**NATIVE AMERICAN LAW & LITERATURE**

**NAS 41**

Dartmouth College

N. Bruce Duthu

Samson Occom Professor & Chair

Native American Studies

Winter Term 2015

9L (MWF 8:45 - 9:50 a.m.); X-hour Th. 9:00 - 9:50 a.m.

Berry 370

Dartmouth's World Culture and Distributive Requirements:

NAS 41 fulfills the "Culture & Identity" (CI) element of the World Culture Requirement and the "Literature" (LIT) distributive requirement.

Office Information: Contact Information:

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10:00 a.m. - 12:00 noon or

by appointment

**COURSE OVERVIEW**

The Acoma Pueblo poet Simon Ortiz once noted that “because of the insistence to keep telling and creating stories, Indian life continues, and it is this resistance against loss that has made life possible.” The regenerative and re-affirming force of tribal stories has been most severely tested when confronted by the overwhelming, and often destructive, power of federal law in Indian affairs. The complex matrix of legal and political relations between Indian tribes and the federal government thus serves as a singularly important arena to examine contested notions of national identity, sovereignty, relationships to lands and people, and concepts of justice. Students will read literary texts produced by Native authors and legal texts involving Indian tribes in an effort to understand how the Native production of stories contributes to the persistence of tribalism in contemporary America.

**COURSE GOALS**

\*Recognize the difference between “law-in-literature” and “law-as-literature;”

\*Understand the processes of textual interrogation and interpretation and their similarities and differences in the fields of law and literature;

\*Understand the narratives of literature and the law and their function in the process of decolonization;

\*Understand how language operates as domination and resistance;

\*Identify how language is performance and acts in the world;

\*Assess the contribution of Native literary writers in mediating, contesting and revising federal Indian law;

\*Understand how narratives produced by Native writers (both legal and literary) advance (and refute) claims of national identity.

**COURSE SYLLABUS**

**REQUIRED TEXTS:**

Louise Erdrich, **TRACKS**

Louise Erdrich, **THE ROUND HOUSE**

William L. Iggiagruk Hensley, **FIFTY MILES FROM TOMORROW: A MEMOIR OF ALASKA AND THE REAL PEOPLE**

Linda Hogan, **POWER**

N. Scott Momaday, **THE WAY TO RAINY MOUNTAIN**

Charles H. Redcorn, **A PIPE FOR FEBRUARY**

Other reading materials, including shorter literary works, legal opinions and scholarly articles, will be posted on Canvas.

**REQUIRED ASSESSMENT TASKS AND GRADING:**

There are four (4) primary course requirements: (1) Regular class attendance and active participation in class discussions; (2) two reflective essays; (3) an independent research paper and (4) a class presentation on selected literary and legal texts. Each of these elements is discussed in more detail below.

**Class Attendance & Participation (10% of final grade)**

Class attendance is required. I expect to see all students at every class absent compelling reasons that may excuse your absence. I expect students to have read all assigned materials and to come to class prepared to engage in active, thoughtful and productive discussion. Class participation is important to your growth in this class and requires reading the material, analyzing it effectively, and pushing beyond the boundaries of what is presented in the material. Participation will be graded not merely on your speaking up in class, but on your engagement with the material. I will look for evidence that you’ve actively engaged with all assigned readings and can demonstrate understanding of the key arguments and themes developed within the materials. I expect vigorous, healthy debate on many issues and expect that such discussion will occur in a sophisticated, respectful and civil way. Critical analysis, not consensus of views or perspectives, is a prime objective of these discussions.

**Reflective Essays (15% each for a total of 30% of final grade)**

Reflective essays will be submitted at two points during the term and are designed to achieve the following objectives: (a) to provide you with a personal medium through which you can reflect, question and further examine issues raised in class; (b) to provide me with an account (beyond class discussions and personal meetings) of how you are relating to the materials and comprehending them; and (c) to provide an outlet for exploring related themes and subjects that go beyond the particular matters or subjects addressed in class. You will receive an essay “prompt” or question(s) in advance of the essay due date which will provide the framework for your reflective essay.

Your essays will be evaluated on the basis of demonstrated depth of analysis (in terms of the legal, literary, political/cultural and/or moral themes developed in class), ability to articulate and respond to or defend viewpoints, either your own or those presented by others and general understanding of the subject matter.

Reflective essays will be **due by 4:00 p.m. at Sherman House** on the following dates: (1) **Essay 1: Jan. 30th, 2015; (2) Essay 2: Feb. 27th, 2015.** You are NOT permitted to submit your essays by FAX or email. Each essay must be ***at least 1,250 words*** in length and must be typewritten (double-spaced) using 12 point font and must include a cover sheet with your name, course title, date and an explicit reference to the total number of words included in your essay.

