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# American Indians and Law Libraries: Acknowledging the Third Sovereign

Nancy Carol Carter

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*American Indian tribal governments constitute a third sovereign within the United States federal system. A higher legal profile among these self-governing entities multiplies legal issues and challenges law libraries. Law librarians are urged to deepen their understanding of American Indian law and tribal law and reconsider their handling within legal collections.*

¶1 American Indian<sup>1</sup> tribes govern and adjudicate. They constitute a third sovereign within our federal system. The status of Indian tribes was articulated by Supreme Court Justice Sandra Day O'Connor when she stated: "Today in the United States, we have three types of sovereign entities—the Federal government, the States, and the Indian tribes. Each of the three sovereigns has its own judicial system, and each plays an important role in the administration of justice in this country."<sup>2</sup>

¶2 Many judges, lawyers, law professors, and even law librarians are unaware or uninformed about the legal status and governmental powers of the nation's third sovereign. This lack of information is multiplied many times over among political leaders and the lay public. Such a lack of public understanding means that headline Indian law news often confounds and sometimes outrages non-Indians,<sup>3</sup> especially when the political status of tribes is not understood and outcomes appear to reflect unfair racial preferences. These and other misunderstandings, when played

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1. While "Native American" is often heard today, many people of indigenous origin in the United States continue to use and prefer to be called "American Indians." The designations are increasingly used interchangeably, but appropriate usage depends on the preferences of the group being described and, sometimes, the intent to include indigenous Hawaiians and Alaskans. "Native American" was coined as a more inclusive descriptor after Hawaii and Alaska were admitted to the Union in 1959, but its origination in the Bureau of Indian Affairs made the term instantly suspect to many critics of that agency.
2. Sandra Day O'Connor, *Lessons from the Third Sovereign: Indian Tribal Courts*, 33 TULSA L.J. 1, 1 (1997).
3. Current high-profile issues causing public consternation include the legality of Indian reservation gambling operations (when otherwise illegal within a state) and the right of some Indians to hunt and fish without a state license and to ignore limits on fish and game. The latter issue has become very heated in states where fisheries are in decline or when Indian fishing or hunting is seen as a threat to state-mandated preservation programs.

out in American Indian jurisprudence, provide a vivid illustration of just how much ignorance can derail the best ideals of American law and justice.

¶3 Law librarians can be a force for positive change if we are willing to think differently about the entire subject of Indian law, to think differently about the place of Indian law materials in our collections, and to think in different ways about how we include these materials in our reference services and how we catalog and classify both secondary and primary materials relating to Indian tribes.

¶4 Rather than regarding Indian law as just another legal subject, law librarians should think of the field in a completely different light. While history and jurisprudence bind the two bodies of law, there is a sharp distinction between United States federal law as applied to Native Americans and the tribal law that emanates from hundreds of sovereign Indian tribes.

¶5 Tribal law is unique to each Indian nation. It represents the primary law of sovereign jurisdictions within our national borders and federal system. This article illustrates these points in its first two sections. There is an explanation of the intersection of tribal sovereignty and the American federal system, followed by a brief review of the legal scholarship that positions American Indian law within our national jurisprudence. Discerning the primary nature of this law establishes the point that Indian law is not just other subject specialty. This is true because Indian law deals with sovereign governments that are part of the fundamental structure of the United States federal system. Consequently, it is important for all law librarians to enhance their understanding of this primary law, even though we necessarily pick and choose to develop expertise in environmental law, telecommunications law, and other specialized areas.

¶6 This understanding also makes clear the necessity to think differently about the place of Indian law in our collections. In most law libraries, primary materials of American jurisdictions form the core of the collection. Yet tribal law has not been recognized by law librarians as falling within the scope of a primary American law collection. Consequently, *law librarians are collectively neglecting the legal record of well more than 550 sovereign governments within the United States*. This gap in American legal literature is addressed in a section titled “Calling All Law Librarians,” which describes some of the challenges in locating and acquiring tribal materials and identifies paths for librarian involvement in the creation of a permanent legal record for the third sovereign.

