AMERICAN INDIAN LAW: NATIVE NATIONS AND THE FEDERAL SYSTEM
Dedications

To my loving parents, Joseph and Ida Goldberg, my partner and husband, Professor Duane Champagne, and my dearest daughter, Andrea.

Carole E. Goldberg

To my beloved children, Daniel and Lisa Tsosie, and to the wonderful students I have had, who continually inspire and motivate me.

Rebecca Tsosie

For my parents, Fred & Phyllis Clinton, whose love and support made my contributions to this work possible.

“Honor thy father and thy mother.”

Exodus 20:12a

Robert N. Clinton

For Avah and Oona.

Angela R. Riley
Acknowledgements

Preparation of this edition took several years. The authors are deeply indebted to many people who assisted either directly or indirectly in the preparation of this book. We are pleased to welcome Professor Angela R. Riley, Professor of Law at the UCLA School of Law, as our newest co-author on this casebook. We congratulate Kevin Washburn on his appointment as Assistant Secretary for Indian Affairs and thank Kevin and Libby Washburn for their contributions to the previous edition of the casebook. We also extend a particular note of gratitude to Adeleene Rockwell (UCLA ’14) for her assistance in bringing this latest edition to completion.

We greatly appreciate the support of Dean Rachel Moran, UCLA School of Law. This edition benefited greatly from research grant support from UCLA School of Law, the UCLA American Indian Studies Center, and the Office of the Chancellor, UCLA. Professor Rebecca Tsosie is very grateful to Professor Goldberg and Professor Riley for sharing the staff and research support of UCLA to enable her contributions to this casebook.

Many of the cases included in this book were downloaded through LexisNexis’s LEXIS electronic information retrieval services or West Publishing Company’s WESTLAW service. We acknowledge the kind cooperation of these firms in making these services available. As requested by West Publishing Company, we also note that insofar as this volume contains any work in which West Publishing Company can claim a valid copyright, they have asked us to include for those portions the following notice: Copyright © 2007–2015 West Publishing Company.

A note about the reproduced case opinions: In order to not encumber the page with dots, omissions have not always been indicated with ellipses. In addition, some footnotes have been removed from the cases; those included have the original footnote numbers retained in brackets at the beginning of the footnote text. Occasionally in the text we discuss an important footnote from an excerpted court opinion. We reference it by its original footnote number, which is the number appearing in brackets.

We also deeply appreciate the kind cooperation of the many authors, law reviews, and publishers who have graciously agreed to permit us to use or reproduce their work in this volume. Their permissions are acknowledged below.

In particular, Professor Carole Goldberg offers her deepest appreciation to UCLA law student Scott Satkin for his assistance with research for this new edition. The entire staff of the UCLA Law Library, especially Linda Karr O’Connor and Amy Atchison, did a fabulous job of overseeing the law student work and carrying out additional research. Finally, her husband Duane Champagne, UCLA Professor of Sociology and American Indian Studies, supplied countless research leads, primary resources, and conceptual tools that have enabled this casebook to incorporate Native perspectives more fully and effectively. His patience, constructive criticism, and never-ending encouragement were essential sustenance for the demanding work of producing this casebook.

Professor Rebecca Tsosie also gratefully acknowledges the support of her research assistant, Kristyne Schaff-Olson (ASU ’15). She also expresses her heartfelt thanks to Beth Difelice, David Gay, and Tara Mospan, librarians at the Ross-Blakely Law Library, at the Sandra Day O’Connor College of Law, for their consistent and excellent support.
Acknowledgements

with the Indian law research necessary to complete the annual updates to this text and this revision. Finally, Professor Tsosie acknowledges, with appreciation, the many outstanding colleagues in the field of Federal Indian Law who have informed her thinking about the compelling issues presented by these materials and the best ways in which to present these issues to students. In addition to those colleagues who teach Indian law in the classroom, there are some very important colleagues who teach the subject in the public arena. Professor Rebecca Tsosie is very grateful to Philip S. Deloria, Director of the American Indian Graduate Center, John Echohawk, Executive Director of the Native American Rights Fund, the staff attorneys, and board members of NARF, for their vision, their dedication to justice for Native people, and the generous ways in which they shared their time and thoughts as we worked to develop and revise this text.

Angela Riley would like to thank her co-authors, first and foremost, for inviting her to join them on this exciting endeavor, and for being outstanding mentors, colleagues, and friends in this project and in so many others. A special thanks goes to Adeleene Rockwell, who dedicated herself to moving this edition to completion as manager of the project. She also deeply appreciates extensive feedback and insights from Professors William Wood and Addie Rolnick, both of whom shared insights and experiences around teaching with this casebook. Thanks goes to the entire staff of the UCLA American Indian Studies Center, but particularly Jamie Chan, Pamela Grieman, and Ken Wade, all of whom supported and contributed to this project in various ways. Finally, she thanks current and former UCLA students who have worked on this project and continue to inspire her.

For all of us, this has been a wonderfully rewarding collaboration, both personally and professionally. We have benefited enormously from the spirited exchanges and integration of diverse ideas that have marked this project. We hope to carry on the commitment to deep and critical examination of federal Indian law that has always marked the work of Professor Robert N. Clinton, who has inspired us as a longtime co-author of this casebook.

The authors gratefully acknowledge permission to reprint from the following copyrighted material:


THOMAS BERGER, VILLAGE JOURNEY: THE REPORT OF THE ALASKA NATIVE REVIEW COMMISSION 142 (1985). Copyright © 1985. All rights reserved.


Acknowledgements


Acknowledgements

Carole Goldberg, Descent into Race, 49 UCLA L. REV. 1373, 1383–84 (2002).


Margaret Howard, Transracial Adoption: Analysis of the Best Interests Standard, 59 NOTRE DAME L. REV. 503, 544 (1984)).


Acknowledgements

Sean Paige, Rewriting Tribal Law, 16 INSIGHT MAGAZINE No. 20 (May 29, 2000).
Preface

Since its inception in 1973, this casebook has surveyed the tribal-federal relationship. It therefore has historically been and remains primarily devoted to the study of federal Indian law, i.e., the federal law developed to regulate the tribal-federal relationship. The separate subject of tribal law, i.e., the law by which any particular tribe governs its people and its lands, is equally deserving of scholarly attention. While the authors frequently reference the subject of tribal law in this work, the primary focus of this book has been and continues to be federal Indian law.

