



NEWSLETTER

Message From the Chair

Greetings Colleagues,

The year 2022 will undoubtedly be remembered as one of exciting developments for our field amidst new, unsettling challenges. As you will see in the pages that follow, this year our section members produced a truly remarkable array of publications and scholarly contributions, took on many key leadership positions, and helped advance the interests of Indigenous peoples across Indian Country and around the world. We also witnessed the American Law Institute’s unanimous approval of the Restatement of the Law of American Indians, led by reporter Matthew L.M. Fletcher and associate reporters Wenona T. Singel and Kaighn Smith, Jr., marking a significant milestone in the development of the field. We saw American law schools prioritize Indigenous law in encouraging ways, conducting record numbers of federal Indian law faculty searches, making their curricular offerings more inclusive of Indigenous law topics, and highlighting Indigenous law scholarship in new ways.

However, as our Judicial Update will show, this year also saw a scattershot record from the federal judiciary—from the U.S. Supreme Court’s reaffirmance of Tribal gaming rights and sovereignty in *Ysleta del Sur Pueblo*, to the *Castro-Huerta* majority’s blatant disregard for federal Indian law precedents in what Justice Neil Gorsuch deemed “an embarrassing new entry into the anticanon of Indian law.” The resulting uncertainty raises the stakes of many pending cases, including *Brackeen v. Haaland*, where the Supreme Court is expected to address the constitutionality of portions of the Indian Child Welfare Act.

As scholars, teachers, and practitioners of Indigenous law, the members of the AALS Indian Nations & Indigenous Peoples Section continue to play a crucial role in our field’s ecology. To this end, our section’s Executive Board has been hard at work developing four panels for the upcoming AALS Annual Meeting that will tackle critical issues facing Indigenous peoples. From disparaging mascots to cultural heritage, our panel, *Indigenizing Intellectual Property*, explores emerging protections for Indigenous identity, culture, creativity, and innovation. Bringing together Canadian and U.S. scholars, *Indigenous Law Professors as Relatives Across the Medicine Line*, shows how law school classrooms can be transformed into inclusive spaces for Indigenous students and Indigenous legal issues. *Pedagogical Lessons from the Indian Child Welfare Act* takes a close look at the *Brackeen* litigation and considers how law teachers can integrate ICWA into their courses. Finally, our co-sponsored panel, *From Aspiration to Implementation for Energy and Environmental Justice*, addresses how governments can carry out environmental justice policies, including the use of tribal co-management strategies.

We cordially invite you to join the conversation on these and other topics during the AALS Annual Meeting in San Diego on January 3-7, 2023!

Kwa’kwhá,

Trevor Reed (Hopi)
Associate Professor, Sandra Day O’Connor College of Law
Arizona State University

Indian Nations & Indigenous Peoples Section

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Indian Nations & Indigenous Peoples Section



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Upcoming Events

Fall 2022

- ◆ The Indigenous Bar Association of Canada will hold its 34th Annual Fall Conference from October 13-15, 2022, in Montreal, Canada. An agenda and registration information can be found [here](#).
- ◆ The Indian Nations Gaming & Governance Program at the University of Nevada, Las Vegas, William S. Boyd School of Law, will host a webinar on December 5, 2022, addressing new issues related to the definition of “Indian lands” under the IGRA, as interpreted by the Department of the Interior through its regulations, and gaming operations outside those lands. Information and registration details are available on the Program’s [website](#).
- ◆ The University of Washington’s 35th Annual Indian Law Symposium will take place on December 9, 2022, via Zoom. The UW will be requesting 6.25 CLE credits, 5.25 Law & Legal, and 1.0 Ethics from the Washington State Bar Association. For an agenda, a list of speakers, and registration, please visit [Register Now](#).

Spring 2023

- ◆ The AALS Annual Meeting takes place January 3-7, 2023, in San Diego, CA. “How Law Schools Can Make a Difference” boasts 250 sessions & 900 speakers. Register [here](#).
- ◆ The Sandra Day O'Connor College of Law will host its 9th Annual “Wiring the Rez” conference on February 16-17, 2023. Visit the school’s site for additional details.
- ◆ The University of Oklahoma College of Law will celebrate its 50th Anniversary of the American Indian Law Review and Symposium and will host the NNALSA Moot Court Competition in Norman, OK in February 2023. Check [NNALSA](#) for details and registration information.
- ◆ The Indian Nations Gaming & Governance Program at the University of Nevada, Las Vegas, William S. Boyd School of Law, will host a conference on the history of Indian gaming in California on March 2-3, 2023. Information and registration are [here](#).
- ◆ The Federal Bar Association’s Indian Law Conference will be held April 17-18, 2023, at the Sandia Resort & Casino in Albuquerque, NM. Please check this [site](#) for details.

Contact Us

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Denezpi v. United States

596 U.S. ___, 142 S. Ct. 1838 (2022).

An officer with the Bureau of Indian Affairs filed a criminal complaint against Merle Denezpi, a citizen of the Navajo Nation. Denezpi was charged in a CFR court with three crimes alleged to have occurred on the Ute Mountain Ute Reservation: assault and battery in violation of 6 Ute Mountain Ute Code § 2; terroristic threats, in violation of 25 CFR § 11.402; and false imprisonment, in violation of 25 CFR § 11.404. Denezpi pleaded guilty to the assault and battery charge and was sentenced to time served (140 days imprisonment). Six months later a federal grand jury in the District of Colorado indicted Denezpi on one count of aggravated sexual abuse in Indian Country, an offense covered by the federal Major Crimes Act. Denezpi moved to dismiss the indictment, arguing the Double Jeopardy Clause barred his consecutive prosecutions because he was charged in a CFR court and a federal district court, which he claimed are judicial bodies of the same sovereign. The district court denied Denezpi's motion, and Denezpi was convicted and sentenced to 360 months imprisonment. The Tenth Circuit affirmed.

The Supreme Court affirmed the judgment of the Court of Appeals, holding Denezpi's single act led to separate prosecutions for violations of a tribal ordinance and a federal statute, and thus were not prohibited by the Fifth Amendment's Double Jeopardy Clause. The Court reasoned by virtue of their existence as distinct sovereigns, the Ute Mountain Ute Tribe and the United States have each defined offenses that are inherently and distinctively separate from one another. Denezpi's prosecution for both Ute Mountain Ute and Major Crimes Act offenses were thus not for the "same offense." Further, the Court held the Double Jeopardy Clause is limited to prohibiting prosecutions for the same offense, not prosecutions by the same sovereign. Thus, one sovereign could prosecute offenses enacted by different sovereigns and still not violate the Clause.