¶7 Because cataloging and classification send powerful—if sometimes implicit—messages to library users, a final section of the article challenges law librarians to take a fresh look at the ways Native American materials are organized and presented to readers. Since little has been written about the handling of these materials in law libraries, the general library literature related to subject headings is consulted. A continuing need for subject cataloging is established along with the need for an evolution in the headings that are applied to minority and ethnic groups. A proposal for a new Library of Congress (LC) classification of primary tribal law is offered.

¶8 In addition to every other reason for examining our approach to American Indian law, law librarians should know that the area is teeming with issues that invite research, study, policy-making, administrative intervention, and litigation. State and federal courts continue to hear a substantial number and array of federal Indian law cases. At the same time, tribal courts are increasingly active and prolific. Congress has added complexity to Indian law in recent decades and created entirely new legal subspecialties by enacting such groundbreaking legislation as the Alaska Native Claims Settlement Act of 1971,<sup>4</sup> the National Indian Gaming Regulatory Act of 1988,<sup>5</sup> and the Native American Graves Protection and Repatriation Act of 1990.<sup>6</sup> More law schools are teaching courses in the field and aiding tribal governments and courts in innovative clinical programs.<sup>7</sup> Native American law has a new prominence in law journals, with articles appearing in top-tier publications. Tribal governments are hiring more lawyers than ever before, as are state and federal agencies as they encounter new Indian law issues. Attorneys in sundry practices and judges at every level of court are encountering Indian law issues—perhaps for the first time—and need the library resources and continuing education programs that can help them understand the field. It is a practice area with employment opportunities and enormous growth potential.

¶9 The timing is absolutely right for law librarians to turn increased attention to the third American sovereign. We have challenging and interesting work ahead in collecting and making accessible the literature of American Indian law and tribal law while bringing about practical and symbolic changes in the way the information is organized and presented to readers.

### Tribal Sovereignty and Federalism

¶10 Indian tribes in the United States lay claim to an inherent right of self-government that predates the arrival of colonizers and the formation of the United States government. The legal recognition of tribal sovereignty in United States law is partially founded on the history of treaty-making. Upon declaring its independence, the United States followed the tradition of the British and other colonial powers in North America by entering into treaties with Indian tribes.<sup>8</sup> Indian treaties were

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4. 43 U.S.C. §§ 1601–1629 (1994).

5. 25 U.S.C. §§ 2701–2721 (1994), 18 U.S.C. § 1166 (1994).

6. 25 U.S.C. §§ 3001–3013 (1994), 18 U.S.C. § 1170 (1994).

7. In addition to traditional legal clinic assignments, some law students have been assigned to practice in tribal courts and help tribes write or update their legislative codes. There also are innovative programs outside law schools. In Arizona, Phoenix College has a Tribal Court Advocacy program to train lay advocates for work in tribal courts. *Tribal Court Advocacy Program in Practice*, NAVAJO TIMES, Feb. 2, 2000, at A7.

8. See generally TIMOTHY J. SHANNON, INDIANS AND COLONISTS AT THE CROSSROADS OF EMPIRE: THE ALBANY CONGRESS OF 1754 (2000) (describing the practicalities of British treaty-making in the latter days of its North American empire, by which time colonial governments were heavily encroaching on British control of Indian affairs).

negotiated and ratified in the same manner as international treaties with foreign nations.<sup>9</sup>

¶11 The federal government recognized tribal powers of self-government by leaving tribes alone to regulate their internal affairs and by protecting tribes from the interference of state governments. In one of the earliest and most enduring definitions of tribal status, Chief Justice John Marshall wrote that the Cherokee Tribe was a “distinct political society separated from others, capable of managing its own affairs and governing itself.” However, the tribe was not a “foreign state,” but perhaps more correctly described as a “domestic dependent nation.”<sup>10</sup> In a different case, the Supreme Court barred a state government’s attempt to exercise jurisdiction over tribal lands, thereby setting one of the most important legal precedents bolstering tribal sovereignty.<sup>11</sup>

