Canadian Journal of Criminology**, July-October, 1992: 281-298.
2. Linda Gerber. "The Development of Canadian Indian Communities: A Two-Dimensional Typology Reflecting Strategies of Adaptation to the Modern World." *Canadian Review of Sociology and Anthropology* 16:4 (1979):404-424.
3. Vic Satzewich and Terry Wotherspoon. "Aboriginal People and Economic Relations: Underclass or Class Fractions." In *First Nations: Race, Class, and Gender Relations*. Scarborough: Nelson Canada, 1993: 43-74.

3. **Aboriginal People and the Police**

Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice and the Challenges of Conflict and Change, pp.27-47

One of:

1. Jim Harding, "Policing and Aboriginal Justice", *Canadian Journal of Criminology* July/October:363-383.
2. Tommy Landau, "Policing and security in four remote aboriginal communities: A challenge to coercive models of police work", *Canadian Journal of Criminology*, January (1996):1-32.

4. Aboriginal People and the Courts

1. Carol LaPrairie, "Sentencing Aboriginal Offenders: Some Critical Issues" in Julian V. Roberts and David P. Cole (eds.), **Making Sense of Sentencing** (Toronto: University of Toronto Press, 1998:173-185.

One of:

2. Rachel Dioso and Anthony Doob, "An analysis of public support for special consideration of aboriginal offenders at sentencing", *Canadian Journal of Criminology*, July 2001:405-412.
3. Philip Stenning and Julian V. Roberts, "Empty Promises: Parliament, The Supreme Court, and the Sentencing of Aboriginal Offenders" **Saskatchewan Law Review** 64 (2001):137-168.

5. Aboriginal People and Corrections

1. Carol LaPrairie, "Aboriginal Offenders, Offending and Imprisonment", in LaPrairie, *Examining Aboriginal Corrections in Canada* (Ottawa: Solicitor General, 1996):32-59.
2. James Bonta, Carol LaPrairie, Suzanne Wallace-Capretta, "Risk prediction and re-offending: Aboriginal and non-aboriginal offenders", *Canadian Journal of Criminology* April 1997:127-144.

6. Shifting Current Criminal Justice Patterns: Restorative Justice

Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice and the Challenges of Conflict and Change, pp.91-110.

One of:

1. Jason Nadeau, **Critical Analysis of the United Nations Declaration of Basic Principles on the Use of Restorative Justice Programs in Criminal Justice Matters**, unpublished paper prepared for the Ministry of the Solicitor General, Canada, and the Ministry of Justice, Canada, July 2001.
2. Robert Depew, "Popular Justice and Aboriginal Communities. Some Preliminary Considerations", *Journal of Legal Pluralism and Unofficial Law* 36(1996):21-67.

7. Traditional Healing in the 'New Justice'

Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice and the Challenges of Conflict and Change, pp.111-130.

One of:

1. Gloria Lee, "Defining Traditional Healing", vol.1 (4) **Justice as Healing** 1996:1-5; on-line at www.usask.ca/nativelaw/publications
2. Chris Andersen, "Governing aboriginal justice in Canada: Constructing responsible individuals through 'tradition'", **Crime, Law and Social Change** 31 (1999):303-326.
3. Joan Ryan and Brian Calliou, **Aboriginal Restorative Justice Alternatives: Two Case Studies** (unpublished paper, Ottawa: Law Commission of Canada, January 2002).

8. Sentencing Circles

Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice and the Challenges of Conflict and Change, pp.131-153.

One of:

1. Barry Stuart, "Sentencing Circles: Making 'Real Differences'", in Julie MacFarland, ed., **Rethinking Disputes: The Mediation Alternative** (Toronto: Edmond Montgomery Publications Ltd., 1997):201-233.
2. Carol LaPrairie and Julian Roberts, "Sentencing Circles: Some Unanswered Questions", **Criminal Law Quarterly** 39 (1996): 69-83.
3. Jacqueline Fitzgerald, "Does circle sentencing reduce Aboriginal offending?", **Crime and Justice Bulletin** No.115, May 2008:1-12.

9. Healing Circles

Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice and the Challenges of Conflict and Change, pp.168-178.

1. Thérèse Lajeunesse, **Community Holistic Circle Healing Hollow Water First Nation**, (unpublished paper, Ottawa: Solicitor General of Canada, 1993).
2. Joe Couture, Ted Parker, Ruth Couture, Patti Laboucane, Native Counseling Services of Alberta, "Executive Summary", "Chapter One, Research Introduction and Protocol", "Chapter Two, Hollow Water Healing - A Circle Process, Requirements, Impact", in **A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Project**, (Ottawa: Solicitor General of Canada, Aboriginal Corrections Policy Unity, 2001), i-vi; 1-28.

10. Family Group and Community Conferencing

Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice and the Challenges of Conflict and Change, pp.154-168.

One of:

1. Ian Hassell, "Origin and Development of Family Group Conferences", in Joe Hudson, Allison Morris, Gabirelle Maxwell and Burt Galaway (eds.), **Family Group Conferences. Perspectives on Policy and Practice** (Annandale, New South Wales: The Federation Press, 1996:17-36.)
2. Lyle Longclaws, Burt Galaway, and Lawrence Barkwell, "Piloting Family Group Conferences for Young Aboriginal Offenders in Winnipeg, Canada", in Joe Hudson, Allison Morris, Gabirelle Maxwell and Burt Galaway (eds.), **Family Group Conferences. Perspectives on Policy and Practice** (Annandale, New South Wales: The Federation Press, 1996:195-205.
3. Juan Marcellus Tauri, "Family Group Conferencing: The Myth of Indigenous Empowerment in New Zealand", **Justice as Healing**, on-line at www.usask.ca/nativelaw/publications.

11. Sustainability, Consequences and the Potential for Positive Change

Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice and the Challenges of Conflict and Change, pp.179-205.

One of:

1. Carol LaPrairie, "The 'new' justice; Some Implications for aboriginal communities", in **Canadian Journal of Criminology**, January 1998:61-79.
2. Sharon T. Levrant, Francis T. Cullen, Betsey Fulton, John F. Wozniak, "Reconsidering Restorative Justice: The Corruption of Benevolence Revisited?" vol.45(1) **Crime and Delinquency**, January 1999:3-27

12. The Future

Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice and the Challenges of Conflict and Change, pp.206-236.

One of:

1. Carol LaPrairie, "The impact of aboriginal justice research on policy: A marginal past and an uncertain future", **Canadian Journal of Criminology**, April 1999:249-260.
2. Shereen Benzvy Miller and Mark Schacter, "From restorative justice to restorative governance", **Canadian Journal of Criminology**, July 2000"405-420.
3. J. Rick Ponting and Cora J. Voyageur, "Challenging the Deficit Paradigm: Grounds for Optimism among First Nations in Canada", **The Canadian Journal of Native Studies**, XXI, 2(2001):275-307.