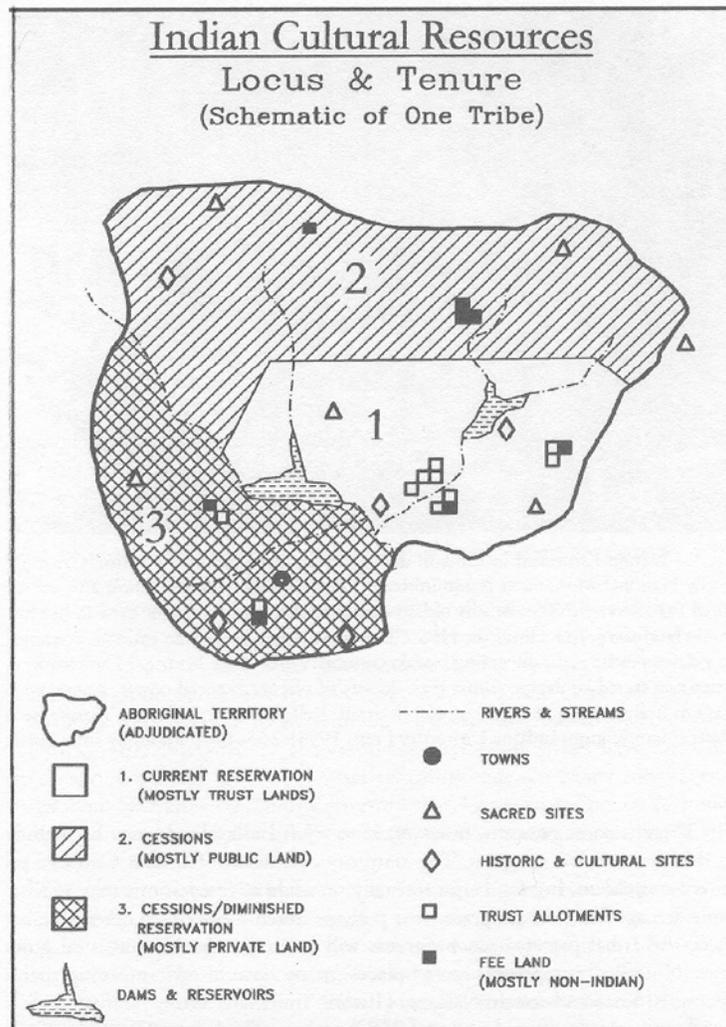


Second Updates to 2003 Ed. *American Indian Territoriality*

Imre Sutton, *editor*



Indian tribes today are encouraged to seek the comanagement of such cultural resources as sacred sites, burial grounds, and traditional landmarks as they exist on public or private lands. (from ch. 7, Clow & Sutton, eds., *Trusteeship in Change*, 2001, p. 169.)

(Prepared in 2005; submitted 1/06)

Editor's Note

As with the first set of updates, I have organized these studies according to the appropriate chapters. Reference materials are added to the *Preface*; *recognition/acknowledgment* will be found in ch. 2. I have placed *termination* in ch. 4 since it relates to land tenure changes. Previously, I created *Marine Resources* in the *First Update* and will add to this now in ch. 5. *Public lands* will be housed with ch. 6 since the issues deal with former tribal lands adjudicated by the ICC. Indian gaming has expanded nationally and in this listing in ch. 7. For comparative purposes, I have added Hawaii. Again, I have gone back in time to pick up a few studies either overlooked or not announced earlier. Some subject matter overlaps, and it is often necessary to examine more than one chapter. Keep in mind that the selections only represent a partial assemblage of manuscript and printed materials. Hopefully, they do reflect the ongoing direction of research on tribal sovereignty and related land matters.

Note that now more than in the original text or even in the *First Update*, I have relied heavily on abstracts, summaries and review sources. It is less appropriate to attempt to integrate all the subject matter into the original guide. I do intend to produce a revised guide in a couple of years.

General acknowledgment for sources, most of which have been modified/edited, etc.: for much of the legal entries, LexisNexis; for adapted other entries: Elsevier Science, FirstSearch, and Google. Most historical entries based on journals reported in *History Cooperative – Amer. Hist. Rev., Environmental Hist., West. Hist. Qtly.* Other entries based on some abstracts at the head of articles. *Wicazo Sa Review* articles can be fully opened and downloaded via Project MUSE depending upon access at given university, public or private libraries. Apologies for any oversights.

As always, I encourage visitors to the guide to inform me or the host, the University of Oklahoma Law Library, of incorrect or incomplete entries or of supplemental titles. My email is ImreSutton@AOL.com.

Overview

With increasing development of tribal autonomy owing, in part, to the self-determination movement since 1975, tribes have expanded their concerns as well as actions in terms of asserting greater authority *within* their reservation borders, but also *beyond*. Within, issues over environmental jurisdiction continue to confound tribal governments, which seek to move ahead with planning, development, and sustainable use of resources. Beyond, tribes are looking more to some form of involvement in the co-management of public lands, especially in terms of cultural preservation of sacred sites and environs. But selectively tribes are aggressively pursuing the establishment of Indian gaming, as the number of operative casinos continues to grow. Whether or not non-recognized Indian

communities seek federal acknowledgment because they hope to develop a casino remains open-ended -- True for some, understated by others, with some real indifference by still others. But acknowledgment does remain an important legal, political, and hence, cultural pursuit. Interestingly enough, fewer doctoral studies encompass issues of land, territoriality, and related matters. Yet many historical studies perforce include review of such issues in the past.

Preface: Reference/Bibliography

Review Article: "Keeping Up with New Legal Title: Charles D. Bernholz, *Kappler Revisited: An Index and Bibliographic Guide to American Indian Treaties* (Kenmore, N.Y.: Epoch Books, Inc., 2003). (see review, *96 Law Libr. J.* 170 (winter 2004).

Treaty-making with Indian tribes was ended by Congress in 1871. With no Indian treaties being negotiated or ratified for more than 130 years, does a new index to Indian treaties have utility? The answer is yes. ... Over a span of four decades, Kappler meticulously compiled five volumes of *Indian Affairs: Laws and Treaties*. ... Long after Charles Kappler's death, the Department of the Interior published a new compilation of Indian law documents, calling it "Volumes 6 and 7" of *Indian Affairs: Laws and Treaties*. ... Second, he hopes to bridge an access-to-information gap impeding some Indian treaty researchers. ... Acknowledging that information access is a catalyst for Bernholz might lead one to conclude that patrons of smaller law libraries need his work while those working in a research-level law library are not a target audience. ... Treaties are listed by ratification number, the tribe, and a date, followed by sources of the text: the Statutes at Large citation, a page in Kappler, and the microfilm reel number for the National Archives microfilm set, *Ratified Indian Treaties, 1722-1869*. ... Finally, it must be noted that this work is a bibliographic tour de force on the subject of Indian treaties in the United States and Canada. ...

Here is an older source I overlooked:

Polly S. Grimshaw, *Images of the Other: A Guide to Microform Manuscripts on Indian-White Relations* (Urbana: University of Illinois Press, 1991). This is a comprehensive volume, the contents of which cut across most of the headings of my guide.

[Editor's Note: while I offer no entries for chapter 1, some of the studies in chapter 6 make reference to indigenous perception and attitudes toward the environment.]

2.

Federal Indian Law, Acknowledgment, Sovereignty, (Hawaii).

Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (NY: W. W. Norton, 2005).

Wilkinson provides both an historical and legal review of Indian affairs leading to self-determination and self-governance. The author is a law professor and authority on federal Indian law. He includes narratives by leading Indian leaders. One reviewer [*Amer. Ind. Cult. & Res. J.*, 29:3 (2005): 125-27] “Barely mentioned are firebrand leaders who put their lives at risk. Disregarded are the fierce internal divisions in Indian Country that spoke to the opportunities and dangers of political action. Left out, too, is the passionate confusion that inevitably accompanies struggle. The executive branch is relegated somewhat inexplicably to relative insignificance....”