¶12 Limits on tribal sovereignty do exist. For example, tribes do not have ultimate control over their lands, generally regarded as a necessary attribute of sovereign nations. In *Johnson v. McIntosh*,<sup>12</sup> the Supreme Court relied on the Doctrine of Conquest to hold that fee title to all the land in this country passed to the United States government as the beneficiary of the claims of the European sovereigns who had won title to the land by the traditional means of conquest. The remaining Indian title, also known as aboriginal title, is good against all parties except the federal government. Tribes have a right of occupancy to their lands and a title good against all claimants except the United States. Tribal sovereignty is further limited by the plenary power of Congress over Indian affairs, as made clear when Congress ended treaty-making in 1871<sup>13</sup> and in subsequent case law.<sup>14</sup>

¶13 While tribal sovereignty has limitations under American law, tribes function as governmental entities with political and legal jurisdiction over their lands and, in most instances, the persons who inhabit those lands. Tribes retain the authority within their jurisdictional bounds to enact and enforce laws, to promulgate administrative rules and regulations, and to adjudicate through courts or traditional means. In the exercise of these powers of self-government, tribes create primary law.

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9. By the same token, Congressional power to abrogate treaties is firmly fixed in law. Federal legislation that conflicts with treaty terms can constitute an abrogation. While some courts have raised a high bar to prevent the inadvertent abrogation of Indian treaties, this is not always the standard. *United States v. Dion*, 752 F.2d 1291 (8th Cir. 1985), *rev'd in part*, 476 U.S. 734 (1986), required that Congressional intent to abrogate Indian treaty rights be clear, but in another case tribal treaty rights were found to have been abrogated by Congressional action without seeming to meet the *Dion* test. According to the dissent, the ruling presented not “a scrap of evidence” that Congress considered the implications of its legislation for the relevant treaty rights. *South Dakota v. Bourland*, 508 U.S. 679, 700 (1993) (Blackmun, J., dissenting).

10. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16–17 (1831).

11. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

12. 21 U.S. 543 (1823).

13. Act of Mar. 3, 1871, ch. 120, § 1, 16 Stat. 566 (codified as amended at 25 U.S.C. § 71 (1994)).

14. *E.g.*, *United States v. Kagama*, 118 U.S. 375 (1886).

¶14 Recognized tribes<sup>15</sup> are acknowledged as self-governing entities standing in a government-to-government relationship with the United States. Each tribal-federal relationship is unique, being defined by a specific history and the treaties, agreements, legislation, and executive actions applicable to the tribe. The status of recognized tribes under United States law derives from this *political* association, not from a *racial* distinction based on the Indian blood of tribal members.

¶15 In our federal system where every square inch of land outside the District of Columbia falls within the borders of a state, some geographical areas, such as military installations, may be exempt from state law enforcement and state court jurisdiction. Indian reservations are a prime example of lands that usually fall outside state control. Congress and the Supreme Court have made clear that, absent some authorization by Congress, states do not have jurisdiction over matters arising on Indian lands, particularly when tribal interests are at stake.<sup>16</sup>

¶16 The exercise of sovereign powers by tribal governments operating within state and county boundaries naturally creates some conflict. The informed public policy discussions that ideally should occur when tribal rights clash with state and local interests are rare. Dialogue is sadly undermined by misunderstandings and an uninformed legal and political leadership. Newly prominent matters, like Indian gaming, are commanding public attention and forcing government officials to sharpen their knowledge of the third sovereign. Almost overnight, some Indian tribes have become major political players, with lobbying and campaign-donation budgets capable of riveting the attention of politicians more successfully than the issues alone.

