

Indian Law Reviews

American Indian Law Review is a specialized law review devoted exclusively to Indian law, and provides a forum for scholarly writing in the areas of the law that particularly affect American Indians.

The Tribal Law Journal provides native peoples, practitioners, and law students an opportunity to contribute their work to the discussion relating to internal indigenous law. The contributions include, but are not limited to, tribal court case comments, reflections on tribal systems, the development of tribal law, the value of tribal law, interviews and teachings.

The Alaska Law Review provides an annual year-in-review of significant court decisions and legislative changes as well as scholarly articles in many areas such as natural resources law, environmental law, land use planning, economic development, and Native American rights.

Selected Law Review Articles

Aboriginal Family Trends: Extended Families, Nuclear Families, Families of the Heart, by Marlene Brant Castellano

This story about Aboriginal families begins in a particular place, with real persons, in the way that knowledge is constructed in an Aboriginal world. Those who hear stories told orally are encouraged to listen with their hearts as well as their minds, because the features of experience — of particular experience — are understood to be manifestations of a larger reality, called the spiritual ...

Alaska v. Native Village of Venetie Tribal Government: Redefining "Indian Country", by Warren Denetsosie

In *Alaska v. Native Village of Venetie Tribal Government*, the United States Supreme Court finally settled the meaning of the phrase “dependent Indian community” which is one of the three prongs of “Indian country”. However, the Supreme Court’s recent interpretation is unwelcome to Indian tribes for the reason that land over which tribes previously asserted sovereign authority can now be found to be outside their jurisdiction and within state control.

American Indians and Law Libraries: Acknowledging the Third Sovereign, by Nancy Carol Carter

American Indian tribal governments constitute a third sovereign within the United States federal system. A higher legal profile among these self-governing entities multiplies legal issues and challenges law libraries. Law librarians are urged to

deepen their understanding of American Indian law and tribal law and reconsider their handling within legal collections.

The Challenges Facing Tribal Courts Today, by Douglas B.L. Enderson

Tribal courts play a vital role in helping Indian tribes create and maintain the social, political, economic, and legal environment necessary to a sovereign entity.

The Changing Landscape of Indian Estate Planning and Probate, by Douglas Nash and Cecelia Burke

A comprehensive overview of the American Indian Probate Reform Act of 2004. The purpose of this article is to provide an understanding of AIPRA. First, the history of events leading up to AIPRA—essential information to understand the issues it purports to address—will be discussed. Second, provisions of AIPRA are discussed by key topics including the following: application to intestate and testate estates; rules of interpretation; application of AIPRA to trust personality; mechanisms provided to reduce fractionation and consolidate ownership interests; tribal probate codes; and general rules governing the probate of Indian trust estates.

Chipping Away at The Indian Child Welfare Act: Doe v. Mann and the Court's "1984" Interpretation of ICWA and PL 280 by Jake J. Allen

In *Doe v. Mann*, the Ninth Circuit (Mann Court) held that the Indian Child Welfare Act (ICWA) did not provide exclusive jurisdiction to a tribe in California due to the tribe failing to “present to the Secretary [of the Interior] for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.” The holding was based on the Mann Court’s reasoning that Public Law 280’s 4 (PL 280) civil regulatory jurisdiction, when combined with the provisions of ICWA, divested the tribe of exclusive jurisdiction over involuntary child custody proceedings, and under ICWA’s § 1918(a), there was a requirement for the tribe to submit a plan to the Secretary of the Interior (Secretary) to regain exclusive jurisdiction over child custody cases involving Indian children residing on the reservation.

Community Holistic Circle Healing: A Community Approach, by Berma Bushie

Berma Bushie of the Community Holistic Circle Healing project in Hollow Water, Manitoba, describes the use of healing circles as a response to sexual abuse in an Aboriginal community.

Community is Not a Place: A New Look at Community Justice Initiatives, by Paul McCold and Benjamin Wachtel

Paper presented to the International Conference on Justice Without Violence: Views from Peacemaking Criminology and Restorative Justice, Albany, New York, June 5-7, 1997, by Paul McCold and Benjamin Wachtel, Community Service Foundation.