MacKenzie T. Batzer, Note: “Trapped in a Tangled Web: *United States v. Lara*: The Trouble with Tribes and the Sovereignty Debacle,” 8 *Chap. L. Rev.* 283 (spr 2005)

Relations between Indian tribes and the United States government have continued to be unstable and ill-defined since colonization. ... In *Oliphant v. Suquamish Indian Tribe*, the Supreme Court held that tribal governments had lost inherent jurisdiction over non-Indians, and stated that when tribal land became part of United States territory, Indian tribes' rights as completely independent, sovereign nations were diminished. ... Between March and June 1984, he resided on the Salt River Indian Reservation with a female companion who was a member of the Salt River Tribe. ... This amendment is commonly called the "Duro fix" and restores the power of Indian tribes to prosecute nonmember Indians for crimes committed on their tribal land. ... If Indian tribes draw their authority to prosecute Indians who commit crimes on tribal land from a source other than their own inherent power, then tribes are not sovereign. ... Because the *Lara* Court found that Indian tribes possess the inherent sovereignty to prosecute nonmember Indians who commit crimes on host tribal land, the Court found that the Sprit Lake Nation was a separate sovereign from the federal government. ...

David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001). [See review , 22 *Law & Hist. Rev.* 200 (spg 2004)]

This book provides a general overview of the relationship between the federal government and Native American tribes. Wilkins and Lomawaima use legal ideas to divide the text into discrete chapters. ... Their arguments are strengthened and clarified by placing the legal doctrine in an historical context, explaining the contradictory application of the doctrine by the federal government and evaluating the legal ramifications of major court cases dealing with these doctrines. ..

Thomas Biolsi, “Imagined Geographies: Sovereignty, Indigenous Space, and American Indian Struggle,” *American Anthropologist*, 32: 2 (2005):239-259.

(*From the abstract*): “[the author seeks] to complicate scholars’ understanding of the modular form of the nation-state by examining four kinds of indigenous political space that figure in contemporary American Indian struggle in the United States: (1) ‘tribal’ or

indigenous nation sovereignty on reservation homelands 2) co-management of off-reservation resources and sites shared between tribal, federal and state governments; (3) national indigenous space in which Indian people exercise dual citizenship and assert rights as tribal citizens under treaty and other federal Indian law, as U. S. citizens within a multicultural U. S. Constitution, and as social or cultural society.

Frank Pommersheim, "Toward a Great Sioux Nation Judicial Support Center and Supreme Court: An Interim Planning Recommendation Report for the Wakpa Sica Historical Society's Reconciliation Place Project," *Wicazo Sa Review*, 17,;1(Spring 2002):183-232.

This Interim Planning and Recommendation Report describes the significance and potential benefits of the Wakpa Sica Historical Society's Reconciliation Place Project in its endeavor to facilitate the establishment of a Great Sioux Nation Supreme Court. The report emphasizes that the vision of establishing such a Court has existed among the Sioux tribes of South Dakota, North Dakota, and Nebraska for generations and that the project's legitimacy and ultimate success depend on its ability to continue fostering the tribes' endorsement of and participation in the Court's development and implementation.

John Henry Glover, *Tribal Sovereigns of South Dakota: A Description of Contemporary Sioux Governments* (Rapid City, SD: Chiesman Foundation for Democracy, Inc., 2005).

The author is affiliated with the Salish of Montana, holds a JD from Willamette University, was an Indian law fellow at the Univ. of South Dakota School of Law, and currently is an Assoc. Prof. of American Indian Studies at Black Hills State University, SD. The book is essentially a handbook of the nine Sioux tribes. The book is introduced by an overview of Sioux peoples, sovereignty, lands. There is a brief listing of Sioux in other states and in Canada. Each tribal chapter covers history, tribal government, enrollment and voting, constitutions features, tribal operations, and contact information. The appendix mostly contains the tribal constitutions; also a Sioux-oriented time line.

Kristin T. Ruppel, "Nations Undivided, Indian Land Unearthed: The Disowning of the United States Federal Indian Trust," Ph. D., Columbia University, 2004.

Cole Harris, *Making Native Space: Colonialism, Resistance and Reserves in British Columbia* (Vancouver: University of British Columbia Press, 2002).

States and Tribes: Building New Traditions: Tribal Trust Lands: From Litigation to Consulation (Denver: National Conference of State Legislatures, 2004).

Federal Acknowledgment

In any discussion of the federal acknowledgment (or recognition) of non-federal Indian communities, California is well represented. In Southern California, for example,

there are Juaneño and Chumash Indian groups that have been seeking acknowledgment for one decade or more. Acknowledgment, of course, brings with it provisions and benefits under several federal laws and provides for the creation of trust lands (reservations, etc.). It is true that a number of non-federally recognized Indian communities hope to be able to develop a casino as part of securing acknowledgment.

Renée A. Cramer, *Cash, Color and Colonialism: The Politics of Tribal Acknowledgment* (Norman: University of Oklahoma Press, 2005)

This volume explores the acknowledgment process in its historical, legal, and social context. The author discusses how the process itself impedes progress. She emphasizes the need to understand three contexts in order to comprehend the problems of the process: 1) growth of casino interests since 1988 (when the National Indian Gaming Regulatory Act was passed); 2) prevalence of racial attitudes concerning Indian identity, and 3) the colonial legacy of federal Indian law. She explores two cases to show how the process works: the Mashantucket Pequot (CT) and the Poarch Band of Creeks (AL). Author is a Political Scientist at California State University Long Beach.

Sara-Larus Tolley, *Quest for Tribal Acknowledgment: California's Honey Lake Maidus* (Norman: University of Oklahoma Press, 2005).

This Indian community lives in northeastern California. Tolley, who as an anthropologist working for many years with the Maidus, recounts their efforts. These Indians gained some funding to move ahead, and submitted their request in 2001.

Mark Edwin Miller, *Forgotten Tribes: Unrecognized Indians and the Federal Acknowledgment Process* (Lincoln: University of Nebraska Press, 2004).

The volume recounts the efforts of four tribes: the Mashantucket Pequot, the Timbisha Shoshone, United Houma, and the Tiguas of Ysleta del Sur Pueblo. The author interviewed key officials at the Branch of Acknowledgment and Research of the BIA. He reveals "how the acknowledgment procedures fail tribes, (and sometimes cause them inordinate toil and turmoil) by applying one standard to all." The reviewer contended that the author did not examine the 'messier,' or more difficulty tribes that have been denied recognition. Miller concludes, and I quote from the review, that "Keeping tribes from being acknowledged is the actual *intent* of the process, as it always has been." (*see review in Amer. Ind. Cult. & Res. J.L.*, 28:4 (2004): 153-55.

Philip Laverty, "The Ohlone/Costanoan-Esselen Nation of Monterey, California Dispossession, Federal Neglect, and the Bitter Irony of the Federal Acknowledgment Process," *Wicazo Sa Review*, 18:2 (Fall 2003): 41-77.

This article presents a sketch of the Ohlone/Costanoan-Esselen Nation of Monterey County, California, focusing on the making of the tribe's federally unacknowledged status. Consisting of over four hundred fifty enrolled members, the Ohlone/Costanoan-Esselen Nation (hereafter OCEN, Esselen Nation, or Esselen) is currently petitioning to clarify its

status as an American Indian tribe through the federal acknowledgment process (FAP) administered by the Branch of Acknowledgment and Research (BAR), Bureau of Indian Affairs (BIA). A history of junctures between federal action and acknowledgment of this community and instances of governmental neglect fostered the dispossession of tribal lands. For members of the Esselen Nation, the bitter irony of the federal acknowledgment process, which requires evidence of a continuous, distinct, politically active tribal community, is that the Indian Service Bureau acknowledged their tribal community as the "Monterey Band" in 1905-6, 1909, and 1923, but failed to establish the federal trust and fiduciary relationship with it as required by Congress. The Indian Service Bureau's failure to do so has abetted the theft of Esselen lands, making it more difficult for the Esselen to persist as a tribal community. Furthering their official erasure, anthropologist Alfred Kroeber declared Esselen and Costanoan peoples "extinct" in 1925. Kroeber's assessment notwithstanding, Bureau of American Ethnology linguist and anthropologist John Peabody Harrington conducted fruitful research with ancestors of the contemporary Esselen/Costanoan people during the 1920s and 1930s, recording over eighty thousand pages of notes that document the persistence of an Indian community in Monterey

Les W. Field, "Unacknowledged Tribes, Dangerous Knowledge: the Muwekma Ohlone and How Indian Identities Are 'Known,'" *Wicazo Sa Review*, 18:2 (Fall 2003):79-94.