¶17 Still, progress in this public policy arena is slow because acknowledgment of tribal sovereign powers challenges conventional understandings of federalism and the already complicated relationship of state governments with each other and with the federal government. When Indian nations are brought into the mix, the number of governments within our federal system increases by hundreds. There

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15. "Recognition" is a term of art describing the federal acknowledgment of a government-to-government relationship. Bureau of Indian Affairs (BIA) services and federal support of the tribal exercise of governmental power are conditioned on this recognition. *See generally* William W. Quinn, Jr. *Federal Acknowledgment of American Indian Tribes: Authority, Judicial Interposition, and 25 CFR § 83*, 17 AM. INDIAN L. REV. 37 (1992); William W. Quinn, Jr., *Federal Acknowledgment of American Indian Tribes: The Historical Development of a Legal Concept*, 34 AM. J. LEGAL HIST. 331 (1990).

16. *Williams v. Lee*, 358 U.S. 217 (1959). This is not to imply that jurisdictional questions are simple. In fact, jurisdiction in Indian country is an exceedingly complex area of law. Congress has granted states jurisdiction over some matters in Indian country and provided for federal jurisdiction in others. Tribal-court jurisdiction in criminal and civil matters, especially when non-Indians are involved, continues to be the subject of litigation. Some states gained jurisdiction over Indian lands in the early 1950s when the federal government was attempting to terminate government-to-government relations with Indian tribes. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588 (conferring jurisdiction on the states of California, Minnesota, Nebraska, Oregon, and Wisconsin with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within the states). The 1950s termination policy has been renounced, but the jurisdictional confusion created by this federal law remains.

are more than 550 federally recognized Indian tribes<sup>17</sup> exercising full or partial jurisdiction over a land base within the United States and approximately 350 Indian tribal courts that are hearing cases and issuing opinions.<sup>18</sup>

¶18 Just how tribal governments will fare in the elbow jostling of competing jurisdictions has not been fully reckoned. Until recently, the majority of tribes were relatively silent players in the national mix of sovereigns. Various factors are bringing this quiescence to an end. For more than thirty years, Congress has supported an Indian policy encouraging tribal self-determination, funded programs to improve and strengthen tribal governments and courts, and encouraged the development of tribal law enforcement programs.<sup>19</sup> A surge of activism and interest in tribal cultures during the same period has reinvigorated many Native American groups. Currently gaming revenues and other economic-development programs are providing a few tribes with the financial resources necessary for building self-reliant, active governmental units. With all these influences at work, the number of recognized tribes has grown and tribal courts have burgeoned.<sup>20</sup>

¶19 Vigorous tribal governments and courts exercising sovereign powers create new legal issues left and right as they interact with state and local counterparts.<sup>21</sup> Volatile legal areas include criminal and civil jurisdiction, gambling on Indian reservations, freedom of religion, repatriation of cultural property, and the meaning that will be given in the twenty-first century to treaties guaranteeing water, hunting, and fishing rights to tribal nations that relinquished vast land holdings to

