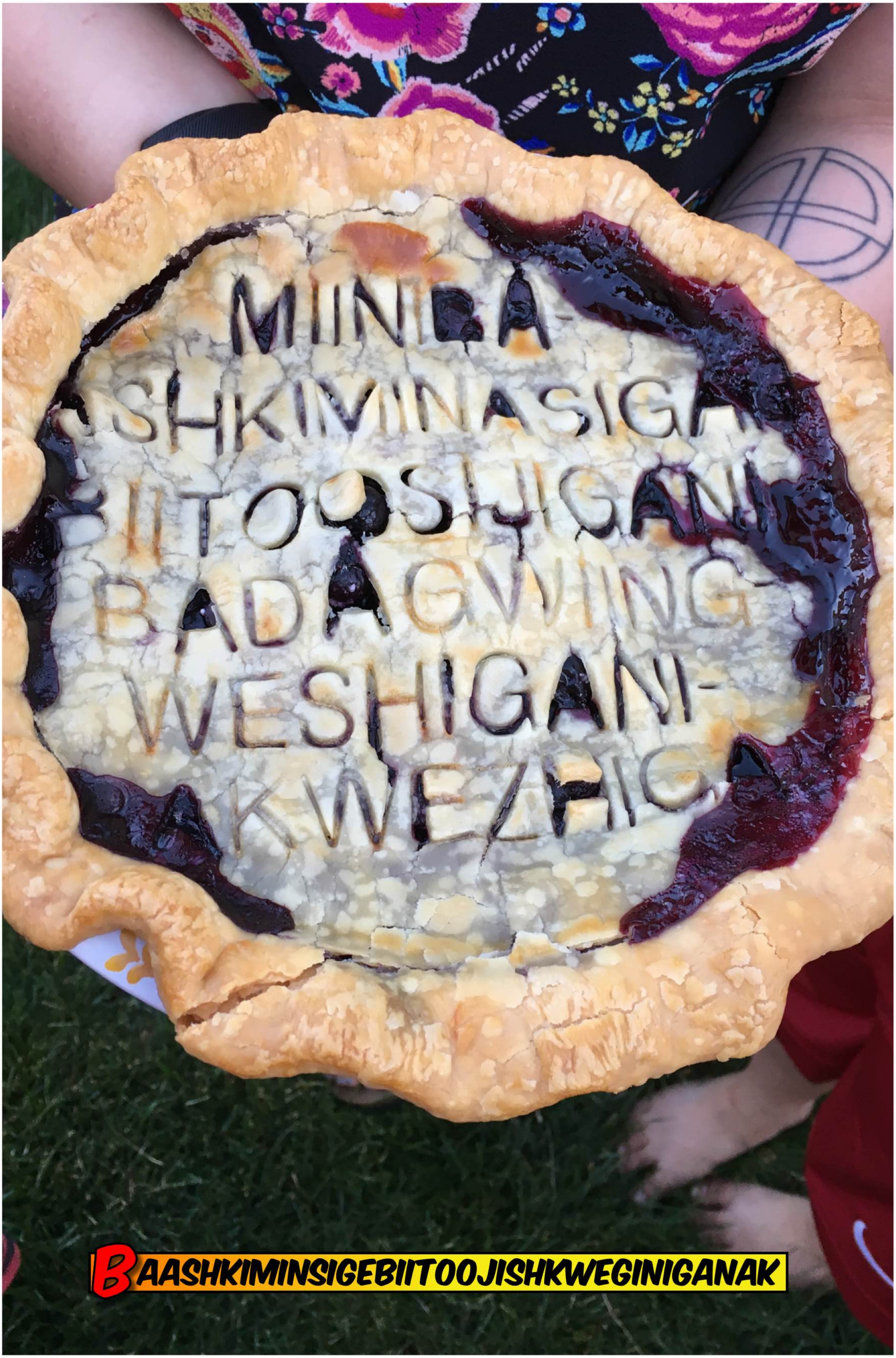
TRIBAL JUSTICE SYSTEMS IN STATE & FEDERAL COURTS



OREGON JUDICIAL DEPT.

FLETCHER


MIINA
SHKIMINASIGA
BIITOOSHIGAN
BADAGWING
WESHIGANI-
KWEZHIG
BAASHKIMINSIGEBIITOOJISHKWEGINIGANAK

A SHORT HISTORY OF INDIAN LAW IN THE SUPREME COURT

By Matthew L.M. Fletcher

The history of federal Indian law in the Supreme Court is dynamic, controversial, and inspiring. The history starts with the earliest decades of the Supreme Court and tracks the growth of the American Republic.

Guiding Principles in Indian Law

The long history of Supreme Court decisions in Indian law has cemented several guiding principles. First, Congress has plenary power in the exercise of its Indian affairs duties. Second, the United States owes a duty of protection to Indian nations and tribal members akin to a common law trust. Third, Indian nations retain inherent sovereign powers, subject to divestiture only by agreement or by Congress. Fourth, state law does not apply in Indian country absent authorization by Congress. Finally, Congress must clearly state its intention to divest tribal sovereignty.

Modern federal Indian law has given space for Indian nations to exercise self-governance and to preserve tribal lands, economies, and cultures. But for too long before the modern era, the Supreme Court ratified the mass dispossession of Indian lands, exploitation of Indian resources by outsiders, and attacks on tribal cultures, governments, and economies.

Until the Warren and Burger Court eras, the Supreme Court deferred absolutely to Congress and the executive branch prerogatives in setting federal Indian policy, which usually was designed to undermine tribal self-determination. However, during the Warren and Burger Court eras, the Court increasingly pushed back on bad federal policy and became a leader in modernizing federal Indian law. Strangely, despite congressional and executive branch support for tribal self-governance since the 1970s, the Supreme Court often has continued to resist federal Indian policy, undermining tribal governance.

Beginnings

The history of Indian law in the Supreme Court opens with the Marshall Trilogy—*Johnson v. M'Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); and *Worcester v. Georgia*, 31 U.S. 515 (1832). The Trilogy, primarily authored by Chief Justice John Marshall, established federal primacy in Indian affairs, excluded state law from Indian country, and recognized tribal governance authority. Moreover, these cases established the place of Indian nations in the American dual sovereign structure that still governs today.

Johnson is best known for the adoption of the so-called Doctrine of Discovery as the origin of American property title, but the case more properly should be known as the decision that established federal supremacy in Indian affairs over the states and individuals. The case involved a dispute over the ownership of parcels of land in the Ohio River Valley. Both parties claimed they had acquired title from Indian nations in the area, the Piankeshaw and Illinois Indians. The Supreme Court held that Indians could not sell their property interests—known to the Court as Indian title, original Indian title, or aboriginal title—to anyone except the national sovereign. Indian sales to individuals (as in this case) or to states or any other nation were void. The Court confirmed national authority over Indian affairs, which had barred all land and commercial transactions with Indians absent sovereign consent since at least the 1763 British Proclamation, a policy adopted by the First Congress in the 1790 Trade and Intercourse Act.

Congress reaffirmed federal supremacy over Indian affairs in the two Cherokee cases, *Cherokee Nation* and *Worcester*. There, the State of Georgia tried to assert the authority to legislate the Cherokee Nation's government out of existence, and then to confiscate Indian lands and resources. In the first case, a deeply split Court held that the Cherokee Nation was a domestic nation, but neither a state nor a foreign nation. In the second case, the Court held that the state laws had "no force" in Indian country, barred under the Supremacy Clause by federal statutes and the Cherokee Nation's treaties with the United States. *Id*. at



561. Of course, the Court's decision favoring the tribe did nothing to prevent the political and military process that eventually forced the Cherokee people to undergo the Trail of Tears.

The Interregnum

The Supreme Court's foundational cases allowed the federal political process—and all its attendant prejudices, inconsistencies, and complexities—to dominate Indian affairs after the Marshall Trilogy for a century and a half. A second trilogy of cases, informally known as the plenary power trilogy, memorialized the darkest decades for Indian people in American history. These cases—*Ex parte Crow Dog*, 109 U.S. 556 (1883); *United States v. Kagama*, 118 U.S. 375 (1886); and *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903)—explored the outer boundaries of congressional and executive power over Indian affairs, Indian lands, and even Indian lives—almost always without the consent of Indian people or Indian nations.

Federal Indian policy of the nineteenth century featured the wholesale removal of entire Indian nations from the East to what is now the central United States; large-scale and destructive warfare with Indian nations in the Southeast, the Great Plains, and the far West; and confiscation and exploitation of remaining and reserved Indian lands and resources by the United States and its citizens. Indian nations often became isolated on reservations or checkered parcels of detached lands in out-of-the-way regions.

The legal import of this isolation came to the forefront in *Crow Dog* and *Kagama*. In *Crow Dog*, leaders from the Sicangu band of Lakota Indians were conflicted over whether to concede additional lands and resources to the United States. Crow Dog, the leader of the group opposed to the concession, allegedly murdered Spotted Tail, the proponent of the concession. Federal officials wanted to prosecute Crow Dog under federal law, but the Supreme Court held that no federal statute or Indian treaty expressly authorized federal criminal jurisdiction over an Indian-on-Indian crime on Indian lands.

Congress quickly passed the Major Crimes Act, expressly authorizing federal criminal jurisdiction in such cases. *Kagama* was the first prosecution under the Act to reach the Supreme Court. For the first time, the Court addressed the source of Congress' constitutional authority over Indian affairs and Indian country. The Court rejected the government's contention that the Indian Commerce Clause authorized the extension of federal criminal jurisdiction over Indian country, the provision that Congress long had relied upon for much of its Indian affairs program. The Court held instead that more generalized federal interests in maintaining law and order on Indian lands, and protecting Indian people from states and their citizens, authorized the Major Crimes Act. 18 U.S.C. § 1153.

Meanwhile, Congress established allotment as national policy. Allotment involved the breakup of Indian reservations by "allotting" parcels to individual Indians and then selling "surplus" lands on the open market. Allotment was an unqualified disaster for Indian people, tribal governments, and reservation governance. Non-Indians quickly and efficiently acquired the most valuable allotted and surplus lands through legal and illegal means, and by 1928 two-thirds of the tribal land base disappeared.

Lone Wolf involved the objection to an allotment plan for the Kiowa-Comanche-Apache reservation. *See generally* Angela R. Riley, *The Apex of Congress' Plenary Power over Indian Affairs: The Story of* Lone Wolf v. Hitchcock, *in* Indian Law Stories 189 (Carole Goldberg et al. eds., 2011). Under the terms of the treaty, two-thirds of the adult males of the tribes would have to consent before the treaty could be amended. Lone Wolf the Younger argued that the Americans fraudulently acquired the consent of the tribe and the allotment plan approved by Congress should be enjoined. The Court held that Congress had the authority to proceed with the allotment plan under its plenary power over Indian affairs, that federal altering of Indian property rights over tribal objections could proceed because the tribe would receive compensation, and that the Court would presume that Congress was acting in good faith in setting the terms of compensation. The Court seemingly held that Indian claims challenging congressional and executive branch decisions on Indian affairs were not subject to judicial review by the courts.