Ysleta del Sur Pueblo v. Texas

596 U.S. ___, 142 S. Ct. 1929 (2022).

In the latest series of legal battles between the federally recognized tribe, Ysleta del Sur Pueblo (the “Pueblo”), and Texas, the U.S. Supreme Court held Texas, per the Ysleta del Sur and Alabama and Coushatta Indian Tribes Restoration Act, 101 Stat. 666 (Restoration Act), cannot regulate gaming activities on tribal lands that are permitted under state law. The Court determined whether the Restoration Act subjects the Pueblo to all of Texas’ gaming regulations or whether the Restoration Act adopts the *Cabazon* framework which provides the Pueblo with the authority to regulate non-prohibited gaming activities.

In *California v. Cabazon Band of Mission Indians*, 480 U. S. 202 (1987), the Supreme Court interpreted a gaming statute and held that if “state law *prohibits* a particular game . . . a State may enforce its ban on tribal lands. But if state laws merely *regulate* . . . Public Law 280 does not permit a State to enforce its rules on tribal lands.” In the years following the *Cabazon* decision, Congress restored the Pueblo’s federal trust status by adopting the Restoration Act. Section 107 of the Act specifically addresses gaming: “all gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe.” 101 Stat. 668–669. However, subsection (b) reads, “Nothing in this section shall be construed as a grant of civil or criminal regulatory jurisdiction to the State of Texas.” *Id.* Asserting that the Restoration Act adopts *Cabazon*’s prohibitory and regulatory scheme, the Pueblo argued its bingo operations are subject only to federal law and its own law, not state law.

In a 5-4 decision, the Supreme Court vacated, remanded, and ruled the Restoration Act adopts the *Cabazon* framework and Texas cannot impose gaming regulations on tribal lands for gaming activities it permits. The Court focused on the plain language of the Restoration Act and the dichotomy between the terms “prohibited” and “regulatory.” Swayed by the decision in *Cabazon* and the passing of the Indian Gaming Regulatory Act (IGRA), the Court held Section 107 was undoubtedly an attempt by Congress to codify previous gaming legislation and precedent. The Court found that by dismissing Subsection (b), Texas undermined Congress’ intentional prohibitory and regulatory scheme adopted in Section 107. If Congress had wished for Texas to possess the ability to regulate a gaming activity, Congress would have been clear as it had been in other tribes’ gaming acts. By adopting any other reading, the Court would essentially be overlooking the statutory scheme embodied in the explicit language of Section 107.

Oklahoma v. Castro-Huerta

597 U.S. ___, 142 S. Ct. 2486 (2022).

Victor Manuel Castro-Huerta, a non-Indian resident of Tulsa, Oklahoma, was charged with child neglect. The neglect occurred when his stepdaughter, a Cherokee Indian, was admitted to the hospital and found severely emaciated. He was sentenced to 35 years in prison but while incarcerated, an Oklahoma case, *McGirt v. Oklahoma*, was decided. *McGirt* found that because some Indian reservations had not been disestablished, there might be issues with the various jurisdictional rules that pertain to criminal offenses. Castro-Huerta committed a crime in Tulsa, which is considered Indian country post-*McGirt*, but his sentence was later vacated because the Oklahoma decision stated the federal government had exclusive control over the land. Castro-Huerta argued the federal government had exclusive control, per the *McGirt* holding, which is why his decision was vacated. However, the issue in this case centered around whether the federal government has exclusive control over criminal prosecutions, or if the state has concurrent jurisdiction. The decision was delivered by Justice Kavanaugh, who remarked, “[T]here is concurrent jurisdiction between the Federal Government and the State to prosecute crimes committed by a non-Indian against an Indian in Indian country.” Through statutory interpretation, the Court found Castro-Huerta’s reasoning faulty and that the two federal laws he used as support, The General Crimes Act and Public Law 280, did not prohibit the state from exercising concurrent jurisdiction. Justice Gorsuch authored a dissent joined by Justice Bryer, Justice Sotomayor, and Justice Kagan.

Chase v. Andeavor Logistics, L.P.

12 F.4th 864 (8th Cir. 2021).

In 2013, a right-of-way held by Andeavor to operate an oil pipeline that crossed both tribal lands and individually-owned allotments expired. In 2017, Andeavor and the Mandan, Hidatsa, and Arikara Nation reached an agreement to renew the right-of-way. In separate negotiations, Andeavor failed to make agreements with some individual allottees. The allottees later filed suit seeking damages for ongoing trespass and injunctive relief requiring the pipeline to be dismantled. The district court dismissed the case for the allottee's failure to first exhaust administrative remedies, and the allottees appealed to the Eighth Circuit.

The procedures for obtaining rights-of-way over Indian lands are located at 25 C.F.R. § 169 *et seq.* In *Klaudt v. United States Dep't of Interior*, 990 F.2d 409 (8th Cir. 1993), the Court held the "clearly detailed administrative process and remedies" in 25 C.F.R. Part 2 "must be followed before seeking relief in the court system." However, citing *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), the Court concluded because the Bureau of Indian Affairs (BIA) is not authorized to award administrative trespass remedies, the district court erred in finding the allottees failed to exhaust administrative remedies.

Andeavor argued the doctrine of primary jurisdiction should apply. According to *United States v. Western Pac. R.R.*, 352 U.S. 59 (1956), primary jurisdiction applies where a claim can originally be addressed in court, but enforcement of the claim requires the resolution of issues by an administrative body.

The allottees argued primary jurisdiction does not apply because they have a federal common law claim for trespass, which can be competently addressed by the court. Andeavor countered the allottees have no federal common law claim under *Oneida I* and *Oneida II*, because federal common law remedies are available only to tribal landowners whose possession is based on unextinguished Indian title. *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661 (1974) (*Oneida I*); *County of Oneida v. Oneida Indian Nation of New York*, 470 U.S. 226, 234 (1985) (*Oneida II*). Further, the Eighth Circuit held under *Oneida I* that federal common law claims arise when a *tribe* asserts a present right to possession based on aboriginal right of occupancy. *Wolfchild v. Redwood Cty.*, 824 F.3d 761 (8th Cir. 2016). Here, the allottees are not a tribe and the alleged source of their ownership is federal statutory allotment, not necessarily Indian title.