The author analyzes a very specific case : the history of the Ohlone peoples of the San Francisco Bay Area and their petition for federal recognition as the Muwekma Ohlone Tribe. As a cultural anthropologist, working as tribal ethnologist for the Muwekma Ohlone Tribe, the approach has been to show the role played by anthropologists and anthropological knowledge in Ohlone history. Early in the twentieth century, the work of anthropologists helped to legitimate the disenfranchisement of Ohlone peoples; in the early twenty-first century, the author uses anthropology instead to support the Muwekma Ohlones' current acknowledgment petition. Consequently, the treatment of these histories is directed toward both Ohlones and anthropologists, their past and present intersections, and their future trajectory.

Samuel R. Cook, "The Monacan Indian Nation: Asserting Tribal Sovereignty in the Absence of Federal Recognition," *Wicazo Sa Review*, 17:2 (Fall 2002): 91-116.

In the spring of 1997, the Virginia Assembly passed a law allowing all Virginia Indians to have the racial designation on their birth certificates and other vital documents changed to read "Indian," as opposed to "Negro," without having to pay requisite administrative fees. How many Virginia Indians came to be classified as "Negroes" in decades past is a complicated story that will be addressed later in this article, but the act of having their legal identity (or at least the right to self-identification) restored was a landmark symbol of good faith on the part of the state government. What is most significant, however, is the fact that the impetus for this legislation came largely from Virginia Indians themselves. Previously, officials in the Virginia Office of Vital Statistics had agreed to change the racial designation of Indians requesting such alterations, but they refused to acknowledge that their office had historically been responsible for deliberate

alterations of vital records, effectively denying Virginia Indians the right to identify as anything other than "Negro." Thus, any Indians wishing to have their racial designation properly restored on vital records would have to pay the eight-dollar administrative fee. Such a fee may seem a pittance under other circumstances, but for Virginia Indians it was a belligerent symbol of "legal racism and documentary genocide" in Virginia.² Hence, a grassroots movement among Virginia tribes to lobby for legislation removing such bureaucratic screens that obscured past injustices ultimately resulted in an official act that was tantamount to an apology from the General Assembly. At the forefront of this movement was the Monacan Indian Nation.

E. Richard Hart, "Federal Recognition of Native American Tribes: the Case of California's Amanh Mutsun," *Western Legal History*, 16 (Win/Spg. 2003): 39-84.

Public Law 280 & Related

Mark R. Scherer, *Imperfect Victories: The Legal Tenacity of the Omaha Tribe, 1945–1995*, Lincoln: The University of Nebraska Press, 1999.

The author examines how the Nebraska Omaha Tribe confronted changes in federal Indian policy at the grassroots level during the second half of the twentieth century. Particular attention is given to the Omaha's encounter with Public Law 280, which authorized state jurisdiction in Indian Country, their experience before the Indian Claims Commission, and prolonged litigation to regain control over 11,000 acres of land located on the east side of the Missouri River in Iowa. In each of these issues, the author concludes that the Omahas won an imperfect but significant legal victory that strengthened tribal self-determination.

Hawaii: For Comparative Review

Some scholars contend that the word *Indian* has generic meaning and that Hawaiian, Aleutian, Eskimo/Inuit can be subsumed under it, without renaming the Bureau of Indian Affairs, the Bureau of Native or Indigenous Affairs. See my earlier discussion and its sources: "The Special Circumstances of Native Hawaiians," in "Not All Aboriginal Territory is Truly Irredeemable," *American Indian Culture & Research Journal*, 24:1 (2000): 150-53. Note footnotes 118-119 and the legal writings of Prof. Jon Van Dyke, Univ. of Hawai'i at Manoa.

Jennifer L. Arnett, "The Quest for Hawaiian Sovereignty: An Argument for the Rejection of Federal Acknowledgement," 14 *Kan. J.L. & Pub. Pol'y* 169 (fall 2004).

Originally called the Sandwich Islands, the Hawaiian Islands have a long history of civilization and government. ... Discussions of Hawaiian sovereignty entail a choice among self-governing structures: a completely independent Hawaii under the exclusive or

predominating control of Hawaiians; limited sovereignty on a specified land base administered by a representative council but subject to United States Federal regulations; legally-incorporated land-based units within existing communities linked by a common elective council; or a 'nation-within-a-nation' on the model of American Indian nations. ... This position strives for a fuller vision of sovereignty -- international independence and recognition as a political entity separate from United States control. ... Federal recognition gives tribe members access to benefits and services reserved by the federal government especially for recognized Indian groups. ... The lack of a formal relationship between a tribal government and the United States also deprives that tribe of recognized authority over its own people and, without the federal government's recognition as a sovereign, they lack the status to "truly claim their Indian heritage." ... Before the introduction of standardized procedures, the federal government and the Department of the Interior controlled which Indian groups gained recognition as tribes for the purposes of treaty negotiation and land organization.

J. Kehaulani, "Precarious Positions : Native Hawaiians and U.S. Federal recognition," *The Contemporary Pacific*, 17:1 (Spring 2005): 1-27.

This essay examines the politics of the controversial proposal for US federal recognition for Native Hawaiians. It explores a range of historical and legal issues that shed light on the multiple claims that constitute the complex terrain of Hawaiian sovereignty politics. The article provides a historical overview of the events that impact the current situation and then discusses a particular set of contemporary conditions that serve as key elements in catalyzing widespread support for federal recognition—namely, the implications of the recent US Supreme Court ruling in *Rice v. Cayetano* and subsequent legal challenges to Native Hawaiian programs and funding by the U.S. government. It also highlights difficulties with the promise of federal recognition as a solution to "the Hawaiian problem" by looking at lessons from Indian Country, Native Alaska, and the Pacific—especially the U.S. unincorporated territories. Finally, the essay explores the independence movement as an alternative to domestic dependent nationhood.

3.

Maps, Cartographic: Locational Factors

Many tribes seeking to develop gaming have identified location as a critical geographic factor in the potential success of a casino. This is only a very recent concern because most trust lands are isolated from the major transportation routes and population centers. Isolation is a mixed variable: some tribal members may prefer being 'left alone,' others want the economic gains that might come from tourism and other on-reservation activities that involve non-Indians. As such, this fundamental study deserves entry here.

Robin M. Leichenko, "Does Place Still Matter? Accounting for Income Variation across American Indian Tribal Areas," *Economic Geography*, 79:4 (2003): 365-86.

Persistent poverty is frequently identified as a key problem on American Indian tribal lands in the United States. Yet the fact that tribal lands tend to be located in isolated, non-metropolitan areas suggests that relatively lower levels of per capita income in tribal areas may be due largely to locational factors, such as the lack of access to markets, the absence of agglomeration economies, and an inadequate infrastructure. The study presented here explored the role of location-specific factors and other characteristics in accounting for variation in income levels between tribal and non-tribal areas and across different types of tribal areas. The results suggest that location indeed plays a significant role in accounting for variation in income across both tribal and non-tribal areas, but that human capital, demographics, and structural factors also matter. In particular, college-educated and retirement-age shares of the population have a positive effect on income levels in areas, while unemployment rates and shares of the population that are American Indian have a negative effect in all areas. The results further indicate that once locational, structural, and demographic factors are controlled, tribal areas do not have significantly lower levels of income than do other areas. The lower income levels found in tribal areas may thus be understood as a function of location, industrial structure, human capital, and demographics, rather than as a reflection of problems that are inherent only in tribal areas. (Elsevier online source).

4.

Land Cessions, Consolidation, & Termination

Jon Kilpinen, "South Carolina's Role in Choctaw and Chickasaw Dispossession," *Geographical Review*, 94:4 (Oct. 2004):484-501.

