

### **Syllabus for *Freedom to Be: Some Restrictions Apply***

**Course Meeting Times:** 9:00 am – 12 noon on Thursday May 4, 11, 18, and 25, 2017

**Brief Description:** The United States prides itself on being a country of freedom and equality. But even as institutionalized discrimination against African-Americans and women has been rooted out and eliminated, the law still draws lines that result in the differing and unequal treatment of American Indians, Alaska Natives, and Native Hawaiians. This course will explore those laws and regulations, with a goal to understanding how they came to be, why they exist, and what they say about us as a society.

**Readings:** I am preparing an electronic course packet which will contain the readings for the course. The course packet will contain a few required readings, some optional readings for each day, and recommendations for further reading on each topic

### **Topics Week by Week**

**May 4 (Week 1):            Possession and Ownership of Property  
                                     Real Property, Cultural Property, Intellectual Property**

Most of the laws that result in the differing treatment of America's Indigenous people are rooted in the legal status and treatment of various forms of property. We will thus start the course by looking at how the laws involving real property, cultural property, and intellectual property are rooted in the Anglo-American legal tradition and the culture that gave rise to that tradition. In exploring these topics, we will look at questions such as

- How did the federal government come to own 30% of the land in the United States?
- What is the basis for the efforts of the Standing Rock Sioux tribe to stop the Dakota Access Pipeline and why were those efforts successful under the Obama Administration and unsuccessful under the Trump Administration?
- Why are the bones of Indians that are more than 100 years old considered the cultural property of the United States? Why does the law protect the integrity of burial site of Caucasian settlers but not the burial sites of Native people?
- How did Western scientists get a patent on cotton seeds developed by Indigenous farmers?
- How did museums get possession of the Native objects they exhibit? What is the difference between an object of art and an item of cultural property?

**May 11 (Week 2):      A Brief Look at Strategies for Dismantling Institutional Discrimination  
Laws Relating to Indian Children and Families**

Dismantling the institutional discrimination toward African-Americans and women was the result of a concerted strategy by advocacy groups. We will begin the second day of class by taking a brief looking at strategies used by those groups and whether those strategies would work for Native people.

We will then turn to an examination of the laws relating to Native families and children. We are less than a century away from a federal policy that literally paid bounties to those who kidnapped Indian children off the reservation and took them to Christian boarding schools. Even after the end of this practice, the same impact was felt through the actions of State social workers who removed Indian children from their families at such alarming rates that Congress enacted the Indian Child Welfare Act to regulate who could make decisions regarding child welfare matters involving Indian children. The effectiveness of this statute has been questioned, and the Supreme Court has recently severely undercut what little effectiveness it continued to have, even as the Bureau of Indian Affairs sought to strengthen the Act through new regulations. Hidden behind this wave of laws, regulation, and processes, however, is the fact that the most effective way to eradicate a culture is to remove its next generation. Between the devastating socio-economic conditions on reservations (which the federal government's own reports attribute to federal policies), the ineffectiveness of the Indian Child Welfare Act, and the alarmingly disproportionate numbers of Indian juvenile offenders in federal prisons, is the U.S. trying to repair what it broke or is it simply continuing old policies in new clothes?

**May 18 (Week 3):      Religions and Culture**

One of the founding principles of the United States is the right to religious freedom and to not have the government regulate your religious practices. In addition to disputes over access to sacred sites on federal land, Indians are subject to a variety of other restrictions on their religious practices. Perhaps the most significant of these is the requirement that Indians apply to the federal government to obtain eagle parts (including eagle feathers) necessary for a variety of ceremonies. The federal government's regulations even define who counts as "Indian" for purposes of those regulations. Week three will be spent looking at these and other federal restrictions on religious practice of Indians. We will also explore recent efforts to protect Native culture and sacred sites, such as Oak Flats and Bears Ears.

**May 25 (Week 4):      Check the Box Indians**

For the last week of class we will switch perspectives to look at those who claim Indian heritage either without documentation ("my family history says that great-great-grandpa married a Cherokee princess") or who may qualify for political citizenship in a tribe without being a member of the culture of the tribe. What makes someone an "Indian" and does it depend on the purpose – whether that is consideration for admission to college or the ability to vote in tribal elections? In other words, who gets to define what it means to be "Indian"?