The Eighth Circuit invoked the doctrine of primary jurisdiction and remanded the case to district court to be stayed while the BIA addresses these issues. The Court reasoned the BIA's role as trustee makes deferring to its jurisdiction appropriate and that its input is required to determine whether the allottees have a federal common law claim they may pursue independently.

Grondal v. United States

21 F.4th 1140 (9th Cir. 2021).

In this appeal, the Ninth Circuit considered the district court's grant of motion for summary judgment for the Bureau of Indian Affairs (BIA). The district court affirmed the BIA's trespass and ejectment order against Paul Grondal and Mill Bay RV Park (Mill Bay) who sued to retain their rights to remain on the RV park until 2034. In response to the trespass and ejectment judgment, Mill Bay claimed: (1) the BIA lacked standing to bring a trespass claim because BIA was not the trustee of the property; (2) under res judicata the BIA could not relitigate Mill Bay's property claim because of a prior litigation in 2004; (3) Mill Bay's subleases were to be preserved rather than canceled because of the termination of the Master Lease; and (4) the BIA is bound to uphold its previous representation of permitting Mill Bay to remain on the property through 2034 under equitable estoppel.

In viewing prior litigation and statutory interpretation, the Court affirmed the district court's ruling. First, the Court reasoned that of the past transactions and trust extensions on the property known as MA-8, none were legally deficient. As a result, the MA-8 land was held in trust by the United States with the BIA as its trustee. Because the BIA was a trustee, it had standing to bring a claim for trespass and ejectment. Second, the Court determined the BIA was not involved in a litigation resulting in a settlement agreement in 2004. Even though the BIA was asked to intervene in the suit and attend mediation, the agency was not involved in the litigation. The Court therefore rejected Mill Bay's claim the BIA was precluded under res judicata from ejecting Mill Bay. Third, the Court ruled Paragraph 8 did not apply. Paragraph 8 would have required the lessor to honor any subleases or subtenancy agreements if the lease was terminated by cancellations. However, the Court determined because the Master Lease was not terminated by cancellation but rather the Master Lease expired when it was not renewed, the agreement could not be honored. Lastly, the court ruled that *United States v. City of Tacoma*, 332 F.3d 574 (9th Cir. 2003), which Mill Bay relied on for its equitable estoppel claim, is not distinguishable. The Court reasoned Mill Bay cannot claim the BIA acted outside the scope of the trustee relationship as mentioned in *Tacoma* because ejectment is a traditional exercise to protect the trustee's property. Furthermore, the BIA did not act beyond its role as a trustee when it helped to draft the Master Leases because to administer, preserve, and maintain the property was a quintessential function by the trustee. The Court affirmed the district court's summary judgment in favor of the BIA.

Becker v. Ute Indian Tribe

11 F.4th 1140 (10th Cir. 2021).

Lynn Becker, a non-Indian, entered into an independent contractor agreement (Agreement) to provide services to the Ute Indian Tribe of the Uintah and Ouray Reservation in exchange for compensation and certain benefits, allegedly including interests in tribal trust property. Included in the Agreement was a limited waiver of sovereign immunity and forum selection clause under which the parties would submit to the jurisdiction of the U.S. District Court for the District of Utah and the relevant appellate courts. Becker resigned from the position under the terms of the Agreement, but later sued the tribe in federal district court claiming damages arising from contract and unjust enrichment claims. That suit was dismissed for lack of subject matter jurisdiction. Becker then brought suit in Utah state district court, which entertained the litigation for more than 17 months. The tribe filed suit in federal district court seeking to enjoin the state court proceedings and sued in tribal court seeking a declaratory judgment of the invalidity of the Agreement. Becker filed suit in federal district court seeking to enjoin the tribal court proceedings. The district court granted Becker's injunction and decided the tribal court's proceeding was not binding on the state court's judgment. The tribe appealed.

The Tenth Circuit held questions regarding the validity of the Agreement relating to jurisdiction over the parties' dispute must be resolved by the tribal court in the first instance under the tribal court exhaustion rule. The Court reasoned the waiver provision was only applicable if the Agreement was valid, and because the tribe raised a series of questions regarding the terms of the Agreement, including the conveyance of ownership interests in the tribe's minerals, abiding by the standard tribal court exhaustion rule would not be "futile." *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856 n.21 (1985). Thus, the Court reversed the district court's injunction order and remanded, ordering Becker's federal lawsuit to be dismissed without prejudice in accordance with the tribal exhaustion rule.

In re Coughlin v. Lac du Flambeau Band of Lake Superior Chippewa Indians

33 F.4th 600 (1st Cir. 2022).

In a circuit split between the Ninth and the Sixth Circuits, the First Circuit sided with the Ninth Circuit, holding the Bankruptcy Code (Code) abrogated the sovereign immunity of tribes in this case. This decision permitted Brian Coughlin to enforce the Bankruptcy Code’s automatic stay against one of his creditors, a subsidiary of the Lac du Flambeau Band of Lake Superior Chippewa Indians (Band).

In 2019, Coughlin obtained a payday loan from Lendgreen, a subsidiary of the Band. Later that year, Coughlin filed for bankruptcy and listed his debt to Lendgreen on his petition. As a result, the Code imposed an automatic stay enjoining debt-collection efforts outside the umbrella of the bankruptcy case. Despite the automatic stay imposed, Lendgreen continued to contact Coughlin seeking repayment.

Coughlin filed suit to enforce the automatic stay and sought to prohibit further debt collection. In response, the Band moved to dismiss the enforcement in the Bankruptcy court, which was granted.

In the appeal, the Court considered whether “domestic government” included tribes under Section 101(27) of the Code. In determining the interpretation of the Code, the majority held Congress understood tribes to be a domestic nation and therefore a governmental unit subject to sovereign immunity under the Code. The Court further reasoned the tribe benefited as a governmental unit such as collecting tax revenue which can also further a tribe’s self-determination. The Band claimed Congress could not abrogate tribal immunity unless the statute expressly stated so. However, the Court held Congress had expressly mentioned abrogating sovereign immunity through a governmental unit, in which tribes are included.