(From the abstract): "During the nineteenth century, Indian groups throughout the United States saw their lands taken from them through a variety of means, including land cessions and allotments. The Choctaw and Chickasaw...endured this process of dispossession. Although the U. S. Congress promulgated much of this dispossession through treaty-based territorial demands, the Supreme Court proved an able partner in the process by subverting treaty guarantees and expanding congressional power. The dispute over the area known as 'Green County' provides an example of the Supreme Court's role in Indian dispossession, for its ruling in 1900 extinguished the Choctaw and Chickasaw claim to most southwestern Oklahoma, earlier treaty provisions notwithstanding. [Includes maps of "Choctaw Lands in the West, 1820-1830," and "Southern Indian Territory – 1830-55, 1855-1866, and 1866-1889."]"

Angelique A. EagleWoman (Wambdi A. Wastewin), *Re-Establishing the Sisseton-Wahpeton Oyate's Reservation Boundaries: Building a Legal Rationale from Current International Law*, 29 *Am. Indian L. Rev.* 239 (2004-05).

The purpose of the Treaty for the transfer of territory by the Sisseton-Wahpeton was to cease the frequent skirmishes between the Dakota and all other tribes by setting up boundary lines for territories and acknowledging the age-old tradition of seeking permission prior to entering for hunting. ... " Citing examples of the Tribal Constitution

asserting jurisdiction within the reservation boundaries as set forth in the 1867 Treaty, the support of the United States for the SWO tribal government enforcing its laws within the reservation boundaries, and the SWO Law and Order Code asserting civil and criminal jurisdiction within the 1867 reservation boundaries, the dissent found ample evidence that "[t]he attitude of Congress, of the Department of the Interior (under which the Bureau of Indian Affairs functions), and of the tribe is that the jurisdiction of the tribe extends throughout, the territory of the reservation as described in the Treaty.

Kwinn H. Doran, "Ganienkeh: Haudenosaunee Labor-Culture and Conflict Resolution," *American Indian Quarterly*, 26:1 (Winter 2002):1-23

Controversy has surrounded the Mohawk community of Ganienkeh in upstate New York since its inception and, to this day, passionate opinions accompany any consideration of Ganienkeh.¹ For the last dozen years, many have argued that Ganienkeh is merely a legal shelter for profiteering endeavors (such as Indian gaming or trafficking tobacco and alcohol) and the warrior society often associated with them. Others suggest that such endeavors do not fully represent the Ganienkeh community, and that, to whatever extent they are part of recent life at Ganienkeh, they are necessary adjustments to changing economic, political, and legal conditions and not signs of wholesale corruption. Far from academic, this disagreement has been at the root of violent tensions within Haudenosaunee government and society. Unfortunately the intensity and complexity of recent developments and debates obscures a different story of Ganienkeh. Ganienkeh's founding was a rare case of Indigenous people reclaiming land from the United States. Two aspects of the Ganienkeh conflict are the focus of this paper: the public discourse pertaining to the dispute and the negotiation process between the state of New York and the Ganienkeh Mohawks which sought to end it.³ I will begin by presenting historical and scholarly background on the Ganienkeh conflict. Then I will primarily attempt to show that differences between Haudenosaunee and American labor-cultures strongly contributed to the cause and continuation of the dispute while also providing a common focal point for public and official communication between otherwise disparate parties. In the process I hope this discussion of the Ganienkeh conflict connotes the possibility that labor concerns should figure prominently in discourse about other conflicts and Indigenous life in general.

Cole Harris, "How Did Colonialism Dispossess? Comments from an Edge of Empire," Annals, Assn of American Geographers, 94:1 (2004): 163-182.

Termination

Jaakko Puisto, "'This is My Reservation; I Belong Here': Salish and Kootenai Battle Termination with Self-Determination, 1953-1999," *American Indian Culture & Research Journal*, 28:2 (2004): 1-24.

These Indians successfully resisted efforts to terminate their tribal status, the trust status of their lands as well as federal programs. The article discusses tribal reactions and struggles over Indian-white conflicts, factionalism, and liquidation of tribal assets. He

argues that the battle over termination ultimately led to greater resolve toward self-determination. The latter process is fully recounted.

Kenneth R. Philp, *Termination Revisited: American Indians on the Trail to Self-Determination, 1933–1953*, Lincoln: University of Nebraska Press, 1999.

Over the past several decades, a nearly uniform historiography has emerged regarding the federal government’s ill-fated “termination” policy toward Native Americans in the post-World War II era. The standard interpretation is that termination evolved into a misguided, avaricious, and culturally arrogant policy that ultimately wreaked havoc on those Indian groups who bore its full brunt. Bureaucrats and politicians like Dillon Myers, Arthur Watkins, and Hugh Butler are the commonly identified villains of the story, while John Collier, Felix Cohen, and various native leaders appear as the defenders of Indian sovereignty and the right-minded critics of both the concept and execution of termination initiatives. While there is much truth in that accepted imagery, and the academic assault on the impact of termination is fully merited, Kenneth R. Philp’s *Termination Revisited* offers a welcome and useful reminder that the full story of termination is a complicated tale. In Philp’s deft hands, the termination movement is revealed as the exceedingly nuanced phenomenon that it was—one that, at various times and in various ways, drew support from prominent Native Americans and important pan-Indian groups.

5.

Resource Management

Dwight Lomayesva, “The Adaptation of Hopi and Navajo Colonists on the Colorado River I. R.,” Masters Thesis in Social Science, California State University, Fullerton, 1981.

In addition to its focus on colonization by Indians from other parts of the Colorado River watershed, the author deals with the history of the Japanese-American relocation center – Poston – which occupied the reservation from 1942-45. Three reservations were selected for relocation centers; Poston was the nearest to the west coast. The occupants effectively cultivated some of reservation lands and returned the trust estate to the Indians in a much more developed way than it had been.

Brian Hosmer and Colleen O’Neill, eds., *Native Pathways: American Indian Culture and Economic Development in the Twentieth Century* (Boulder: Univ. Press of Colorado, 2004).

The collection of essays covers various economic facets of tribal life; contributions include those by historians, anthropologists, and sociologists. Elsewhere I have listed appropriate chapters under various headings. [see a review: *Amer. Ind. Cult. & Res. J.*, 29:3 (2005): 152-54.]

Marine Resources

Elizabeth M. Bakalar, "Subsistence Whaling in the Native Village of Barrow: Bringing Autonomy to Native Alaskans outside the International Whaling Commission, 30 *Brooklyn J. Int'l L* 601(2005)

The Inupiat Eskimo villages of northern Alaska have long relied on the hunting of the bowhead whale (*Balaena mysticetus*) for clothing, food, tools, shelter, and fuel. ... The International Convention for the Regulation of Whaling (ICRW), of which the United States is a signatory, is the international agreement that currently governs the commercial, scientific, and aboriginal subsistence whaling practices of fifty-nine member nations. ... In this regard, the United States has publicly voiced its support for aboriginal subsistence as managed through the IWC, but has also been characterized as "leading the fight in the international arena" for the continuance of the Alaska Native bowhead whale hunt despite the IWC's protection of the bowhead and the potentially chilling effect on its international reputation as a state generally opposed to whaling.

Water Resources

John E. Thorson, Ramsey L. Kropf, Dar Crammond, and Andrea Gerlak, "Dividing Western Waters: A Century of Adjudicating Rivers And Streams," 8 *U. Denver. Water L. Rev.* 355 (Spg 2005)

Due to the McCarran Amendment, the federal government and Indian tribes became the most significant parties in most stream adjudications. The statutory general stream adjudication is the most complex type of these formal methods of dispute resolution. ... Following the lead of other states, Texas passed irrigation acts in 1889, 1895, and 1913. ... In a 1938 case arising on the Crow Indian Reservation, the court held the United States reserved water for the use of the Indians; that a portion of the reserved water right was appurtenant to allottees' lands; and when allotments are sold or leased, a portion of the reserved water right goes with the land unless a contrary intention appears. ...

