

*This syllabus was created by Professor Sean Robertson, Faculty of Native Studies, University of Alberta, Edmonton, Alberta, Canada. Designed for the Winter 2014 session (January to April 2014). Shared by IPinCH for educational purposes with permission of the author.*

**REPATRIATION, INTELLECTUAL PROPERTY AND BEYOND:  
THE LAW AND POLITICS OF ABORIGINAL CULTURAL HERITAGE  
(NS280)  
SYLLABUS**

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Note on Terminology

The Canadian constitution recognizes 3 groups of Aboriginal peoples termed Indian, Métis and Inuit. Today "First Nation(s)" is preferred to "Indian" in Canada. "Aboriginal", "Indigenous", and "Native" may also be used interchangeably. There are additional usages that reflect the complexities surrounding appropriate terminologies past and present and the diverse contexts in which these terms applied.

Course Description

With the rise of the information economy over the past 40 years, innovation and creativity in the sciences and arts have risen in importance. Stronger legal borders have been placed around knowledge and its products. In many instances, the tangible and intangible aspects of Indigenous knowledge—i.e. traditional cultural expressions (e.g. songs, totem poles, architecture, stories, places, etc.); traditional ecological knowledge (e.g. knowledge of plant species for food and medicine); and, even the genetic code of Indigenous peoples—have been seen as open terrain for commercial exploitation and academic inquiry. As part of the emergence of Indigenous rights movements in the late 20th century, Indigenous peoples have asserted control over their cultural heritage and, in many instances, drawn a border against the public domain. They have sought equitable relationships with university researchers and museums, the repatriation of ancestral remains and cultural objects, protection against appropriation of the knowledge behind foods and medicines, control over the commercial use of Indigenous identities and stories, control of access to sacred landscapes, and deployed TEK as a rhetorical justification for entitlement to their territories.

Course Objectives

1. To introduce the issues surrounding the protection of Indigenous cultural heritage through Canadian and international examples
2. To introduce the Indigenous, Canadian, United States and international law of Indigenous cultural heritage
3. To develop an appreciation of the tensions between self-determination and support for the public domain, two competing valid social objectives
4. To understand the strategic adoption of legal and political constructions of identity

Required Texts

Select on-line readings available from the University of Alberta Library.

### Recommended for Professional Development

These guides provide composition tips, including editing notations helpful for all writers.

Hay, I. and Giles, P. (2011). *Communicating in Geography and the Environmental Sciences*. Don Mills: Oxford University Press, OR

Northey, M. et al. (2012). *Making Sense: A Student's Guide to Research and Writing: Geography and the Environmental Sciences*. Don Mills: Oxford University Press.

### Assignments

1. Readings Summaries (2 X 2.5 = 5%): Students are to prepare summaries of each reading and bring them to class, as per the syllabus. In 300 words, briefly set out the reading's Topic, Thesis (if there is one), and Main Points, and present 2 Discussion Questions (using these headings; point form is acceptable). They will be unexpectedly collected at the beginning of class and marked twice during the term on a Pass/Fail basis. If you do not have your summary with you when they are collected, there will be no opportunity for you to submit them later.

2. Participation (20%): 5% for attendance at lectures and participation in lecture exercises (including: discussions based on summaries); 5% for peer review exercise; 10% for oral presentation of paper.

3. Research proposal (10%):

In this assignment, you will propose a research project that you will later research and carry out in the research paper. Your Proposal will include a Research Narrative and an Annotated Bibliography and should answer the following questions in order. Please use numbered headings for clarity, based on the following:

#### A. Research Narrative

1. What is the title of the research paper? Make it descriptive and interesting. Include your name on the title page.

2. What is the topic you propose to address?

3. What issue do you propose to tackle? What is your research question? Make sure your question is both researchable (answerable given time, sources) and not too broad/too narrow.

4. What empirical (or "real world") example do you propose to analyze? Describe from where and when your example is drawn. Primary evidence: The paper requires you to locate empirical evidence about a topic to explore using the legal, political and theoretical tools developed in the course. Primary empirical evidence could include: newspaper accounts, archival material, court cases, magazine articles, pamphlets, web sites, and documents from state institutions as well as civil society organizations. Present at least 5 pieces of evidence along with an explanation of how you plan to incorporate them into your paper. The point here is to ensure that the legal, political and theoretical issues you will be grappling with are connected to the local and everyday.