Unite Here Local 30 v. Sycuan Band of the Kumeyaay Nation

35 F.4th 695 (9th Cir. 2022).

The Ninth Circuit held the Sycuan Band of the Kumeyaay Nation (Sycuan), a federally recognized Indian tribe, must arbitrate a casino labor union dispute. The Ninth Circuit affirmed the lower court's decision which granted a labor union's motion for judgment on the pleadings and dismissed the counterclaim brought by the Sycuan.

In 2015, California and the Sycuan entered a compact which outlined a Tribal Labor Relations Ordinance (TLRO). Set forth in the TLRO were numerous provisions and procedures including the parties' agreement about casino employees' labor rights, the ability for union laborers to organize those employees, and procedures for organizing employees. The TLRO also provided that arbitration was the dispute resolution procedure for all issues arising under the TLRO and the Sycuan waived all sovereign immunity against suits brought in state or federal court seeking to compel arbitration.

In 2019, Unite Here Local 30, a labor union, sought to organize the casino's employees. When the Sycuan refused the labor union's demands, the labor union brought suit to compel arbitration alleging the Sycuan violated the TLRO. Sycuan counterclaimed and sought a declaratory judgment asserting the National Labor Relations Act preempted the compact and the TLRO.

Despite the Sycuan's preemption and contract formation claims, the Ninth Circuit found the TLRO to be valid and enforceable. The Sycuan agreed in its gambling compact with California to arbitrate any dispute it has with a union. Additionally, the court held the arbitration clause was broad enough to encompass a preemption dispute and rejected Sycuan's assertion that preemption was outside the scope of the TLRO's arbitration provision. Regarding the jurisdictional claims, the Ninth Circuit held the district court had original jurisdiction over the labor union's claims pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction in relation to the Sycuan's counterclaims pursuant to 28 U.S.C. § 1367(a).

The Ninth Circuit affirmed the district court, declined to review the substantive matters, and sent the dispute to arbitration.

Apache Stronghold v. United States

38 F.4th 742 (9th Cir. 2022).

The U.S. Secretary of Agriculture conveyed land held sacred by the Apache to Resolution Copper, a mining company, and received other territory in return. Apache Stronghold, a nonprofit organization tasked with protecting sacred areas, sought a preliminary injunction, alleging the federal government violated the Religious Freedom Restoration Act (RFRA), the Free Exercise Clause, and the trust obligation set forth in the 1852 Treaty of Santa Fe when it exchanged land with Resolution Copper. The district court held the plaintiff was unlikely to succeed on the merits of the case and denied Apache Stronghold's motion. The case was appealed to the Ninth Circuit.

The Ninth Circuit first assessed the definition of "substantial burden" under RFRA to determine whether the exchange of land obstructed the ability of Apache Stronghold's members to practice their religion. The Court relied on numerous cases, but most heavily on *Navajo Nation v. U.S. Forest Service*, 535 F.3d 1058 (9th Cir. 2008) (en banc), to hold the exchange of land does not substantially burden the exercise of religion, nor does it make it impossible for religion to be practiced there. It was noted by the Court that even if the members found it impossible to use the land for religious purposes, this did not violate RFRA. In addition, the Court found the exchange of land did not dispossess the members' "use and enjoyment of 'government' land for religious exercise" and it did not put them at greater risk for trespass charges because the necessary element of coercion was not present. For a RFRA claim to succeed, the government must establish a condition that would violate religious beliefs. Since this did not occur, the Ninth Circuit agreed with the district court's holding that a RFRA claim would not succeed.

The Court also affirmed the district court's decision regarding the second claim of a Free Exercise Clause violation. It reasoned a violation would materialize when a law is not neutral, when its objective was to restrict religious practices. Because the exchange of land was not designed to be hinder religious freedom, the Court held it was neutral and generally applied. Therefore, any claim the swap violated the Free Exercise Clause was without merit.

The third claim of a trust obligation violation was discounted by the Court. The Ninth Circuit asserted a trust obligation arises when the government "takes on or has control or supervision over tribal monies or properties." The Court pointed out the land that was exchanged was not tribal property but federal property. Furthermore, the government's obligation was limited to land designated by the language of the treaty, and there is no evidence here that indicated the plot of land included in the exchange was encompassed by the treaty. As a result, the Court held this claim would not succeed, again affirming the district court's decision.

Chegup v. Ute Indian Tribe

28 F.4th 1051 (10th Cir. 2022).

The Ute Indian Tribe of Uintah and Ouray Reservation temporarily banished four of its members in 2018. To challenge the Banishment Order, the affected members sought relief in federal court by filing a petition for habeas corpus, arguing they were “detained” under the Indian Civil Rights Act of 1968 (ICRA).

For a federal court to hear a habeas petition under ICRA, two prerequisites must be satisfied: (1) the petitioner must be in custody, and (2) the petitioner must have exhausted tribal remedies. The district court dismissed the case, concluding the members’ banishment did not constitute detention within the meaning of ICRA, but neglected to address whether tribal exhaustion had been satisfied. The Tenth Circuit reversed the district court and remanded the case.

The Tenth Circuit noted the district court should have addressed the tribal exhaustion doctrine. Generally, grounds for dismissal are at the discretion of the court. However, under these circumstances, the Court decided that “any such ‘leeway’ must give way to the important interests of tribal sovereignty.” Only after determining the tribal exhaustion requirement was satisfied should a court address detention under ICRA.

The Court acknowledged that generally federal courts may “avoid difficult subject matter jurisdiction questions and dispose of a case on a ‘threshold, nonmerits issue,’ . . . so long as resolving the issue ‘does not entail any assumption by the court of substantive law-declaring power.’” *Valenzuela v. Silversmith*, 699 F.3d 1199, 1205 (10th Cir. 2012). Here, the district court did the opposite. First, a decision on the detention question, whether banishment constitutes detention under ICRA, is a substantive holding that affects the rights of numerous tribes and individuals. Second, tribal exhaustion was presented and contested by the parties as a basis for dismissal, and was an obvious, procedurally proper way to resolve the case. Third, in cases where a federal court is asked to override a tribe’s decision before tribal courts have addressed it, comity concerns underlying tribal exhaustion doctrine are “at their strongest.”

