

CHAPTER 3

40 Years of the Indian Civil Rights Act: Indigenous Women's Reflections



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AND EVA PETOSKEY

First, I want to thank the people at Michigan State University Law School for planning this conference. The Indian Civil Rights Act (ICRA)¹ as the core statute and then *Santa Clara Pueblo v. Martinez*² as the foundational case that continues with power in Indian life on the ground are very important. And I want to thank everyone. I know Matthew Fletcher and Wenona Singel led, but you had some great staff people and I thank you all. I especially want to thank the panelists for their perspectives. I come from Mexican indigenous people, Yaquis who cross over into territorial Arizona, and Indianness does not end with formal borders. We always speak about all our relations, and I am especially pleased to be here with my relations and particularly my sisters that include not only Rina Swentzell, but it is always gratifying for a law professor to see several of her former students on the program. I also want to acknowledge my appreciation for Professor MacKinnon.³ One of the highlights of my career as a law student was to hear her speak at the Harvard Law School. I think all women who have faced less than friendly work environments owe a great deal to the development of the doctrine of the hostile work environment and what complications arise for all women in the workplace, and they have not all gone away, as we know.

I approach this discussion by noting that *Martinez* raises two critical oppositional principles: the collective political right versus the individual rights norm. Individual rights are the keystone in the Constitution of the United States. However, tribal rights for collective political entities are also affirmed in the Constitution in the provisions that establish relationships with the tribal nations. This political, nation-to-nation relationship was explicitly acknowledged and reaffirmed in *Morton vs. Mancari*.⁴ The most important right that tribal people claim for themselves is that as sovereigns. We have to remember that tribes were first sovereigns within the United States. And, as the noted scholar Charles Wilkinson reminds us, the tribal sovereigns

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were pre-constitutional, post-constitutional, and, in the international law context of indigenous law, extra-constitutional.⁵

As an Indian law teacher who also teaches constitutional law, I'm quite aware of the different pushes and pulls of those two doctrines. It's very hard for some students to understand why this political sovereignty right exists and how it functions as the guiding principle of *Martinez*. Many a student comes into law seeing that Indians are just another minority group, an aggregate collection of individuals. Why not apply the universal norms of equal protection and due process, and transfer them from the constitutional law doctrines over into the Indian law area? Yet they ignore or are unaware throughout their law education that Indian law is, as we call it in law, *sui generis*, a unique form of historical and legal relationship-based law. The fact remains that within the borders of the United States, the tribes are unique, culturally based governments—the only legal theocracies—and that has always guided my own perspective of what every question starts with: the sovereignty foundation.

From the law professor perspective, I'm working on the *Martinez* case for a book and some other writings. I enjoy looking at the Library of Congress archives of our justices to see how they reasoned, not only in *Martinez* but in other cases. You have to recognize that *Martinez* is one of the most cited cases. It has endless numbers of articles written about it. If you look just in the federal courts from the Supreme Court down to bankruptcy court, almost 350 citations to *Martinez* and to ICRA appear, and the number is growing.⁶

On the ground, life is different from legal study. I'm very aware of this as I engage in this long-term study with Santa Clara Pueblo tribal member and scholar Rina Swentzell on this matter. I am writing a law chapter using the Library of Congress, the justices' archives, but am very aware all the time that life on the ground as it's lived in Indian country where I live and have lived most of my life is quite different. The ICRA is one of a number of Indian statutes, but one that nonetheless has complete and pervasive impact, much the way Lawrence Baca described it when it is invoked for a variety of reasons, some not so honorable.⁷

The underlying question very much is as my former student Casey Douma states it in the federal bar article in the conference materials.⁸ He raises the question: "Can tribal law and can tribal courts provide justice to the persons who are within the authority exercised by that tribe?" Let us remember that the act is about "persons" within the authority of that tribe. In the legislative history, as described in Donald Burnett's great article in the *Harvard Journal* on legislation, there was much active discussion on this point.⁹ As truncated and spread-out as those hearings were, there was one continuing discussion: Should the ICRA protect the rights of "Indians," "members," or "persons?" The final statutory term "persons" is significant in how life on the ground is lived among Indians and non-Indians and how government authority is exercised under the ICRA.¹⁰ Issues of equality, equal protection, and due process raise the question in *Martinez* as well as now: Who defines these terms and how do we go about determining that equality exists?