This volume represents the Seventh Edition of the first casebook developed to teach federal Indian law, initially published by Monroe E. Price in 1973. Over time, significant changes have occurred both in federal Indian law and in the authors and approaches adopted by this casebook. When the First Edition of the casebook was published in 1973, fewer than a dozen instructors focused their scholarly or teaching attention on federal Indian law. At latest count, the number was well over 100. Additionally, the 37-year lifespan of this casebook has witnessed significant changes in federal Indian law, as reflected in the successive editions. In the Second Edition, published in 1983, Robert N. Clinton joined the book, and the authors reorganized the casebook to recognize the explosive growth in legal attention to federal Indian law during the prior decade, including 32 new decisions of the United States Supreme Court, many, perhaps most, favoring tribal interests. In the Third Edition, published in 1991, Nell Jessup Newton joined as a co-author, and the Preface noted that “the rising expectations created by the previous legislative and judicial successes only represented a prelude to a more bumpy roller coaster ride for the resolution of many Indian issues, particularly in federal and state courts.”

Following publication of the Third Edition, that “bumpy roller coaster ride” continued for Indian nations. Indian law cases have occupied a large and disproportionate amount of the Supreme Court’s docket. Indians may be around 1.5% of the total United States population, but their cases often consume as much as 5% of the Court’s caseload. Between 1994 and 2009, tribal interests have found themselves losing far more cases than they were winning. Of 38 cases involving Native interests over that fifteen-year period (including two that address Native Hawaiians), tribes have prevailed in seven, won partly in one, and had lower court decisions vacated and remanded in three. The other 27 were losses.¹

Yet, the picture was not as bleak for tribal interests as their win-loss record in the Supreme Court might have suggested. To appropriate Charles Dickens’s well-worn phrase from A Tale of Two Cities, for Indian tribes, “It was the best of times, it was the worst of times.” Tribal governments and their legal systems expanded in size and sophistication, and their business enterprises — particularly in the gaming industry — exploded. Tribes became increasingly self-sufficient and far less reliant on the federal government both for funding and technical assistance. They also became more adept at promoting and defending their positions in federal and state legislative and administrative settings. Furthermore, international attention to the rights of indigenous peoples

worldwide has opened rhetorical space for criticism of Supreme Court decisions as well as new venues for asserting Indian rights.

Such changing times required adaptation from this casebook, and change it did. The Fourth Edition, published in 2003, and the Fifth Edition, published three years later, included a new set of authors, with Carole E. Goldberg and Rebecca Tsosie joining the work. Nevertheless, while no longer named as authors, prior contributors Monroe E. Price and Nell Jessup Newton greatly enhanced the vision still reflected in this casebook, and their significant contributions are gratefully acknowledged. In addition to these changes in personnel, the recent divergence of federal Indian law decisions of the United States Supreme Court from its historic legacy rendered it even more imperative that the authors honor, acknowledge, teach, and publicize the tribal voice and views on the appropriate relationship that should exist between Native nations and the United States. Thus, far greater attention was paid in the Fourth Edition to Indian perspectives and voices on the tribal-federal relationship and to tribal reactions to Supreme Court decisions. The authors’ point in undertaking that effort has been to highlight the fact that the tribal-federal relationship has always been and remains a bilateral arrangement in which the federal courts’ role in unilaterally finding solutions traditionally has been quite limited. By focusing far greater attention on tribal perspectives in the tribal-federal relationship, the authors also have invited readers to consider precisely how much of the relationship the federal courts and Congress can unilaterally dictate. Ultimately, the authors have asked readers to consider for themselves the appropriate model for tribal-federal relations by focusing on international developments, historic models and understandings, legal treaty and other commitments, and contemporary events, and to further consider how the most appropriate model can be pursued and legally implemented.

The Fifth Edition, coming only three years after its predecessor, maintained considerable continuity with the Fourth Edition, both in the continued collaboration of Professors Clinton, Goldberg, and Tsosie, and in the focus on tribal as well as non-Indian perspectives on Native nations in the federal system. Benefiting from the authors’ experience teaching from the Fourth Edition as well as feedback from colleagues in the field, the Fifth edition mainly updated material, reduced the heft of the volume, and reorganized some of the topics to eliminate duplication and enhance “teachability.”

The Sixth Edition saw the inclusion of two new co-authors, Kevin K. Washburn and Elizabeth (Libby) Rodke Washburn, who added significant perspectives borne of their deep experience in Indian law scholarship, practice, and advocacy. Their approaches to the material enhanced the casebook by emphasizing political realities in both federal and tribal settings.

This Seventh edition builds on previous work, and is also influenced by the addition of its newest co-author, Angela R. Riley, of the UCLA School of Law. It also marks the departure of now-Secretary for Indian Affairs, Kevin Washburn, and Elizabeth Rodke Washburn, who have rotated off the casebook.

While casebooks obviously tend to focus on reported appellate cases to search for predictably stable decisional patterns, from its inception, this book has pursued a far broader perspective, merging jurisprudence, history, comparative law, ethnology, and sociology to bring meaning to the tribal-federal relationship. The authors of this volume, like the authors of prior editions, have never been interested in merely presenting the “black letter” law as is, without providing the historical, cultural, and jurisprudential tools
for a reader to critically analyze the current state of legal doctrine in federal Indian law and also providing some historical perspective on how it emerged and some tools for its improvement going forward. We seek to provide a wide-ranging inquiry into the role of law and legal processes, both domestic and international, in protecting or frustrating the desires for political and cultural autonomy of various racial, cultural, religious, or national subgroups within a society.

To carry out this broader mission for the casebook, we have incorporated insights from an array of new intellectual developments in law and related fields, including critical race theory, the new legal realism of the law and society movement, empirical approaches to law, law and economics, indigenous methodology, legal pluralism, and neoinstitutionalism. As federal Indian law doctrine has become increasingly hostile to tribal claims to sovereignty and property, Indian law scholars and practitioners have turned to these intellectual tools to explain doctrinal developments (e.g., as reflections of institutional racism or the pursuit of economic gains) to refute the empirical premises of adverse decisions (e.g., assertions that tribal courts are unfair to outsiders), and to suggest ways tribes might avoid harmful rulings (e.g., through cooperative agreements or political advocacy). Our own approach, while eclectic, benefits especially from the conceptual apparatus of legal pluralism and institutionalism. Legal pluralism emphasizes the interplay of multiple legal systems that may possess authority over the same territory and people. Institutionalism examines the ways in which the legal entities administering law affect legal actors, including governments as well as individuals. Federal Indian law is especially rich in opportunities for the interaction of legal systems and institutions. Federal, tribal, state, and international legal regimes are all implicated in the governance of Native nations, their territories, and their people. These multiple institutional settings create opportunities for different normative visions of tribal-federal relations, as well as alternative legal routes for pursuing Indian and non-Indian objectives. We have sought to highlight these opportunities and to suggest how Indian law may enhance or inhibit these pursuits at the federal and tribal levels. Our aim is to inform future practitioners and advocates about pragmatic, political possibilities, and constraints, complementing theoretical and critical perspectives that may challenge the current state of affairs. Thus at several points in the casebook (see especially Chapters 5 and 7), we emphasize intergovernmental relations through cooperative agreements and institutional innovation.

