

LAWS3305
Thursday, October 17/13
War Crimes

- war crimes have always been with us; an issue even contemporarily
- for example, historically, the killing fields and Kamir Rouge; or currently, the African Union which has made a move to seek immunity from the International Criminal Court Ratification. The one thing leaders can say is that nobody in the west has been prosecuted for war crimes – ex: Afghanistan, Guantanamo, etc.

From last week, the Aboriginal aspect of the Wild West:

- **4 principal false assumptions between white people and aboriginals:**
 - Aboriginals are incapable of governing themselves
 - the treaties that we made with them very early on were not covenants of trust; they were created just to settle pragmatic matters of the moment
 - our condescending relationship was appropriate for Aboriginal peoples – what we did for them was for their benefit
 - we have determined what is best for them; we have never taken in Aboriginal values – they take in ours

These false assumptions still exist today; we have an aboriginal crisis involving substance misuse, etc. The native population is grossly over represented in custody, especially in Saskatchewan. How did this happen, and why is it a still problem?

The land was seated in trust; whether legal or moral, that was something that could not be swept under the rug. **Back when white people came to Canada/North America, they came from a separate world. They did not lay any underbelly to understanding the native cultures.** Accordign to the doctrine of discovery, sovereignty passed onto the conquering nation. This was extended to mean that lands not civilized could also be passed onto the conquering nation. The Natives argued that no one could own the land; it was for the benefit of all. They had absolutely no concept of containment – no one could own the land, according to the natives. The prevailing notion developed through Canadians and Americans as time went on was that **aboriginals were simply in possession of their land and did not demonstrate any civilized/Christian attributes in relation to the land. Were seen as a nation incapable of holding their own land.**

John Locke, one of the philosophers who we give credit for the enlightenment, even had a condescending and discriminatory view of aboriginal people. He concluded that **Europeans were absolutely free to acquire property rights simply through agricultural cultivation.**

In actuality, there has always been considerable diversity in Indian groupings (ex: the Mic Mac, Mohawks, Sioux, etc.) Each had their own indigenous customs and relationships. Many of these nations, when they were first dealing with British forebearers and politicians, **thought they were making treaties promising peace and friendship.** They did not realize that they were giving up thier land. In some cases, it's questionable as to whether the Indian people knew what they were agreeing to.

In the history of Canadian litigation re: aboriginal spirit, there is a huge aberration from rule (ex: debauched testimony, to explain a written document in an inaccurate way)

In time, confederation happened; there were various editions of the Indian Act; some women in First Nations opposed to self-government because they won't have the government to rely on when they are suffering from abuse from males on the reserve – they don't want to be cut free because they're afraid they'll suffer even more.

Important Aboriginal Cases in History

Catherines Milling & Lumber Co v. The Queen

R v. Drybones (1967) – before the charter, but there was still the Bill of Rights; Drybones had been found drunk off of the reserve; treated unfairly; begun to open up national awareness of aboriginals in the courts

R vs. Sparrow (1990) – land claims and treaty disputes that went on

Guerin v The Queen (1984)

Delgamuuk v British Columbia (1997)

R v Marshall (1999) – about aboriginal hunting and fishing rights; goes to ecology and preservation of fish stock; natural resource mgmt; did the original treaties man commercial fishing or fishing for susptenance?

War Crimes:

- the Nuremburg trials which went on for quite some time

From the book, 'The Sun Climbs Slow, Justice in the...Imperial Era' (on reading list)

- “the legacy of the 20th century is one of unsurpassed brutality...Nazis, Stalin, Kamir Rouge w/Pol Pot; genocides in Rwanda...etc...”
- Stalin's representatives got to sit on the war crimes tribunal, despite Stalin having killed more people than even Hitler

The Nuremberg Laws:

- Nuremberg laws were antisemitic laws introduced in Nazi Germany
- to the allies, Nuremberg seemed like an appropriate place for justice to be restored

3 Main Principles to Come from Nuremberg:

In August, 1945, in the US, it was determined that the categories of crimes that would be tried as **war crimes (traditional)**, **crimes against the peace** (unprovoked aggression – stomping into Poland, overrunning the Netherlands, Czech Slovakia, etc.), **and crimes against humanity** (the Holocaust.)

Final Solution – divised in 1942; “carrying out the final solution to the Jewish problem”; totally extermination; In January 1942, the one-sea conference took place in Berlin; plans to exterminate entire Jewish population in Europe and the Sovier Union

Approximately 4 million Jews had died in death camps, and at least 2 million before died in the mobile killing units.

Alber Speer – AKA the architect of the third reich; very well educated, uppercrust German; Speer was successful at Nuremberg in convincing the court that he did not have actual knowledge of the final solution (how could he not have?); in any event, was given 20 years, served it, and wrote a book called '*Inside the Third Reich*' – tells the reader what the essence of nazism was; what was going on in Hitler's mind.

A lot of Nazis were sublimated / integrated into our society w/o much publicity or retribution. Even when the war ended, the cold war was developing. Already, our former ally, the Soviet Union, was becoming a communist threat, and the iron curtain was about to drop.

Yamashita – commander who paid the price for acts for which he had already atoned; paid the price on the basis of a very high exercise of principle. Hours before his execution, dictated his final words.

War criminals – should there be a statute of limitations? In the criminal court, there is a push for no safe haven. There are loopholes – some countries have charters, some don't.

In Rome, Italy, 1998, having had the special tribunal for the prosecution of war crimes related to the former Yugoslavia in which our Justice of the Court was an elite prosecutor, we have a **permanent international court based in the Hague. It tries crimes of humanitarian concern – ex: genocide and war crimes.** They don't prosecute war crimes at the time, and they have trouble defining what aggression is. The court is a court of last resort; states are encouraged to prosecute their own miscreants if possible.

Whenever the country of origin refuses to do so or lacks the necessary structural capacity, the ICC can approach the security council to get a warrant from the UN to seek out that individual and proceed its prosecution. Even though the state is unwilling (for ex: dictatorship), unlikely to prosecute their own headhunter / abuser.

One of the things it lacks: international police force.

The American 'Domino Theory' – if you don't stop communism, it will take over; the US government very concerned over this.

The Americans first went into South Vietnam; took the view that the North Vietnamese were really another country; did not see it as a civil war between 2 factions of the country. The CIA was much involved; America was brutally and bitterly divided in the Vietnam war.

Very often, African Americans, undereducated and underrepresented in the southern states, got drafted. In the south Asian jungles, they were exposed to snakes; never saw the enemy. The American soldiers didn't understand the difference between the North and South Vietnamese.

The typical attitude of the American soldier – “the loyal Vietnamese should be taken out to sea in a raft... everyone else should be killed, then the raft should be sunk.”

There was a **scorched earth policy – free firezones in which cart blanche applied; anything could be shot at in this zone.**

My Lai – the Vietnam Massacre: rampant butchery; no threat from the Vietnamese, but were attacked anyway, including women and babies. All suppressed and managed to get out; only one lieutenant paid the price for this horrific crime.

Vietnam was a very complex lesson for the States, but they did not appear to learn from it.