The Supreme Court's extreme deference to the federal government's Indian affairs policies extended to the mid-nineteenth century. The capstone plenary power decision has to be *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955). *See generally* Walter R. Echo-Hawk, In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided 359 (2010). There, the Interior Department authorized the harvesting of valuable timber in the Tongass National Forest claimed by Alaska Natives. The Court held that Congress never vested Alaska Native property rights and that the taking of property protected by Indian title was not subject to the Fifth Amendment Takings and Just Compensation Clause.

The Modern Era

The Supreme Court reaffirmed inherent tribal authority in *Williams v. Lee*, 358 U.S. 217 (1959), a decision heralded by Charles Wilkinson as the first case of the modern era of federal Indian law. Charles F. Wilkinson, American Indians, Time, and the Law 1 (1987). A non-Indian shop owner sued two members of the Navajo Nation in state small claims court to force the payment of debts incurred at the store, which was located in the Navajo reservation. The Supreme Court modernized tribal sovereignty by holding that state courts do not possess jurisdiction to hear claims brought arising on Indian lands against Indian defendants without congressional authorization.

Following *Williams*' lead in relation to state authority, the Court

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Electronic copy available at: http://ssrn.com/abstract=2616802

reaffirmed several principles initially announced in *Worcester v. Georgia* and its progeny—that states may not tax on-reservation transactions involving tribal members (for example, *Warren Trading Post Co. v. Arizona State Tax Commission*, 380 U.S. 685 (1965)), may not tax on-reservation income of tribal members (for example, *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973)), may not tax on-reservation tribal economic development projects (for example, *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)), and may not regulate on-reservation activity inconsistent with tribal government prerogatives (for example, *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)). The high point for tribal interests was the Supreme Court's dramatic rejection of the State of California's effort to regulate tribal bingo operations in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

Further following *Williams*' lead in relation to tribal governance authority, the Supreme Court affirmed numerous aspects of tribal governance authority—including the power to tax members and nonmembers (for example, *Washington v. Colville Confederated Tribes*, 447 U.S. 134 (1980)), the power to prosecute Indian lawbreakers (*United States v. Wheeler*, 435 U.S. 313 (1978)), tribal sovereign immunity (for example, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)), the power to adjudicate civil claims (for example, *National Farmers Union Insurance Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985)), and the power to exclude persons from Indian lands (*Merrion v. Jicarilla Apache Tribe*, 445 U.S. 130 (1982)). The Court further held that Indian treaty rights remain extant unless Congress expressly abrogates them (for example, *Washington v. Washington State Commercial Passenger Fishing Vessel Assn*., 443 U.S. 658 (1979)), and even then only if the government pays just compensation. *Cf. Menominee Tribe v. United States*, 391 U.S. 404 (1968). However, despite a lack of clear congressional guidance, the Supreme Court also held that Indian nations cannot prosecute non-Indian lawbreakers, *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), and that tribal civil jurisdiction over non-Indians is limited, *Montana v. United States*, 450 U.S. 544 (1981).

Despite significant limitations on tribal governance authority, the Supreme Court in the early decades of the modern era of federal Indian law marked the path of national Indian affairs, joining Congress in recognizing and encouraging tribal self-determination as the guiding principle in federal-state-tribal affairs.

Retrenchment

In recent decades, the Supreme Court has markedly shifted toward skepticism of tribal interests and tribal claims, and away from federal policies announced by Congress and the executive branch. *See generally* Wenona T. Singel, *The First Federalists*, 62 Drake L. Rev. 775 (2014). The Court routinely, though not always, has reversed presumptions favoring tribal interests and federal interests favoring Indian tribes. From the beginning of the Rehnquist Court to the current term of the Roberts Court, tribal interests have prevailed on less than one-quarter of the cases.

The turning point is not obvious, and some point to the *Oliphant* and *Montana* cases as the starting point, but the most vivid change occurred in *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989). There, the Supreme Court held that a state may tax a non-Indian company extracting natural resources from Indian trust lands on the Jicarilla Apache Reservation. The Court held that a tribe's interest in its own reservation resources was not sufficient to preempt the state tax, even though the state tax created a double taxation scheme that effectively undermined the tribal tax.

The Supreme Court also held in a series of cases that tribal courts may not exercise criminal jurisdiction over all nonmembers, including nonmember Indians, in *Duro v. Reina*, 495 U.S. 676 (1990). Though Congress quickly corrected that holding in the so-called *Duro* fix, *United States v. Lara*, 541 U.S. 193 (2004), Justice Anthony Kennedy's theory about why tribal governments may not exercise jurisdiction over nonmembers—because nonmembers have not expressly consented to tribal jurisdiction—continues to inform the Court's views on tribal regulatory and tribal court jurisdiction. *See, e.g*., *Plains Commerce Bank v. Long Family Land and Cattle Co*., 554 U.S. 316 (2008); *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001); *Strate v. A-1 Contractors, Inc.*, 520 U.S. 438 (1997). When informed that the Court's decisions created jurisdictional loopholes or statutory contradictions, the Court directs tribal interests to Congress to deal with the problems. *See, e.g*., *Duro*, 495 U.S. at 696.

The Supreme Court has also been undeterred by the unique history of the relationship between Indian nations and the United States in its decisions. Recent decisions have relied upon 19th century congressional policy declarations thoroughly repudiated in the modern era to reach decisions that a tribe's reservation boundaries have been diminished (for example, *Hagen v. Utah*, 510 U.S. 399 (1994)), to undermine 70 years of administrative interpretations of a statute designed to benefit Indian nations (*see Carcieri v. Salazar*, 555 U.S. 379 (2009)), to allow states to tax on-reservation land owned by the tribe (*Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103 (1998)), and to hold that state governments can invoke equitable defenses against tribal claims brought under federal statutes (*City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005)). Perhaps most painfully for Indian people, the Court will not protect Indian sacred sites. *See, e.g*., *Lyng v. Northwest Indian Cemetery Protective Assn*., 485 U.S. 439 (1988). *See generally* Amy Bowers & Kristen A. Carpenter, *Challenging the Narrative of Conquest: The*

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Story of Lyng v. Northwest Indian Cemetery Protective Association, *in* Indian Law Stories, *supra*, at 489.

The Court's reasoning in several cases turns the notion of tribal self-determination against tribal interests by denigrating the federal-tribal trust relationship. In *United States v. Navajo Nation*, 537 U.S. 488 (2003), the Court excused unethical ex parte contact with the interior secretary by a mining company in royalty negotiations with the tribe to wipe out a $600 million judgment against the federal government. In *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313 (2011), the Court held that the federal government did not have to disclose documents to the tribe about the scope of the government's trust duties to the tribe. Even when affirming a tribe's immunity from suit, the Court implored Congress to abrogate tribal immunity by statute. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc*., 523 U.S. 751 (1998).

In cases involving the mere interpretation of a statute or treaty, tribal interests have fared much better. Tribal interests have prevailed in critical decisions involving the Indian Self-Determination and Education Assistance Act (*Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012); *Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005)), the Indian Gaming Regulatory Act (*Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024 (2014)), and treaty interpretation (*Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999)). But the Court has ruled against tribal interests (and the federal government) in decisions involving the Indian Reorganization Act (*Carcieri v. Salazar*, 555 U.S. 379 (2009)), the Freedom of Information Act (*Department of Interior v. Klamath Water Users Protective Assn*., 532 U.S. 1 (2001)), the Indian Gaming Regulatory Act (*Chickasaw Nation v. United States*, 534 U.S. 84 (2001); *see also Seminole Tribe of Florida v. Florida*, 516 U.S. 44 (1996) (striking down a critical provision in the Indian Gaming Regulatory Act)), the Quiet Title Act (*Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012)), and the Indian Child Welfare Act (*Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013)).

The win-loss rate, some argue, is skewed by Indian nations that overstep, making claims beyond what the Court has articulated as settled precedent or what Congress desires. But there is strong evidence that an institutional bias against tribal interests drives the current Supreme Court. Matthew L.M. Fletcher, *Factbound and Splitless: The Certiorari Process as a Barrier to Justice for Indian Tribes*, 51 Ariz. L. Rev. 933 (2009). Even when the federal government sides with tribal interests, the Court is unimpressed. This institutional bias runs against the now-settled national policy favoring tribal self-determination.

Conclusion

Tribal interests have always faced an uphill climb in what Chief Justice Marshall once referred to as the "courts of the conqueror." *Johnson v. M'Intosh*, 21 U.S. 543, 588 (1823). But, despite tough lessons learned in the Supreme Court in recent decades, Indian people and their governments have become players in the American constitutional structure in a way likely thought inconceivable at the Founding of the Republic, and perhaps even as late as three or four decades ago. The future is bright.

Matthew L.M. Fletcher is a professor of law at Michigan State University College of Law.



TRIBAL COURTS



INDIAN JUDGES, LOWER BRULE AGENCY.



MATTHEW L.M. FLETCHER

NAVAJO NATION SUPREME COURT @ HARVARD LAW, 1999

OKLAHOMA TRIBAL COURTS IN 19TH CENTURY

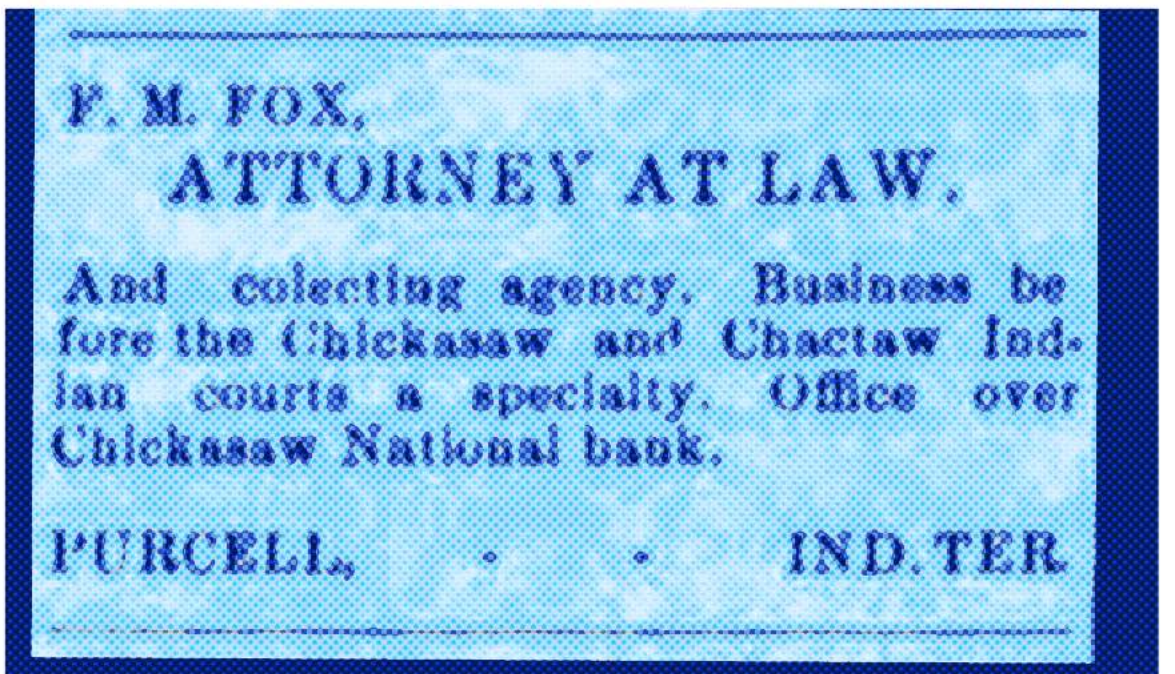
THE **FIVE CIVILIZED TRIBES** — CHEROKEE, CHOCTAW, CHICKASAW, CREEK, AND SEMINOLE — ALL HAD TRIBAL COURTS THROUGHOUT THE 19TH CENTURY, UNTIL CONGRESS TERMINATED THEIR COURT SYSTEMS IN 1906.