CP 87 and CP 100: Allotment and Fractionation Within the Citizen Potawatomi Nation, by Mark Welliver

This article illustrates some of the problematic issues faced today by interest owners of Indian allotment land.

Developing Effective Processes of American Indian Constitutional and Governmental Reform: Lessons from the Cherokee Nation of Oklahoma, Hualapai Nation, Navajo Nation and Northern Cheyenne Tribe by Eric Lemont
Over the past several decades, numerous American Indian nations have been revising their constitutions to create more legitimate, effective and culturally-appropriate governments. However, successful processes of reform have been hindered by a variety of universal challenges, including political obstacles to changing the status quo, difficulties in achieving effective citizen participation and insufficient mechanisms for resolving conflict .

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Diné Bi Beenahaz'áanii: Codifying Indigenous Consuetudinary Law in the 21st Century, by Kenneth Bobroff

On November 1, 2002, the Navajo Nation Council acknowledged the survival of the fundamental laws of the Diné, recognizing four specific constituent elements — traditional law, customary law, natural law, and common law – and explaining the principles of each. This action by the legislature follows more than two decades of conscious efforts by the Navajo Nation judiciary to apply Navajo common law in written legal opinions and to incorporate traditional Navajo dispute resolution into the judicial system. This paper examines the Council's efforts to incorporate consuetudinary law in its written statutes in English. It is primarily descriptive, attempting to provide a Spanish audience with an understanding of Diné legal principles employed by the Navajo legislature in first attempting codification of principles of Navajo consuetudinary law.

Domestic Violence and Tribal Protection of Indigenous Women in the United States, by Gloria Valencia-Weber and Christine P. Zuni

The essential Navajo value is that while men and women are distinct, they relate as complementary equals. That kind of relationship creates, or should create, an environment that views violence toward women as deviant behavior. Under

Navajo common law, violence toward women, or mistreatment of them in any way, is illegal ...

The Dynamics of Navajo Peacemaking, by James W. Zion

Journal of Contemporary Criminal Justice, Vol. 14 No. 1, February 1998 58-74 © Sage Publications, Inc.

Environmental Regulations on Indian Lands: A Question of Jurisdiction, by Lynn H. Slade and Walter E. Stern

Native American tribes play an increasingly critical role in regulating the environment on Indian lands. As tribes' regulatory muscles grow--often with the blessing of the federal government--the regulated community must learn to adapt not only to different regulatory standards and procedures, but also to a different legal system . . .

Evolving the Hopi Common Law, by Pat Sekaquaptewa

A judicial system with well fleshed out judge made law, or common law, is one that promotes fairness, consistency, and a respect for local values ..

Expanding the Network of Safety: Tribal Protection Orders for Survivors of Sexual Assault, by Sarah Deer

The right to exist in a world free from violence is a basic tenet in many indigenous cultures and governments. The epidemic of sexual violence perpetrated against Native American women in the United States reflects a fundamental breakdown in the cultural and legal norms that have served to provide protection to Native women from time immemorial. Current rates of sexual violence against Native women are extremely high and the response from the criminal justice systems is arguably weak or, in some cases, nonexistent. This article examines what we know about the nature and extent of sexual violence against Native women as distinct from other forms of violence, the impact of legal obstacles on survivors and tribal communities, and will offer one potential legal remedy for tribal judicial systems wishing to address the problem.

A Federal Commitment to Tribal Justice Systems, by Janet Reno

Litigation practice and a series of projects of the U.S. Department of Justice support the federal government's longstanding policy of self-determination for Indian tribes.

From Marshall to Marshall: The Supreme Court's Changing Stance on Tribal Sovereignty, by Philip J. Prygoski

Tribal sovereignty is not simply an abstract legal concept; it is part of the military, social, and economic development of our country. The following is a look at how the decisions of the Court for the past 170 years have defined, defended, and ultimately diminished that sovereignty . . .