5. Describe the analytical or theoretical framework you will apply. More information will be provided in the class.

6. Prepare a potential thesis statement to be used in your paper's introductory paragraph. A thesis statement states the main point that you will develop in the paper. The thesis statement must be argumentative and not merely descriptive. All the points made in the paper go toward supporting this controlling idea or claim.

#### B. Annotated Bibliography

Find and read at least 5 peer-reviewed academic sources from outside the course materials. Provide all bibliographic information and a brief description of what the article/book is about, how it is connected to others in the bibliography, and how it is relevant to your topic. Each entry should be between 200-300 of your own words, exclusive of the bibliographic information. For help on writing annotated bibliographies, see:

<<http://guides.library.ualberta.ca/content.php?pid=57725&sid=812996>>;

<<http://www.lib.sfu.ca/help/writing/annotated-bibliography>>. For help with bibliographic citation style, consult the style guides available from the library. Please use APA.

The proposal must be typed in 12pt font, in either full sentences or point form, double spaced, and be 7-8 pages in length. Students are advised to refer to writing guides available from the library, such as Prentice Hall Handbook for Writers. See:

<<http://guides.library.ualberta.ca/content.php?pid=57725&sid=422777>>

4. Research Paper (40%): Required length: 3000-3500 words (approximately 10-12 pages, excluding endnotes and bibliography)

*Rough draft:* You must submit two copies of a first draft in hard copy. Using a peer review rubric (to be handed out), students will have the opportunity to evaluate one another's writing and provide feedback as part of the participation grade. They will also have the opportunity to revise and improve their papers based on feedback from their peers.

*Final submission:* In the Research Paper, students will have the opportunity to research and analyze one Indigenous cultural heritage issue from anywhere in the world. The paper must include at least 5 peer-reviewed academic sources. These will include the sources in your Annotated Bibliography as well as any other peer-reviewed sources you come across that you find helpful in making your argument. The paper must also include 3 sources from the course readings, plus 5 primary empirical sources. Again, these will include the sources from your Proposal as well as other sources you come across.

#### Written Assignment General Guidelines

- A. Papers must be word processed with an easily readable darkness of print. Handwritten submissions are not acceptable.
- B. Papers must be double-spaced with a generous margin (2.54cm at top/bottom; 3.17cm at left/right), in 12 pt font (such as Times New Roman or Arial) and printed on one side of a page only.
- C. Papers must be stapled together. A stapler is available in the Faculty of Native Studies Reading Room.
- D. Include a cover page that includes the title of your paper, your full name and student ID

- number, the course name and number (NS240), and the name of the professor.
- E. Each page should be numbered.
  - F. References: You must use the APA citation style guide, which includes formatted in-text citations. See: <<http://guides.library.ualberta.ca/apa>> & <<http://www.apastyle.org/>>
  - G. References: You should include a References list of the literature that you consulted and referred to in the paper. Consult citation style guides. In general, you may not quote course notes in your paper; be sure to use the original source.
  - H. It is not always easy to determine whether a source is peer-reviewed. Academic journals contain peer-reviewed articles. Check their inside covers, under the heading Author Submission Guidelines, to determine the editorial policy of the journal. Consult the reference librarians and ask to be directed to databases consisting of primarily peer-reviewed sources. As for books, a general rule is that if the publisher title includes the word "University," then it is most likely peer reviewed. NB Wikipedia is not peer reviewed by academics. NB Canadian law school reviews are peer reviewed.
  - I. Consider using headings to better organize your paper and direct the reader.

### Writing the paper

As you research and write your paper, ask yourself the following questions, because these are the questions I will ask when marking it.

- A. Quality of writing: How clear is the structure of the paper? How clear and concrete is the thesis statement? Do the introduction, body and conclusion link together persuasively?
- B. Force of argument: How strongly does the argument link to the larger conceptual issues brought out in the readings --i.e., is this paper merely descriptive or does it attempt to link itself to more theoretical issues and convince me of something?
- C. Originality & Research: How well researched is the paper? Is the research persuasively integrated, or does it rely too much on a single source?
- D. Eloquence: Simply put, is this a well-written paper? How sound is the sentence structure? Is the argument clearly articulated?
- E. Technical aspects: Is the paper long enough? Are the references cited properly? Are the pages numbered?

5. Final Examination (25%): held during the University Examination period (consult BearTracks). The exam will be based on readings, lectures, videos, class discussion, and guest lectures. The exam will consist of short essay answer questions. Practice questions will be shared with the class as the exam approaches. The exam will test your ability to synthesize materials and apply concepts, as well as recall factual content.