The cross-currents and inconsistencies of such legislative developments, case decisions, and intellectual ferment present formidable challenges to anyone who sets out in a casebook format to capture the depth and richness of the intellectual efforts of tribal people and others, including judges, legislators, lawyers, and academics, to build a coherent body of Indian law. From its inception in Professor Monroe E. Price’s hands, this book always sought to present a broad jurisprudential and comparative perspective that transcended mere efforts to accurately portray existing federal Indian law doctrine. The book has not only repeatedly questioned and challenged those doctrines, but also aspired to place federal Indian law in a larger historical and global context and to tie federal legal doctrines affecting indigenous peoples to other similar problems of preserving autonomous cultures and nationalities in South America, Africa, Canada, New Zealand, and Australia, to name but a few. Editors of a book in such a rich field are faced with an exacting task. They can ignore the breadth and richness of the field and devote extended attention to a small part of the panorama of Indian law — such as federal court doctrine — or they can attempt to survey the various cross-currents and expose the reader to a broad, but not necessarily in-depth, treatment of the major issues and perspectives in
Preface

the field. We deliberately have chosen the second approach. Since the Fourth Edition, we have added a third and long overdue objective: to accurately portray Indian tribal perspectives and voices on questions of federal Indian law. Thus, we continue to hold to a broad vision for this casebook, although the increasingly diverse directions of the scholarship, decisions, and legislation in Indian law have made it ever more difficult to devote equal attention to all three of our objectives.

In addition, while this casebook was developed primarily as a teaching tool, its authors are deeply committed to providing a sufficiently rich set of legal and other sources, such that the book also serves double-duty as a research sourcebook in the field of federal Indian law. The need for such a sourcebook was greater during the period 1982–2005, when there were no updated editions of the major treatise in the field of Indian law, originally published by Felix Cohen in 1941 and revised by a group of legal scholars, including Professors Clinton and Goldberg, in 1982. With the publication in 2005 of a new edition of this treatise, in which Dean Washburn and Professor Goldberg participated, an invaluable research sourcebook has become available to scholars, students, judges, and practitioners in the field. Furthermore, the authors and editors of the 2005 edition have produced biannual updates to the treatise. Thus, where appropriate, we have referred readers of the casebook to Cohen’s Handbook, rather than repeat the research it presents. Nevertheless, where illuminating historical analyses and background material are unavailable in other sources, we have included them in the casebook to enrich students’ understanding. We have aimed for a casebook that will serve as a resource for students long after graduation.

Chapter 1 of this edition introduces the basic problem of federal Indian law, establishing an appropriate model for the tribal-federal relationship. By examining historical materials, the views of tribal leaders, and early case decisions, including the famous benchmarks of federal Indian law, the Marshall trilogy (Johnson v. M’Intosh, Cherokee Nation v. Georgia, and Worcester v. Georgia), the first chapter seeks to introduce varying conceptions of how Native nations fit with or in the federal union, and how those conceptions have evolved over time. To facilitate a fuller understanding of that evolution, Chapter 1 also provides a mini-history of the evolution of federal Indian policy. Finally, this chapter offers an introduction to international legal protections and comparative models of the treatment of indigenous peoples, designed to encourage those attracted to reformative visions of federal Indian law to challenge their ideas from a global perspective.

Chapter 2 focuses attention on some cross-cutting themes in federal Indian law, including examining the legal definitions applied to some basic questions such as who is an Indian or tribal member, what is an Indian tribe, and what land constitutes Indian country. It also examines critical equal protection and due process constitutional questions that surround having a body of law addressing Indians. Finally, the chapter introduces the idea that special canons of interpretation affect the judicial interpretation of Indian treaties and statutes in important ways, often benefiting Indian tribes.

Chapters 3 through 5 focus attention on the competition for legal authority and power in Indian country among the three sovereign authorities, each of which asserts claims to political dominion and sovereignty over Indian country and its people — the tribal government, the federal government, and the state government. These chapters examine in that order the history and legal doctrines surrounding each respective government’s claim to exercise legitimate political power and authority over the people and resources
Preface

of Indian country, culminating in a separate chapter (Chapter 5) devoted to jurisdiction under special statutory schemes addressing matters such as child welfare, gaming, and environmental protection. These chapters explore the historical evolution of each sovereign’s claim to authority and the prevailing legal doctrines that shape those claims. These materials also question the historical or political legitimacy of some of those claims to political authority. In short, these chapters explore the limits of sovereignty. They provide a test of the extent to which the original self-government and political authority of the aboriginal tribes of the North American continent have been eroded by the dominant colonial power, and they examine how sovereignty and jurisdictional issues have shaped the underlying model applied to the tribal-federal relationship.

Sovereignty and political authority are not ends unto themselves, however. One cannot eat jurisdiction, and sovereignty alone does not support the needs of Indian families. Rather, sovereignty is a tool to be used to support or suppress the destiny and future of Native peoples. Allocating political authority or sovereignty also delegates decision-making responsibilities, and thereby determines whether the political, economic, or cultural destinies of Native American peoples and those who enter onto their reservations will be decided by Native Americans or by non-Indian federal or state governments. To give meaning to such decision-making, however, the very existence of Indian resources, goods, and services must be assured by legal protections.

Chapters 6 and 7 focus attention on the legal protections afforded to Indian property and resource rights, and the manner in which the law facilitates or frustrates the development of those resources. Chapter 6 focuses primary attention on the legal protection of the one resource that simultaneously is often the tribe’s most valued cultural resource and sometimes its only major remaining economic resource — tribal land and resources appurtenant thereto, such as oil and gas, minerals, or timber. It also explores issues associated with a special kind of tribal property — cultural property.