Improving the Relationship Between Indian Nations, the Federal Government, and State Governments, by Jerry Gardner

In order to effectively address criminal justice issues in Indian country and services for victims of crime in Indian country, it is vital that productive efforts are made to improve the relationship between Indian Nations, the federal government, and state governments. The first step required in any effort to improve these relationships is an understanding and recognition of the unique sovereign status of Indian Nations. Second, contemporary problems in the relationship between these governments should be examined. Third, recent examples of efforts to improve the relationship between these governments should be reviewed. Then, the potential use of written cooperative agreements - such as Memorandums of Understanding (MOUs) - to improve the relationship between these governments should be examined. Finally, practical tips for developing and implementing written cooperative agreements should be reviewed.

The Indian Child Welfare Act - The Need for a Separate Law, by B. J. Jones

The Indian Child Welfare Act (ICWA), which was adopted by Congress in 1978, applies to child custody proceedings in state courts involving "Indian" children-children of Native American ancestry . . .

Indian Common Law: The Role of Custom in American Indian Tribal Courts, by Robert D. Cooter and Wolfgang Fikentscher

Many American Indian Reservations have had modern tribal courts for at least 60 years. Have the distinctive social norms of Indians worked their way into judge-made law, or are tribal courts much like state courts? Is there Indian common law? To answer these questions, we interviewed tribal judges on reservations throughout the West. We found distinctively Indian social norms, both substantial and procedural, pervading tribal courts. Many of these norms are specific to particular tribes and some are shared by many tribes. Indian common laws (in the plural) are tribe-specific, so there is a comparative law of Indian common law. Applying the rules of conflict of laws requires knowledge of Indian common laws.

"Indian Country" and the Nature and Scope of Tribal Self-Government in Alaska, by Geoffrey D. Strommer and Stephen D. Osborne

Today Alaska Native tribes face one of their most difficult challenges since the days of the Alaska Native Claims Settlement Act (ANCSA). Ever since the United States Supreme Court ruled in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), that ANCSA largely extinguished "Indian country" in Alaska, and thus the tribes' territorial jurisdiction, the extent of Alaska tribal sovereignty and authority has been shrouded in uncertainty. Using rural justice and law enforcement as a central example, the authors demonstrate that restoring Indian country to Alaska would promote numerous public policy objectives, benefiting both the tribes and the State.

Indian Identity: Who's drawing the Boundaries?, by Rekha Balu

American Indian law is replete with ironies . . .

Indian Restorative Healing, by James W. Zion

This paper is part of my continuing 21+ year quest to understand traditional Indian law. My latest attempt was a presentation on Navajo Restorative Justice to the Second International Conference on Therapeutic Jurisprudence in 2001. "TJ" (therapeutic jurisprudence) is related to "RJ" (restorative justice) in many ways ...

Indian Tradition and Custom in Adjudication under Rules of Evidence, by James W. Zion

This article addresses how tribal courts receive evidence of Indian tradition and custom under rules of evidence, discusses the definition and nature of tradition and custom in court settings, and their recognition as a legitimate form of law. *Indigenous Justice Systems and Tribal Justice*, by Ada Pecos Melton
Indigenous justice systems are based on a holistic philosophy. Law is a way of life, and justice is a part of the life process . . .

Issue Paper: What Indian Tribes Can Do To Combat Child Sexual Abuse, by Larry EchoHawk and Tessa Meyer Santiago

One of the most destructive problems affecting children in "Indian country" today is sexual abuse. Increasing reports of child sexual abuse and the severe impact this type of crime has on Indian youth and their families have prompted tribal leaders to voice great concern about the impact of this crime on Indian communities.

Law Enforcement Authority in Indian Country, by Melissa L. Tatum

The protection order has proven to be an effective tool in the war against domestic violence. A protection order, however, is good only so long as it can be enforced, and enforcement has proven to be a problem when a person travels with a protection order to a different jurisdiction. In an effort to address these problems, and to further boost the effectiveness of protection orders, Congress included in the Violence Against Women Act provisions that require full faith and credit for protection orders.