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Of the 565 tribes that are federally recognized, each has a unique culture and perspective, but there are some commonalities. The story on the ground in Santa Clara Pueblo is that before and after the case there had always been a core of people who, by their own designation, called themselves progressives, who felt that true equality and treatment of female members should exist. They are the same people who presented a proposal in the last two years to the Pueblo council to change that ordinance. I will leave it to Rina to address this.

What's important is that *Martinez* left to the tribe, in the exercise of its authority, community dialogues and process, to resolve how—in the sense of all my relations—we are going to live with each other. The fact that *Martinez* preserves a collective communal right does not mean that equality of individuals will be overlooked. In mainstream scholarship, Martha Minow, who writes about relations and community, has suggested that when our role in the community is based on relationships, these relationships are the core from which our individual rights, entitlements, and duties arise.¹¹ What we are entitled to—how we are going to be protected in enjoying the entitlements that arise from those relationships, families, clans, and orders—depends on a Pueblo perspective. In *Martinez*, specifically, what the western lens looks at is ideas of male dominance and patriarchy. These ideas are the very reasons why Alfonso Ortiz, a professor at the University of Chicago, returned to New Mexico: to write about the Pueblo perspective. In his book, *The Tewa World*, Ortiz tells us that perspective is not about matriarchy or patriarchy, the narrowing paradigms that western intellectual academic study uses to analyze the Pueblo world.¹² That world is about loyalties, moieties, or societies, whether you are part of the winter people who govern and carry out the order of the pueblo in the winter and then hand it to the summer people. It is in those core societies that our relationships, our status, our responsibilities, our protections arise.

And so you have this set of clearly different views. Life on the ground was different even at the time of the case. Through detective work, I got the transcript of the trial and you can now, if you go on our law school Web space, get it through our law library.¹³ One would think, reading the law-review articles, that the day after the Supreme Court issued its decision upholding the sovereignty and the sovereign immunity of the tribe, that the moving vans showed up and threw the Martinezes out of the community, threw the kids out of the school, cut off the water, cut off the firewood, and cut off all those amenities. That is not what happened.

We have to step back and ask, “Is this the lens, are these the principles by which we try to understand what was going on internally at Santa Clara Pueblo?” We find that during that time the Martinez family continued to function as community members; they do to this very day. Two weeks ago, we were doing interviews in Santa Clara Pueblo and passed by the Martinez house still used, inhabited by members. Outsiders bring a western cultural perspective that is not invaluable, but it is different. And life on the ground continues that way. On the ground today in tribes

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across the US, the power of *Martinez* in the affirmation of sovereignty and sovereign immunity is critical for daily life.

When I teach *Martinez*, I have the students read the Swentzell essay¹⁴ and I also show them the excerpt from a PBS documentary called *Winds of Change*, showing that the Onondaga Nation uses its sovereignty differently.¹⁵ At Onondaga, it is a female clan system and the woman that heads the clan selects the Faith Keeper, a male. If he fails in his duty on the Faith Keeper council that governs the Onondaga, she alone has the power to remove him. Note that in a George W. Bush era, there is no democracy here. No one elects the clan mother. No one elects or votes for the Faith Keeper. And I show a special excerpt from *Winds of Change* with this grainy footage of the all-male Faith Keeper council seeing that their cultural foundation based on clan mothers and clan systems is falling apart. Why? Because when the high school on the reservation closed and was merged with the in-town high school, high school hormones and hot love resulted in all kinds of marriages. So the question comes when you have a finite amount of land, space, and resources: Who is going to have a piece of Onondaga land? You see the newsreel footage of the all-male council voting to preserve their clan mother system. For the males who out-marry, it is they and their children who will be disadvantaged. This is how the Onondaga used the tribal culturally based governance to preserve themselves.