Chapter 7 focuses on important hunting and fishing, food gathering, and water rights. The protection and enforcement of such Indian rights are critical to Indian survival in the harsh terrains that characterize some reservations. This chapter illustrates the manner in which the political, cultural, and economic facets of Indian autonomy are interwoven into a complex legal fabric governing how Indians and Euro-Americans compete in the legal system for control of the same scarce resources, and how they may also cooperate to achieve their material and cultural needs for those resources. It will illustrate how federal Indian law and its concepts of property and sovereignty have been used to protect or frustrate tribal concerns central to Indian survival.

By choosing to survey some of the broad currents in federal Indian law and provide a rich set of research sources, we have been forced to make certain basic decisions about the organization and structure of this book. First, we have concluded that the richness and diversity of the cases and scholarship relating to Native Americans called for a book that was larger and deeper than would be possible to teach in any single two- or three-hour Native American law course or seminar. Rather, we chose to present an organized body of source material from which any instructor could select the ingredients to craft his or her own course to suit individual objectives. Thus, teachers and students most interested in questions of political authority, sovereignty, legitimacy, and jurisdiction may focus the primary attention of their courses on Chapters 1 through 5. Those primarily interested in the protection of Indian property and natural resources may find their time most profitably spent concentrating mainly on Chapters 1 and 6–7. A two-hour course focused
mostly on jurisdiction might consider covering Chapters 1, 2, and portions of 3, 4, and 5. Some schools, including those of the authors, offer more than one course in federal Indian law. The first course could cover jurisdiction issues, and the second could focus on resource issues, perhaps including some of the special jurisdictional regimes (such as Alaska, Hawaii, and federal environmental laws) covered in Chapter 5. Thus, the authors see the casebook as a flexible tool, readily adaptable to various course configurations.

A further problem for the creation of this volume was imposed by size constraints dictated by both our publisher and the concessions that unfortunately must be made to the length of the academic calendar. As the decisions from the courts grow longer and more ponderous, and the richness, depth, and diversity of the literature increases, casebook editors are forced to make very difficult editing decisions — decisions about issues we did not always agree upon even among ourselves. Significant problems emerge in paring down extensive, sometimes convoluted, often carefully integrated opinions from the Supreme Court into a few pages manageable for a class session. The Fourth and Fifth Editions sometimes paraphrased long significant cases while giving them separate treatment that prevented the lesser attention that students frequently afford to note cases. In the Sixth Edition and in this Seventh Edition, we have maintained some use of this device, but have employed it for fewer cases, to ensure that students read as much of the most important text as possible. Similarly, the historical, political, and legal arguments found in the secondary literature often do not lend themselves to brief encapsulation, either by way of paraphrased description or through inclusion of a carefully pruned snippet or two. Nevertheless, employing these techniques, we have sought to present very complicated material in a more condensed form, while attempting to do justice to the complexity of analysis in the original.

The authors have chosen to leave statutory and regulatory language out of the casebook text, relying on the relatively easy access that today’s students have to online sources. That decision was made both to decrease the size of the book and to promote greater readability of the casebook text. Editing of cases and source materials, of course, poses its own technical problems. Specifically, how is a reader to know where editing in a text has occurred? On the other hand, if every editing change is appropriately flagged, the text becomes far less readable. On this question, the authors deliberately opted for visual readability, rather than detailed technical cues. Thus, we have liberally deleted citations and footnotes from both primary cases and secondary works without any indication in text of the omission. Similarly, in new cases, we have used ellipses sparingly, preferring instead when possible to use brackets to indicate where minor editing was necessary to smooth transitions required by omissions. Parallel citations, pinpoint citations, footnotes, and other references have been liberally removed from published cases and other sources, without any flag or indication. Furthermore, in an effort to increase readability, we have chosen not to indicate each deletion of interstitial paragraphs by indented hanging ellipses, relying instead primarily on brackets that begin or end a paragraph to indicate that some editing was done with the intervening material. That editing may represent a short phrase or many paragraphs omitted from the original source. Some deletions are not noted at all. Additionally, in the interest of space, the authors have not consistently noted denials of review by the United States Supreme Court or other non-significant subsequent histories of cases. We believe that this casebook, while intended to have some utility as a research source, should be designed primarily as an instructional volume in which readability represents the most important asset. Those interested in the details of the complete opinion or source should consult the original rather than relying on our
Preface

abridged version of those materials, and for case opinions should also employ electronic
databases to assure the complete citation to the materials in question.

Carole E. Goldberg
Jonathan D. Varat Professor of Law
UCLA School of Law
Associate Justice, Hualapai Court of Appeals

Rebecca Tsosie
Regent’s Professor of Law
Sandra Day O’Connor College of Law, Arizona State University
Associate Justice, Fort McDowell Yavapai Nation Supreme Court
Associate Judge, San Carlos Apache Court of Appeals

Robert Clinton
Foundation Professor of Law
Sandra Day O’Connor College of Law, Arizona State University
Chief Justice, Winnebago Supreme Court
Associate Justice, Colorado River Indian Tribes Court of Appeals
Associate Justice, Hualapai Court of Appeals
Associate Justice, Hopi Appellate Court

Angela R. Riley
Professor of Law, UCLA School of Law
Co-Director, Native Nations Law and Policy Center
Director, Joint Degree Program in Law and American Indian Studies
Chief Justice, Citizen Potawatomi Nation of Oklahoma
Table of Contents

Chapter 1  HISTORIC AND MODERN CONCEPTIONS OF THE TRIBAL-FEDERAL RELATIONSHIP ................. 1

A. HISTORIC MODELS OF TRIBAL-FEDERAL RELATIONS ............. 1
   1. Introduction ................................................................. 1
   2. Treaty Models of the Political Relationship Between Indian Tribes and the Federal Government ........................................... 4
      a. International Self-Determination Model .......................... 4
         Treaty of Fort Pitt with the Delaware Nation ................. 4
      b. Treaty Federalism Model ............................................. 5
         Treaty of Hopewell with the Cherokee Nation ............. 6
         Treaty of New Echota with the Cherokee Nation ....... 7
      c. Colonial Federalism Model ........................................... 7
         Treaty of Fort Sumner with the Navajo Nation .......... 8
         Notes on Models of Tribal-Federal Relations .......... 8