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17. Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 65 Fed. Reg. 13,298 (Mar. 13, 2000), available at <http://www.doi.gov/bia/tribes/entry.html>. The BIA is mandated to regularly update and publish a list of federally recognized tribes in the *Federal Register*.
  18. *Department of the Interior and Related Agencies Appropriations, FY 2001: Hearings on H.R. 4578 Before the Subcomm. on Interior Appropriations of the Senate Comm. on Appropriations*, 106th Cong. 508 (2001) (prepared Statement of the National American Indian Court Judges Association). Since 1965, Indian tribal judges have been meeting to offer mutual support and work for stronger tribal justice systems. The National American Indian Court Judges Association is today a vibrant force in tribal affairs and the national judiciary. See Mary Pierpoint, *Judge Betty: Pioneer in Tribal Court Reform*, INDIAN COUNTRY TODAY, Apr. 12, 2000, at C1.
  19. The development of a public policy of the United States toward its indigenous population has challenged and bedeviled our national psyche for more than two hundred years. Federal Indian policy has taken radical swings, but President Richard Nixon is credited with ushering in the current federal Indian policy of tribal self-determination. See generally JACK D. FORBES, NATIVE AMERICANS AND NIXON: PRESIDENTIAL POLITICS AND MINORITY SELF-DETERMINATION, 1969–1972 (1981). President Clinton added meaning to this policy approach throughout his term in office by regularly ordering executive departments to meaningfully consult and collaborate with tribal officials when federal policies had implications for tribes. See, e.g., Exec. Order No. 13,175, 3 C.F.R. 304 (2000), reprinted in 25 U.S.C.A. § 450 note (2001) (Consultation and Coordination with Indian Tribal Governments).
  20. In 2001, there were more than 350 tribal courts. See *supra* note 18 and accompanying text. In 1993, an estimated 170 tribes had a court system, which itself was almost double the number that existed in the 1970s. Melody L. McCoy, *When Cultures Clash: The Future of Tribal Courts*, HUM. RTS., Summer 1993, at 22, 23.
  21. For practical examples of the issues that are arising from the dual functioning of state and tribal courts, see Stanley G. Feldman & David L. Withey, *Resolving State-Tribal Jurisdictional Dilemmas*, 79 JUDICATURE 154 (1995).

the United States government. Legal determinations of the tribal role in such issues as land use, water management, environmental practice, adoption, and family law will keep tribal and state officials and their lawyers occupied for years to come. In recognition of elevated levels of legal activity, the United States Department of Justice established the Office of Tribal Justice in 1995 as a permanent liaison to federally recognized Indian tribes. This growing list of developments and issues demonstrates the need for a new conception of federalism that includes a very active third sovereign.

### The Scholarly Mandate

¶20 With law practice reflecting increased Indian law activity, legal scholars and jurists are being urged to intensify their understanding of third-sovereign issues. For instance, Phillip P. Frickey, a professor at the University of California, Berkeley, School of Law and former chair of the Section on Native American Rights of the Association of American Law Schools, thoughtfully argues the place of Indian law at the core of American public law and forges an analytical path for rationalizing the Constitutional interpretation of Indian law cases in the Supreme Court. He finds guidance for the modern Court in Justice John Marshall's early and still pivotal Indian law decisions. Frickey notes Marshall's regard for the "constitutive" nature of treaties and other texts defining the *mutually sovereign* federal-tribal relationship.<sup>22</sup>

¶21 In a recent essay,<sup>23</sup> Frank Pommersheim, a professor of law at the University of South Dakota School of Law, former chair of the Section on Native American Rights of the Association of American Law Schools, and justice of both the Rosebud Sioux Supreme Court and the Cheyenne River Sioux Tribal Court of Appeal, takes to task both the United States Supreme Court and scholars who work in the area of federal courts. The failure of legal scholars to identify and more fully discuss tribal courts and tribal sovereignty within their published work is, according to Pommersheim, an unnecessary restriction that distorts the dialogue on contemporary federalism. Casebooks, texts, and other federal courts publications also do not mention tribal courts within the federal system. Federal judges and their law clerks therefore remain largely ignorant of tribal court issues, despite ongoing litigation involving the role of tribal courts within the federal context<sup>24</sup> and a vibrant

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22. Philip P. Frickey, *Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law*, 107 HARV. L. REV. 381, 408–09 (1993). In a subsequent article, Frickey explores the idea of increased sovereign-to-sovereign negotiation as an alternative to the adjudication that has so thoroughly muddled the jurisprudence of Indian law. Philip P. Frickey, *Adjudication and its Discontents: Coherence and Conciliation in Federal Indian Law*, 110 HARV. L. REV. 1754 (1997).

23. Frank Pommersheim, "Our Federalism" in *the Context of Federal Courts and Tribal Courts: An Open Letter to the Federal Courts' Teaching and Scholarly Community*, 71 U. COLO. L. REV. 123, 124 (2000).