CHICKASAW

CHEROKEE

THE **SUPREME COURT** CONFIRMED THE AUTHORITY OF THE CHEROKEE NATION TO PUT TO DEATH **BOB TALTON**, A CHEROKEE CITIZEN CONVICTED OF MURDER, IN 1896.



THE **CHEROKEES** EXECUTED A WHITE MAN — JAS. WILLIAMS — THE SAME DAY, ALSO FOR MURDER.

LAWYER SOLICITING BUSINESS IN CHICKASAW AND CHOCTAW COURTS.

COURTS OF INDIAN OFFENSES

COURTS OF INDIAN OFFENSES — ESTABLISHED BY THE OFFICE OF INDIAN AFFAIRS IN THE 1880S — WERE THE PRECURSORS TO MODERN TRIBAL COURTS.

Dignified Blackfeet Justice Maintains Order in Tribe by Reprimands, Occasional Fines

Family Arguments, Few Thefts and Other Crimes Come Before Indian Judge at Court Sessions

INDIANS FIGHT AGAINST WHITE COURT TRIALS

Indian Judge Says Redman will Not Fight for Rights in White Man's Court

HAVE BEEN SWINDLED

LEARN SOMETHING FROM INDIAN JUSTICE

THEY WERE A SYSTEM OF CONTROL DESIGNED TO ENCOURAGE **ASSIMILATION.**

"Masters In Common Sense" Settle Marital Dispute In Short Order.

By Science Service

New York—The white man's d- [illegible] might learn [illegible]

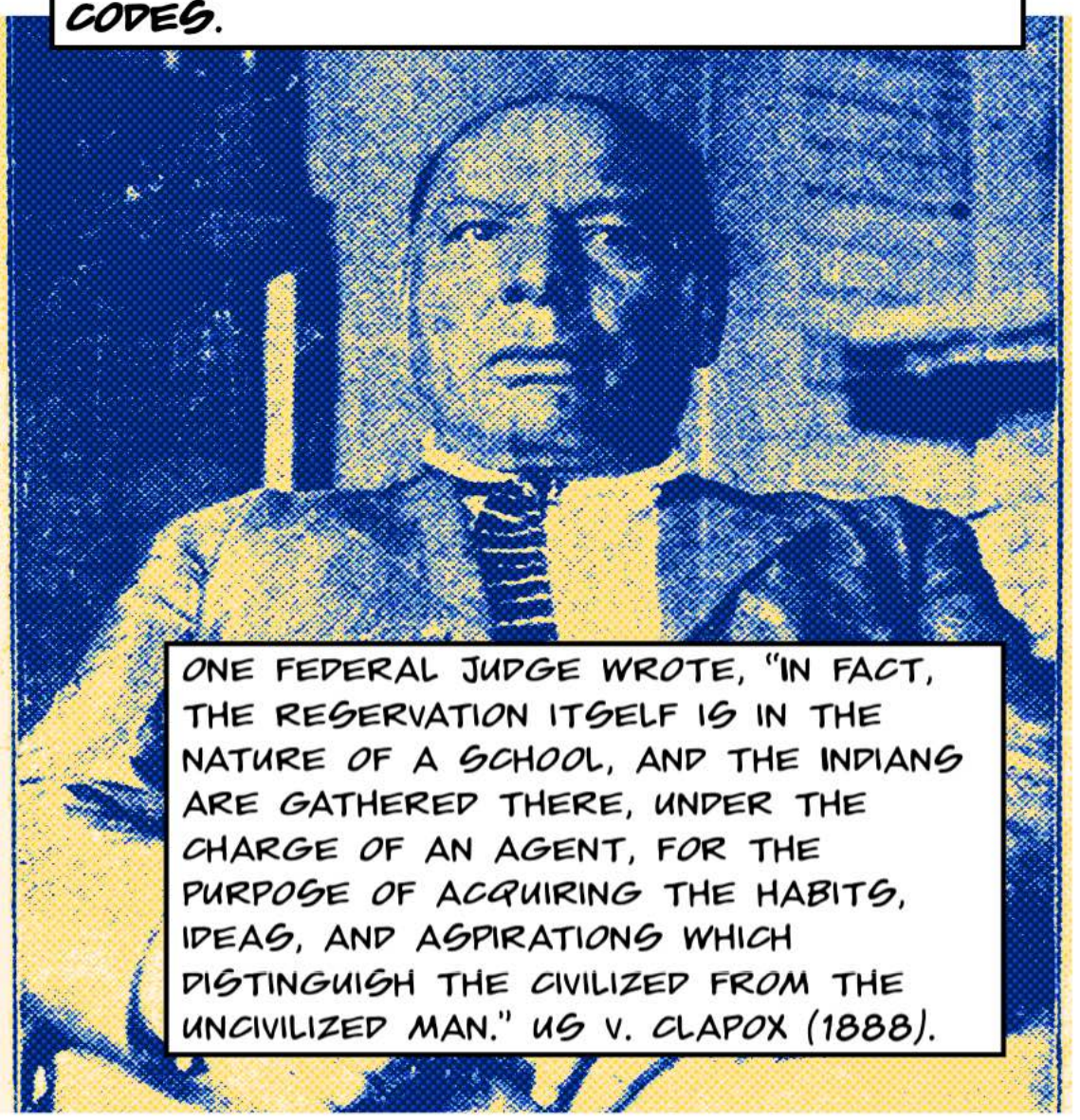
REFORMS.

INDIAN JUDGES ARE APPOINTED

LATEST MOVE TO TREAT ABO RIGINE AS A BROTHER.

Jury of His Peers Will Try Him on Reservation and One of His Race Will Sit on Bench—Banning's Gov- [illegible]

FEDERAL OFFICIALS SELECTED **INDIAN JUDGES** AND **INDIAN POLICE** TO ENFORCE FEDERALLY MANDATED **LAW AND ORDER CODES.**



ONE FEDERAL JUDGE WROTE, "IN FACT, THE RESERVATION ITSELF IS IN THE NATURE OF A SCHOOL, AND THE INDIANS ARE GATHERED THERE, UNDER THE CHARGE OF AN AGENT, FOR THE PURPOSE OF ACQUIRING THE HABITS, IDEAS, AND ASPIRATIONS WHICH DISTINGUISH THE CIVILIZED FROM THE UNCIVILIZED MAN." US V. CLAPOX (1888).

INDIAN CIVIL RIGHTS ACT (1968)

THE UNIVERSITY OF MICHIGAN
MAR 21 1972

"INDIAN BILL OF RIGHTS" GUARANTEES CIVIL RIGHTS TO "PERSONS UNDER TRIBAL JURISDICTION."

MODERN TRIBAL COURTS

AMERICAN INDIAN CIVIL RIGHTS HANDBOOK

Clearinghouse Publication No. 33

United States Commission on Civil Rights

March 1972

SANTA CLARA PUEBLO V. MARTINEZ (1978)

TRIBAL COURTS ARE EXCLUSIVE FORUMS TO ENFORCE **INDIAN BILL OF RIGHTS**. TRIBES ARE IMMUNE FROM SUIT IN FEDERAL COURT. TRIBAL LAWS GOVERN THE MEANING OF "EQUAL PROTECTION" AND "DUE PROCESS."

Santa Clara Charged With Rights Violation

...hip criteria, or ...s right is negated by ...nstitution and sta-tutes.

by many a thorn in the side of tribal sovereignty, has struck again at the Santa Clara Pueblo in New Mexico, this time at traditional tribal law, in a suit brought against the pueblo by a member and her eight children.

Julia Martinez and her eight children allege in the suit that their rights, which arise under the Fifth Amendment to the U.S. Constitution and the Indian Civil Rights Act of 1968 have been violated by the Santa

Santa Clara Pueblo Gov. Paul Tafoya said of his tribe's enrollment practices:

"The Santa Clara people have a very strong tradition that the male is the head of the houshold. It is his responsibility to take care of his family. this (practice of enrolling only children of male tribal members) has been handed down from generation to generation."

According to the Martinez at-

Indians can control aliens, says court

SAN FRANCISCO (AP) — The 9th U.S. Court of Appeals Wednesday ruled that an Indian tribe has jurisdiction over non-Indians who commit crimes while on Indian tribal land within a reservation.

The 2-1 decision upheld a U.S. District Court order which had denied Mark David Oliphant a writ of habeas corpus. The appeals court noted the case involves a question of Indian law which has been unresolved since it first arose a century ago.

Oliphant was arrested Aug. 19, 1973 on the Port Madison Indian reservation on Washington by Suquamish tribal police. He was charged before the provisional court of the tribe with assaulting an officer and resisting arrest.

The tribal court ordered Oliphant jailed in lieu of $200 bail, but then released him on his own recognizance. Before trial he filed action in federal court claiming the tribal court can have no jurisdiction over a non-Indian.

Oliphant had claimed Congress had never conferred such jurisdiction.

The appeals court said the proper approach was to determine what the original sovereign powers of the tribes were and then how far and in what respects these powers have been limited.

It noted the U.S. Supreme Court has declared that Indian tribes have exclusive criminal jurisdiction if the crime was by or against an Indian unless Congress designates otherwise.

The court noted the first treaty between the Suquamish and the United States in 1859 was silent on the subject as was the second and last treaty in 1905. The court also rejected Oliphant's arguments that three federal laws withdrew jurisdiction from the Indian tribe.

