

Rel 243: Native American Religious Freedom

Winter Term, 2004

Michael McNally
Leighton 319 (x5953)
mmcnelly@carleton.edu

Office Hours:
MF 3-4:30; Th 10-2;
lunches, or by appt.

Course Description

This course explores the historical, legal, and cultural contexts in which Native Americans have practiced their religions within the United States. Making reference to the cultural background of native traditions and the history of First Amendment law, the course explores legislation and landmark court cases concerning sacred lands, Peyotism, free exercise of religion in prisons, and sacralized traditional practices (whaling, fishing, hunting). The course also considers the alternative recourse sought by Native communities in light of major blows to Native American religious freedom by the Rehnquist court: treaty rights and property law. The course critically examines the conceptual framework of "religion" as it has been applied to the practice of Native American traditions. Service-learning research projects will integrate academic learning and student involvement in matters of particular concern to contemporary native communities.

Public Scholarship Projects as Service-Learning

Native American communities consistently link cultural learning in the oral tradition with expectations of responsibility to the community. In our own academic context, service-learning can provide a nourishing link between community service projects and classroom inquiry by structuring reflection on that experience such that it becomes part of the transforming learning of the course. Students will identify concrete efforts by native communities today to secure religious and cultural freedom. Informed by contact (often electronic) with native people in those communities, students will conduct research projects into the complex circumstances of those issues. In the final segment of the course, in-class project presentations will instruct the class about each issue. As the primary "deliverable" for the project, students will submit html-format scholarly case studies for a web-based portal exploring these issues. In addition, take-home final exam essays will structure each student's own integration of knowledge gleaned through service-learning and other course knowledge.

Course Requirements and Criteria for Evaluation

Prepared Class Participation (includes class discussion & office hours)	10% of Grade
Oral Class Presentation on Service Learning Research	5% of Grade
Good Faith Effort on Service Learning and Research Submission for Website	10% of Grade
Essay #1 on Koyukon views of Land (3-4 pp.)	15% of Grade
Essay #2 on Makah Whale Hunt (3-4 pp.)	15% of Grade
Legal Memorandum/Case Study, read in class (2-4pp.)	15% of Grade
Take Home Integrative Final (4-6 pp.)	30% of Grade

Required Readings available at the Bookstore.

Flowers, Ronald, *That Godless Court? Supreme Court Decisions on Church-State Relationships* (Westminster John Knox Press, 1994)

Martin, Joel, *The Land Looks After Us: A History of Native American Religion* (Oxford U. Press, 2001)

Nelson, Richard, *Make Prayers to the Raven: A Koyukon View of the Northern Forest* (U. Chicago Press, 1983)

Mihesuah, Devon, ed., *Repatriation Reader: Who Owns American Indian Remains* (U. Nebraska Press, 2000)

Sullivan, Robert, *A Whale Hunt* (Scribner, 2000)

A Variety of Court Cases available on Web and Law Review Articles (found on closed reserve in library with an extra copy outside my office).

P r e l i m i n a r i e s

- M 1/5 Overview of Course & Service-Learning
Film: *In Light of Reverence*

I. First Amendment Jurisprudence on Religion

- W 1/7 **Origins of Two Religion Clauses of First Amendment & Introduction to Judicial System**
Flowers, *That Godless Court* pp. 1-19, 147-155, 20-44 (& familiarize yourself with other books)
- F 1/9 **Major Precedents & Tests in First Amendment Free Exercise Jurisprudence**
Flowers, *That Godless Court* pp. 45-125 skim
- M 1/12 **The Problematic Concept of “Religion” in Jurisprudence**
Flowers, *That Godless Court* pp. 126-146
“Constitutional Definitions of Religion” *Harvard Law Review* 91 (1978).
- W 1/14 **Native American Religious Freedom and U.S. Indian Policy: A Sketch 1776-Present**
Berkhofer, Robert, “Introduction” to *The White Man’s Indian* (1978)
Loesch, Martin, “The First Americans and the Free Exercise of Religion” *American Indian Law Review* 18:313-377 (1993) (r)

II. The Problematic Concept of “Religion” in Native American Traditions

- F 1/16 **“No Word for Religion”: Spiritual Integrated Ways of Life**
Martin, *The Land Looks After Us*, pp. 5-83
- M 1/19 **Notes on the Dynamics of Native American Religious Practice**
Martin, *The Land Looks After Us*, pp.114-139
Nelson, *Make Prayers to the Raven*, pp. 1-46
- W 1/21 **The Sacred Economy and Ecology of the Koyukon Way**
Nelson, *Make Prayers to the Raven*, pp. 47-138 skim, 139-199
- F 1/23 **Land and the Sacred in Native America: the Koyukon Example**
Nelson, *Make Prayers to the Raven*, pp. 200-248
Due in Class: Essay I on Koyukon relationship to Land

III. Sacred Lands Cases

- M 1/26 **The Sequoyah and Badoni Cases**
Laurie Ensworth, “Native American Free Exercise Rights to the Use of Public Lands” *Boston Univ. Law Review* 63:141-179 (1983) (r)
- Memos in Class: *Sequoyah v. Tennessee Valley Authority* 620 F. 2d 1159 (6th Cir. 1980)
Badoni v. Higginson 638 F 2d 172 (10th Cir. 1980)
Fools Crow v. Gullet 706 F. 2d. 856 (8th Cir. 1983), cert. denied, 464 U.S. 977 (1983)
Wilson v. Block 708F. 2d 735 (D.C. Cir. 1983)
- W 1/28 **The Lyng Case (1988) I**
Lyng v. Northwest Cemetery Protective Association 485 U.S. 439, 451 (1988)& associated documents (r)
- F 1/30 **The Lyng Case (1988) II**
Deloria, Vine, “Trouble in High Places” from *The State of Native America*, ed. A. Jaimes (1992) (r)
- Memos in Class: *Bear Lodge Multiple Use Association v. Babbitt* 175 F.3d 814; (Cir. 1999)

IV. Free Exercise Cases