This past May, in New York I had an opportunity to talk to Oren Lyons, the head Faith Keeper. Chief Lyons said that there has been no change in the rule at Onondaga. It remains the same. Males who out-marry, who marry non-Onondaga women, the price is that their children will suffer some membership losses. But again, on the ground if you go to Onondaga, as soon as you get off the tribal land, at the boundaries surrounding Onondaga are homes where these males who out-married live with their wives and children. They partake of what goes on in that society. And no one who sees that film and sees the clan mothers that are featured there would think that these are women without power. So this is just one example of how it plays out within other communities.

Now on the ground in Indian country where I live, *Martinez* matters beyond membership issues. Remember that the ICRA applies to “persons” and not just “Indians” or “members.” As non-Indians come onto Pueblo lands for all kinds of commercial, business, and economic-development ventures, we are seeing those issues arise. For example, outside of Santa Fe, right next to the ritzy Santa Fe Opera, is the Tesuque Flea Market. It is quite a large and enjoyable flea market, and it is commercially run by the Tesuque Pueblo. A non-Indian vendor who had a vendor’s license and contract got into a physical dispute with other vendors, was ejected, and then had his vendor license canceled. He exhausted his remedies in tribal court, but was not satisfied, so then tried to get into federal court. Of course, he did have his liberty interest, his livelihood, and his income stopped. But then again he had violated the conditions. In a way, the vendor was trying to invoke *Oliphant*¹⁶ wherein non-Indians cannot be prosecuted by the Indian tribe. There is a hint of that in

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some of his filings. After losing at the Pueblo's court of appeals, he tried to get into federal district court, which dismissed the case. Then he filed a cert petition and the Supreme Court denied review. But you see how he could invoke the rights he claimed and he was fairly treated. However, he had violated the terms of the contract and the tribe had every right to control the activities on tribal land and to deny him further presence on their land.¹⁷ For Tesuque in that area, there are continuing struggles in which non-Indians challenge tribal authority even though there is cross-deputization with the state and county police authorities.

I will finish with tribal sovereignty as a recognized authority to enforce law. We have a lot of cross-jurisdictional agreements involving tribes and the state in New Mexico of necessity because of the way Indian land weaves in and out. And there again that busy highway that goes by the Santa Fe Opera and the Tesuque Flea Market is a place where cross-deputized Tesuque police officers frequently stop people who are speeding like crazy, or maybe driving under the influence, or engaging in other kinds of offenses that are dangerous to people on the road. Continuously, non-Indians challenge the Tesuque Pueblo officer. Even though the officer shows the cross-deputization document, the non-Indian says, "No, they can't stop me and they shouldn't be able to arrest me or anything else." It's what those of us living in New Mexico call "the non-Indian guys who hate getting tickets from Indian police officers." This goes on in other places. In some instances, cross-deputization occurs with the federal authorities. You cannot have some federal law enforcement activity occur in the hinterlands without the assistance of some tribes. When an offender flees, cooperation is essential. One incident involved violent killings on an interstate amid canyons and mountains; the only people who could help find the suspects were the tribal people and the tribal trackers! So life on the ground is different. Life on the ground involving the ICRA and *Martinez* is about real people living daily lives trying to be productive. This is a concern not only within their tribal community, but shared with the other communities with which they have mutual interests in safe and productive lives.

Rina Swentzell

Good morning, I am from Santa Clara Pueblo and I am a female. And I was, to give up ages, going on forty when the *Martinez* case was declared and the community went up in joy, saying you know, everybody in the community was happy for the decision.

Of course it's complicated. Of course the world is complicated. And the statement that Lawrence Baca left us with, you go this way, you got this set of problems; you go this way, you've got a different set of problems. But let me try and give you a sense of what I know. What I know about Santa Clara, I think, is something that the rest of the world really needs to hear—not just in terms of the law, not just in terms of social institutions, but I think there's something deeper there that Indian tribes have. I will tell you about this particular one.