B. HISTORY OF TRIBAL-FEDERAL RELATIONS ....................... 13
   1. Introductory Perspectives ............................................. 13
      Composter (Seneca), Speech Delivered to President George Washington at Fort Stanwix, 1790 ................ 13
      Tecumseh (Shawnee), Speech Delivered at Vincennes, Indiana, August 12, 1810 ..................... 13
   2. The Uneven History of Federal Indian Policy: Politics, Assimilation, and Autonomy ......................... 14
      a. The Colonial Period (1492–1776) ............................... 15
      b. The Confederation Period (1776–1789) ...................... 17
      c. The Trade and Intercourse Act Era (1789–1835) ........... 18
      d. The Removal Period (1835–1861) .............................. 20
      e. The Reservation Policy (1861–1887) ......................... 22
      f. The Allotment Period and Forced Assimilation (1871–1934) ... 24
      g. The Indian Reorganization Act Period (1934–1940) ........ 30
      h. The Termination Era (1940–1962) .............................. 33
      k. History, Federal Indian Policy, and Statutory Interpretation 43

C. ORIGINS OF THE MODELS: FOUNDATIONAL UNITED STATES SUPREME COURT DECISIONS AND THE TRIBAL RESPONSE .... 44
   1. Property, Sovereignty, and Claims of Conquest: The Case of Johnson v. M’Intosh .......................... 45
Table of Contents

Speech of Corn Tassel (Cherokee at Hopewell Treaty Negotiations) .................................. 45
Johnson v. M’Intosh .................................................. 46
Notes on Johnson v. M’Intosh ................................... 50
2. Sovereignty Revisited: The Cherokee Cases ................................................................. 53
   Cherokee Nation v. Georgia ............................................. 55
   Notes ................................................................. 59
   Worcester v. Georgia .................................................. 62
   Notes ................................................................. 72
   Note on the Rhetoric of Exclusion ................................... 77
D. PROCESSING MODELS OF TRIBAL-FEDERAL RELATIONS AS LEGAL DOCTRINE: NINETEENTH AND EARLY TWENTIETH CENTURY ILLUSTRATIONS ........................................... 78
1. Treaties Between Nations ........................................... 78
   Ex parte Crow Dog .................................................. 80
   Notes ................................................................. 83
2. The Rise of Federal Plenary Power ........................................... 86
   United States v. Kagama ............................................. 86
   Notes on Kagama ................................................... 90
   United States v. Clapox ............................................. 93
   Notes ................................................................. 94
   Lone Wolf v. Hitchcock ............................................. 96
   Notes on Lone Wolf ................................................. 98
   United States v. Sandoval ........................................... 101
   Notes on Sandoval .................................................. 104
E. INTERNATIONAL HUMAN RIGHTS LAW AND INDIGENOUS PEOPLES’ RIGHTS ..................... 108
1. International Models of Political Self-Governance ...................................................... 109
   Notes ................................................................. 110
2. The Institutional Framework for International Human Rights Law ......................... 114
   Notes ................................................................. 116

Chapter 2 RECURRING ISSUES IN TRIBAL-FEDERAL LEGAL RELATIONS ................................ 121
A. FUNDAMENTAL DEFINITIONAL QUESTIONS .................................................. 122
   1. What Is an Indian Tribe or Nation? ................................ 122
      a. Tribal vs. Federal Definitions .................................. 122
      b. Definitions of “Tribe” Under Federal Statutes ............ 124
      c. Achieving Federal Recognition ................................ 126
      d. The Politics of Federal Recognition ......................... 132
      Testimony of Kevin Gover, Professor of Law, Arizona State University College of Law ........... 133
# Table of Contents

2. Who Is an Indian? ........................................... 134  
   a. Traditional Tribal Views of Status and Community Membership ... 134  
   b. Federal Definitions ..................................... 137  
      P.S. Deloria & Robert Laurence, *What’s an Indian? A*  
      *Conversation About Law School Admissions, Indian Tribal*  
      *Sovereignty, and Affirmative Action* ................................... 140  
      Notes on Defining Who Is An “Indian” ......................... 143  
3. What Is the Extent of Tribal Territory, or Indian Country? .... 144  
   a. Indian Nations’ Relationships to the Land ...................... 144  
   b. Defining “Indian Country” .................................. 145  
      i. Formal and Informal Reservations ..................... 146  
         *United States v. John* ........................................ 146  
         Note .......................................................... 149  
      ii. Dependent Indian Communities .......................... 150  
         *Alaska v. Native Village of Venetie* .................. 150  
         Notes on *Venetie* and “Dependent Indian Communities” …. 156  
      iii. Allotted Land Outside Reservations ................... 158  
      iv. Determining the Boundaries of an Indian Reservation .... 159  
         *Solem v. Bartlett* .......................................... 160  
         Notes on Determining Congressional Intent to Diminish  
         Boundaries .................................................. 170  
B. EQUAL PROTECTION QUESTIONS POSED BY INDIAN LEGISLATION ..................................................... 176  
1. Indian Classifications as Political Rather than Racial ...... 177  
   *Morton v. Mancari* ........................................ 177  
   Notes on *Morton v. Mancari* ................................ 184  
   *United States v. Antelope* .................................. 187  
   Notes on Treating Indian Classifications as Political Rather than  
   Racial ......................................................... 189  
2. Indians as a Constitutional Racial Classification? .......... 192  
   *AFGE v. United States* ..................................... 192  
   Note on Indians as a Constitutional Racial Classification .... 194  
3. When Might Equal Protection’s “Strict Scrutiny” Invalidate Federal  
   Indian Legislation? ......................................... 195  
   *Babbit v. Williams* ........................................ 196  
   *Rice v. Cayetano* ........................................... 198  
   Notes on Treating Indians as a Suspect Racial Classification ... 202  
C. CANONS OF CONSTRUCTION FOR INTERPRETING THE  
   TRIBAL-FEDERAL LEGAL RELATIONSHIP ....................... 204  
   *Minnesota v. Mille Lacs Band of Chippewa Indians* .......... 205  
   *San Manuel Indian Bingo and Casino v. N.L.R.B.* ............ 212  
   Notes on Indian Law Canons of Construction .................. 220  

xxi
**Table of Contents**

Chapter 3  
TRIBAL SOVEREIGNTY AND ITS EXERCISE  

A. MODERN TRIBAL GOVERNMENTS  
1. Tribal Constitutions and Courts  
   a. Emergence of Modern Written Tribal Constitutions  
   b. Types of Tribal Courts  
2. Tribal Law Provisions on Jurisdiction  
3. Sources of Law in Tribal Courts  
   Notes on Customary Law  
4. Tribal Restrictions on Tribal Governments  
   a. Tribal Provisions for Federal Approval  