Wildlife & Fisheries Management

Colleen M. Diener, Comments: "Natural Resources Management and Species Protection in Indian Country: Alternatives to Imposing Federal and State Enforcement Upon Tribal Governments and Native Americans," 41 *Idaho L. Rev.* 211 (2004)

Although the ESA does not address the federal government and tribal government dynamic regarding species conservation and management, when faced with congressional silence on an issue of statutory interpretation, the judiciary interprets federal legislation [e.g., Endangered Species Act, 1973] pursuant to accepted canons of construction. ... In *Puyallup Tribe v. Department of Game of Washington* (Puyallup I), state regulation of salmon and steelhead outside of Indian country was at stake. ... The state cannot qualify the federal treaty right by "subordinating it to some other state objective or policy," but may use its traditional conservation powers "only to the extent necessary to prevent the exercise

of that right in a manner that will imperil the continued existence of the [natural] resource." ... Because states have judicial endorsement pursuant to the Puyallup decisions to regulate species conservation and adversely impact tribal member hunting and fishing rights, the Supreme Court has implied modification and possibly abrogation of treaty rights into the ESA and general management under traditional state environmental goals. Although the ESA cannot interfere with the full exercise of Native Americans rights, species conservation is not doomed in the face of tribal government and Indian management of natural resources.

Allen, Cain, "Replacing Salmon: Columbia River Indian Fishing Rights and the Geography of Fisheries Mitigation," *Oregon Historical Quarterly*, 104 (Summer 2003), 196–227.

Mining

Saleem H. Ali, *Mining, the Environment, and Indigenous Development Conflicts*. (Tucson: University of Arizona Press, 2003)

The European conquest of North America relegated indigenous populations to marginal lands, but valuable ore deposits have been found on some of those reserves. Exploiting those minerals would seem to be an obvious way to improve often impoverished tribal economies, but Native communities have resisted many proposals to mine those ores. The author addresses this seeming paradox, with the goal of formulating effective strategies for stakeholders (indigenous communities, mining businesses, governments, and advocacy groups) to use in planning environmentally sound mining projects.

6.

Land Claims, Sacred Places & Public Lands

Land Claims and Restoration

Brian H. Hirsch, "Alaska's 'Peculiar Institution': Impacts on Land, Culture, and Community from Alaska Native Claims Settlement Act of 1971," Ph. D. Diss., Univ. of Wisconsin-Madison, 1998.

David Wishart, "Indian Dispossession and Land Claims: The Issue of Fairness," in *Human Geography in North America: New Perspectives and Trends in Research*, ed. Klaus Frantz, *Innsbruck Geographische Studien* 26 (Innsbruck, Aus: Instituts fur Geographie der Universitat Innsbruck, 1996): 181-194.

Sacred Sites and Places

Kristen A. Carpenter, "A Property Rights Approach to Sacred Sites Cases: Asserting a Place for Indians as Nonowners," *52 UCLA L. Rev.* 1061 (apr 2005)

For practitioners of religions throughout the world, certain places are sacred. ... When a sacred site is found on private land, the individual owner may not be able or

willing to donate it to the appropriate tribe or provide special access - even if that individual believes in the right of everyone, including Indians, to worship freely. ... This factor should be considered as a "cost" of public land use that harms Indian sacred sites. ... Given the apparent semantic and cultural disconnect, it is not surprising that Indian nations and practitioners of tribal religions have not typically made detailed property law claims in sacred sites cases to date. ... Establishing that an Indian nation, even as a nonowner, has a legally protected property right is one way to get courts to pay serious attention to Indians' claims at sacred sites. ... Some might argue that a property rights approach sets Indians up for a big loss - if Indians fail to establish a property interest in a sacred site (as they often will), courts will affirm the federal government's right to destroy sacred sites.

Michelle Sibley, Note: "Has Oregon Tightened the Perceived Loopholes of the Native American Graves Protection and Repatriation Act? - - *Bonnichsen v. United States*," 28 *Am. Indian L. Rev.* 141 (2003-04)

In 1990, Congress enacted the Native American Graves Protection and Repatriation Act (NAGPRA or the Act) with a twofold purpose: to return to Native American tribes all remains and artifacts being housed in museums or any remains or artifacts found on public lands and to ensure that Native American burial sites would be protected in the future. ... The scientist plaintiffs "demanded a detailed scientific study to determine the origins of the man before the Corps decided whether to repatriate the remains. ... When alleging that the plaintiffs' claims were not ripe and that the plaintiffs had failed to exhaust all administrative remedies, the Corps reasoned that they had not yet made a final decision, so there could be no judicial review of the decision until the plaintiffs had exhausted all of their administrative remedies and the Corps had made a final decision concerning repatriation of the remains. ... The court reasoned that, if there was a decision favorable to the scientist plaintiffs, there was a "likely" chance that they would be allowed to study the remains and their injury would be redressed. ... The Corps' second standing argument was that the scientist plaintiffs "[did] not fall within the 'zone of interest' sought to be protected or regulated by NAGPRA. ... Because the court decided that NAGPRA did not apply to Kennewick Man based on the lack of a general relationship with any existing tribe, it was unnecessary for the court to discuss any of the scientist plaintiffs' other claims.

Robert Retherford, Comment: "A Local Development Agreement on Access to Sacred Lands," 75 *U. Colo. L. Rev.* 963 (summer2004)

Across the country, Indians are speaking out against the development of lands that they consider sacred, even when the lands are not within the boundaries of their current reservations. ... In the northeast, Montauket Indians argued that their claim to sacred land in a state park on Long Island should prevent its development. ... Because of this beneficial relationship, the task of Indian religions "is to determine the proper relationship that the people of the tribe must have with other living things," to determine how to act "harmoniously with other creatures" including the land. ... "As a result, the idea that a sacred site is on some individual's private property or government's land may not seem as

important as the necessity for the entire community that a ceremony take place there. ... However, an important difference in Euro-American and Indian viewpoints is that, for Indians, this sense of the sacred exists independently of anyone recognizing it, while the Judeo-Christian tradition requires that sacred sites be codified or formally recognized. ... Indians who follow traditional values "need a guarantee of religious freedom for their ceremonies, festivals, medicinal plant gathering, and pilgrimages," and any agreement between tribes and other governments must naturally include access to sacred lands. ... Working together can benefit both the Indians and the local government. ...

Elizabeth G. Pianca, Comment: "Protecting American Indian Sacred Sites on Federal Lands," 45 *Santa Clara L. Rev.* 461 (2005)

A striking feature of American Indian culture is a relationship to the natural world and to spiritually significant places where important events are believed to have occurred. ... This alignment partially explains why Indian beliefs are site-specific, thus making the development of a sacred site a threat to religious practice. ... In the instance where a sacred site may not meet the National Register criteria for a historic property and, conversely, a historic property may not meet the criteria for a sacred site, a federal agency should, in the course of the section 106 review process, consider accommodation of access to and ceremonial use of the property in accordance with Executive Order 13007. ... (b) For purposes of this Act: (1) "Federal lands" means any land or interests in land owned by the United States; (2) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that is eligible for special programs and services provided by the United States because of its Indian status; and (3) "Sacred site" is any specific, discrete, narrowly delineated location on Federal land that is identified by Indian tribal leaders, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established and documented religious significance to, or ceremonial use by, an Indian tribal religion.

Brian E. Brown, *Religion, Law and the Land: Native Americans and the Judicial Interpretation of Sacred Land*(Westport, CO: Greenwood Publishing Group, 1999).

With five US Supreme Court cases from 1980 to 1988, Brown documents the consistent judicial failure to accord constitutional protection to tribal religious belief and practice with respect to land. For each he identifies the particular sacred site involved, the circumstances that led the respective tribes to try to enjoin government actions that threatened to desecrate the land, and the legal but not religious arguments of both sides..(Elsevier online source).

Gregory R. Campbell and Thomas A. Foor, "Entering Sacred Landscapes: Cultural Expectations Versus Legal Realities in the Northwestern Plains, *Great Plains Qtly*, 24 (Sum. 2004):163-83.

Daniel L. Dustin, Ingrid E. Schneider, Leo H. McAvoy, and Arthur N. Frakt,

“Cross-Cultural Claims on Devils Tower National Monument: A Case Study,”*Leisure Sciences*, 24:1 (Jan. 2002): 79-88.

An older paper but a worthwhile case study of tribal interests in sacred sites that form part of former territories. *(From the abstract)*: A dispute between American Indians and rock climbers over the appropriate use of Devils Tower National Monument reflects fundamental differences in culture and world view. The NPS has attempted to resolve the dispute with a voluntary ban on climbing during June, the sacred month to various Indian groups. Subsequent court decisions upheld the NPS policy.