Law Enforcement in Indian Country: The Struggle for a Solution, by Jonathan Mills and Kara Brown

In response to a request by the California Research Bureau, this paper outlines the legal framework governing law enforcement on Indian reservations in California and discusses various approaches to improving reservation safety. It also briefly discusses the procedure by which California could return jurisdiction over reservations to the federal government (“retrocession”).

Multiple Sovereignties: Indian Tribes, States, and the Federal Government, by Judith Resnik

Although often unrecognized, three entities within the territory that constitutes the United States - Indian tribes, states, and the federal government - have forms of sovereignty. The rich and complex relationships among these three sovereignties need to become integrated into the discussion and law of federalism.

The Navajo Response to Crime, by Robert Yazzie, Chief Justice of the Navajo Nation

Speech delivered by Chief Justice Yazzie at the National Symposium on Sentencing: The Judicial Response to Crime at the American Judicature Society in San Diego, California on November 2-3, 1997.

A New Era of Federal - Tribal Court Cooperation, by J. Clifford Wallace

The Ninth Circuit Task Force on Tribal Courts is helping to encourage dialogue and bring about changes beneficial to the federal judiciary and tribal courts.

A Primer on Tribal Court Civil Practice, by B.J. Jones

This article examines the current state of the law governing tribal court practice in North Dakota, with an emphasis on the ever-changing civil jurisdiction rules governing tribal courts, an examination of full faith and credit between tribal and state courts as well as between tribal courts, and a review of recent federal legislative proposals which undoubtedly will impact tribal court civil practice.

Public Law 280: Issues and Concerns For Victims of Crime in Indian Country, by Jerry Gardner and Ada Pecos Melton

Public Law 83-280 (commonly referred to as Public Law 280 or PL 280) was a transfer of legal authority (jurisdiction) from the federal government to state governments which significantly changed the division of legal authority among tribal, federal, and state governments . . .

Punishment versus Healing: How Does Traditional Indian Law Work?, by James W. Zion

Many people are skeptical of justice methods which do not have punishment as their driving force. There is a great deal of disbelief about traditional Indian law for that reason, and there are many who are leery of the growing restorative justice movement ..

Questions and Answers About Public Law 280, by Carole Goldberg

This article provides answers to frequently asked questions about Public Law 280 - a federal statute enacted in 1953 which gave certain states jurisdiction in Indian country.

The Reemergence of Tribal Society and Traditional Justice Systems, by Carey N. Vicenti

In their efforts to establish tribal culture, Indian tribes are relying on the restoration of traditional forms of adjudication.

Resolving State - Tribal Jurisdictional Dilemmas, by Stanley G. Feldman and David L. Withey

As a project of the Conference of Chief Justices is demonstrating, it is possible through communication and cooperation to minimize jurisdictional problems between state and tribal courts.

Restoring Harmony through Nalyeeh: Can the Navajo Common Law of Torts be Applied in State and Federal Forums?, by J. R. Mueller

This article demonstrates “that the Navajo Nation has developed and articulated a modern tort law and doctrine of restitution grounded in Navajo tradition and evolved from ancient custom, similar to the Anglo-American notion of common law.” This article also explores whether tribal customary law can be applied in state and federal forums in light of a recent federal case *Cheromiah v. United States*.

Rethinking the Role of Custom in Tribal Court Jurisprudence, by Matthew L.M. Fletcher

Customary law still appears in many of the decisions of American state and federal courts. Customary law, part and parcel of the English common law adopted and adapted by the Founders of the United States, recurs less often given that statutory and administrative law dominate the field. In contrast, the importance of customary law in American Indian tribal courts cannot be understated. Indian tribes now take every measure conceivable to preserve Indigenous cultures and restore lost cultural knowledge and practices. Tribal court litigation, especially litigation involving tribal members and issues arising out of tribal law, often turns on the ancient customs and traditions of the people. But this development of applying customary law in tribal courts is new and undertheorized.