As a result, the Court reversed the district court’s dismissal and remanded the case to determine whether the banished members exhausted tribal remedies.

Professor Lindsay G. Robertson

After 25 years, Professor Lindsay G. Robertson is retiring from the University of Oklahoma College of Law (OU) as one of the most respected legal scholars, both in his field and in the classroom.

He has taught courses in Federal Indian Law, Comparative and International Indigenous Peoples Law, Constitutional Law and Legal History, and serves as Faculty Director of the Center for the Study of American Indian Law and Policy and Founding Director of the International Human Rights Law Clinic. He also regularly teaches a summer course on the history of U.S. Indian law and policy at the University of Mainz, Germany.

In 2015, Professor Robertson was selected as the first Chickasaw Nation Native American Law Chair at OU Law. This was the first Native American Law Chair to be held by a permanent faculty member at any law school in the United States.

Professor Robertson was Private Sector Advisor to the U.S. Department of State Delegations to the Working Groups on the U.N. Declaration of the Rights of Indigenous Peoples (2004-06) and the American Declaration on the Rights of Indigenous Peoples (2004-07). From 2010-12 Professor Robertson was a member of the U.S. Department of State Advisory Committee on International Law. In 2014, he served as advisor on Indigenous peoples law to the Chair of the U.N. Committee on the Elimination of Racial Discrimination. He has spoken widely on international and comparative Indigenous peoples law issues in the United States, Europe, Latin America and Asia.

In addition to numerous articles and book chapters, Professor Robertson is the author of the award-winning *CONQUEST BY LAW* (Oxford University Press, 2005), the first comprehensive history of the U.S. Supreme Court's foundational Indian Law decision, *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823).

He was co-founder of Octagon, a digital history production company, and helped established the International Inter-Tribal Trade and Investment Organization (IITIO), where he currently serves as Vice Chair of Education.

In 2014, Professor Robertson was honored with the first David L. Boren Award for Outstanding Global Engagement. He also received the first Bacone College Strickland School of Tribal Law and Criminal Justice "Warrior for Justice" Award. In 2017 he was awarded the OU Regents' Award for Superior Professional Service and Public Outreach, and he recently was honored with the Regents' Award for Superior Teaching.

Professor Robertson is an elected member of the American Law Institute and serves as a justice on the Supreme Court of the Cheyenne and Arapaho Tribes. He received his J.D. in 1986 and earned his Ph.D. in history from the University of Virginia in 1997. Professor Robertson also holds a M.A. in Native American studies from the University of Oklahoma.



Member Accomplishments

Bethany Berger, Professor of Law, University of Connecticut School of Law

Publications

PROPERTY LAW: RULES, POLICIES AND PRACTICES (with Joseph William Singer, Nestor Davidson & Eduardo Peñalver) (8th ed. 2022).

Mohegan Women, the Mohegan Church, and the Lasting of the Mohegan Nation, 27 ROGER WILLIAMS U.L. REV. 211 (2022) (Symposium: An Uncomfortable Truth, Indigenous Communities and Law in New England) (with Chloe Scherpa).

Eliding Original Understanding in Cedar Point Nursery v. Hassid, 33 YALE J.L. & HUMAN. 1 (2022).

McGirt v. Oklahoma and the Past, Present, and Future of Reservation Boundaries, 169 U. PA. L. REV. ONLINE 250 (2021).

Forthcoming Publications

Property and the Right to Enter, WASHINGTON & LEE L. REV.

Race to Property: Racial Distortions of Property Law, 1634 to Today, ARIZ. L. REV.

The Promise of Intertribal Wildlife Management, in OUR PLACE IS IN OUR SOUL: THE COMBINED EFFORTS OF TRIBES TO CONSERVE WILDLIFE FOR FUTURE GENERATIONS (forthcoming 2023).

Positions

Oneida Indian Nation Visiting Professor, Harvard Law School, 2022 & 2023.

Brief

Amicus Brief for the National Congress of American Indians in *Oklahoma v. Castro-Huerta*.

Michael Blumm, Jeffrey Bain Faculty Scholar & Professor of Law, Lewis & Clark Law School

Publications

Tribal Consultation: Toward Meaningful Collaboration with the Federal Government, 33 COLO. ENVTL. L.J. 1 (2022).

30 By 30: Areas of Critical Environmental Concern, and Tribal Cultural Lands, 52 E.L.R. (ELI) 10366 (2022).



Member Accomplishments

Kirsten Matoy Carlson, Professor of Law, Wayne State University Law School

Publications

Beyond Descriptive Representation: American Indian Opposition to Federal Legislation, 7 J. OF RACE & ETHNIC POLITICS 65 (2022) doi:10.1017/rep.2021.38 (peer-reviewed).

Introduction to the Special Issue on Indigenous Politics, 7 J. OF RACE & ETHNIC POL. 1 (2022) (with Richard Witmer and Laura Evans) doi:10.1017/rep.2022.10.

Federal Lawmaking and Policymaking, in TRIBAL ADMINISTRATION HANDBOOK (with Tadd Johnson, Wendy Helgamo, and Laura Painter) (Joseph Bauerkemp & Rebecca Webster eds., 2022).

Participation in Federal and State Politics, in TRIBAL ADMINISTRATION HANDBOOK (with Michael D.O. Rusco and Patrice Kunesh) (Joseph Bauerkemp and Rebecca Webster eds., 2022).

Oklahoma State Officials Resist Supreme Court Ruling Affirming Tribal Authority over American Indian Country, [CONVERSATION](#) (Apr. 8, 2022).

Supreme Court Rejects Trump's Blocking of Jan. 6 Docs: 3 Takeaways from Ruling, [CONVERSATION](#) (Jan. 20, 2022) (reprinted in Detroit Legal News, Jan. 26, 2022).

Steve Bannon Faces Criminal Charges over Jan. 6 Panel Snub, Setting Up a Showdown over Executive Privilege, [CONVERSATION](#) (Oct. 14, 2021).

Bay Mills President's Indian Affairs Appointment Will Transform Relationships, [DETROIT FREE PRESS](#) (Sept. 18, 2021).

House Committee Investigating Capitol Insurrection has a Lot of Power But It's Unclear It Can Force Trump to Testify, [CONVERSATION](#) (Aug. 3, 2021).