D. S. Pensley, “The Native American Graves Protection and Repatriation Act (1990): Where the Native Voice is Missing,”*Wicazo Sa Review*, 20:2 (Fall 2005): 37-64.

Passage of the Native American Graves Protection and Repatriation Act (NAGPRA, or the Act) in November 1990 represented the culmination of decades of protest, private negotiations, and legal action by Native American communities across the country. Four issues stood in the foreground:

1. the failure of museums to represent Native American culture accurately and appropriately;
2. museums' possession and display of Native American human remains;
3. the presence of sacred and culturally sensitive material culture in museum collections; and,
4. the illicitness, even violence, with which most of the objects in these collections had been obtained.

In 1971, the American Indian Movement disrupted an archeological dig outside Minneapolis–St. Paul. Despite the absence of human burials at the site, the confrontation was important to the group's members, who observed the excavation proceeding without respect to Native values and beliefs.² Ten years later, the newly formed North American Indian Museums Association issued "Suggested Guidelines for Museums in Dealing with Requests for Return of Native American Materials."³ In 1984–85, the Zunis successfully blocked—on religious grounds—the New York Museum of Modern Art's proposed inclusion of a war god sculpture in an exhibition on "primitivism" in twentieth-century art; a label explained the empty pedestal.⁴ Around the same time, the Three Affiliated Tribes (the Mandan, Hidasta, and Arikara Nations) convinced the State Historical Society of North Dakota to return nearly a thousand sets of Indian bones and to cease storing human remains and their associated burial artifacts

Carey N. Vicenti, “Religious Freedom and Native Sovereignty – Protecting Native Religions through Tribal, Federal, and State Law: Panel Discussion,”*Wicazo Sa Review*, 19:2:(Fall 2004): 185-197.

Walter R. Echo-Hawk, “Issues in the Implementation of the American Indian Religious Freedom Act: Panel Discussion,” *Wicazo Sa Review*,19:2 (Fall 2004):153-167.

Public Lands and CoManagement

Curt Sholar. Note: "Glacier National Park and the Blackfoot Nation's Reserved Rights: Does a Valid Tribal Co-Management Authority Exist?," 29 *Am. Indian L. Rev.* 151 (2004-05)

The Blackfoot Nation, geographically located within northwestern Montana, has long asserted that it has never relinquished its treaty-reserved hunting, fishing, and gathering rights within the original western range of its reservation lands. ... Prior to the act of May 11, 1910, the Indians of the Blackfeet Reservation did not exercise to any appreciable extent the rights reserved in the aforesaid agreement of September 26, 1895, to hunt and fish in and remove timber from the land ceded in the agreement, and such rights were authoritatively terminated by the limitations of the act of May 11, 1910. ... It was only with the decision on the second issue in *Peterson*, which held that Glacier National Park's goal of wildlife conservation was inconsistent with Indian hunting rights, that the Blackfoot Nation's treaty reserved right to hunt within the park was abrogated. ... In *United States v. Peterson*, the court solidified the prohibition on hunting when it held that, "[t]he language of the statute . . . reflect[s] 'an unmistakable and explicit legislative policy choice' that the Blackfoot Tribe should not be allowed to hunt in any portion of the Park under any circumstances. ... The Blackfoot Nation's treaty-reserved right to fish within the eastern portion of Glacier National Park should also include the right to protect the habitat upon which the exercise of the reserved right depends.

Erin Patrick Lyons, "Give Me a Home Where the Buffalo Roam': The Case in Favor of the Management-Function Transfer of the National Bison Range to the Confederated Salish and Kootenai Tribes of the Flathead Nation," *J. Gender Race & Just.* 711(winter 2005)

The Flathead Indian Reservation sits on over one million acres of wooded mountains and tranquil valleys carved out of beautiful Montana ranch land just west of the Continental Divide. ... The Federal Register points out that the above listed functions are not "all-inclusive," but rather "representative," meaning that there remains a significant amount of room for negotiation pursuant to the mandate of the amendments. That wording appears to leave significant room for the tribes and the Fish & Wildlife Service to negotiate the CSKT's future role in the management of the National Bison Range Complex. ... The tribes are understandably troubled that in the heart of their federally-guaranteed ancestral land, they have had no say whatsoever in the management of a resource that would not exist but for the efforts of the ancestors of tribe members. ... The federal government should follow through with the opportunity represented by the draft annual funding agreement and carry out the proposed management function transfer. ... The CSKT have also established their own special conservation areas for grizzly bears, elk, and bighorn sheep on the reservation. ... " Thus, the federal government and the CSKT will continue to manage the National Bison Range and its affiliated wildlife refuges in a manner consistent with the ongoing mission of wildlife conservation.

Peter Nabokov and Lawrence Loendorf, *Restoring a Presence: American Indians and Yellowstone National Park* (Norman: University of Oklahoma Press, 2004).

One reviewer [*Amer. Ind. Cult. & Res. J.*, 29:3(2005): 165-168] notes that this book was preceded by a report on the same subject, commissioned by the NPS. The authors demonstrate that Yellowstone was a significant place to various Indian groups. These Indians include: the Crow, Blackfeet, Flathead, Bannock, Nez Perce, and the Shoshone. The greater part of the book focuses on culture history, but its reviewer suggests it "...is not especially valuable for those hoping critically to comprehend the long history of relations between the NPS and American Indian tribes, in Yellowstone or more broadly." Furthermore, it is noted that "...promotional materials that Yellowstone stands out as an egregious example of poor NPS-tribes relations...is not addressed in the text..."

Rena Martin, "Native Connection to Place: Policies and Play," *American Indian Qrtly*, 25:1 (wn 2001): 35-40.

(Adapted from *Humanities Abstracts*): Discussion of the connections Native Americans feel toward certain places focuses on the Navajo and their homeland. The author contends that there is a difference in how natives and non-natives utilize such words as 'connection' or 'ties.' The article reviews public lands and native cultural places, the separation of culture and landscape, the way federal laws affect tribal peoples, and tribal traditions and values are reviewed. The author had experience in consultation reporting.

Tonia Woods Horton, "Indian Lands, American Landscapes: Toward a Genealogy of Place in National Parks." Ph. D. dissertation, Arizona State University, 2003.

Interdisciplinary study of interpretations of nineteenth- and twentieth-century landscape history and Native American history in the cultural resources management policies implemented at Mesa Verde National Park in Colorado, Glacier Bay National Park in Alaska, and Little Bighorn Battlefield National Monument in Montana. Topics discussed include national identity, sense of place, public history, landscape architecture, anthropology, ethnohistory, cultural geography, environmental history, and Native American history.

Cultural Resource Preservation

Lauryne Wright, "Cultural Resource Preservation Law: The Enhanced Focus on American Indians," 54 *Air Force Law Review*, 131 (2004)

Protected cultural rights of American Indian include control over the disposition of human remains, the return or repatriation of objects of cultural patrimony, religious freedom and the practice of sacred rituals, access to sacred sites on federal property, and consultation with federal agencies regarding preservation and protection of cultural resources. ..Tribes must be notified 30 days prior to issuance of a permit if excavation may

result in harm to a tribal, religious, or cultural site. ... Military installations encompassing archaeological sites must strive to balance the right of public access with preservation and protection responsibilities, including Indian tribe requests for non-disclosure of site locations for religious or cultural reasons. ... The purpose of such consultation is to positively identify and confirm that what has been discovered is in fact a cultural item subject to disposition under NAGPRA. ... What is or is not a "sacred site" is determined only by American Indians, not subject to interpretation by federal agency representatives, except in confirming that it is pursuant to an established religion espoused by an appropriately authoritative representative of an Indian religion. ...(*adapted from the LexisNexis Online source*)

Sarah Palmer, Cherie Shanteau, and Deborah Osborne, "Strategies for Addressing Native Traditional Cultural Properties," *Natural Resources Environment*, 20:2 (Fall 2005): 45-50.