B. TRIBAL GOVERNING AUTHORITY  
1. Inherent Tribal Sovereignty  
   *Talton v. Mayes*  
   *United States v. Wheeler*  
   Notes  
   *Merrion v. Jicarilla Apache Tribe*  
   Notes on Nonmember Exclusion and Tribal Governing Authority  
2. Federally Supported Tribal Authority  
   *United States v. Mazurie*  
   Note on Varieties of Congressional Support for the Exercise of Tribal Authority  
   *Bugenig v. Hoopa Valley Tribe*  
   Note on *Bugenig*  

C. FEDERAL JUDICIAL AND LEGISLATIVE RESPONSES TO INHERENT TRIBAL SOVEREIGNTY  
1. Federal Judicial Plenary Power Purporting to Preempt Tribal Sovereignty  
   *Oliphant v. Suquamish Indian Tribe*  
   *Duro v. Reina*  
   Notes  
   *Montana v. United States*  
   Notes  
   *Strate v. A-I Contractors*  
   Notes  
   *Nevada v. Hicks*  
   Notes on *Hicks*  
   Notes  
   *Water Wheel Camp Recreational Area, Inc. v. LaRance*  
2. Congressional Acknowledgment of Inherent Tribal Sovereignty  

xxii
# Table of Contents

- **United States v. Lara** ........................................ 358
  Notes on Lara .................................................. 365
- **3. Federal Conceptions of Tribal Taxing and Regulatory Power** .......... 368
  Kerr-McGee v. Navajo Tribe .................................... 368
  Atkinson Trading Company, Inc. v. Shirley .......................... 371
  Notes on Tribal Taxing Jurisdiction ................................ 377
  Brendale v. Confederated Tribes & Bands of the Yakima Indian Nation ................ 380
  Notes on Tribal Regulatory Power .................................. 383
- **D. INDIVIDUAL RIGHTS AND TRIBAL AUTHORITY** .................. 386
  1. Federal Restrictions on Tribal Governments: The Indian Civil Rights Act of 1968 .......................... 386
     Santa Clara Pueblo v. Martinez .................................. 388
     Notes .......................................................... 395
  2. Individual Rights in Tribal Courts ................................ 400
     Winnebago Tribe of Nebraska v. Bigfire .......................... 402
     Notes .......................................................... 405
  3. Tribal Power to Define Membership ................................ 405
     Poodry v. Tonawanda Band of Seneca Indians ....................... 408
     Notes on Tribal Membership/Citizenship and Banishment .......... 415
- **E. INTERJURISDICTIONAL RESPECT AND COOPERATION** ............ 421
  1. Extradition, Full Faith and Credit, and Comity ....................... 421
     Eberhard v. Eberhard ........................................ 423
     Wilson v. Marchington .......................................... 429
     Notes on Full Faith and Credit and Comity ........................ 436
  2. Intergovernmental Agreements ..................................... 442
     a. Why Enter into Intergovernmental Agreements? .................. 443
        National Congress of American Indians & National Conference of State Legislatures, Government to Government: Models of Cooperation Between States and Tribes ................ 444
        Notes on Tribal-State Intergovernmental Agreements ........... 446
     b. Authority to Enter into Tribal-State Agreements ................ 448
     c. Enforcement Issues ............................................ 450
- **F. TRIBAL SOVEREIGN IMMUNITY** .................................. 451
  1. In Federal and State Courts ...................................... 451
     Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma ......................... 451
     Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc. 455
     Michigan v. Bay Mills Indian Community .......................... 461
     Notes on Tribal Sovereign Immunity in Federal and State Courts ........................................ 471
# Table of Contents

**C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma** ............................................. 475

Notes on Waiver of Tribal Sovereign Immunity ............................................. 481

2. **Scope of Sovereign Immunity in Tribal Courts** ................. 487

**Charbonneau v. St. Paul Insurance Company** ............................................. 487

## Chapter 4  
**FEDERAL AND STATE AUTHORITY IN INDIAN COUNTRY** ............................................. 491

### A. THE FEDERAL GOVERNMENT’S PLENARY POWER OVER INDIANS AND INDIAN COUNTRY ............................................. 493

#### 1. Sources and Scope of the Power  ............................................. 493

- **United States v. John** ............................................. 496

- Notes ............................................. 500

- **Delaware Tribal Business Committee v. Weeks** ............................................. 503

- Notes on the Bill of Rights and Plenary Power ............................................. 505


- **United States v. Dion** ............................................. 507

- Notes on Treaty Abrogation ............................................. 513

#### 3. Criminal Jurisdiction as an Illustration of the Exercise of Federal Power over Indian Affairs ............................................. 518

- a. Introduction ............................................. 518

- b. Federal Criminal Jurisdiction Statutes ............................................. 521

- Note on Juvenile Offenders and Federal Jurisdiction ............................................. 529

- c. Implications of Federal Criminal Jurisdiction Statutes for Tribal Jurisdiction ............................................. 531

- **Wetsit v. Stafne** ............................................. 533

- Notes on Concurrent Tribal Jurisdiction over “Major” Crimes and Double Jeopardy ............................................. 534

- **Walker v. Rushing** ............................................. 538

- Notes on Concurrent Tribal Criminal Jurisdiction Under Public Law 280 and Like Statutes ............................................. 541

- d. Criminal Jurisdiction, Policing, and Extradition ............................................. 542

- e. Problems ............................................. 547

#### 4. Federal Civil Jurisdiction ............................................. 550

- a. Federal Jurisdiction to Tax and Regulate ............................................. 550

- **Squire v. Capoeman** ............................................. 550

- **Lazore v. Commissioner of Internal Revenue** ............................................. 555

- Notes on Federal Taxation of Tribes and Tribal Members ............................................. 559

- b. Federal Civil Adjudicative Jurisdiction ............................................. 561
Table of Contents

County of Oneida v. Oneida Indian Nation ............................. 561
National Farmers Union Insurance Cos. v. Crow Tribe .......... 564
Iowa Mutual Insurance Co. v. LaPlante ............................... 568
Notes on Federal Civil Jurisdiction Involving Indian Country . . 571