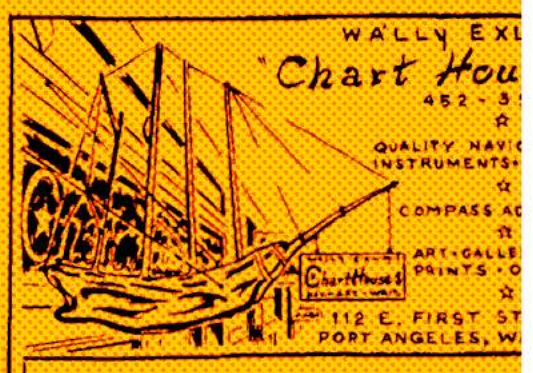
"The federal government has been encouraging Indian tribes to adopt law and order codes, set up tribal courts and exercise authority over reservations," said the court.

It added that practical consideration also supports tribal jurisdiction.

"Antagonism between reservation Indians and the surrounding populations does persist," said the decision. "History, broken promises, cultural differences and neglect all contribute to it. Reluctance on the part of the states to accord to the Indians rights guaranteed to them by treaties still exists."

Judge Anthony Kenne... saying the jurisdiction th... attempts to exercise is ...nusual, and certainly ... with prior practice." H... court history persuades h... "not intended to have juri... non-Indians.

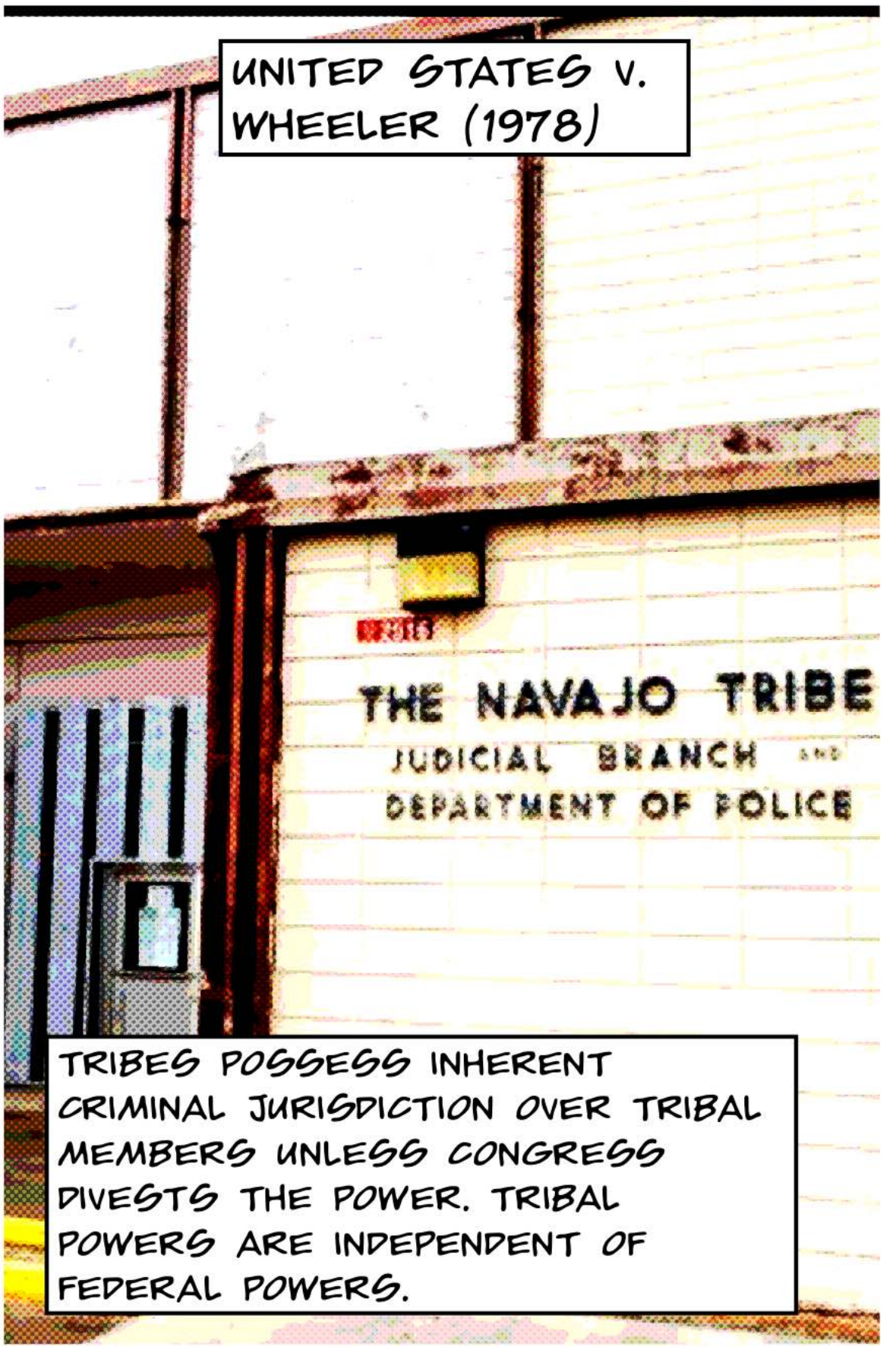
flowers
Say it for you
DeFawn's
Flowers & Gifts
683-4709 SEQUIM



OLIPHANT V. SUQUAMISH TRIBE (1978)

TRIBES CANNOT PROSECUTE "**NON-INDIANS**" ABSENT AUTHORIZATION FROM CONGRESS. SUPREME COURT COULD NOT FIND EVIDENCE TRIBES HAD EVER PROSECUTED NON-INDIANS BEFORE. BUT REMEMBER "JAS. WILLIAMS"?

UNITED STATES V. WHEELER (1978)



TRIBES POSSESS INHERENT CRIMINAL JURISDICTION OVER TRIBAL MEMBERS UNLESS CONGRESS DIVESTS THE POWER. TRIBAL POWERS ARE INDEPENDENT OF FEDERAL POWERS.

TRIBAL COURTS



MICHIGAN TRIBAL-STATE-FEDERAL JUDICIAL FORUM

MASHPEE WAMPANOAG COURT



APPOINTED JUDGES, LAWYERS ONLY, TRIBAL MEMBERS AND NONMEMBERS, GUIDED BY ELDERS JUDICIARY COMMITTEE

ST. REGIS MOHAWK COURT



ELECTED JUDGES, MIX OF LAWYERS AND NONLAWYERS, TRIBAL MEMBERS ONLY

NEW POKAGON BAND OF POTAWATOMI COURTHOUSE



APPOINTED JUDGES, LAWYERS, ONLY, TRIBAL MEMBERS AND NONMEMBERS

TRIBAL JUDGES

In The Poarch Band of Creek Indians Tribal Suprem

THE WHITE V. POARCH BAND TRILOGY

EARNEST RAY WHITE, §
Appellant/Cross-Appellee §

THE TRIBAL COUNCIL SUMMARILY FIRED LONG-TIME TRIBAL JUDGE **WHITE** BECAUSE HE WAS NOT LAW-TRAINED (AND OTHER REASONS).

v. **Case No.**

POARCH BAND OF CREEK INDIANS, et al., §

THE **TRIBAL COURT** ULTIMATELY AWARDED ABOUT $300K IN MONEY DAMAGES FOR WRONGFUL TERMINATION.

Appeal from Poarch Band Indians Tribal Court
Civil Action No. CV-09-73

WE **AFFIRMED** ON PRINCIPLES OF SEPARATION OF POWERS AND PROCESS DUE JUDGES WHEN REMOVED.

FLETCHER, CHIEF JUSTICE.[1]

THE **LITTLE RIVER BAND V. CHAMPAGNE**, ANOTHER "TRILOGY" OF SORTS.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT OF APPEALS

THE TRIBE **PROSECUTED** APPELLATE JUDGE **CHAPMAGNE** — WHO WAS NOT A LAWYER — FOR THE CRIME OF ATTEMPTED FRAUD. HE REPRESENTED HIMSELF.

Ryan L. Champagne,
Ap

CHAMPAGNE FILED AN INSURANCE CLAIM ARISING OUT OF A CAR ACCIDENT HE WAS IN, CLAIMING TO BE ON THE CLOCK, BUT HE WASN'T.

Case No. 06-178-AP

v.

WE AFFIRMED THE CONVICTION. RETIRED M.S.U. LAW PROF BRENDA JONES QUICK WAS THE TRIAL JUDGE, APPOINTED SPECIALLY AS A CONFICTS JUDGE.

On Appeal from:
Case No. 06-131-TM

The People of the Little River Band
of Ottawa Indians,
Respondent

FLETCHER SAT ON THE APPELLATE COURT, ALSO AS A CONFLICTS JUDGE, ALONG WITH TWO TRIBAL ELDERS WHO WERE NOT LAWYERS.

APPLICATION OF TRIBAL LAWS

FILED
AUG 27 2013
Lac du Flambeau Tribal Court

Lake of the Torches Economic Development Corporation and Lac du Flambeau Band of Lake Superior Chippewa Indians,

Plaintiffs,

v.

Saybrook Tax Exempt Investors, LLC; LDF Acquisition, LLC; Stifel, Nicolaus & Company, Inc.; Stifel Financial Corporation; Godrey & Kahn, S.C.; and Wells Fargo

No. 13 CV 115

MATTER INVOLVING $50 MILLION TRIBAL DEBT ARISING FROM FAILED OFF-REZ GAMING VENTURE. REACHED SEVENTH CIRCUIT BEFORE AND AFTER THIS DECISION.

UNDERLYING MATTER INVOLVED CHALLENGE TO SUMMARY BANISHMENT OF 3X DRUG OFFENDER UNDER INDIAN CIVIL RIGHTS ACT.

FILED
IN MY OFFICE THIS
JUL 16 2013
CLERK, HOOPA VALLEY TRIBAL COU

IN THE HOOPA VALLEY TRIBAL COURT OF APPEALS
HOOPA VALLEY TRIBE
HOOPA, CALIFORNIA

Hoopa Valley Tribal Council, Petitioner/Appellee, v. **Arthur Pliny Jones,** Respondent/Appellant.	NO. A-12-002 {C-12-042} **ORDER DENYING MOTION TO DISMISS AND MOTION FOR SANCTIONS**

THIS PART INVOLVED EFFORT TO FORCE RECUSAL OF FLETCHER.

TRANSFERRED UNDER INDIAN CHILD WELFARE ACT TO TRIBAL COURT.

1/5 2017.10.19

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS
TRIBAL APPELLATE COURT

2605 N. West Bay Shore Drive, Peshawbestown, MI 49682
(231)-534-7050, Main ** (231)-534-7051, Fax **

DECISION INVOLVED APPLICATION OF MINO-BIMAADIZIWIN AND SEVEN GRANDMOTHER TEACHINGS.

Timothy and Anne Donn, **Appellants,**	**Hon. Matthew Fletcher** **Hon. Mary Roberts** **Hon. Quinton Walker**

IN THE MATTER OF: [redacted]

FOSTER PARENTS DO NOT HAVE STANDING TO OBJECT TO VISITS WITH BIO MOM.