**Independent Research Paper (40% of final grade)**

A research paper in the range of **15-18** **pages in length** (typewritten, double-spaced using 12 point font with 1 inch margins) is **due on or before 4:00 p.m. on the last day of the winter term exam period, i.e. Tuesday, March 17th. Papers must be submitted in hard copy (not by FAX or email) on or before this deadline** and should be delivered to the NAS Offices in Sherman House.

The subject matter of your paper should explore a piece or pieces of literature written by a Native American author (contemporary or historical figures) in conjunction with a legal text (e.g. legal opinion, statute or regulation or policy statement) to explore some of the thematic or methodological approaches discussed in class. The literary and legal works you select may include works discussed in class and/or included among the required texts, but in that case, your paper should explore thematic elements substantially different from the ones discussed in class.

Your papers will be assessed on the basis of substantive content, depth of research, originality, persuasiveness and coherence of the arguments or positions developed; quality of writing (substantively and stylistically); and choice and use of both primary and secondary source material. Your papers should include a cover sheet that contains (minimally) the title of your paper, your name and the date of submission. Remember to number your pages! Please use footnotes as opposed to endnotes and include a bibliography of all sources consulted. You may select the citation format you prefer.

**Class Presentations (20% of final grade)**

Students will work in small groups or teams to interrogate assigned literary and legal texts using the approaches and methodologies developed and demonstrated throughout the term. Team assignments, work duties and dates of presentations will be finalized during the course of term.

Assessment will be based on the clarity and coherence of the analysis; demonstrated ability to identify and address the principle arguments and/or themes developed in the relevant texts; capacity to provoke insightful questioning and reflection among students on the assigned materials; and the extent to which the presentation embraces and advances at least two of the stated goals for this course.

### HONOR PRINCIPLE:

### PLEASE remember that for purposes of all written assessment tasks, you are bound by the Honor Principle which states that “Any form of plagiarism violates the Academic Honor Principle." The publication, Sources and Citation at Dartmouth College (available on-line at the following site: http://www.dartmouth.edu/~writing/sources/sources-citation.html), describes plagiarism as follows:

### 1.A What Is Plagiarism?

Plagiarism is intellectual theft. It occurs when you use the words or ideas of others   
without acknowledging that you have done so. If you are aware of a source, use an idea   
or quotation from this source, and fail to cite it, then you have plagiarized—regardless of   
your intent.

• If you quote from a source, you must specifically mark the quoted material and   
immediately cite the source. Place the quoted text in quotation marks or format it   
as a block quotation. Your citation should appear at the point of quotation, either   
in parentheses or in a footnote or endnote. Listing the source in a bibliography   
does not, by itself, constitute proper citation; you must cite at the point of use.

• If you quote a distinctive phrase, or even a single distinctive word, place it in   
quotation marks and cite the source.

• If you paraphrase an idea or special information from a source—that is, if you   
restate the idea, but alter the exact wording—you must cite that source.

• If you use images, maps, charts, tables, data sets, musical compositions, movies,   
new-media compositions, computer source code, song lyrics, and the like, you   
must cite the source.

• If you find a solution to a problem on a website and use that solution—even if you   
use it just to teach yourself how to solve the problem—you must cite the source.

• If you want to submit the same work, in whole or in part, for more than one   
course, then, according to Dartmouth’s Academic Honor Principle, you must get   
the approval, in advance, of all professors involved.

Citation styles and formats matter, but style and formatting errors do not constitute   
plagiarism. As long as you properly cite your source at the place where you use   
another’s words or ideas, you are not plagiarizing. Once style and formatting errors are   
brought to your attention, you should correct them for the benefit of readers who might   
wish to trace your sources.

**LATE SUBMISSIONS**

Absent compelling circumstances that are beyond the student’s control (e.g. sudden and serious illness, family emergency, and the like), students will NOT be permitted to submit assigned work product after the scheduled due date & time.

**CLASS POLICIES**

Any student with a documented disability needing academic adjustments or accommodations is requested to speak to me by the end of the second week of the term. All discussions will be kept in confidence although the Student Disabilities Coordinator may be contacted to verify the situation. If any student must be absent for religious observations, please notify me ahead of time.

**COURSE SCHEDULE**

**Weekly Topics and Reading Assignments**

**\*All Legal Cases & law review articles will be posted on Canvas (C)**

**WEEK ONE**

**Introduction & Approaches to Native American Law & Literature**

Monday, Jan 5: **Introduction** (No Assigned readings)

Wednesday, Jan. 7: **Approaches to Native American Law & Literature**

Jane B. Baron, *Law, Literature and the Problems of Interdisciplinarity*, 108 Yale

Law Journal 1059 (1999) (C);

Amelia V. Katanski, *Writing the Living Law: American Indian Literature as*

*Legal Narrative, 33* American Indian Law Review 53 (2009) (C).