Presentations

Invited Presentation, "Federal Legislation and American Indian Advocacy," University of Washington's 34th Annual Indian Law Symposium, April 2022.

Invited Presentation, "A Discussion of FIREKEEPER'S DAUGHTER and Domestic Violence and Criminal Jurisdiction on Tribal Land," Michigan Indian Legal Services, October 2021.

Panel Presentation, "Diplomacy as Representation: Congress, Indian Nations, and Legislative Success," American Political Science Association Annual Meeting, September 2021.



Member Accomplishments

Kristen Carpenter, Council Tree Professor of Law & Director, American Indian Law Program, University of Colorado, Boulder

Publications

[*Living the Sacred: Indigenous Peoples and Religious Freedom*](#), 134 HARV. L. REV. 2103 (2021) (book rev.).

[*Indigenous Peoples and Diplomacy on the World Stage*](#), 115 AM. J. OF INT'L L. UNBOUND 118 (with Alexey Tsykarev) (2021).

[*Decolonizing Indigenous Migration*](#), 109 CAL. L. REV., 63 (with Angela Riley) (2021).

Presentations

[“Indigenous Rights, Human Rights: It’s Time for the Declaration,”](#) 14th Annual William C. Canby Lecture, Arizona State University, Mar. 16, 2022.

[United Nations Permanent Forum Side Events](#), May 3 & May 5, 2022.

Angelique EagleWoman, Professor & Co-Director of the Native American Law & Sovereignty Institute, Mitchell Hamline School of Law

Publications

Trailblazing and Living a Purposeful Life in the Law: A Dakota Woman’s Reflections as a Law Professor, 51 SW. U.L. REV. 227 (2022).

Jurisprudence and Recommendations for Tribal Court Authority Due to Imposition of U.S. Limitations, in A GUIDE TO CIVIL PROCEDURE: INTEGRATING CRITICAL LEGAL PERSPECTIVES (Brooke Coleman, Suzette Malveaux, Portia Pedro, Elizabeth Porter eds., 2022).

Presentations

8/3/2021. “I Am a Native Law Student:’ Diverse Perspectives Panel on the Native Law School Experience.” Professor Angelique EagleWoman provided the opening remarks to the [webinar](#), “I Am a Native Law Student:’ Diverse Perspectives Panel on the Native Law School Experience.” The webinar was co-sponsored by the AALS Section on Indian Nations and Indigenous Peoples and the National Native American Law Student Association (NNALSA).

8/6/2021. Social Networking Session Professor Angelique EagleWoman in her role as Chair of the AALS Section on Indian Nations and Indigenous Peoples hosted a Social Networking Session for U.S. and Canadian law professors. The event provided an opportunity for introductions on scholarship, courses taught, and locations of professors in the field of indigenous law.



Member Accomplishments

Aila Hoss, Associate Professor, Indiana University McKinney School of Law

Publications

[*Toward Tribal Health Sovereignty*](#), 14 WIS. L. REV. 413 (2022).

[*Securing Tribal Consultation to Support Indian Health*](#), 14 NE. U.L. REV. 155 (2022).

[*Vaccine Passports and Indian Country: Nothing Fast About It*](#), 137 PUB. HEALTH REP. 637 (2022) (with Alec Calac).

The Indian Country Abortion Safe Harbor Fallacy, [L. & POL. ECON. PROJECT](#) (June 6, 2022) (with Lauren van Schilfgaarde, Sarah Deer, Ann E. Tweedy, & Stacy Leeds).

Presentations

Dobbs v. Jackson: The Impact on Native Reproductive Health, UCLA Native Nations Law & Policy Center, Virtual, July 2022.

Unpacking 25 USC § 231, Health Law Professors Conference, Phoenix, Arizona, June 2022.

Toward Tribal Health Sovereignty, Drexel Kline School of Law Faculty Workshop, Virtual, Jan. 2022.

Robert J. Miller, Professor, Willard H. Pedrick Distinguished Research Scholar, & Director, Rosette LLP American Indian Economic Development Program, Sandra Day O'Connor College of Law at Arizona State University

Publications

[*The Indian Law Bombshell: McGirt v. Oklahoma*](#), 101 B.U. L. REV. 2049 (2021) (with Torey Dolan).

[*The International Law of Colonialism in East Africa: Germany, England, and the Doctrine of Discovery*](#), 32 DUKE J. COMP. & INT'L L. 1 (2021) (with Olivia Stitz).

Forthcoming Publications

A PROMISE KEPT: THE MUSCOGEE (CREEK) NATION AND MCGIRT V. OKLAHOMA (University of Oklahoma Press, January 2023) (with Robbie Ethridge).

[*Tribal Sovereignty and Economic Efficiency Versus the Courts*](#), 97 WASH. L. REV. (forthcoming 2022).

Presentations

Keynote Address, [Constitution Day](#), Northeastern State University, Oklahoma, Sept. 17, 2021.

Keynote Address, Law & Economics for Tribal Judges, Antonin Scalia Law School, George Mason University, Washington D.C., Nov. 2, 2021.

[O'Connor Institute Speech](#), "American Indian Influence on the U.S. Constitution," Apr. 20, 2022.



Member Accomplishments

Monte Mills, Charles I. Stone Professor of Law & Director of the Native American Law Center, University of Washington School of Law

Publications

[Bridges to a New Era, Part 2: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Public Land in Alaska](#), 46 COLUM. J. ENVTL. L. 176 (2022) (with Martin Nie). This article follows *[Bridges to a New Era](#)*, which was recognized by the [Environmental Law and Policy Annual Review \(ELPAR\)](#) as an honorable mention top environmental law article of the year.

Re-Indigenizing Yellowstone, 22 WYO. L. REV. 397 (2022) (with Kekek Stark, Autumn L. Bernhardt, & Jason Robison).

Forthcoming Publications

(Some) Land Back...Sort of: The Transfer of Federal Public Lands to Indian Tribes Since 1970, 63 NAT. RES. J. (forthcoming 2022-23) (with Audrey Glendenning and Martin Nie).

Trevor Reed, Associate Professor of Law, Sandra Day O'Connor College of Law

Publications

The Right to Let Culture Die, in THE ROUTLEDGE COMPANION TO MUSIC AND HUMAN RIGHTS (Julian Fifer, et al. eds., 2022).