Craig W. Elhart (P26369)	Cheryl Gore-Follette (P41102)

DESCHENE V. TSOSIE



IN RE BACAVI VILLAGE



Tribal College

Journal of American Indian Higher Education | Volume 38, No. 1, Fall, 2026



The Trust Responsibility

Restoring Inaawendewin to the Trust Relationship

By Matthew L.M. Fletcher



Manoomin, or the wild rice found in the western Great Lakes, is a critically important relative of the Anishinaabeg tribal nations (Katanski, 2017). The Anishinaabeg originated on the Atlantic seaboard long ago, but migrated inland up Gichigami-ziibi, what is now the Saint Lawrence River, until they reached a place where food rested on water. This was Manoomin, or the great berry. In the trickster story "Nanaboozhoo and the Duck," Nanaboozhoo is struggling to harvest food and supplies when he notices that a duck has left behind a small kernel in his kettle. Nanaboozhoo cooks the kernel, which makes the best soup he has ever tasted. He follows the duck until he locates the source of the kernel, seeing waterfowl feasting on the delicious great berry. He learns then of the bounty that Manoomin represents and shares it with the rest of the Anishinaabeg. Nanaboozhoo only learns this knowledge through the agency and generosity of his bird relatives.

Manoomin is harvested only during proper times by partners, with one partner guiding the canoe while the other knocks rice kernels into the canoe. Many kernels fall into the water, where they reseed the next season's harvest of Manoomin. The literal interconnectedness of this transaction is exemplary of the Anishinaabe principle of *inaawendewin*, or relational accountability. Anishinaabeg harvesters know that careful harvesting of the Manoomin beds is critical to sustaining the resource. Just as importantly, like Nanaboozhoo, the Anishinaabeg have learned the lesson that the plants and animals of Anishinaabewaki, the world of the Anishinaabe, have much more knowledge than we humans can possibly ever learn. The Anishinaabeg have learned lessons about their place in Anishinaabewaki, that they are dependent on the world around them and that the world around them is dependent on them as well.

One of the great struggles of the Anishinaabeg involves the effort to educate the colonizer with this knowledge. Western economic and political philosophies treat Manoomin and other relatives of the Anishinaabe as mere resources to be exploited until they are exhausted, then to move on. The obvious death spiral of such a philosophy can be seen all around us, as Manoomin beds are confiscated for mass exploitation, polluted, or destroyed. The Anishinaabeg, like other tribal nations in the United States, recognize the symbiotic relationship we possess with Manoomin and the rest of Anishinaabewaki.

The root of federal Indian law is the trust responsibility, originally known as the duty of protection. In this legal and political understanding, the United States owes a duty of protection to tribal nations that originates in treaties and other agreements, a duty the federal government accepted when it took tribal nations under its wing. Unfortunately for the Indigenous peoples of this place, the United States chose to largely ignore its duties, seeking primarily to exploit and eradicate its Indigenous relatives rather than to humbly accept its obligations to them. The fate of Manoomin and its Anishinaabe relatives is a powerful metaphor for the federal-tribal relationship.

Fortunately, there are signs that the Anishinaabeg are beginning to educate the colonizer. It's a slow process, full of frustration and setbacks, but it's a worthy effort. In some places, Manoomin is protected, respected, and thriving. We should work toward expanding those successes.

THE LEGAL HISTORY OF THE TRUST RESPONSIBILITY

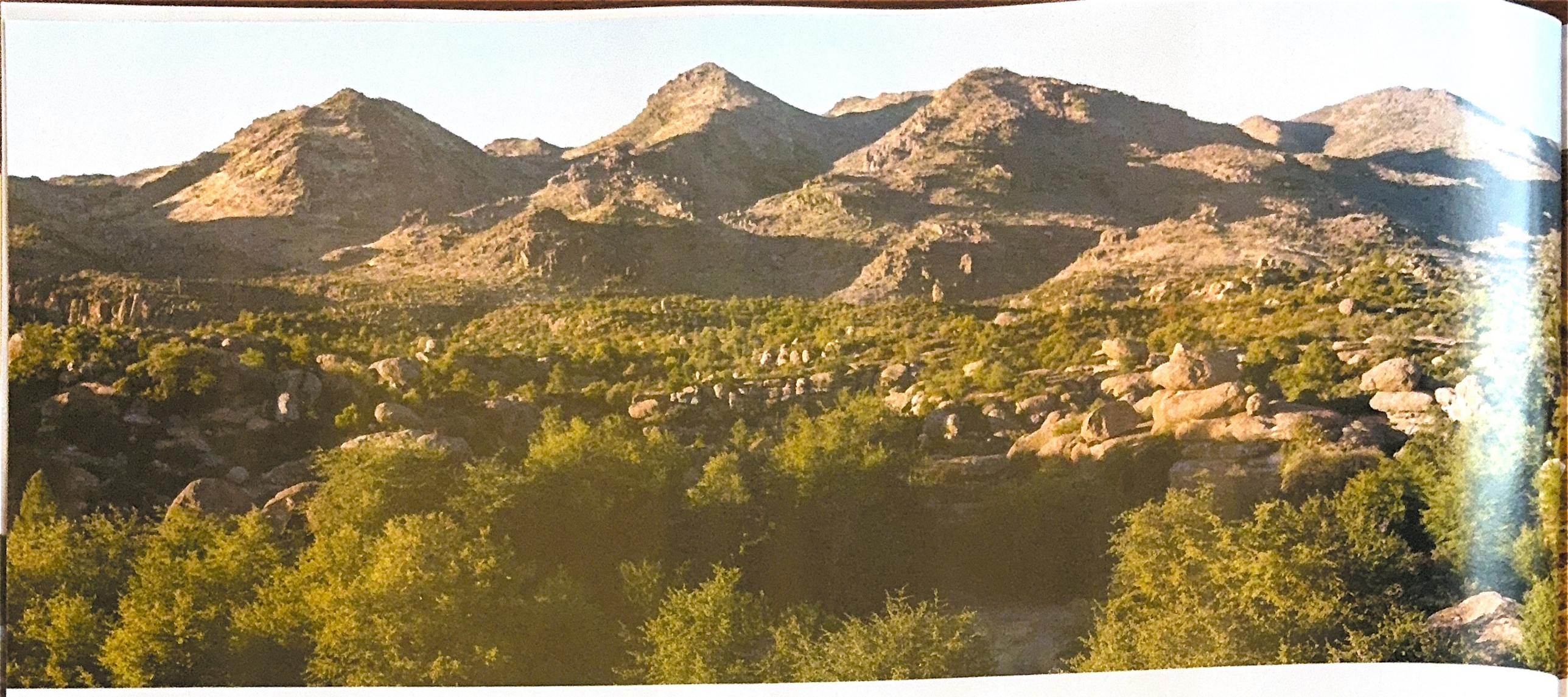
The relationship between Indigenous tribal nations and the United States is usually referred to as a trust. We refer to the federal government's trust duty or trust responsibility. Occasionally, observers might refer to this relationship as a guardianship, with tribal nations and individual Indians as wards of the federal government's guardian. But trusteeship and guardianship are mere metaphors used to describe the relationship. I prefer to describe this relationship in its original phrasing—the duty of protection.

The notion of the duty of protection originates in customary international law dating back centuries before the establishment of the United States. Under international law, larger, more powerful nations could agree to accept smaller ones as vassal nations under their protection. In this understanding, which the United States Supreme Court adopted as federal common law in the 1830s (*Worcester v. Georgia*, 1832), the smaller sovereign agrees to give up aspects of its external sovereignty in exchange for the retention of its internal sovereignty. In this protectorate, the vassal nation retains plenary authority over its own lands and people. The larger nation promises to defend the smaller nation's sovereignty from all threats, including external ones like foreign powers and even the larger sovereign's own government and citizens. Think of Italy and the Vatican or France and Monaco.

The United States owes a duty of protection to tribal nations that originates in treaties and other agreements, a duty the federal government accepted when it took tribal nations under its wing.

This original understanding of the special relationship between tribal nations and the federal government is the reason that the United States negotiated and ratified hundreds of treaties with tribal nations. It is the reason that the Constitution includes references to commerce with Indian tribes and "Indians not taxed," the only two provisions in the Constitution that explicitly mention racial or ethnic groups. Tribal nations within the exterior boundaries of the United States are not states, nor are they foreign nations (*Cherokee Nation v. Georgia*, 1831). Instead, they are "Indian tribes" that enjoy sovereignty as enforced by the special relationship with the United States.

As is well known, however, the United States quickly weaponized the duty of protection against tribal nations. Even in the same foundational opinions that codified the duty of protection into federal common law, the Supreme Court opened up the thesaurus (never a good idea for a lawyer to do) and paraphrased the duty of protection as a "guardian–ward" relationship, calling tribal nations "domestic dependent nations" and emphasizing tribal dependence on the federal government. No treaty or act of



Through a land transfer agreement, the Resolution Copper mining company is seeking to dig an open pit copper mine like that in Bisbee, Arizona (right), at Chí'chil Biłdagoteel (left), a sacred Apache site. Bisbee Lavender Mine by Nicholas Hartmann is licensed under CC 4.0; Oak Flat by Elias Butler is licensed under CC 4.0.

Congress announced this paradigm shift away from the duty of protection and toward guardianship, but the court (and then later Congress and the executive branch), simply assumed that its guardianship metaphor was law. By the end of the 19th century, it was common for the Supreme Court to treat guardianship as a synonym for the duty of protection (e.g., *United States v. Kagama*, 1886).

It is important to know what a "guardianship" means to lawyers. A guardian is a person who makes legal and financial decisions for a ward and owes a fiduciary duty to the ward. The typical guardian is a parent to a child. Less typical guardianships are those that allow an adult to make decisions for another who no longer can make those decisions for themselves. Think Britney Spears, who a judge placed into what would become a 13-year guardianship under her father. A guardian usually brings suit to enforce the fiduciary duty. In fact, the ward has no legal status at all. Courts frequently refer to wards as "incompetent under the law."

For Indian people and tribal nations, the court's metaphor became reality. Congress and the executive branch began to routinely make decisions on behalf of Indians and tribes without their consultation or consent. The government simply assumed that Indian and tribal property was effectively owned by the United States, allowing the government to do whatever it wanted with it. Worse, the government's assumption of a "guardianship" enabled Indian child removal, mandatory boarding schools, forced adoptions, sterilizations, urban relocation, reservation allotment, and outright confiscations of Indian and tribal property. None of those activities would have been considered legal if applied to non-Indians, but the Supreme Court simply allowed them to happen by assuming Indians and tribes were wards of the federal government.