24. *Id.* at 129.



and increasingly confident tribal judiciary that is hearing and deciding a growing number of diverse cases.<sup>25</sup>

¶22 Pommersheim calls for a more comprehensive approach to the scholarly inquiry on federalism and points out the existence of significant historical, doctrinal, and normative questions regarding the legal status of tribes and their governmental units.<sup>26</sup> He identifies specific issues needing scholarly attention. His essay also points to the lack of an articulated jurisprudence about tribal courts at the Supreme Court.<sup>27</sup> The legal framework for the practical integration and enforcement of tribal court judgments is increasingly the subject of scholarly attention.<sup>28</sup>

¶23 While this is not a comprehensive review of scholarly attention to Indian law issues, three additional writers should be mentioned. Nell Jessup Newton points to what she regards as unwarranted criticism of tribal courts by uninformed observers and calls for additional attention to the performance of tribal courts as a means of advancing understanding of their work and the legitimacy of their enterprise.<sup>29</sup> Preceding Pommersheim and Newton by almost a decade, both Judith Resnik<sup>30</sup> and Robert Clinton<sup>31</sup> sounded calls to scholarly action with thoughtful writing about the place of tribal courts and governments within our larger federal system.

### Calling All Law Librarians

¶24 Along with practitioners and legal scholars, it is time for law librarians to focus increased attention on the Indian nations constituting a third American sovereign. We have important work to do, both within our individual libraries and systemically. It is time to examine how completely the law libraries of the United States are acknowledging the existence and import of tribal governments by way of their acquisitions programs, collections, reference readiness, publications, classification schemes, and Web sites. We need to assess whether we are turning enough of the prodigious skill and intelligence of law librarians to building the legal record of the many units of government found among the nation's Indian tribes.

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25. One scholar looked at eighty-five tribal court opinions, categorizing the issues raised and analyzing the legal principles applied, to achieve a better understanding of the work of tribal courts and to address concerns about their impartiality. Nell Jessup Newton, *Tribal Court Praxis: One Year in the Life of Twenty Indian Tribal Courts*, 22 AM. INDIAN L. REV. 285 (1998).

26. Pommersheim, *supra* note 23, at 125.

27. *Id.* at 129.

28. *See, e.g.*, Stacy L. Leeds, *Cross-Jurisdictional Recognition and Enforcement of Judgments: A Tribal Court Perspective*, 76 N.D. L. REV. 311 (2000).

29. Newton, *supra* note 25, at 295–97.

30. Judith Resnik, *Dependent Sovereigns: Indian Tribes, States, and the Federal Courts*, 56 U. CHI. L. REV. 671 (1989).

31. Robert Clinton, *Tribal Courts and the Federal Union*, 26 WILLAMETTE L. REV. 841 (1990). Clinton has written extensively in the field and given special attention to issues of jurisdiction in Indian country.

¶25 How well are we preparing for the inevitable increase of research into the law of the third sovereign? The answers individual law librarians offer will surely be influenced by geographic region and the proximity of Indian country.<sup>32</sup> Arizona, New Mexico, and Oklahoma quickly come to mind as states in which Indian tribes have well established and functional governments and where Native American legal issues have prominence and currency.<sup>33</sup> This said, several less obvious states have significant Indian law events in their recent histories, including Connecticut, Florida, Maine, and Rhode Island.<sup>34</sup> Some regions are more likely to have law schools that offer Native American law courses, federal and state attorneys general offices having Indian affairs specialists, law firms specializing in Indian law, courts that hear Indian law cases, and Indian legal services offices. In these areas, law libraries of all types are likely to have some Indian law materials and some degree of law-librarian expertise in the field.

