Native American Literature, Ceremony, and Law

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The joint study of law and literature offers a platform for Indigenous Studies and other programs to explore divergent philosophies and systems of law that have marked the Americas since 1492: Native American Ceremony and Euro-U.S. Law. Although law and literary culture are seen as inextricable and thus seemingly preclusive of Native American ceremony, our essay suggests a rationale and approaches for exploring, in a classroom, the theme of Native American ceremony in its relation to law.

Native American ceremony, as fundamentally anomalous to Old World or Eurasian ceremony and law, interrogates, in the relation, the collective imaginary and ethos or internal logic that enters into creating and even needing law. This relation can be explored using imaginative literature and contrasted to networks that legitimate our practices, as well as to changing definitions of law, such as St. Augustine’s Natural Law, and Jeremy Bentham’s early definition that tied law to monarchy. Euro-U.S. law in America since 1492, for example, has relied on punitive force as its normative power, but what are the consent mechanisms in Native American ceremony and how does it differ from normative domains described by Euro-U.S. practices, such as religion and even literature? An exploration of this theme through interactive readings of literature and law would focus on what the relationship between law and Native American ceremony might be, based on the continuing presence of Indian ceremony against the force of the U.S. system of law as it increasingly exercises control over Native Americans on tribal lands. Despite the legalities of Euro-US past and present control over Indians, Native American ceremony continues to play a strong part in the psychological processes of the Native American imaginary.

James Welch’s Fools Crow is an exemplary fiction that raises these issues, which are made clearer through legal texts. The plight of a small village of Blackfeet and the implied historical events that follow receive a fuller reading through the Indian Removal Act of 1830, Andrew Jackson’s Report to Congress in 1829 and 1835, including congressional rhetoric and Acts contemporary to the 1870s, the temporal setting of Fools Crow. These texts give access to divergent cultural practices both through the experience of imagination and through grounding the fictive in the reality of the political setting, setting being an important element of fiction. A reading through the lens of the legal texts motivates questions about why, in the last chapter, Fools Crow and the people observe a 7-day ceremony, even though they realize they are being overwhelmed by invasions of U.S. soldiers and settlers. This locus in the text creates an interpretive opening to the conflict between U.S. and Indian law, to divergent views of law itself and the collective imaginary that goes into its formulation and enactment. Law, as seen in Indian ceremony across America, is strongly tied to harmonious interaction with what the land offers.

Classroom approaches can be organized around major time periods addressing three kinds of legal texts: ceremony, Indian treaties, and federal law with corresponding texts in themes important for the 21st century because of environmental, humanitarian, and sustainability concerns and because of pressures for development of natural resources, many of which can be found on what remains of Indian land. Much of the conflict between Native Americans and Non-Indians, from the Makah whale hunt to more recent Hopi and Navajo opposition to creating artificial snow on San Francisco Peaks in Arizona, has been because of a lack of understanding of Indian Ceremony as valid law in the Americas.

2 Shirley Jackson in 1948 explored the collective imaginary and law in her short story “The Lottery” about a town of pioneer settlers.
For Bentham law was “...a volition conceived or adopted by the sovereign in a state, concerning ... persons, who ... are supposed to be subject to his power... (Bentham 1782, 1, in Endicott) Endicott, Timothy, "Law and Language", The Stanford Encyclopedia of Philosophy (Winter 2002 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2002/entries/law-language/>.

For example, the complex political dimensions of Tolstoy’s short story, “The Death of Ivan Ilyich”, can be more fully understood through his historical allusions, not only in the Emancipation Reform of 1861 that freed the serfs, but in the nature of the eponymous hero’s and his colleagues’ legal work.