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It all goes back to the gender. Male/female, winter/summer, which we do have in our community, the whole social structure is winter and summer. It goes from one season to the other. Why does it do that? Because sometime way back long time ago, people acknowledged that there are tensions in the world, that there are opposite forces in the world, opposite energies in the world. And we also could see that male and female are part of those kinds of energies. And I disagree with Alfonso Ortiz in that it is about matriarchy and patriarchy, in a way, because at Santa Clara, we have the idea that there is something larger than male and female. If you look at winter and summer, we've got the whole year. It's not just about winter, it's not just about summer, it's about the whole cycle. And without one or the other, boy, we'd be in bad shape, if all we had was one or the other, if all we had was male or all we had was female. Pretty bad shape, I think. Our people somewhere back there realized that and began to put a meaning on something else. They didn't go for saying one is better than the other, accepting that there are tensions in the world, but they said how do we bring that together? How do we bring that together so there's an acknowledgment that there's something bigger than this man here, or this female here, or that winter here and summer there, hot and cold, whatever.

We have a word that sort of encapsulates the whole thing. The word is *gia*. And *gia* in Tewa means *mother*. A very important concept . . . mother. So mother then becomes the place that contains everything. All native tribes are really nature-connected. Everybody in the world acknowledges that earth and mother are almost synonymous. And so we go to that place because we are of the earth. In our language we talk about being children of the earth. We are children of the mother. Males and females are children of the mother. So that femaleness becomes but a gender classification, if you will. What does that mean? Boy, that just changes the whole thing, doesn't it? I mean we're not about picking up on the oppositional, the adversarial, which the law is about. Where does the law that we know come from? It comes from that adversarial philosophy of our human nature. We didn't go there. We went someplace else. We went to the relational place that Gloria was talking about. That's what the mother is about. What are relationships about? That sets a whole different way of looking at the world and about how we treat each other, how we make decisions, what kinds of rules we make for each other. If the laws are made by the mother, can't you see it as being a different kind of world? I think it does. I live in both worlds.

I grew up in Santa Clara, with my great-grandmother of course, right in the middle of the plaza. Growing up as a child during the times that we're talking about, already being married when the *Martinez* case came through, I knew the community. But what was happening in that community during those years, and still to some extent is there, is that when big decisions like that were coming through, guess what was going on in the community? The men who were caretakers of the outside world, traditionally they were the ones that were out in the mountains, out in the fields, farming, gathering, hunting, whatever they were doing. Who was on the

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inside? The mothers and children. And the traditional role of the males was to take care of that inside space, to keep it all in balance. Balance is the word here. To keep it all so that it moves well for the children of that community, for the children that they were responsible for.

In that world of the men feeling like they really had a very serious responsibility to take care of that inside space, and the operative word here is care, and nurturing, how do we care for it in the best way that we can? All of a sudden, all of these outside forces are coming in. Who is authorized to deal with outside forces? The men go out and deal with the Plains Indians coming in, or whoever is doing what out there. And then the Spanish and Anglos come in, and of course the men start talking with them. But internally, every morning at her kitchen stove, my great-grandmother would be sitting there. There would be a parade of men coming through saying, "Okay, now we've got this problem, let's talk about it. What do you think we should do about this? How does it work?" And who was sitting there while these people were coming in and out? She was there, as one of the five women during the time that I was growing up, five major women in that pueblo, called *gias*, mothers, of that large extended family. They were all contacted about what should be done in major decisions.

There's an interesting point. The men who worked at a different level in that society worked in the *kivas*, the places where the men would gather. Those people in ceremonies and large public functions, if there was a man who acted appropriately, according to what was expected, guess what they were called? They were *gias*. They were mothers. What a different—we're talking something totally different here! If you look at the transcripts that Gloria's talking about, the *Martínez* case, some of the testimonies there, you get a man's testimony, Alcario Tafoya.¹⁸ When they were questioning him about religious stuff, he says, "Can't talk about it. But I am the *ogikay* of the winter people." What does that mean? It means that he was a winter mother. It literally means he is the winter mother. Not "I'm the winter leader, I'm the winter man, I'm the winter whatever"—"I am the winter mother." Wow! And that's what we have. We have winter mothers, we have summer mothers, but they are men.