In the case of the Osage Indians (and a smattering of other tribal nations in Oklahoma and elsewhere), the weaponization of guardianship became deadly. As was recounted in numerous works such as Linda Hogan's *Mean Spirit* (1990) and John Joseph Mathews' *Sundown* (1934), as well as James Young Deer's lost silent film, *Tragedies of the Osage Hills* (1926), Osage headright owners in the early 20th century often became wealthy due to the discovery of oil on their lands. But because federal law labeled full-blood Osage Indians as incompetent, non-Indians could become their guardians and, if they married their wards, become the heirs of the headrights. The situation led to many hundreds of Osage people being murdered for their headrights, often by their own spouses.

Riding the political winds of the era between World War I and the Civil Rights Movement, Congress's Indian affairs agenda pinballed from establishing a process for tribal nations to reorganize into constitutional democracies to terminating those new tribal governments. During the 1950s, one of the worst ever decades for tribal interests, Congress terminated its duty of protection to over 100 tribal nations and extended state law enforcement authority into many areas of Indian Country. Bureau of Indian Affairs officials proudly asserted near-absolute control over reservation Indians' lives and tribal governance (Cohen, 1953).

Coinciding with the rise of the Civil Rights Movement in the 1960s, Native activists fought in favor of treaty fishing rights, land back, and tribal sovereignty. In the 1970s, Congress turned its plenary powers toward tribal self-determination and the restoration of terminated tribal nations. Congress also acknowledged the power of tribal nations to bring suit in federal courts and to retain their own legal counsel.

Consistent with the political turn toward tribal sovereignty, the Supreme Court largely discarded the guardianship metaphor in favor of a trust relationship metaphor. Gutting the reasoning of cases from the late 19th and early 20th centuries that utilized guardianship as a tool for dominion over Native people and tribal resources, the court recognized the vast power of Congress to enact statutes in furtherance of the trust responsibility (e.g., *Morton v. Mancari*, 1974). Moreover, the court would no longer allow



federal officials to simply confiscate Indian or tribal property without due process or just compensation (e.g., *Babbitt v. Youpee*, 1997; *United States v. Sioux Nation*, 1980).

THE TWO "TRUST" DUTIES

In the last half century, federal authorities have usually acknowledged that the federal government's relationship with tribal nations is best characterized as a trust relationship. The modern understanding of the trust responsibility has two separate components.

The first kind of trust duty is a metaphor for the duty of protection. This is the same duty that tribal nations negotiated for in the treaty-making era in which tribal sovereignty in relation to Indian and tribally owned lands is paramount, while external sovereignty is largely the domain of the federal government. Non-treaty tribes enjoy the duty of protection as well, given that Congress has made a policy choice to treat all tribes more or less the same. Aspects of the duty of protection accepted by the United States include the obligation to protect tribal and Indian lands and resources and to ensure adequate governmental services (either federal or tribal or both) to tribal citizens and others in Indian Country. These are enormous duties, the scope of which should be similar to the scope of lands and resources the tribes granted to the federal government.

Unfortunately, the federal government rarely has fulfilled its responsibilities to Indians and tribes. The United States effectively destroyed the governmental and economic infrastructure in reservation territories, leaving tribal nations little with which to rebuild. Funding for governmental services has never come close to the need in Indian Country. Poverty, crime rates, and other social ills related to lack of adequate government infrastructure are endemic on most reservations. Worse, federal courts do not allow tribal nations to sue Congress to force adequate funding for governmental services guaranteed by the duty of protection (cf. *Arizona v. Navajo Nation*, 2023).

When Congress *does* act, however, the duty of protection serves as a robust source of federal power. The United States Constitution authorizes Congress to regulate commerce with tribal nations and establishes treaty power in the president and Senate. Those two sources of constitutional power are supplemented by the duty of protection. The recent United States Supreme Court decision affirming the constitutionality of the Indian Child Welfare Act pointed to the duty of protection as a useful source of power (*Haaland v. Brackeen*, 2023).

By the end of the 19th century, it was common for the Supreme Court to treat guardianship as a synonym for the duty of protection. . . . Congress and the executive branch began to routinely make decisions on behalf of Indians and tribes without their consultation or consent.

The other trust duty is more literal. The United States owns or holds in trust an untold amount of Indian and tribal assets for the benefit of Indians and tribal nations. These trust assets include trust lands and the resources therein. Trust assets also include cash held by the United States for Indians or tribes, such as Individual Indian Money Accounts. Other assets are owned by Indians or tribes but are managed by the federal government. These assets include, for example, allotments owned by individual Indians but leased by the federal government to non-tribal members, with rental and royalty payments collected and managed by the United States.

When the federal government holds or manages Indian and tribal assets, the duty of trust it owes is heightened to ensure its duty of protection is fulfilled. The United States Supreme Court once held that Congress "has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards"



U.S. commissioners led by William Tecumseh Sherman brokered the Treaty of Fort Laramie with Lakota, Cheyenne, and Arapaho leaders. Just nine years later, the U.S. broke the treaty by seizing the Black Hills. In the landmark case, *United States v. Sioux Nation* (1980), the Supreme Court ruled 8-1 in favor of just compensation to the Lakotas.

(*Seminole Tribe v. United States*, 1942). At times, tribal nations and individual Indians have been awarded large amounts for egregious federal breaches of trust, as in the case of the Cobell settlement which totaled over $3 billion. However, the Supreme Court no longer judges the federal government "by the most exacting fiduciary standards," intently looking for and usually finding a technical reason to excuse the government from liability (e.g., *United States v. Navajo Nation*, 2003).

THE FUTURE OF THE TRUST RESPONSIBILITY

The trust responsibility is a source of great possibility and frustration for tribal nations and Indian people. On one hand, Congress has acted toward fulfillment of the trust responsibility for several decades now but has not come close to actual fulfillment of its duties. On the other hand, the Supreme Court has expressed a great deal of skepticism of tribal self-determination, pushing back against congressional policies. Worse, the judiciary will not allow tribal nations to sue the United States for breach of its trust responsibilities writ large.

That said, there is a great deal of promise in the future, but it will require time, patience, and creativity. In recent decades, tribal nations have been remarkably effective at lobbying and other forms of advocacy that have helped to prevent Congress and the executive branch from continuing to run roughshod over tribal interests. But that advocacy does not always work. Take, for example, the act of Congress favoring a mining company that wants to exploit resources underneath the sacred Apache land, Chí'chil Biłdagoteel (or Oak Flat). That land was confiscated by the United States long ago in retaliation for Apache resistance to American colonialism, but the federal government had long allowed tribal members to use the land for religious purposes, such as Apache coming of age ceremonies unique to the area. The proposed mining operation would create a crater that would destroy the sacred site. The United States Supreme Court that protects football coaches who make playing time dependent on Christian prayer or companies that discriminate against LGBTQ+ persons on religious freedom grounds now refuses to protect this religious practice by Indigenous peoples.

The United Nations Declaration on the Rights of Indigenous Peoples has the support of the United States (at least on paper). One of the declaration's core principles is that a nation must seek and receive the informed consent of Indigenous peoples before taking actions that affect them, a principle known as free, prior, and informed consent (FPIC). Consent of the affected seems like an obvious requirement before taking governmental action, but when the federal government chooses to elevate political constituents ahead of tribal interests, suddenly we are back in the guardian–ward paradigm. Nevertheless, consent is a rising tide more generally. In more supportive administrations, Department of the Interior officials take consent seriously, even incorporating FPIC into the most recent Native American Graves Protection and Repatriation Act regulations.

Moreover, there is some hope the Supreme Court will erode the unilateral power of Congress to regulate tribal nations without their consent. Justice Neil Gorsuch has suggested that Congress likely should not have the power to dictate terms to tribes without consent and has even suggested that the United States reinitiate treatymaking with tribal nations.

In sum, the federal–tribal relationship has long been fraught and complicated. The horrific history of dispossession and abuse ran hand-in-hand with unilateral federal actions taken without tribal consent. Indigenous peoples have long known that such selfish behavior and good public policy are antithetical. Hopefully, the United States will continue to lean into tribal self-determination in federal Indian affairs, law, and policy. ▲

Matthew L.M. Fletcher, JD (Grand Traverse Band of Ottawa and Chippewa Indians), is the Harry Burns Hutchins Collegiate Professor of Law at the University of Michigan.

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United States v. Kagama, 118 U.S. 375 (1886).

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Worcester v. Georgia, 31 U.S. 515 (1832).

INDIAN CHILD WELFARE ACT



WHAT YOU NEED TO KNOW -- IT'S A LOT:

IN 1978, CONGRESS FOUND THAT 25-35 PERCENT OF ALL INDIAN CHILDREN HAD BEEN REMOVED FROM THEIR HOMES.

ABOUT 90 PERCENT OF THOSE CHILDREN WERE PLACED IN NON-INDIAN FOSTER AND ADOPTIVE HOMES.

CONGRESS FOUND THAT STATE COURTS AND AGENCIES ENGAGED IN SYSTEMIC RACISM LEADING TO THOSE OUTCOMES.

CONSOLIDATED CHIPPEWA 54: A Chippewa baby in the traditional cradle board at an In

JURISDICTIONAL PREDICATES:

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

INDIAN BABIES
HOW TO KEEP THEM WELL

AN "**INDIAN CHILD**" IS ONE WHO IS A MEMBER OF A FEDERALLY RECOGNIZED TRIBE, OR ELIGIBLE FOR MEMBERSHIP.