Sarah Deer & Melissa Tatum, Tribal Efforts to Comply with VAWA's Full Faith and Credit Requirements: A Response to Sandra Schmieder, 39 Tulsa L. R. 403 (2003).

The Violence Against Women Act requires state and tribal governments to enforce one another's protection orders. This article explores the various problems with the cross-jurisdictional enforcement of protection orders in Indian country. *A Second Century of Dishonor: Federal Inequities and California Tribes*, by Carole Goldberg, J.D. and Duane Champagne, Ph. D., with assistance from Wallace T. Cleaves, Leroy Seidel, Chad Gordon, Patty Ferguson, Kit Winter, Lola Worthington and Lori Soghomonian

For over 100 years, studies conducted by federal, state, and private agencies have reached the same conclusion: California Indians are not receiving a fair share from federal Indian programs; and because they have received less support from the federal government, California Indians have suffered in social-economic well-being relative to other Indian groups in other states . . .

Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law, by Sarah Deer

"...[I]t is impossible to separate theories of indigenous self-determination from theories on sexual assault jurisprudence. It is critical that a dual analysis be employed in both disciplines because sexual violence is so deeply imbedded in colonizing and genocidal policies."

Surveying the Boundaries: State and Tribal Court Jurisdiction, by Beth Ermatinger Hanan & William H. Levit Jr.

When disputes concerning overlapping state court and tribal court jurisdiction occur within the (Wisconsin) Ninth and Tenth Judicial districts, the parties and courts can use an agreed-on procedure to determine which court has jurisdiction to proceed. When there is a risk of a deadlock between the courts, the federal tribal exhaustion doctrine, coupled with comity's critical role in resolving

interjurisdictional disputes, makes deference to proceeding in tribal court more likely.

This Land is My Land, This Land is Your Land: Markets and Institutions for Economic Development on Native American Reservations, by Ezra Rosser, describes reservation land regimes and economies, and then shows how two economic theories can enhance understanding of reservation development and can lead to both shared and divergent policy prescriptions.

Tribal Courts: Providers of Justice and Protectors of Sovereignty, by Frank Pommersheim

Tribal courts are now the premier institutions that struggle to analyze and identify the extent of tribal jurisdiction and sovereignty.
Tribal Law as Indigenous Social Reality and Separate Consciousness-

[Re]Incorporating Customs and Traditions into Tribal Law, by Christine Zuni Cruz

There are few spheres in which social reality so insistently takes precedence over legal dictate as the tenacity with which people adhere to their way of life as forged in the crucible of everyday living; and so, whatever the declared legal situation, cognizance must always be given to the 'living law' of the community. This is indeed true of any community, and becomes all the more pertinent when that community, by whatever name known, has some sort of consciousness of its separate identity.

Tribal-State Affairs: American States as 'Disclaiming' Sovereigns, by David E. Wilkins

The history of tribal-state political relations has been contentious from the beginning of the republic. As a result of these tensions, the relationship of tribal nations and the federal government was federalized when the U.S. Constitution was ratified in 1788. Thus, a number of states, especially in the West, were required in their organic acts and constitutions to forever disclaim jurisdiction over Indian property and persons. This article analyzes these disclaimer clauses, explains the factors that have enabled the states to assume some jurisdictional presence in Indian Country, examines the key issues in which disclaimers continue to carry significant weight, and argues that the federal government should reclaim its role as the lone constitutional authority to deal with indigenous nations.

Troublesome Aspects of Western Influences on Tribal Justice Systems and Laws, by Alex Tallchief Skibine

The influence of western culture on tribal judicial systems is due to at least three distinct efforts pursued by the federal government. The first is the attempt to impose western norms on the structure and process of tribal judicial decision making. The second is the attempt to influence the culture of Indian tribes, and finally, the improper efforts to incorporate or integrate Indian tribes into the United States. After briefly discussing the efforts at imposing western norms on the culture and structure of tribal courts, this paper will focus on issues surrounding the integration of tribes within the United States.