Now can you imagine the kind of confusion that comes into the community as people are saying Santa Clara Pueblo has incredible gender discrimination. Of course, looked at from one perspective, of course there is. But how does a society that's worked under different sorts of categories deal with that? I don't live in the community. I'm one of those people who married a non-Indian. My children are not members. My brother's children are members, and, and so we go. Two of my children live in the pueblo. My grandchildren live there; my daughter has grandchildren now. They are in the community and act as if that's where they are. This is home, this is it. They live in houses that everybody in the community acknowledges are theirs. We know nobody is going to throw them out. That's just the way it is. How do we work through this thing? We work through this thing within our

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own tribe, within our own sensibilities. And it will happen. It will happen in such a way that we can feel that we're not, that we haven't given ourselves over to being the Other, which is nothing but rules and laws and pointed actions, that we can do this, maybe in a relational sort of way. Thank you.

Eva Petoskey

I want to say *miigwetch* for inviting me here today, to Matthew and Wenona and the rest of the staff here at the law school. It's a pleasure to be here at the Michigan State University campus. My daughter's a freshman here and I think she might be coming in here soon so she'll have a chance to hear her mom talk, which will be wonderful. Good for her, good for me, good for the family. Also, I want to say, *miigwetch* to the other women on the panel. I had the privilege of walking over from the hotel with Rina this morning and she kept a good pace. *I* had to keep up with *her*! We were both walking so fast we almost went past the law school! But also she inspired me to just be myself today. So in light of that inspiration let me introduce myself in our language, if you will: [*in Eva's language*].

I think it's really important for native people to feel liberated enough to use our language anywhere. But it's hard, it's hard to do that. It's hard to stand up and speak my truth. I wonder do any of you really care what my Anishnaabek name is? Or am I trying to put on some kind of show here for you to let you know that I actually have one? It is hard for me to know what is in your mind. But to me, it's important for me to introduce myself with my Anishnaabek name because my name reflects how I see the world. If I have to stand in front of a group of people it's more comfortable for me to say my name before I speak because it acknowledges my spiritual connection to who I am. If you're going to ask me to come and speak here, I have to ask for spiritual help in doing that. And the way I do that within the Anishnaabek worldview is to first speak my name and recognize my spiritual helpers. My name helps me feel grounded and unafraid. I'll be honest with you, that's hard. It's hard to speak my truth in this context.

But when I was asked to come here and speak, I read Catharine MacKinnon's article, and I don't know if she's here? Is she here? Hi Catharine. I read your article and I'll be honest again, I was kind of intimidated by it. I thought, I don't really understand this. And I'm an educated person, so to speak; I've gone to college and I have a couple different degrees and this and that, but I had a really hard time understanding it. I think because I've lived at home too long. I've lived on the reservation for twenty years, I served in tribal government, I raised our children, I'm married to another tribal member, so maybe I've forgotten. Sometimes I don't even go away from my home for weeks at a time other than to go to the grocery store! So I get really into this mind-set that's really pretty connected to where I live. I had a hard time with this presentation, because I thought, well Matthew, what are you asking me to talk about here? And at first I said, I'm not going to do it! I don't want to do it! I

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mean, what are you asking *me* for? [laughter] Then I realized that what I had to do is just tell myself I'll just speak from my own place. And we all speak from our own place. And Catharine, you speak from your own place, an honorable place, the place of your life experience and the view and the life of a woman. And that I can understand. I've certainly lived the life of a woman: a native woman.