### Evaluation

- Weekly summaries (5%)
- Participation (20%)
- Research proposal (10%)
- Research paper (40%)
- Final Examination (25%)

### Weekly Outline

All readings must be read before the class in which they are to be discussed. Part of the class will consist of a lecture and part will also include group discussion. So, make sure you show up ready to contribute.

### **Week 1: Introduction: Philosophy and politics of Indigenous cultural heritage**

Readings:

Johnson, D. (2009). Preface: Towards Reconciliation. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. vii-xii). Vancouver, BC: University of British Columbia Press.

Brown, M. (2003). Introduction. In *Who owns native culture?* pp. 1-10. Cambridge, MA: Harvard University Press.

Bell, C. and Paterson, R. (2009). Introduction. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. 3-12). Vancouver, BC: University of British Columbia Press.

Asch, M. (2009). Concluding thoughts and fundamental questions. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. 394-411). Vancouver, BC: University of British Columbia Press.

## **PART 1 TANGIBLE HERITAGE**

### **Week 2: Repatriation in Canada**

Readings:

Bell, C. (2009). Restructuring the relationship: domestic repatriation and Canadian law reform. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. 15-77). Vancouver, BC: University of British Columbia Press.

### **Week 3: Ancestral remains in museum collections |The Alberta Repatriation Experience**

Paterson, R. K. (2009). Ancestral remains in institutional collections: Proposals for reform. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. 155-180). Vancouver, BC: University of British Columbia Press.

### **Week 4: Repatriation in the United States**

Readings:

Nafziger, J. (2009). The Protection and Repatriation of Indigenous Cultural Heritage in the United States. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. 110-152). Vancouver, BC: University of British Columbia Press.

Supplementary:

<http://www.law.ualberta.ca/research/aboriginalculturalheritage/>

<http://www.sfu.ca/ipinch/>

## **Week 5: Customary Law | Heritage sites**

Readings:

Napoleon, V. (2009). Looking beyond the law: Questions about Indigenous peoples' tangible and intangible property. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. 370-393). Vancouver, BC: University of British Columbia Press.

Brown, M. (2003). Negotiating mutual respect. In *Who owns native culture?* pp. 144-172. Cambridge, MA: Harvard University Press.

Supplementary:

Robertson, S. (2014). Extinction is the dream of modern powers: Bearing witness to the return to life of the Sinixt peoples? *Antipode: A Radical Journal of Geography* [forthcoming].

Ziff, B. & Hope, M. (2009). Unsightly: The eclectic regimes that protect Aboriginal cultural places in Canada. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. 181-202). Vancouver, BC: University of British Columbia Press.

## **Week 6: Archaeological heritage**

Readings:

Hollowell, Julie and George Nicholas. (2009) "Using Ethnographic Methods to Articulate Community-Based Conceptions of Cultural Heritage Management." *Public Archaeology: Archaeological Ethnographies*, Vol. 8 No. 2-3, pp. 141-160. Available online: <http://www.sfu.ca/ipinch/node/486>

Carver, K., & Purcell, R. (2001). *The Kennewick Man: An epic drama of the West*. New York: Filmmakers Library. [DVD]

Supplementary:

McLay, E., Bannister, K., Joe, L., Thom, B., Nicolas, G. (2008). 'A'lhut tut et Sul'hweentst [Respecting the Ancestors]: Understanding Hul'qumi'num heritage laws and concerns for the protection of archaeological heritage. In C. Bell and V. Napoleon (eds.), *First Nations cultural heritage and law: case studies, voices and perspectives*, pp. 150-202. Vancouver: UBC Press.

Nicholas, G.P. (2009). Policies and protocols for archaeological sites and associated cultural and intellectual property. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. 203-220). Vancouver, BC: University of British Columbia Press.

## PART 2

## INTANGIBLE HERITAGE

### Week 7: Cultural appropriation: Sports & Gender

#### Readings:

Beck, A. (2013). Miss Appropriation: Why do we keep talking about her? *Generational Politics*, 3(1), 2-3.

Ono, K. & Buescher, D. (2001). Deciphering Pocahontas: Unpackaging the commodification of a Native American woman. *Critical Studies in Media Communication*, 18(1), 23-43.

Black, J. (2002). The 'Mascotting' of Native America: construction, commodity and assimilation. *The American Indian Quarterly*, 26(2), 605-622.