Victims of Crime: Issues in Indian Country, by Cathy Sanders

Since 1987, the Office for Victims of Crime (OVC) has focused discretionary Victims of Crime Act (VOCA) funds on improving services for federal victims of crime in Indian country.

Morisset, Schlosser, Ayer, & Jozwiak has a series of papers on Indian Law, including the following:

The Best Interests of the Indian Child: Federal Gloss on a State Law Concept, Regina M. Cutler (May, 2004)

Cultural Resource Protection Strategies: Post "Kennewick Man," Rob Roy Smith (May, 2004)

Jurisdiction Case Law Basics: How Jurisdiction Relates to Tribal Utility Regulation, Thomas P. Schlosser (May, 2003)

Updated Primer on Federal Recognition and Current Issues Affecting the Process, Jennifer P. Hughes (November, 2001)

Tribal Rights and their Effect on our Concept of Property Rights in the Northwest, Mason D. Morisset (November, 2001)

Environmental Enforcement on Tribal Lands: Congressional Authority and Major Case Law, Thomas P. Schlosser (August, 2001)

Tribal Civil Jurisdiction over Nonmembers, Thomas P. Schlosser (June, 2001)
View as a PowerPoint Presentation

Judicial Update 2000-2001 Federal Case Law on American Indians, Kyme Allison McGaw (May, 2001)

Primer on Federal Recognition and Current Issues Affecting the Process, Jennifer P. Hughes (February, 2001)

Judicial Update 1999-2000 Federal Case Law on American Indians, Thomas P. Schlosser (September, 2000) View as a PowerPoint presentation

Why Doing Business on Reservations is Unique, Thomas P. Schlosser (May, 2000) View as a PowerPoint Presentation

Tribal Civil Jurisdiction, Thomas P. Schlosser (March, 2000) View as a PowerPoint Presentation

Federal Delegation of Tribal Jurisdiction over Nonmembers, Thomas P. Schlosser (September, 1999)

Recent Developments in Defining the Federal Trust Responsibility (The Case of the Reluctant Guardian), Mason D. Morisset (April, 1999)

Sovereign Immunity (Should the Sovereign Control the Purse?), Thomas P. Schlosser (October, 1998)

Taxation of Businesses in Indian Country, Thomas P. Schlosser (March, 1996)
Enforcing Tribal Court Judgments in State Court: Three Perspectives, Kyme Allison McGaw (September 1994)
Locating the National Indian Forest Resources Management Act in the Tortured History of Indian Timber Management, Thomas P. Schlosser (February, 1992)
Tribal Court Handbook for the 26 Federally Recognized Tribes in Washington State, Prof. Ralph Johnson and Rachel Paschal (2d Ed. September 1992)
The Center on Child Abuse and Neglect (CCAN) provides a Native American topic specific monograph series. This project developed a series of booklets to assist individuals in better understanding issues affecting Native communities. The booklets increase the amount and quality of resource materials available to community workers so that they can assist Native American victims of crime and the general Native public. This project was funded by the Department of Justice, Office for Victims of Crime.

Abusers Who Were Abused: Myths and Misunderstanding
Community Readiness: A Promising Model for Community Healing
Confidentiality Issues in Child Physical and Sexual Abuse Case
Dealing with Disclosure of Child Sexual Abuse
The Difference Between Forensic Interviews and Clinical Interviews
Child Advocacy Centers in Indian Country
History of Victimization in Indian Country
Developing and Implementing Memorandums of Understandings Between Tribes, the Federal Government and the State Government
Native Americans and HIV/AIDS
An Overview of Elder Abuse in Indian Country
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Office for Victims of Crime

Office of Tribal Justice (OTJ)
Office on Violence Against Women

OJJDP Tribal Youth Program

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Tribal Justice and Safety in Indian Country
more . . .

Native Organizations
California Indian Legal Services
National American Indian Court Judges Association (NAICJA)
National American Indian Housing Council (NAIHC)
National Congress of American Indians (NCAI)

National Indian Child Welfare Association (NICWA)

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