I can speak as an Anishnaabek woman. I'm a member of the Grand Traverse Band of Ottawa and Chippewa Indians and I served on our tribal council for a number of years. When I think about feminism, if you will, from a native point of view, I really share Rina's view. Rina did such a wonderful job of describing the inner life of her community. I can only speak of the inner life of the Anishnaabek community as I know it today. We still have some speakers of our native language, unfortunately, not a lot. But I had the privilege to be born in a family where my mother was a fluent speaker of the language. So I was able to learn certain things that maybe some people my age, and I'm fifty-six, didn't have the opportunity to learn. When the *Martinez* case was decided [laughter], I was about twenty-some years old, twenty-five maybe, and I had just finished my undergraduate degree at the University of Wisconsin and I was in graduate school, but in the summer of 1978 I participated in the Longest Walk, a treaty walk, and I am sure some of you probably don't even know what I'm talking about. But people walked across the United States to protest legislation that had been introduced to abrogate treaty rights. I joined the walk in Pennsylvania and walked for maybe the last 150 miles or so. Not that this was a particularly successful political initiative but it was a formative experience, one of many at that time. This time period was about building empowerment for many people. After that summer I went to work in the basement of a place called Great Lakes Intertribal Council, which was in an old Catholic school on the Bad River Reservation. It was a great place to work fresh out of graduate school; I worked in the alcoholism program, of all things. I have always been concerned about where our people walk and where we live, and I decided to go there because of all of the issues associated with the destructive use of alcohol in our family and in the community.

But enough about me: Let me share a little bit from our language. There is a concept that expresses the egalitarian views of our culture. In our language we have a concept, *mino-bimaadziwin*, which essentially means to live a good life and to live in balance. But what you're really saying is much different, much larger than that; it's an articulation of a worldview. Simply said, if you were to be standing in your own center, then out from that, of course, are the circles of your immediate family. And then out from that your extended family, and out from that your clan. And then out from that other people within your tribe. And out from that people, other human beings within the world, other races of people, all of us here in the room. And out from that, the other living beings . . . the animals, the plants, the water, the stars, the moon and the sun, and out from that, the spirits, or the *manitous*, the various spiritual forces within the world. So when you say that, *mino-bimaadziwin*, you're

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saying that a person lives a life that has really dependently arisen within the web of life. If you're saying that a person is a good person, that means that they are holding that connection, that connectedness within their family, and within their extended family, within their community.

I just learned a new Anishnaabek word the other day. I'm a person that likes to ask for the deeper meaning in a word, so whenever I find someone who can speak our language, I go and ask questions. Well, one word I was wondering about in preparation for today is the word for *mother*.

In our language if you say *mother*, you say *ne'gasheh*; if you say *my mother*, that's *ne'gasheh*. *Gasheh* is a mother. So the other day I was thinking, well, before I come down here, maybe I should ask somebody, what are you really saying? In our language there's a lot more to a word than what appears on the surface. In our language, *ne'gasheh* actually means *my mother*—or *ne'dudu*, you could say also. And *ne'dudu* is an older word that people don't often use anymore. But *ne'dudu* actually refers to breast-feeding. Here is the mother, the woman who fed me. But *ne'gasheh* is even more earthy; *ne'gasheh* is actually, you're saying, here is the person's body from which I came. Say you introduced your mother with a literal translation to English, you would say, here's the person's body from where I came. But I think our people in our expression of our language are much more natural, and we speak of reality in a more natural way.

So why do I mention all that? Because I think in a way I kind of stand here as an anomaly maybe; you could look at me and say, well, who are you anyway? And I could look at myself and say that too. But I think that it is important to remember that throughout the whole country, it's very important to speak to lawyers this way—I'm married to a lawyer, and actually when I asked him about, well, what do you think I should talk about, he started talking for five minutes and I realized, NO WAY. [laughter] I am not, there's just no way I'm going to be able to talk about that! Maybe they should have invited you to be on the panel! Because I can't speak the way that you do! And that's when I started to realize I had to speak from my view as an Anishnaabek woman and mother.