#### Background:

<http://bigstory.ap.org/article/victorias-secret-apologizes-use-headress>

[http://www.vueweekly.com/on\\_the\\_offensive/](http://www.vueweekly.com/on_the_offensive/)

#### Supplementary:

Jackson, S. & Hokowhitu, B. (2002). The New Zealand All Black Haka and the Politics of Identity. *Journal of Sport and Social Issues*, 26, 125-139.

### Week 8: Traditional environmental knowledge and the global context

#### Readings:

Coombe, R. (2009). First Nations intangible cultural heritage concerns: Prospects for protection of traditional knowledge and traditional cultural expressions in international law. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. 247-277). Vancouver, BC: University of British Columbia Press.

Zerbe, N. (2002). Contested ownership: TRIPs, CBD, and implications for Southern African biodiversity. *Perspectives on Global Development and Technology*, 1(3/4), 294-321.

#### Background:

UN Declaration of Human Rights (1948), Arts. 17 & 23

International Covenant on Civil and Political Rights (1966), Art. 27

International Covenant on Economic, Social and Cultural Rights (1966), Art. 15

Declaration of the Rights of Indigenous Peoples (2007), Art. 12

International Labour Organization Convention 107 (1959); Convention 169 (1991)

Convention on Biological Diversity (1993), Art. 8(j)

WTO TRIPs Agreement (1994), Art. 27.3(b)

<http://www.wipo.int/tk/en/>  
<http://www.cbd.int/tk/>

Supplementary:

Barsh, R. (1999). How do you patent a landscape? The perils of dichotomizing cultural and intellectual property. *International Journal of Cultural Property*, 8(1), 14-47.

Cottier, C. and Panizzon, M. (2004). Legal perspectives on traditional knowledge: the case for intellectual property protection. *Journal of International Economic Law*, 7(2), 371-400.

Daes, E-I. (1995). Final Report on the Protection of the Heritage of Indigenous Peoples. U.N. Doc.E/CN.4/Sub.2/1995/26.

Dutfield, G. (2001). TRIPS-related aspects of traditional knowledge. *Case Western Reserve Journal of International Law*, 33, 233-275.

## **Week 9: Human rights and intangible heritage**

Readings:

Peetush, A. (2003). Cultural Diversity: Non-Western Communities and Human Rights. *Philosophical Forum*, 34(1), 1-19.

Greene, S. (2004). Indigenous people incorporated? Culture as politics, culture as property in pharmaceutical bioprospecting. *Current Anthropology*, 45(2), 211-224\*.

Background:

Dutfield, G. (2002). Bioprospecting: legitimate research or “biopiracy”? Science and Development Network: Policy Briefs.  
<http://comenius.susqu.edu/biol/312/bioprospectinglegitimateresearchorbiopiracy.pdf>

Supplementary:

Robbins, B., & Stamatopolou, E. (2004). Reflections on Culture and Cultural Rights. *South Atlantic Quarterly*, 103(2/3), 419-434.

## **Week 10: Bioprospecting of TEK**

Readings:

Brown, M. (2003). Ethnobotany blues. In *Who owns native culture?* pp. 94-143. Cambridge, MA: Harvard University Press.

Supplementary:

Chander, A., & Sunder, M. (2004). The Romance of the Public Domain. *California Law Review*, 92, 1331-1369.

**Week 11: Biodiversity politics and identity in Latin America**

Readings:

Jung, C. (2003). The politics of Indigenous identity: Neoliberalism, cultural rights and the Mexican Zapatistas. *Social Research*, 70(2), 433-462.

Harvey, N. (2001). Globalization and Resistance in Post-Cold War Mexico: Difference, Citizenship and Biodiversity Conflicts in Chiapas. *Third World Quarterly*, 22(6), 1045-1061.

**Week 12: Bioprospecting & Development**

Readings:

McAfee, K. (1999). Selling nature to save it? Biodiversity and the rise of green developmentalism. *Environment and Planning D: Society and Space*, 17(2), 133-154.

Castree, N. (2003). Bioprospecting: From theory to practice (and back again). *Transactions of the Institute of British Geographers*, 28, 35-55.

**Week 13: Course Wrap-Up & Examination workshop**

Re-read:

Asch, M. (2009). Concluding thoughts and fundamental questions. In C. Bell, & R.K. Paterson (Eds.), *Protection of First Nations cultural heritage: Laws, policy and reform* (pp. 394-411). Vancouver, BC: University of British Columbia Press.