ICWA APPLIES TO "**CHILD CUSTODY**" MATTERS ON AN "**INDIAN RESERVATION.**"

CHILD CUSTODY MATTERS INCLUDE **EMERGENCY REMOVALS** AND **ADOPTION PROCEEDINGS.**



WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

JURISDICTION:

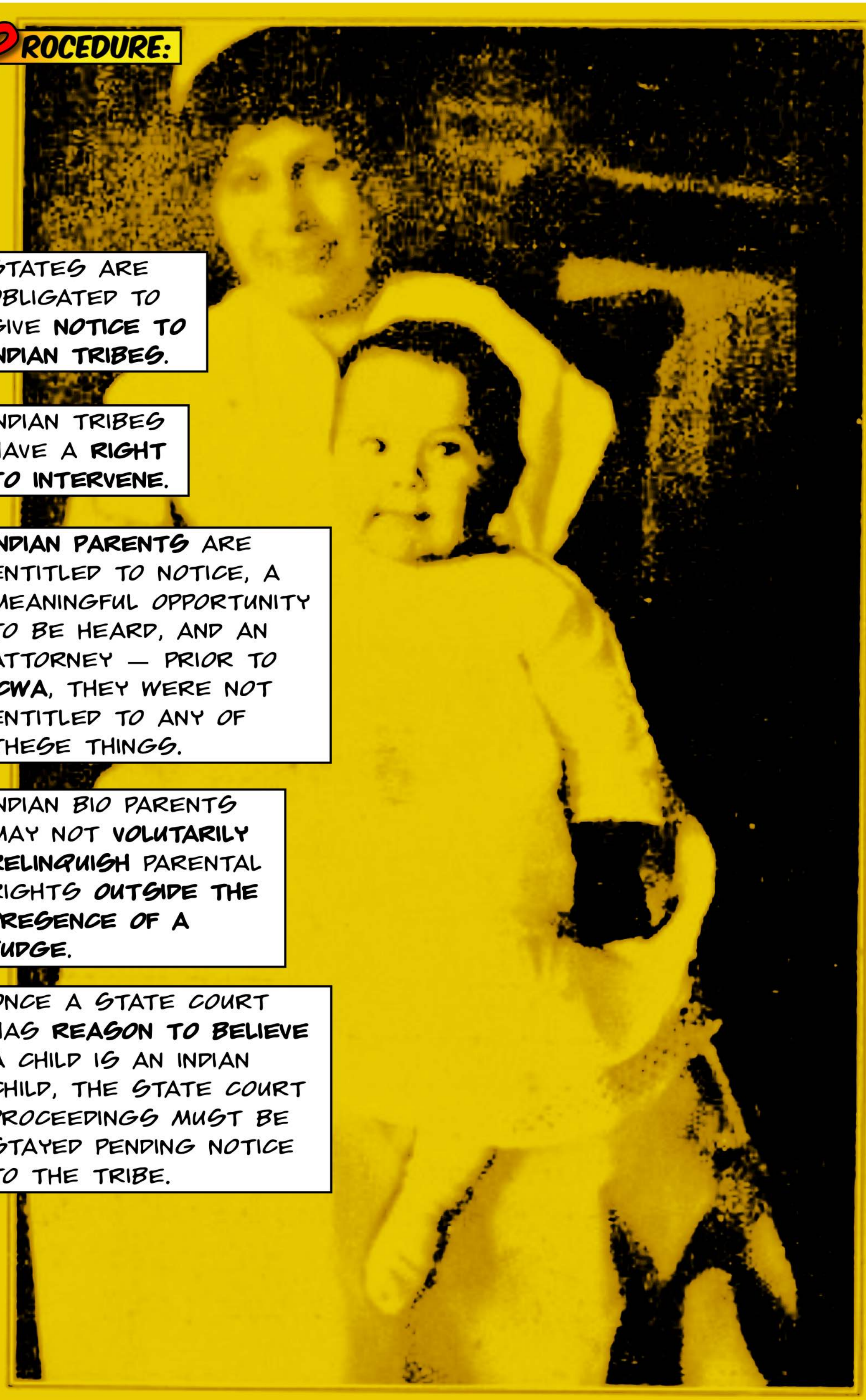
INDIAN TRIBES HAVE **EXCLUSIVE JURISDICTION** OVER CHILD CUSTODY MATTERS INVOLVING INDIAN CHILDREN DOMICILED ON INDIAN RESERVATIONS.

INDIAN TRIBES HAVE **PRESUMPTIVE JURISDICTION** OVER INDIAN CHILD **NOT** DOMICILED ON INDIAN RESERVATIONS.

STATE COURTS SHOULD **TRANSER** CASES TO **TRIBAL COURT** UNLESS THE **INDIAN PARENT OBJECTS** OR THERE IS **GOOD CAUSE TO THE CONTRARY.**

HATHE BABY EVERY DAY.

PROCEDURE:



STATES ARE OBLIGATED TO GIVE **NOTICE TO INDIAN TRIBES.**

INDIAN TRIBES HAVE A **RIGHT TO INTERVENE.**

INDIAN PARENTS ARE ENTITLED TO NOTICE, A MEANINGFUL OPPORTUNITY TO BE HEARD, AND AN ATTORNEY — PRIOR TO **ICWA**, THEY WERE NOT ENTITLED TO ANY OF THESE THINGS.

INDIAN BIO PARENTS MAY NOT **VOLUTARILY RELINQUISH** PARENTAL RIGHTS **OUTSIDE THE PRESENCE OF A JUDGE.**

ONCE A STATE COURT HAS **REASON TO BELIEVE** A CHILD IS AN INDIAN CHILD, THE STATE COURT PROCEEDINGS MUST BE STAYED PENDING NOTICE TO THE TRIBE.

STANDARDS:

INDIAN PARENTAL RIGHTS MAY NOT BE **TERMINATED** UNLESS THE COURT HEARS **TESTIMONY FROM A QUALIFIED EXPERT WITNESS.**

INDIAN PARENTAL RIGHTS MAY NOT BE TERMINATED UNLESS THE STATE **PROVES BEYOND A REASONABLE DOUBT** THAT IT IS IN THE **BEST INTERESTS OF THE INDIAN CHILD.**

INDIAN PARENTAL RIGHTS MAY NOT BE TERMINATED UNLESS THE STATE SHOWS IT HAS PROVIDED **ACTIVE EFFORTS** TO SEEK REUNIFICATION OF THE INDIAN FAMILY.



GIVE BABY PLENTY OF COOL, BOILED WATER.

CHALLENGES:



MISERABLY LOW COMPLIANCE RATE BY STATES.

THE EXISTING INDIAN FAMILY "EXCEPTION."

EXPLOITATION OF MEDIA THROUGH DOG WHISTLING.

FIFTH AND FOURTEENTH AMENDMENT EQUAL PROTECTION CHALLENGES.

NON-DELEGATION DOCTRINE CHALLENGE.

TENTH AMENDMENT COMANDEERING CHALLENGES.

FEDERAL TITLE IV-E FUNDING LIMITATIONS AND PERVERSE INCENTIVES.

NO ATTORNEY FEES AWARDS.

DIFFICULTY IN PURSUING APPELLATE REVIEW.

FOSTER-TO-ADOPT PARENTS.

A NAVAJO CRADLE.

Date.....193.....

GENTLEMEN:

Please send me the following Indian Remedies at your advertising prices as marked below:

ADVERTISING PRICES

.....Packages Yuma Wonder Herbs..2 for $1.00

.....Bottles of Yuma Wonder Oil....3 for $1.00

.....Packages of Sau-Kee Herb Tea..2 for $1.00

.....Bottles of Sau-Kee Liniment.....2 for $1.00

.....Bottles of Kee-Kol Tonic.....ea. $1.25

.....Cakes Indian Vegetable Soap..10 for $1.00

.....Tins Healing Salve ..... ea. .50

.....Tins Corn Remover Salve..... ....ea. .25

Remarks .....

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I will pay Postman $....., plus postage on delivery.

Name .....

Street .....

City and State.....

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No orders sent less than $1.00

TRIBAL COURT JURISDICTION CASES

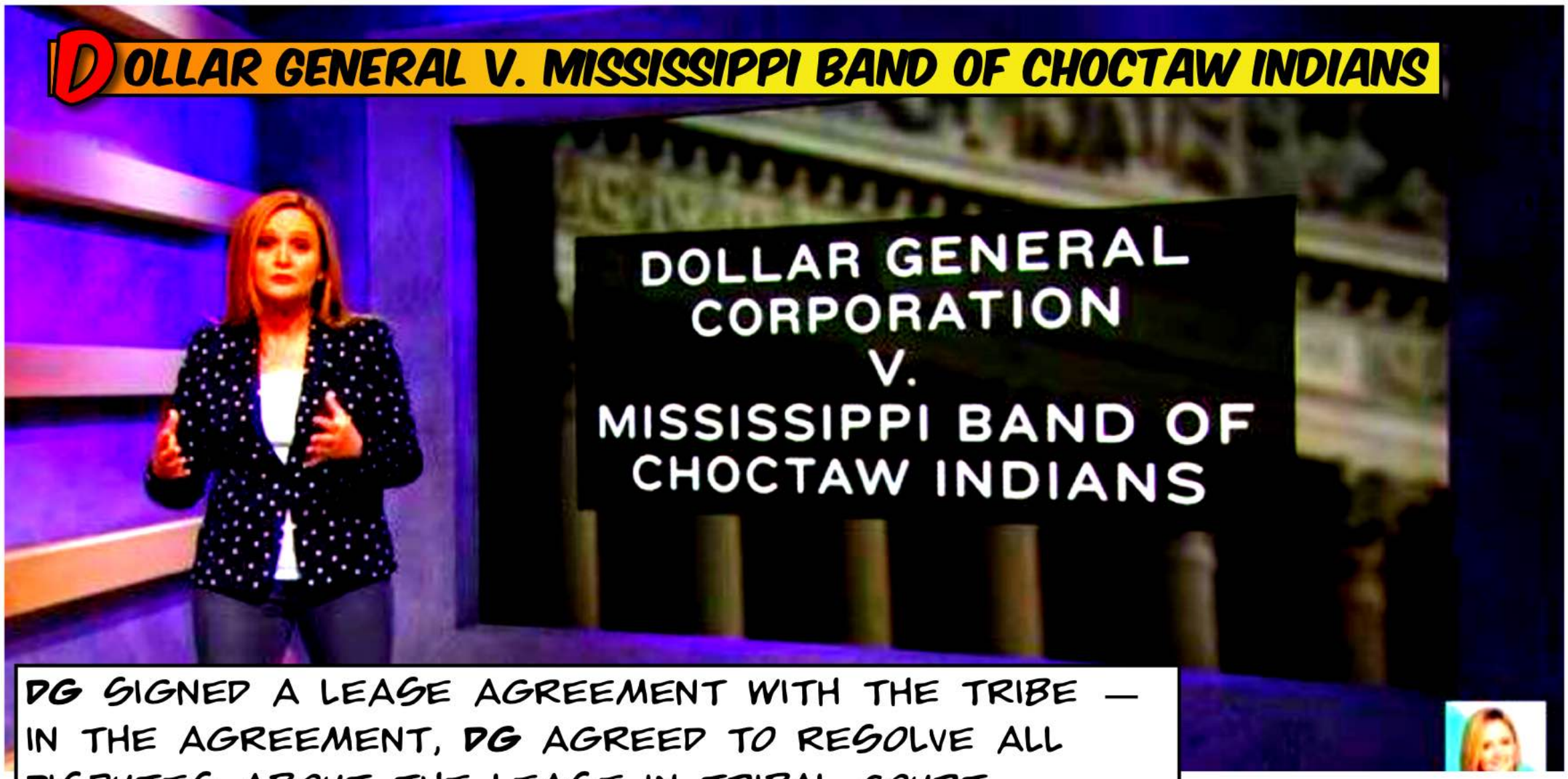


CHIPPEWA PICTURE WRITING · SENECA MASK · EASTERN WOODLANDS

INDIAN COURT
FEDERAL BUILDING
GOLDEN GATE INTERNATIONAL EXPOSITION
SAN FRANCISCO 1939

A FEW HIGHLIGHTS FROM THE LOWER COURTS

DOLLAR GENERAL V. MISSISSIPPI BAND OF CHOCTAW INDIANS



DG SIGNED A LEASE AGREEMENT WITH THE TRIBE — IN THE AGREEMENT, DG AGREED TO RESOLVE ALL DISPUTES ABOUT THE LEASE IN TRIBAL COURT.