"In the course of implementing federal land management actions a number of laws, such as the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Clean Water Act (CWA), often come in to play. Frequently, management of public land also involves consideration of traditional values and uses of the land by American Indian, Alaska Native, or Native Hawaiians. These uses and values may be protected in treaties between specific tribes and the federal government, or through laws and executive orders such as the Archaeological Resources Protection Act (ARPA); the National Historic Preservation Act (NHPA), which recognizes cultural properties (TCPs); the American Indian Religious Freedom Act (AIRFA); the Native American Graves Protection and Repatriation Act (NAGPRA); or Executive Order 13,007 (Indian Sacred Sites). This article explores the intercultural dynamics and opportunities for intergovernmental, multiparty collaboration in the course of identifying, understanding, and recognizing the cultural values placed on TCPs when both NEPA and NHPA apply."

7.

Indian Country, Environmental Jurisdiction, Gaming, Tripartite Government

Tribes and Environmental Jurisdiction

Jessica Owley, Tribal Sovereignty over Water Quality," 20 *J. Land Use & Envtl. Law* 61 (Fall 2004)

Indian tribes are independent sovereigns located within the United States. ... Tribal sovereignty over water resources fundamentally includes control over water quality, including regulation of water pollution. .The EPA granted the Isleta Pueblo Indian Tribe TAS status to administer water quality standards and to certify compliance with such standards. ... Thus, the second Montana exception applies because pollution of non-Indian lands within the reservation could have a grave impact upon tribal health and environmental interest. ... The tribe applied for TAS status in 1994 and Wisconsin opposed

the application on the grounds that the state was "sovereign over all of the navigable waters in the state, including those on the reservation, and that its sovereignty precluded any tribal regulation. However, in general, states enforce their permit programs and water quality standards on tribal land. ... Tribal sovereignty over air and water quality is not something to be bestowed by the federal government.

Jana B. Milford, "Tribal Authority under the Clean Air Act: How Is It Working?" 44 *Nat. Resources J.* 213 (winter 2004)

The Clean Air Act amendments of 1990 (CAA) authorized the U.S. Environmental Protection Agency (EPA) to "treat tribes as states" for purposes of developing, administering, and enforcing air quality regulations within reservation boundaries, irrespective of land ownership. ... (B) the functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and ... In contrast, before tribes can implement CAA programs outside of reservation boundaries, they must demonstrate regulatory authority over the affected areas under general principles of federal Indian law. ... " The court also reasoned that without a delegation of authority over non-Indian-owned fee lands within reservation boundaries, tribes would only be able to impose "checkerboard" regulation, which would have been "inconsistent with the purpose and provisions of the Act. ... The Tribe's Air Quality Code, which constitutes the submitted TIP, includes tribal air standards for fluorides and six toxic metals that are of concern due to the off-reservation metals processing facilities. ... The Shoshone-Bannock applied for eligibility in 1999 with the vision of developing a TIP and Title V permit programs to address air quality issues related to the FMC facility.

Michael C. Blumm,"Issues in Environmental Law: Retracting the Discovery Doctrine: Aboriginal Title, Tribal Sovereignty, and Their Significance to Treaty-Making and Modern Natural Resources Policy in Indian Country," 28 *Vt. L. Rev.* 713 (spg 2004)

One of the more misunderstood concepts of Anglo-American law is the discovery doctrine. ... In short, the discovery doctrine created a kind of split estate, leaving the Indians with a present estate that Marshall called occupancy title and giving the discoverer a future interest: a right of preemption in Indian lands. ... Over a quarter-century, in five different opinions, the Marshall Court outlined the contours of the discovery doctrine and the related concepts of Indian title and native sovereignty. ... Neither was Indian title terminated by the issuance of a lease, nor a federal land patent, nor a treaty between a tribe and a state. ... Since discovery only gave an exclusive right to purchase, it became incumbent upon the federal government to negotiate treaties with Indian tribes to gain title to lands for settlement. ... Of course, the chief treaty-making goal of the United States was to extinguish Indian title, which, because of the discovery doctrine, required consensual cessions of land from the tribes. ... The restraint on alienation the discovery doctrine imposed on Indian title did limit the Indians to federal land sales, but left all other proprietary rights intact.

Richard A. Du Bey and Jennifer Sanscrainte, “The Role of the Confederated Tribes of the Colville Reservation in Fighting to Protect and Clean-up the Boundary Waters of the United States: A Case Study of The Upper Columbia River and Lake Roosevelt Environment,” *12 Penn St. Envtl. L. Rev.* 335 (summer 2004)

In 1990, the Washington State Department of Health (DOH) issued a fish consumption advisory for dioxins in Lake Roosevelt fish.. Specifically, they stated that increased draw-downs of the Lake Roosevelt reservoir will likely redistribute existing contamination and expose additional contaminated sediment, which when dried out, becomes airborne dust that poses a significant health threat to the Lake Roosevelt community. ... And, the Confederated Tribes should be provided with the opportunity to participate in federal dam operational decisions designed to properly protect the reservation population and the reservation environment. ... In their development of a comprehensive strategy, the Confederated Tribes have taken steps to seek out federal and state agency partners, with common resource protection missions, so they may collectively assert their sovereign governmental powers, and seek to enforce applicable federal, state, tribal, and international environmental laws to protect the health of the impacted community and to restore the quality of the natural environment,

Carol Vallee Crouch, “An Investigation of Perceptions, Concerns, and Awareness of Environmental Issues among American Indians,” Ph. D., Env. Sci., Oklahoma State University, 2004.

Twelve tribes – six small and six large --, randomly selected from 39 Oklahoma tribes, participated in a Questionnaire. Health was the most significant environmental quality of life for both groups. The grassroots group concerned preservation and protection of their cultural resources most vital; tribal professionals were most concerned with water pollution. Grassroots awareness of environmental law and justice was low whereas professionals felt that law was not sufficient to protect their environments. Both groups contended that delivery of environmental and conservation programs was low. (*Text adapted from OCLC FirstSearch*).

C. D. James Paci and Lisa Krebs, “Local Knowledge as Traditional Ecological Knowledge: Definition and Ownership,” Ch. 12 in Hosmer & O’Neill, pp. 261-82 (*see Section I above*).

Shepard Krech, III, “Reflections on Conservation, Sustainability, and Environmentalism in Indigenous North America,” *American Anthropologist*, 107:2 (2005): 78-86.

(*From the abstract*): Building on a range of issues presented initially in *The Ecological Indian: Myth and History*, and debated subsequently in reviews and various papers, this article ranges widely in time to address traditional environmental knowledge, oral history, conservation and sustainability, and environmentalism in Indian Country. [The author] also offers thoughts on the involvement of Native people in large-scale

development, as well as co-management schemes today and in the future. [Editor's note: this and other papers relate to indigenous planning and link also to tribal interests in former territory as part of public lands.]

Tracylee Clarke, "An Ideographic Analysis of Native American Sovereignty in the State of Utah: Enabling Denotative Dissonance and Constructing Irreconcilable Conflict," *Wicazo Sa Review*, 17: 2 (Fall 2002): 43-63.

In 1990, the Office of Nuclear Waste Negotiation under the direction of the federal government sought a community to voluntarily store nuclear waste. The program, known as Monitored Retrievable Storage (MRS), would temporarily store 40,000 metric tons of spent nuclear fuel within a designated community until a permanent storage location could be determined. In 1992, the Goshute Tribe, located on the Skull Valley Goshute Reservation in southwest Utah, submitted a grant application and was awarded \$100,000 to investigate the benefits and impacts of implementing the MRS program on their reservation. Since then, the Goshute Band has leased land to a private group of electrical utilities for the temporary storage of the spent nuclear fuel. The tribe, along with the out-of-state utility companies, is in the process of transporting the nuclear fuel to the Goshute Reservation. Targeting a Native American tribe to store nuclear waste is not specific to the Goshutes. Tribes in the United States are increasingly targeted by governments and corporations to consider the economic possibilities of storing nuclear waste on their reservations. The Pine Ridge Sioux, Chippewa, California Campo, Mescalero Apache, Northern Arapaho, Fort McDermitt Paiute-Shoshone, Lower Brule Sioux, Chickasaw, Sac and Fox, Alabama-Quassarta, Ponca, Eastern Shawnee, Caddo, Yakima, and others have either been approached or have applied to store nuclear waste on their reservations.¹ This has led to much controversy as conflicting ideas about the legal and moral implications of involving Native Americans in the problem of nuclear waste storage come to the forefront of the debate. Likewise, storage of nuclear waste on the Skull Valley Reservation has ignited a major controversy and a howl of protest. Although the Goshute Skull Valley Tribe has sovereign rights to govern and render the use of their land, there are those in Utah who do not want the tribe to house nuclear fuel and are challenging tribal autonomy.