5. Federal Executive Power and the Executive Trust Responsibility ...... 583
   a. The Bureau of Indian Affairs and the Administration of Federal
      Indian Programs ................................................. 583
      United States v. Eberhardt .................................... 584
      Notes on Statutory Authority for Administrative Action ...... 585
   b. The Trust Relationship ........................................... 587
      United States v. Mitchell ....................................... 590
      Notes on Trust Mismanagement Claims ......................... 597
      United States v. White Mountain Apache Tribe ................. 601
      United States v. Navajo Nation ................................ 603
      Note on Recent Mismanagement Claims ......................... 607
      Cobell v. Norton ............................................... 609
      Note on Further Developments in the Cobell Litigation ..... 615
      Cobell v. Salazar ............................................... 619
      Note on Settlement of the Cobell Litigation .................. 621
   c. Conflicts of Interest Between Government Departments and the
      Prospect of Equitable Relief .................................... 623
      United States v. Jicarilla Apache Nation ...................... 624
      Nevada v. United States ....................................... 644
      Notes on Injunctive Enforcement of the Trust ................. 655

   Salazar v. Ramah Navajo Chapter .................................. 659
   Note on Federal Programs and Administrative Authority of
   Federal Agencies for Tribal Services ............................ 664

B. STATE AUTHORITY IN INDIAN COUNTRY ............................. 668
   1. Tribal Expectations ............................................. 668
      Cherokee Council, 1830 ....................................... 668
      George W. Harkins (Choctaw), Farewell Letter to the American
      People, 1832 .................................................... 668
      Treaty with the Creek and Seminole Tribes .................... 669
      Note on Tribal Expectations Regarding State Authority ....... 669
   2. Early Approaches to Inherent State Power in Indian Country .... 670
      Notes ............................................................. 670
   3. Congressionally Authorized State Power in Indian Country .... 677
   4. The Modern Era .................................................. 681
      a. State Adjudicative Jurisdiction .............................. 682
         Williams v. Lee .............................................. 682

xxv
Table of Contents

| Notes .................................................. | 684 |
| Joe v. Marcum ......................................... | 690 |
| Note on Enforcement of Judgments in Indian Country | 693 |
| Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians | 694 |
| Notes .................................................. | 703 |

| b. State Taxing and Regulatory Jurisdiction .......... | 705 |
| Washington v. Confederated Tribes of the Colville Reservation | 711 |
| Notes .................................................. | 720 |
| White Mountain Apache Tribe v. Bracker ............... | 729 |
| Cotton Petroleum Corp. v. New Mexico .................. | 737 |
| Notes on State Taxing Jurisdiction ..................... | 753 |
| New Mexico v. Mescalero Apache Tribe .................. | 760 |
| California v. Cabazon Band of Mission Indians ....... | 769 |
| Notes on State Jurisdiction to Regulate ............... | 776 |

| 5. State Jurisdiction over Indians and Indian Property Outside Indian Country | 778 |
| Mescalero Apache Tribe v. Jones ....................... | 778 |
| Notes .................................................. | 780 |
| Oklahoma Tax Commission v. Chickasaw Nation .......... | 784 |
| Note ................................................... | 790 |

Chapter 5 JURISDICTION UNDER SPECIAL STATUTES ...... 791

| 1. PUBLIC LAW 280 AND RELATED STATUTES .............. | 793 |
| Text and History ....................................... | 793 |
| Carole E. Goldberg, Public Law 280: The Limits of State Jurisdiction over Reservation Indians | 794 |
| 2. Acquiring and Exercising State Jurisdiction Under Public Law 280 .................. | 802 |
| Bryan v. Itasca County .................................. | 802 |
| Notes ................................................... | 807 |
| 3. Concurrent Tribal and State Jurisdiction Under Public Law 280 .................. | 814 |
| Notes ................................................... | 815 |
| 4. Practical Effects and the Future of Public Law 280 .................. | 819 |
| Note on the Future of Public Law 280 .................. | 820 |

| B. UNIQUE TRIBAL-FEDERAL RELATIONSHIPS .............. | 820 |
| 1. Alaska .............................................. | 820 |
| a. The Alaska Native Claims Settlement Act of 1971 (ANCSA) .................. | 821 |
| Notes on the Alaska Native Claims Settlement Act .................. | 823 |
| b. Indian Country and Tribal Government Jurisdiction .................. | 825 |

xxvi
## Table of Contents

2. Hawai‘i ............................................................. 828
   a. The Hawaiian Homes Commission Act of 1921 ................. 830
   b. The Hawai‘i State Constitution and the 1982 Amendments .... 831
   c. Ceded Lands Controversy ..................................... 832
      Hawaii v. Office of Hawaiian Affairs ......................... 833
   d. Native Hawaiian Political Status and Legal Rights .......... 838
      Notes on Native Hawaiian Sovereignty ...................... 840

C. INDIAN CHILD WELFARE ACT .............................. 841
   1. Introduction .................................................... 841
   2. Jurisdiction and “Domicile” Under ICWA ....................... 844
      Mississippi Band of Choctaw Indians v. Holyfield ............ 844
      Notes .............................................................. 858
   3. “Indian Child” Under ICWA .................................. 863
      In re A.J.S. ...................................................... 863
      Notes .............................................................. 870
   4. When Does ICWA Protect an Indian Parent? .................... 876
      Adoptive Couple v. Baby Girl .................................. 877
      Notes .............................................................. 896
   5. “Good Cause” and Transfer of ICWA Cases from State to Tribal Court ........................................ 897
      Bureau of Indian Affairs Guidelines for State Court Indian Child Custody Proceedings ......................... 897
      Notes on Transfer of Cases from State to Tribal Court ........ 899

D. INDIAN GAMING REGULATORY ACT ........................ 904
   1. The Jurisdictional Regime for Tribal Gaming .................. 904
      Kevin K. Washburn, Recurring Problems in Indian Gaming .... 905
      Alex Tallchief Skibine, The Indian Gaming Regulatory Act at 25: Successes, Shortcomings, and Dilemmas .............. 906
      Rumsey Indian Rancheria of Wintun Indians v. Wilson ......... 909
      Seminole Tribe of Florida v. Florida .......................... 915
      Pueblo of Santa Ana v. Kelly .................................... 918
      Notes .................................................................. 919
   2. Business Disputes Related to Gaming ......................... 931
      Bruce H. Lien Company v. Three Affiliated Tribes .......... 932
      Notes on Tribal Gaming Disputes ............................... 933

E. FEDERAL INDIAN LIQUOR CONTROL STATUTES ............. 935
   Rice v. Rehner ...................................................... 936
   Notes on Federal Indian Liquor Control Laws ................... 940