Creative Sovereignities, 67 J. COPYRIGHT SOC'Y USA 313 (2021).

Forthcoming Publications

Restorative Justice for Indigenous Culture, 70 UCLA L. REV. (forthcoming).

Presentations

"Fair Use as Cultural Appropriation," Roundtable on Diversity & Inclusion in Copyright, George Mason University (Apr. 2022) & Chicago-Kent Faculty Workshop (Oct. 2021).

"Cultural Abuse," School for Advanced Research, Santa Fe, NM (Mar. 2022).

"Sonic Sovereignty," American Association of Law Schools Annual Meeting (Jan. 2022).

Co-Organizer and Speaker, Gathering of Indigenous Law Scholars, Arizona State University (Dec. 2021).

"Restorative Justice for Indigenous Culture," Intellectual Property Scholars Conference (Aug. 2021) & Seattle University Faculty Colloquium (November 2021).



Member Accomplishments

Angela Riley, Professor of Law & Director, Native Nations Law & Policy Center, UCLA School of Law

Publications

Decolonizing Indigenous Migration, 109 CAL. L. REV. 63 (2021) (with Kristen Carpenter).

Forthcoming Publications

Mapping Dual Sovereignty and Double Jeopardy in Indian Country Crimes, COLUM. L. REV. (forthcoming 2022) (with S. Thompson).

The Ascension of Indigenous Cultural Property Law, MICH. L. REV. (forthcoming 2022).

Appointments

Special Advisor to the Chancellor on Native American and Indigenous Affairs, UCLA, July 2022.

Visiting Professor, Harvard Kennedy School of Government, January 2022 (co-teaching Nation Building I with Joe Kalt).

Chair, UCLA Campus Repatriation Implementation Committee (re-appointment).

Tribal Court Appointments

Appellate Judge, Pokagon Potawatomi Court of Appeals, 2022 – present.

Appellate Judge, Rincon Tribe Court of Appeals, 2021 – present.

Re-elected as Chief Justice, Citizen Potawatomi Nation Supreme Court.

Presentations

Panel Presentation, Law and Society: Keynote Address, Symposium on Indigenous Data Sovereignty, University of Buffalo, May 10, 2022.

Panelist, Symposium on the Restatement of the Law of American Indians, University of Washington School of Law, April 22, 2022.

Panelist, #Landback Discussion, Harvard Project on American Indian Econ. Dev., January 20, 2022.

Organizer & Speaker, Gathering of Indigenous Legal Scholars: A Pipeline Program, Arizona State University School of Law, December 8-9 (coordinator).

Panelist, Criminal Jurisdiction in Indian Country in a Post McGirt World, Wis. Law School, Nov. 4-5, 2021.

Panelist, Race and Firearms, Duke Law School, November 17, 2021.

Speaker, 10 Questions Series, UCLA School of Arts and Architecture, Los Angeles, CA, October 18, 2021.



Member Accomplishments

Addie Rolnik, San Manuel Band of Mission Indians Professor of Law, Faculty Director, Indian Nations Gaming & Governance Program, Associate Director, Program on Race, Gender & Policing, William S. Boyd School of Law, University of Nevada, Las Vegas

Publications

Indigenous Subjects, 131 YALE L.J. 2653 (2022).

Rice v. Cayetano in CRITICAL RACE JUDGMENTS: REWRITTEN U.S. COURT OPINIONS ON RACE AND LAW (Capers, Carbado, Lenhardt & Onwuachi-Willig, eds., 2022).

Race AND Gender AND Policing, 21 NEV. L.J. 885 (2021) (with F.R. Cooper & S. Chang).

Removal, Confinement, Assimilation & Discipline: Native Girls and Government Intervention, 11 COLUM. J. OF RACE & L. 811 (2021).

Forthcoming Publications

State v. Williams in FEMINIST JUDGMENTS: CRIMINAL LAW (Capers, Deer, Rayburn Yung, eds. (forthcoming 2022)).

Trauma-Informed Delinquency Interventions for Native Children, J.L., MED. & ETHICS (forthcoming 2022) (with P. Sekaquaptewa).

Appointments

Director, UNLV Indian Nations Gaming & Governance Program.

National Academies of Science, Engineering & Medicine Ad Hoc Committee on Reducing Racial Inequalities in the Criminal Justice System.

Ezra Rosser, Professor of Law & Associate Dean for the Part-Time & Evening Division Washington College of Law, American University

Publications

[A NATION WITHIN: NAVAJO LAND AND ECONOMIC DEVELOPMENT](#) (2021).

[The Euclid Proviso](#), 96 WASH. L. REV. 811 (2021).

[Shelter, Mobility, and the Voucher Program](#), 10 BRIGHAM-KANNER PROP. RTS. J. 85 (2021) (reviewing Eva Rosen, THE VOUCHER PROMISE: “SECTION 8” AND THE FATE OF AN AMERICAN NEIGHBORHOOD (2020)).



Member Accomplishments

Alex Tallchief Skibine, S.J. Quinney Endowed Professor of Law, University of Utah, S.J. Quinney College of Law

Publications

Textualism and the Indian Canons of Statutory Construction, 55 U. MICH. J.L. REFORM 267 (2022).

Kekek Jason Stark, Co-Director of the Indian Law Program, Margery Hunter Brown Indian Law Clinic, & the American Indian Governance & Policy Institute, Assistant Professor of Law at the Alexander Blewett III School of Law at the University of Montana

Publications

Re-Indigenizing Yellowstone, 22 WYO. L. REV. 397 (2022) (with Autumn L. Bernhardt, Monte Mills, & Jason Robison).

Bezhigwan ji-Izhi-Ganawaabandiyang: The Rights of Nature and its Jurisdictional Application for Anishinaabe Territories, 83 MONT. L. REV. 79 (2022).

Tribal Natural Resources, in TRIBAL ADMINISTRATION HANDBOOK: A GUIDE FOR NATIVE NATIONS IN THE UNITED STATES (Rebecca M. Webster & Joseph Bauerkemper eds., 2022).

Anishinaabe Inaakonigewin: Principles for the Intergenerational Preservation of Mino-Bimaadiziwin, 82 MONT. L. REV. 293 (2021).

Presentations

Tribal Treaty Rights and Energy Infrastructure for the Hazardous Materials Transport Outreach Network.