Tribal Gaming

Brian P. McClatchey, Note: "A Whole New Game: Recognizing the Changing Complexion of Indian Gaming By Removing the 'Governor's Veto' for Gaming on 'After-Acquired Lands,'" 37 *U. Mich. J.L. Reform* 1227 (summer 2004)

The Indian gaming industry has exploded in scope from its beginnings in the late 1970's as a collection of small enterprises to a full-fledged industry, generating tens of billions of dollars in revenues annually. ... " There can be no doubt that a state governor is an "executive or administrative officer," nor can it be seriously argued that the governor's concurrence requirement does not arise under federal law, since IGRA is a federal statute. ... the governing Tribal-State gaming compact specifically provides for gaming operations on lands outside the exterior boundaries of the Tribe's reservation. ... This proposal also

would not allow a tribe to evade the terms of its compact with State A by seeking to place land off-reservation in State B into trust for the purposes of gaming. ... As it becomes increasingly apparent that Indian gaming is driven more by market proximity than reservation boundaries, and as Indian gaming strives to meet the demands of those markets, it should be apparent to states and tribes that the "governor's veto" should be abandoned in favor of a framework for off-reservation gaming which is solely addressed by the Tribal-State gaming compact's terms. .

Darlene M. Suarez, "Gambling with Power: Race, Class and Identity Politics on Indian Lands in Southern California," Ph. D. in Anthropology, Univ. of Calif., Riverside, 2003.

An ethnographic study of race and class among a small, marginalized community of Kumeyaay Indians at Jamul in San Diego County. It is a study about claiming, reconfiguring and transforming Indian identities and lands by three settler societies entering California, and reclaiming them back by the Kumeyaay through revitalization processes such as political resurgence and ethnic renewal widespread expansion of tribal casinos has created many changes in our society, including tribal/state conflicts, and in turn they concern issues of sovereignty. *(Text adapted from OCLC FirstSearch)*

Anon., "Chemehuevi Indian Tribe et al and Coyote Valley Band of Pomo Indians v. the State of California," U. S. Court of Appeals for the Ninth Circuit, *Gaming Law Review*, 7:6 (Dec. 2003): 455-75.

Joely de la Torre, "Interpreting Power: the Power and Politics of Tribal Gaming in Southern California," Ph. D., Political Science, Northern Arizona University, 2000.

Eve Darian-Smith, *New Capitalists: Law, Politics and Identity Surrounding Casino Gaming on Native American Lands* (Belmont, Ca: Thomson/Wadsworth, 2004).

Jessica R. Cattelino, "Casino Roots: The Cultural Production of Twentieth Century Seminole Economic Development," ch. 4 in Hosmer O'Neill, pp. 66-90. *See Section 1 above*.

Nicolas G. Rosenthal, "The Dawn of a New Day? Notes on Indian Gaming in Southern California," ch. 5 in Hosmer & O'Neill, pp. 91-111. *(see Section 1 above)*.

Paul Pasquareta, *Gambling and Survival in Native North America* (Tucson: Univ. of Arizona Press, 2003) (See review in *Amer. Ind. Cult. & Res. JI. 28:2 (2004):153-55*).

The study grows out of a doctorate in English at SUNY Stony Brook, "Tricksters at Large: Pequots, Gamblers, and the Emergence of Crossblood Culture in North America," (1994).

It is essentially a case study of the Mashantucket Pequot at Foxwoods, CT.

A. A. Gonzales, "Gaming Displacement: Winners and Losers in American Indian Casino Development," *International Social Science Journal*, no.175 (2003): 123-134.

In 1987, the United States Supreme Court issued its decision in *California v. Cabazon Band of Mission Indians* upholding the legal right of American Indian tribes to offer gaming on reservation lands. In the years since, tribal gaming has done what no other anti-poverty programme has been able to do in reversing the cycle of displacement and impoverishment of American Indians. In 2002, the 321 tribal casinos owned and operated by 201 Indian tribes generated over \$10.6 billion dollars in net revenues. Among its proponents, tribal gaming has been credited with transforming once destitute Indian reservations from the grips of poverty, unemployment, and welfare dependency. Given the choices at hand, it is not surprising that many have seized upon gambling as a bonanza and much needed, though controversial, form of development. Yet this reversal of fortune after generations of impoverishment has exacted a displacement toll few proponents have been willing to acknowledge: social conflict, tribal factionalism, and cultural antagonism. In this essay I consider some of these displacement effects, their historical antecedents, and the ramifications for Indian and non-Indian communities.

Tripartite Government

Doug Goodman, Daniel C. McCool and F. Ted Hebert, "Local Governments, Tribal Governments, and Service Delivery: A Unique Approach to Negotiated Problem Solving," *American Indian Culture and Research Journal*, 29:2 ((2005): 15-33.

Voting in Indian Country

Laughlin McDonald, "The Voting Rights Act in Indian Country: South Dakota, A Case Study," *29 Am. Indian L. Rev.* 43 (2004-05)

The problems that Indians continue to experience in South Dakota in securing an equal right to vote strongly support the extension of the special provisions of the Voting Rights Act scheduled to expire in 2007. ... A voting change is deemed to be retrogressive if it diminishes the "effective exercise" of minority political participation compared to the preexisting practice. ... Given the socioeconomic status of Indians in South Dakota, it is not surprising that their voter registration and political participation have been severely depressed. ... Given the prevailing patterns of racially polarized voting, which members of the legislature were surely aware of, Indian voters could not realistically expect to elect a candidate of their choice in the new district. ... In another case brought by residents of the Crow and Northern Cheyenne Reservations in Montana, the court found "recent interference with the right of Indians to vote," "the polarized nature of campaigns," "official acts of discrimination that have interfered with the rights of Indian citizens to register and to vote," "a strong desire on the part of some white citizens to keep Indians out of Big Horn County government," polarized "voting patterns," the continuing "effects on Indians of being frozen out of county government," and a depressed socioeconomic status that makes it "more difficult for Indians to participate in the political process. ...

Boundary Issues

B. D’Arcus, “Contested Boundaries: Native Sovereignty and State Power at Wounded Knee,” *Political Geography*, 22 (2003): 415-437.

In February 1973 some 200 American Indian Movement activists and local Indians occupied Wounded Knee, on the Pine Ridge Indian Reservation in SD. They raised issues of treaty rights and sovereignty. This paper focuses on the events in light of boundaries. As the abstract states: the paper “focuses...on how the issues of power and authority at the root of the conflict were played out over a series of boundaries that constituted this contested geographic space: what one government official referred to as a ‘protest platform.’ The contentious manner in which questions of authority and power on the Pine Ridge Reservation were played out during the occupation was particularly apparent With respect to the various roadblocks and perimeters that determined who and what had access to Wounded Knee.” (Thanks to Elsevier Science Ltd for the abstract.)

Eileen M. Luna-Firebaugh, “The Border Crossed Us: Border Crossing Issues of the Indigenous Peoples of the Americas,” *Wicazo Sa Review* 17.1 (2002) 159-181

For many years, the Tohono O’odham Nation in Arizona has transported tribal members from Mexico to the United States through traditional border crossings for medical treatment. The nation is the only one in the United States that grants full enrollment to its people who are citizens of Mexico. Thus, Mexican citizens who are enrolled members are legally entitled to access health and other services provided by the tribe to all its members.

Since the recent militarization of the U.S.-Mexico border, these routine visits have become more rare and more dangerous. Frequently now, the tribal employees who provide the transportation for Mexican O’odham Nation members have been stopped and harassed by U.S. Border Patrol agents. These agents, operating on the lands of the O’odham Nation, have made the nation’s elders and others who suffer from tuberculosis, diabetes, and other life-threatening diseases return to Mexico if they lack U.S. documents. This insistence on official U.S. documentation, rather than recognizing Tohono O’odham Nation membership identification, strikes at the heart of Indian sovereignty and is the focus of this article.