

**Basic Principles of Indian Law
In relation to
Court Ordered Treatment of Native Americans**

1. Tribal governments predate the formation of the United States.
 - a. The British, French, Spanish and the colonial states entered treaties with tribes to which the United States acceded upon formation of the union.
 - b. Conquest and Discovery Doctrines fueled by imperial powers
 - c. The United States entered treaties with tribes until 1871.

2. Foundations for tribal government autonomy
 - a. Justice Marshall trilogy
 - b. Congressional plenary power
 - i. Regulation of "Indian commerce" Art. I, Sec. 8
 - ii. *Kagama*, dependency
 - iii. *Lone Wolf*, abrogation of treaties
 - c. Tribes are subject to the laws of the United States.

3. Themes of federal-Indian law policy and development
 - a. Indian policy affected by shifts in national identity building
 - b. Static versus dynamic understanding of tribal communities
 - c. Assimilation versus delineation
 - d. Federalism versus tribal autonomy
 - e. Short-term versus long-term recognition
 - f. Federal plenary power (and trust responsibility) versus tribal autonomy
 - g. Federal versus state interaction
 - h. Development of tribal self-determination policies

4. Tribal Reservations in Arizona are lands reserved by tribes from much larger territories controlled prior to occupation by white settlers.
 - a. Treaties and executive orders established reservations to protect Indians and provide permanent homelands.
 - b. Arizona holds the greatest percentage of land under tribal control

5. The state of Arizona does not have jurisdiction in Indian country.
 - a. Tribal governments are not subject to the laws of Arizona.
 - i. Supremacy of the United States.
 - ii. Arizona Enabling Act disclaimed jurisdiction.

1. “that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States”
 - a. 36 U.S. Stat. 557, 568-579, Section 20, June 10, 1910.
 - iii. State officers and agents cannot intrude on the right of reservation Indians to make their own laws and be governed by them. Does the state action undermine the authority of tribal courts over Reservation affairs?
 1. *Williams v. Lee*, 358 U.S. 217 (1958)
 2. *Warren Trading Post v. Arizona*, 380 U.S. 685 (1965)
 3. *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973)
6. Indians in Arizona are citizens of the state.
- a. Natural born Indians were granted United States citizenship in 1924.
 - b. The 14th Amendment to the US Constitution: all citizens of the United States are citizens of the state in which they reside.
 - c. Arizona Supreme Court recognized the right of Indians to vote in 1948.
 - i. *Harrison v. Laveen*, 67 Ariz. 337 (1948).
7. Tribal Sovereignty
- a. Inherent power of tribal governments to make their own laws and be governed by them.
 - i. Tribal governments are different from states and local governments.
 - ii. No double jeopardy in tribal and federal prosecution
 - b. Tribal Sovereign Immunity
 - i. *Santa Clara v. Martinez*, 436 U.S. 49 (1978)
 - c. Tribal jurisdiction
 - i. Criminal jurisdiction pitfalls
 1. *Ex Parte Crow Dog*
 2. Major Crimes Act
 3. *Oliphant v. Squamish Indian Tribe*, 435 U.S. 191 (1978)
 4. *Duro v. Reina*, 495 U.S. 676 (1990)
 - ii. Civil jurisdiction ebbs and flows
 1. *Montana v. United States*, 450 U.S. 544 (1981),

2. *Strate v. A-1 Contractors*, 520 U.S. 438 (1997)
 3. *Burlington Northern v. Red Wolf*, 196 F.3d 1059
 4. *White Mountain Apache Tribe v. Elliot*, WMAT Tribal Court
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8. The case of Florence Red Dog a member of the Oglaga Sioux Tribe of the Pine Ridge Reservation in South Dakota
 - a. *White v. Califano* 581 F.2d 697 (8th Cir. 1978) *aff'g* 453 F.Supp. 543 (S.D. 1977) and 420 F.Supp. 882 (S.D. 1976).
 9. Arizona ARS §12-136, Indian tribal courts; involuntary commitment orders; recognition
 - a. Arizona Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders with Forms
 - b. Development of tribal law and tribal court procedures for involuntary commitment