The Rights of Nature for the SRP Sustainability Conference.

Tribal Co-management and Public Lands for the Natural Resources Law Teachers Institute.

Protecting Tribal Resources: Legal and Forest Management Strategies for the Minnesota State Bar Association – Environmental, Natural Resources, and Energy Law Section CLE.

Indian Policing: Agents of Assimilation for the Case Western Reserve University School of Law Symposium.

Brackeen and the ICWA for the Montana State Bar Indian Law Section CLE.



Member Accomplishments

Michalyn Steele, Professor of Law, J. Reuben Clark Law School, Brigham Young University

Publications

Revitalizing Tribal Sovereignty in Treaty-making, 97 N.Y. L. REV. 137 (2022) (with David H. Moore).

Positions

Named Marion G. Romney Professor of Law (January 2022).

Promoted to Associate Dean for Faculty & Curriculum (June 2022).

Victoria Sutton, Associate Dean for Digital Learning and Graduate Education & Horn Distinguished Professor, Texas Tech University School of Law

Publications

[DECOLONIZING THE FOUNDATIONS IN AMERICAN INDIAN LAW: REVISITING THE FOUNDATION TRILOGY](#) (2021).

[Lost in Translation: A Translation That Set In Motion the Loss of Native American Spiritual Sites](#), 7 UCLA INDIGENOUS PEOPLES' J.L., CULTURE & RESISTANCE 93 (2022).

“[unintended consequences](#)” weekly posts.

Documentary, writer & director of “[Can Archaeology Repair its Past with Indigenous America?](#)” (currently in film festivals).



Member Accomplishments

Heather Tanana, Assistant Professor of Law (Research), University of Utah, S.J. Quinney College of Law

Publications

The Unfulfilled Promise of Indian Water Rights Settlements, NAT. RES. & ENV'T (Fall 2022) (with Elisabeth Parker).

Protecting Tribal Health from Climate Change Impacts, 15 NE. L. REV. 1 (2022).

Securing a Permanent Homeland: The Federal Government's Responsibility to Provide Clean Water Access to Tribal Communities, FEDERAL LAWYER (Mar./Apr. 2022).

Universal Access to Clean Water for Tribes: Recommendations for Operational, Administrative, Policy, and Regulatory Reform (2021) (with Bidtah Becker, Anne Castle et al.).

Forthcoming Publications

Indigenous Peoples and the Environment, in COMPARATIVE ENVIRONMENTAL LAW RESEARCH HANDBOOK (2023) (with Elisabeth Parker).

Heather Tanana et al., *Understanding the Indian Child Welfare Act and its Application to Practice*, in CWLA CHILD AND FAMILY-SERVING SYSTEMS: A COMPENDIUM OF POLICY AND PRACTICE (2023).

Indigenous Efforts to Advance the Human Right to a Healthy Environment, PACE ENVTL. L. REV. (2023) (with Elisabeth Parker).

Voices of the River: The Rise of Indigenous Women Leaders in the Colorado River Basin, COLO. ENVTL. L. REV. (2023).

Continued on next page.



Member Accomplishments

Heather Tanana, Assistant Professor of Law (Research), University of Utah, S.J. Quinney College of Law

Selected Presentations

CLE International Utah Water Law Conference, Colorado River Panel: State and Tribal Perspectives (with Amy Haas, Oct. 3, 2022).

CLE International Tribal Water Law Conference, Tribal Water Quality and Shortage Initiatives: Environmental Justice and Human Rights to Water (with Bidtah Becker, Sept. 20, 2022).

Western Resource Advocates, Colorado River Basin Interim Guidelines Negotiations: A Historic Moment for the Colorado River (panelist, July 28, 2022).

Law & Society Association Global Meeting, Securing Indigenous Futures (panelist, July 16, 2022).

Annual Health Law Professors Conference, Tribal Public Health Law (panelist, June 2, 2022).

NorCal Environmental Justice Network for University Community Partnerships, Securing the Human Right to Water in Tribal Communities (with Bidtah Becker, May 11, 2022).

University of Utah, Symposium for Underserved, Rural, and Global Health Education, Culturally Informed Care: Addressing Native American Women's Health Issues (Apr. 29, 2022).

Northeastern Law, Annual Health Law conference, Climate Change: Challenges for Health, Equity, and the Law (Apr. 14, 2022).

Organization of American Historians, Historicizing COVID-19 in Navajo Nation (with Farina King, Mar. 31, 2022).

Loyola University Chicago School of Law, Annual Annals of Health Law and Sciences Symposium (Nov. 5, 2021).

University of Colorado – Boulder, 41st Annual Colorado Law Conference on Natural Resources, Equity in the Colorado River Basin: How to Sustainably Manage a Shrinking Resource, Universal Access to Clean Water on Tribal Lands (panelist, Sept. 30, 2021).

Colorado Water Conservation Board, Equity in Water Conference & Workshop, (keynote, Sept. 30, 2021).

Positions

Contributing author to Water Chapter in Fifth National Climate Assessment, U.S. Global Change Research Program (forthcoming 2024).

Co-Chair of American Bar Association, Native American Resources Committee, Environment, Energy & Resources Section.

Member, American Bar Association, Environmental Justice Task Force.

Member, The Foundation for Natural Resources and Energy Law, Diversity and Inclusion Committee.



Member Accomplishments

Rebecca Tsosie, Regents Professor & Morris K. Udall Professor of Law, James E. Rogers College of Law, University of Arizona

Publications

Justice as Healing: Native Nations and Reconciliation, 54 ARIZ. ST. L.J. 1 (2022).

Tribal Self-Determination in Higher Education: The Role of Legal Education in Nation-Building, 60 J. AM. INDIAN ED. 44 (2021).

Positions

Morris K. Udall Professor of Law, University of Arizona (effective July 2022).

Daniel and Maggie Inouye Distinguished Chair in Democratic Ideals at the University of Hawaii (Fall 2021).

Ann Tweedy, Professor of Law, University of South Dakota School of Law

Publications

Tribes, Firearm Regulation, and the Public Square, 55 UC DAVIS L. REV. 2625 (2022).

Forthcoming Publications

Off-Reservation Treaty Hunting Rights, the Restatement, & the Stevens Treaties, 97 WASH. L. REV. (forthcoming 2022).