F. FEDERAL ENVIRONMENTAL LAWS .......................... 942
Table of Contents

1. Introduction: Tribal Perspectives on Economic Development and the Environment ................................................. 942
   John Echohawk, *We Are Sovereign Peoples* ...................... 942
2. The Basic Framework of Federal Environmental Law and Policy ................................................................. 945
   a. EPA’s Indian Policy .................................................. 945
      *EPA Policy for the Administration of Environmental Programs on Indian Reservations* ......................... 946
   b. Implications for Application of State Environmental Laws ........................................... 948
      *Washington Department of Ecology v. EPA* ...................... 948
      Notes ................................................................. 951
3. Federal Laws Regulating Tribal Activities ................................................................. 952
   a. Environmental Review Requirements .................................. 952
      *Davis v. Morton* .................................................... 952
      Notes on Federal Environmental Review Requirements ........... 955
   b. The Endangered Species Act in Indian Country .................... 960
      *Secretarial Order #3206* ........................................... 960
      Notes on Tribes and the Endangered Species Act ................. 964
4. Federal Protection for Tribal Environments and Economic Activities from Non-Indian Economic Development ........................................... 965
   *Wisconsin v. Environmental Protection Agency* .................... 965
   Notes on Tribal Environmental Controls Affecting Off-Reservation Development ........................................... 971

Chapter 6 TRIBAL RIGHTS TO LAND AND CULTURAL RESOURCES ........................................... 973

A. TRIBAL PROPERTY INTERESTS ........................................... 976
1. Aboriginal Title ...................................................... 976
   *United States ex rel. Hualpai Indians v. Santa Fe Pacific Railroad Co.* .................................................. 976
   Notes on Aboriginal Title ............................................. 981
   *Tee-Hit-Ton Indians v. United States* ................................ 987
   Nell Jessup Newton, *At the Whim of the Sovereign: Aboriginal Title Reconsidered* ......................... 994
   Notes ................................................................. 996
2. Recognized Title ...................................................... 998
   *United States v. Shoshone Tribe of Indians* ....................... 998
   *United States v. Sioux Nation* ....................................... 1001
   Notes on Recognized Title ............................................ 1012
3. Executive Order Reservations .......................................... 1017
   *Sioux Tribe v. United States* ........................................ 1018
   Notes ................................................................. 1022
### Table of Contents

4. Placing Indian Land in Trust ........................................... 1025  
   *Carcieri v. Salazar* ........................................... 1028  
   Notes on Land-into-Trust and *Carcieri* ......................... 1042  
   *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak* ........................................... 1044  
   Notes ....................................................... 1053

5. Land Claims ....................................................... 1054  
   a. The Indian Claims Commission ........................................... 1054  
      *United States v. Dann* ........................................... 1057  
      Notes on the *Dann* Case and the Indian Claims Commission ........................................... 1060  
   b. Claims Under the Nonintercourse Act ........................................... 1067  
      *County of Oneida v. Oneida Indian Nation* ........................................... 1067  
      *City of Sherrill, N.Y. v. Oneida Indian Nation of New York* ........................................... 1077  
      Notes on the Oneida Litigation and the Nonintercourse Act ........................................... 1090

6. Allotted Lands ....................................................... 1094  
   *Northern Cheyenne Tribe v. Hollowbreast* ........................................... 1094  
   *Black Hills Institute of Geological Research v. South Dakota School of Mines and Technology* ........................................... 1099  
   Notes on Allotted Lands ........................................... 1101  
   *Hodel v. Irving* ........................................... 1105  
   *Babbitt v. Youpee* ........................................... 1113  
   Notes on Fractionated Allotments ........................................... 1114

B. CULTURAL RESOURCES ........................................... 1117  
1. Sacred Sites and Religious Freedom ........................................... 1118  
   *Lyng v. Northwest Indian Cemetery Protective Association* ........................................... 1120  
   Note on *Lyng* ........................................... 1130  
   *Employment Division, Department of Human Resources of Oregon v. Smith* ........................................... 1131  
   Notes ....................................................... 1144

2. Cultural Property ....................................................... 1152  
   a. Tangible Cultural Property ........................................... 1153  
      *Chilkat Indian Village v. Johnson* ........................................... 1154  
      *Chilkat Indian Village, IRA v. Johnson* ........................................... 1155  
      *United States v. Corrow* ........................................... 1159  
      Notes on Tangible Cultural Property ........................................... 1165  
   b. Intangible Cultural Property ........................................... 1167  
      Rebecca Tsosie, *Reclaiming Native Stories: An Essay on Cultural Appropriation and Cultural Rights* ........................................... 1168  
      Notes ....................................................... 1169

3. Protections for Native American Human Remains ........................................... 1176
Table of Contents

Chapter 7 THE OPERATION OF THE RESERVED RIGHTS DOCTRINE: HUNTING, FISHING, AND WATER RIGHTS 1199

A. HUNTING, FISHING, AND FOOD-GATHERING RIGHTS 1201
   Aleck Paul (Chippewa), Our Stock of Food & Clothes 1201
   1. On-Reservation Rights 1202
      Menominee Tribe v. United States 1202
      Notes on On-Reservation Hunting and Fishing Rights 1206
   2. Off-Reservation Food-Gathering Rights 1216
      United States v. Winans 1219
      Notes on Winans and its Aftermath 1222
      Washington v. Washington State Commercial Passenger Fishing Vessel Association 1227
      Notes on Off-Reservation Food Gathering Rights 1239

B. COMPETITION FOR CONTROL OF WATER 1249
   1. Source, Quantity, and Use of Indian Water Rights 1250
      Winters v. United States 1250
      Arizona v. California 1252
      Notes on Winters Rights 1254
      In Re General Adjudication of All Rights to Use Water in Gila River System and Source 1257
      Notes on Winters Rights Quantification 1265
   2. Adjudicating and Regulating Indian Water Rights 1278
      Arizona v. San Carlos Apache Tribe 1278
      Notes on State Adjudication of Indian Water Rights 1289

   3. Water Rights of Allottees and Their Successors 1293
   4. Water Rights Settlements as Alternatives to Litigation 1296
      Robert T. Anderson, Indian Water Rights: Litigation and Settlements 1297
      Notes on Indian Water Settlements 1301
# Table of Contents

Table of Cases ......................................................... TC-1

Index ................................................................. I-1