I think it's important for us as women to feel liberated even in this context of a fairly intellectual discussion about federal Indian law. Which is extraordinarily important. Probably my husband and I are the best example of people who are very different: an intellectually oriented lawyer and someone who, like me, is mainly interested in watching the birds, but we can live happily together and love one another. Because both things are really needed. In a marriage, differing views can be respected in our home, but also in a forum like this, so that you can bring people who can come to speak from the internal perspective of the tribe and the culture, and what is still alive today. Because you might look around in Michigan and think, well gee, you folks should be fairly well acculturated. Well yeah we are, but yeah we aren't. Because you still have people like myself who, and many others, who are still affiliated with the language and the culture and the ceremonial life of the community.

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Let me switch gears a little bit to talk about my experience as a member of our tribal council. I'll get lost in a story somewhere so you'll have to tell me to stop. But I was an elected official within our tribe; I was elected to our tribal council in 1990, so it's been a little while ago. Eighteen years ago . . . I had one child, and in fact I was pregnant at the time, so I was an old mother. But my daughter, if she ever comes in here, she is the one I was pregnant with in 1990 when I was elected as a tribal council member. In fact I was enormously pregnant—I think I was about seven months' pregnant when I was sworn into office—and I served for six years as a tribal council member. I actually had two children during that time, so I often brought my babies to the tribal council meetings. I even nursed my child occasionally at meetings. [laughter] I've always been just a little bit of my own person, and I actually come from a family like that. My mother was like that, my grandmother—so when people would sometimes view from the outside native women as somehow walking two steps behind the man, I could never understand that, because I never observed that other than maybe subtly so. But if someone was going to—exactly what you were speaking of Rina—if someone was going to really make a decision or get some advice . . . even my own husband, if you ask him anything about what's going on in the family, he'll just defer to me. You know, that's how our dynamic works. And I think that's still very much alive today.

But in our tribal government we have a constitution also that incorporates the Indian Civil Rights Act, and although I would venture to say that in the six years I served on the council and in the twenty-some years I've lived at home, I have seen very few situations in which people have actually used that in our tribal court. I am really a strong advocate for strengthening our tribal governments. I like the *Martinez* case, I can tell you that right now. Catharine, I think a comment in your article was that the only time the Supreme Court has really upheld sovereignty was at the expense of an Indian woman, and I say, I would pay that cost. I would pay that price! I would pay that price because I know a slightly different world. Oh, and here's my baby! What a good time for her to come in the door! Hi, Rosie.

So, I would pay that price. Because I don't really have a life without the sovereignty of the tribe. We don't have our land without the tribe's sovereignty. We don't have much hope of preserving our language. We don't have much hope of being able to live at home and raise our children where they can know about who they are. We don't really have much hope of anything. And truly, I've lived in the outside world, I went to college, I did all these things. I actually have never worked there because I came home and I started working for the tribes, so I don't know, the only discrimination that I've experienced has been somewhat in interfacing with the outside world, but not so much as employment. I have seen what I would characterize as discrimination in employment within our tribal system. I've seen a lot of situations where I thought that people were not treated fairly, and sometimes didn't feel that they had adequate recourse, even within our tribal judicial system. And particularly I would say this is true for women. In fact, one of the bolder things that

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we did one time several years ago is a number of women felt mistreated in employment practices within our tribe. It seemed as though some of our tribal council members had developed the opinion that non-natives are smarter than us. Internally we treat each other rather poorly sometimes, because we think that if we employ a non-Indian within our government system they might be able to figure out something better than we can. I'm talking rather directly about our internalized oppression; some of you aren't familiar with this, so maybe I'm in the wrong audience to really get into that too much ... but I'm just going to say that when you serve on a tribal council you have to deal with all of these issues as an elected official. One of the biggest challenges you have as an elected official is how to balance the rights of the individual against the collective rights of the tribe, and how to do that considering *mino-bimaadziwin*, how to do that from the interconnectedness of the people. Someone will say, "I'm going to get in there and do the right thing." Well, having served as a council member six years, the right thing is not always evident; you have to really work to find what the right thing is.