DG SIGNED AN AGREEMENT WITH THE TRIBE TO EMPLOY TRIBAL MEMBER CHILDREN — IN THE AGREEMENT, DG AGREED TO COMPLY WITH ALL TRIBAL LAWS.

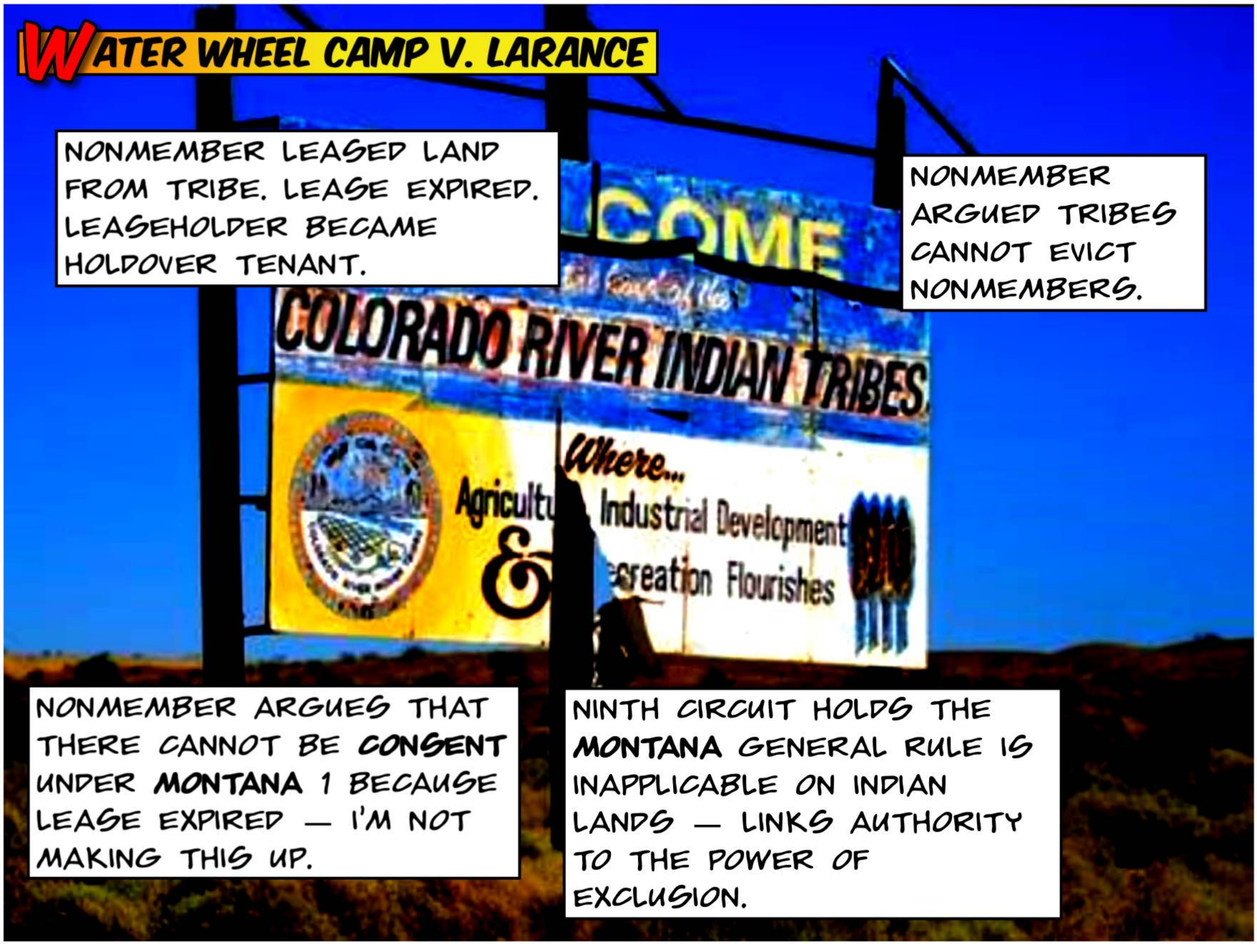
SCOTUS SPLIT 4-4 — JUSTICE SCALIA DIED DURING DELIBERATIONS — FIFTH CIRCUIT DECISION FAVORING TRIBAL JURISDICTION AFFIRMED WITHOUT OPINION.



WATER WHEEL CAMP V. LARANCE

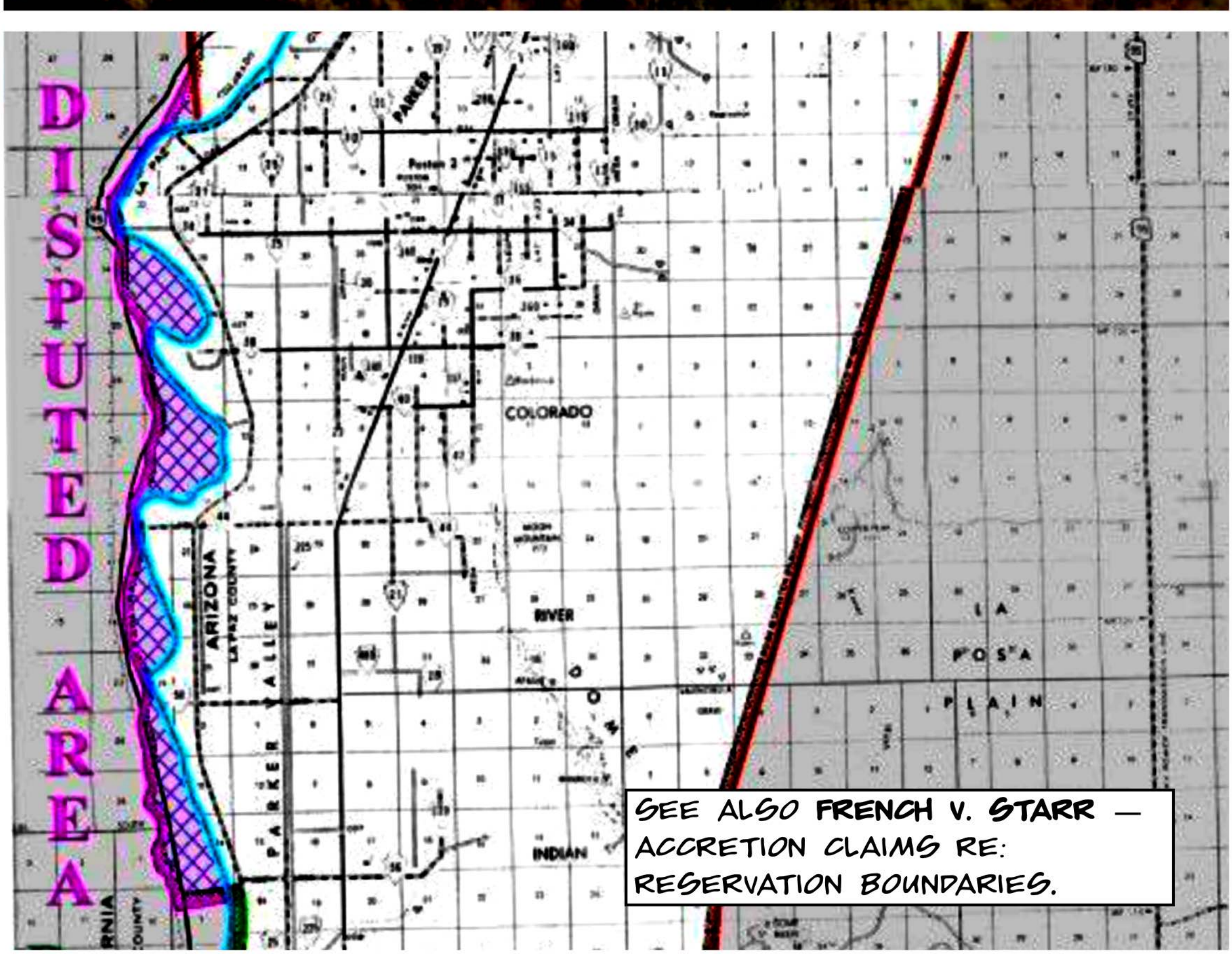
NONMEMBER LEASED LAND FROM TRIBE. LEASE EXPIRED. LEASEHOLDER BECAME HOLDOVER TENANT.

NONMEMBER ARGUED TRIBES CANNOT EVICT NONMEMBERS.



NONMEMBER ARGUES THAT THERE CANNOT BE **CONSENT** UNDER **MONTANA** 1 BECAUSE LEASE EXPIRED — I'M NOT MAKING THIS UP.

NINTH CIRCUIT HOLDS THE **MONTANA** GENERAL RULE IS INAPPLICABLE ON INDIAN LANDS — LINKS AUTHORITY TO THE POWER OF EXCLUSION.



SEE ALSO **FRENCH V. STARR** — ACCRETION CLAIMS RE: RESERVATION BOUNDARIES.

RINCON MUSHROOM V. MAZZETTI

NONMEMBER OWNED LAND ACROSS STREET FROM TRIBAL CASINO.

NONMEMBER REFUSES TO COMPLY WITH TRIBAL LAND USE REGS, INSPECTIONS, ETC. ETC.

WILDFIRE ON REZ BURNED SOME OF NONMEMBER BUILDINGS — CAUSED GROUNDWATER POLLUTION.





TRIBAL APPELLATE COURT RULED IN FAVOR OF TRIBAL JURISDICTION — CASE NOW IN FEDERAL COURT.

Indian Law CLE & Networking Reception

Friday
September 25, 2026
5:00 PM - 7:00 PM
Schwabe
1211 SW Fifth Avenue
Suite 1800
Portland, OR 97204

Join us for an evening of learning, networking, and community. Connect with Indian law practitioners, colleagues, law students, and friends from across the Oregon legal community while hearing from nationally recognized scholar and jurist Professor Matthew L.M. Fletcher on "Indigenous Futurism and the Law".

Register Here

Matthew L.M. Fletcher is the Harry Burns Hutchins Collegiate Professor of Law and Professor of American Culture at the University of Michigan. A leading authority on federal Indian law, Professor Fletcher teaches and writes on federal Indian law, tribal law, Anishinaabe legal and political philosophy, constitutional law, federal courts, and legal ethics.



Light refreshments will be provided.
Complimentary parking will be available in the PacWest Building parking garage.
**CLE credit is pending.*
Questions? Contact: Adrea Korthase
Adrea.Korthase@ojd.state.or.us

Schwabe

NORTHWEST INDIAN BAR ASSOCIATION

Oregon State Bar Indian Law Section

JUDICIAL DEPARTMENT STATE OF OREGON