Friday, Jan. 9: **Approaches to Native American Law & Literature** (cont).

N. Bruce Duthu, *Incorporative Discourse in Federal Indian Law: Negotiating Tribal Sovereignty Through the Lens of Native American Literature*, 13 Harvard Human Rights Journal 141 (2000) (C);

Mark O'Connell, *10 Novels to a Better You*, Slate (Oct. 28, 2013) (C);

Joshua Landy, *Introduction* from HOW TO DO THINGS WITH FICTIONS (Oxford Univ. Press 2012) (C).

**WEEK TWO**

**Sovereign Selves: Tribal Identity/National Identities**

Monday, Jan. 12: William Apess, *An Indian's Looking Glass for the White*

*Man* (1833) (C);

Louise Erdrich, *"Saint Marie"* from **LOVE MEDICINE** (C)

Wednesday, Jan. 14: *Johnson v. McIntosh*, 21 U.S. 543 (1823)

Friday, Jan. 16: *United States v. Rogers*, 45 U.S. 567 (1846);

*Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989)

**WEEKS THREE &**

**FOUR**

**Relationships: Land, Territory & Peoples**

Monday, Jan. 19: **No Class: MLK, Jr. Day**

Wednesday, Jan. 21: Louise Erdrich, **TRACKS**

Thursday, Jan. 22: *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903)

Friday, Jan. 23:Kristen Carpenter, *Contextualizing the Losses of Allotment Through Literature*, 82 North Dakota Law Review 605 (2006).

Monday, Jan. 26: FILM: ***In the Light of Reverence*** (in class)

Wednesday, Jan. 28: *Navajo Nation v. US,* 553 F.3d 1058 (9th Circuit 2008); *Lyng v. Northwest Indian Cemetery Protective Association*

485 U.S. 439 (1988);

Friday, Jan. 30: *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998).

**ESSAY #1 DUE BY 4 P.M. TODAY**

**WEEK FIVE**

**Promise-Keeping: The Trust Doctrine and the Legacy of Allotment**

Monday, Feb. 2: Charles Redcorn, **A PIPE FOR FEBRUARY**

Wednesday, Feb. 4: *Eloise Cobell v. Norton*, 229 Federal Rules of Decision 5 (District Court, DC 2005); *Cobell v. Kempthorne*, 455 F.3d 317 (D.C. Cir. 2006); *United States v. Navajo Nation*, 537 U.S. 488 (2003).

Thursday, Feb. 5: X-hour: Synthesis of literary & legal texts

Friday, Feb. 6: No Class (Winter Carnival)

**WEEK SIX**

**Crime & Punishment: Lessons in Power, Justice & Forgiveness**

Monday, Feb. 9:Guest Lecturer: *Professor Beth Piatote*, Univ. of CA

Berkeley

Wednesday, Feb. 11: Louise Erdrich, **THE ROUND HOUSE**

Friday, Feb. 13: *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); *United States v. Lara*, 541 U.S. 193 (2004);

Amnesty International, MAZE OF INJUSTICE: The Failure to Protect Indigenous Women from Sexual Violence in the USA (2006); Duthu, *Broken Justice* (NYT Op-Ed, Aug. 2008).

**WEEK SEVEN**

**Subsistence Practices: Living in Balance**

Monday, Feb. 16: William L. Iggiagruk Hensley, **FIFTY MILES FROM TOMORROW: A MEMOIR OF ALASKA AND THE REAL PEOPLE**

Wednesday, Feb. 18: Roy M. Huhndorf & Shari M. Huhndorf, *Alaska Native Politics Since the Alaska Native Claims Settlement Act (C)*

Friday, Feb. 20: Alexis Bunten*, Indigenous Capitalisms* (C)

**WEEK EIGHT**

**Of Words, Language and Being**

Monday, Feb. 23: N. Scott Momaday, **THE WAY TO**

**RAINY MOUNTAIN**

Wednesday, Feb. 25: *US v. Sioux Nation*, 448 U.S. 371 (1980)

"Taking" of land

Friday, Feb. 27: *Morton v. Mancari*, 417 U.S. 535 (1974)

"Indian" as "racial" or "political" classification

**ESSAY #2 DUE BY 4:00 P.M. TODAY**

**WEEK NINE and TEN**

**GROUP PRESENTATIONS**

Literary Text: Linda Hogan, **POWER**

Legal Text: *US v. Billie, 667 F. Supp. 1485*  (SD Fla 1987)

Monday, March 2: Group 1 Student Presentations

Wednesday, March 4: Group 2 Student Presentations

Friday, March 6: Group 3 Student Presentations

Monday, March 9: Group 4 Student Presentations

**Research Papers Due: Thursday, March 17th by 4:00 p.m.**

There may be some adjustments to the class schedule and reading assignments as the term progresses. Every effort will be made to provide students with adequate notice of such adjustments.