But I was starting to say, a group of women and I organized this campaign because we felt as though the non-native employees were treated better than the native employees. And so we made some buttons and stuff, it was really kind of out there, but you know—"stop the abuse of member employees." But we didn't get anywhere, you know, it was just trying to raise consciousness. [laughter] We really didn't get anywhere; we didn't solve anything. But what kind of gives me pleasure—this was probably eight years ago—I still go in people's houses and they've got this button, which had a big bear on it that had "Same" on it; you still see this button stuck on someone's bulletin board. And then we'll have a little chat about it, and it's a gradual process. If you're living in a tribal community and you want change to happen quickly, it's not going to happen. But people do talk, and people do change.

So I'm just going to close my session, I'm going to do the bold thing. I told John, my husband, I might just go down there and read poetry. This speaks to the issue of feminism from the inside, from the tribal view. And actually this was a dream that I had and I wrote it down in a poem:

Our Place of Vision

There is a place where women gather, a place deep in the maple forest.

[And some of you haven't seen the maples, they are changing now, and I know Rina was commenting how beautiful that is, it's an orange, beautiful glow that comes in the fall.]

We bring our food, we clang our pots, we gather our voices and speak our truth. We prepare a feast of birth and feast for death.

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We nurture our spirits with the foods of life. From the fiber of our lives we weave a basket, strong, soft, and pure. Deep in the eye of this basket, at the center of the spokes is where the past, present, and future of our community resides. From the center, our lives unfold. From this place of vision, we nourish our ancestors and our unborn children.

Miigwetch.

NOTES

1. Indian Civil Rights Act, Pub. L. 90-284, 82 Stat. 77-80 (1968) (codified at 25 U.S.C. §§ 1301-03, 1311-12, 1321-26, 1331, 1341).
2. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).
3. Catharine A. MacKinnon, Martinez Revisited, in THE INDIAN CIVIL RIGHTS ACT AT FORTY (2011).
4. Morton v. Mancari, 417 U.S. 535 (1974).
5. CHARLES F. WILKINSON, AMERICAN INDIANS, TIME, AND THE LAW: NATIVE SOCIETIES IN A MODERN CONSTITUTIONAL DEMOCRACY 112-113 (1987).
6. Before presenting this talk, this was the rough count from Westlaw and Lexis. It has now increased.
7. Lawrence R. Baca, *Reflections on the Role of the United States Department of Justice in Enforcing the Indian Civil Rights Act*, in THE INDIAN CIVIL RIGHTS ACT AT FORTY (2011).
8. Casey Douma, *40th Anniversary of the Indian Civil Rights Act: Finding a Way Back to Indigenous Justice*, 55 The Federal Lawyer 34 (March/April 2008).
9. Donald J. Burnett, Jr., *An Historical Analysis of the 1968 "Indian Civil Rights" Act*, 9 HARV. J. ON LEGIS. 557, 574-575 (1971-1972).
10. *Id.* at 602, n. 239.
11. MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 308-309 (1990).
12. ALFONSO ORTIZ, THE TEWA WORLD (1969).
13. See Gloria Valencia-Weber, *Santa Clara Pueblo v. Martinez*, in LAW STORIES (forthcoming). Also see transcript of the District Court Trial at the University of New Mexico School of Law: Transcripts of Federal District Court Trial, Santa Clara v. Martinez, No. 9717 Civil (D. N.M. Nov. 25, 1974), <http://hdl.handle.net/1928/342>.
14. Rina Swentzell, *Testimony of a Santa Clara Woman*, 97 (2004).
15. THE WINDS OF CHANGE: A MATTER OF PROMISES (PBS 1990).
16. Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978).
17. Walton v. Tesuque Pueblo, 443 F.3d 1274 (10th Cir. 2006).
18. Martinez v. Santa Clara Pueblo, 540 F.2d 1039, 1044 (10th Cir. 1976), Record on Appeal, U.S. Court of Appeals, 10th Cir., Transcript of Trial, November 25-26, 1971, Vol. II at 382, Testimony of Alcario Tafoya.