¶26 Most of these libraries will have necessarily concentrated on the body of law that deals with the status of Indian tribes vis-à-vis the federal government, along with all the other sources that emanate from that legal relationship. Two factors explain why. First, as usually employed, the term “Indian law” (or “Native American law”) means “federal law about Indians.”<sup>35</sup> Treaties are the one source that may be claimed as primary law by both a tribal government and the federal government. Other sources traditionally constituting an Indian law collection originate from the law of the United States, including executive actions, statutes, regulations, case law, administrative decisions, and all the secondary sources that have been written to explain, interpret, and critique the ways that federal law has dealt with the indigenous population within our national borders.<sup>36</sup>

¶27 A second reason that law libraries focus on *federal* Indian law authority is that legal materials emanating from tribal governments are scanty and extremely difficult to obtain. Historically, the importance of these sources also may have been undervalued. However, once law librarians have assessed federal Indian law collections and made any appropriate improvements within their libraries, they

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32. Indian country is defined as “all land within the limits of any Indian reservation under the jurisdiction of the United States Government, . . . all dependent Indian communities within the borders of the United States . . . , and all Indian allotments. . . .” 18 U.S.C. § 1151 (1994).

33. Law schools in each of these states have special Indian law programs and the University of Arizona and the University of Tulsa offer graduate programs in Native American and Indigenous studies. The University of Tulsa’s Mabee Legal Information Center has created the unique position of instructional services and Native American law resources librarian.

34. Successful land claims in the 1970s established tribal ownership to huge portions of the state of Maine. Legally the land was Indian Country, despite almost two hundred years of use and occupation by non-Indians. This claim was settled, along with similar claims in Connecticut, Florida, and Rhode Island through the passage of special federal legislation. *See* Maine Indian Claims Settlement, 25 U.S.C. §§ 1721–1735 (1994); Connecticut Indian Land Claims Settlement, 25 U.S.C. §§ 1751–1760 (1994); Florida Indian Land Claims Settlement, 25 U.S.C. §§ 1741–1749 (1994); Rhode Island Indian Land Claims Settlement, 25 U.S.C. §§ 1701–1716 (1994).

35. WILLIAM C. CANBY, JR., *AMERICAN INDIAN LAW IN A NUTSHELL* 1 (3d ed. 1998).

36. My own guide to this literature is still useful. Nancy Carol Carter, *American Indian Law: Research and Sources*, *LEGAL REFERENCE SERVICES Q.*, 1984–85, no. 1, at 1.

need to turn to the difficult work of building collections of primary tribal law. These materials are not currently being systematically collected by the nation's law libraries. Almost any law library is likely to be devoting more resources to collecting the laws of remote nations on distant continents than to collecting the laws of the Indian nations within our borders. Most law libraries can offer more information about the laws of Guam than the laws of the nearest Indian nation. In fact, a law library is apt to provide a better answer to a reference question on a foreign legal system than on that of a local tribe. Law library research guides and Web sites are unlikely to point to American Indian law resources.

¶28 These choices may be quite deliberate and serve the needs of patrons, but I am urging larger law libraries to move beyond a default position on Indian law materials. Most larger libraries can expand collection parameters to incorporate tribal law as a primary resource without sacrificing other collection and reference goals. Collectively, we might then begin building the permanent legal record of the third sovereign. As explained in the next section, although these governments are "domestic," there are enough acquisitions challenges to interest the most intrepid seekers of obscure documentation.

### Acquisitions Challenges

¶29 To date, the daunting task of bringing primary tribal legal sources together in up-to-date collections available for purchase by libraries has defied bibliographers of every stripe and continues to defeat even the most determined efforts.<sup>37</sup> Not only are there hundreds of tribal governments from which to seek legal information, but written copies of legal materials are often scarce or nonexistent. The *Navajo Tribal Code* is a notable exception, having been in print and commercially available for a number of years, but it is no more applicable to a different tribe than are the laws of Vermont to Louisiana.

¶30 Tribes are empowered to decide whether to create written legal documents. In thinking about this reality, law librarians necessarily must balance their

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37. The Marian Gould Gallagher Law Library of the University of Washington produced one of the earliest collections of tribal codes in 1981. INDIAN TRIBAL CODES: A MICROFICHE COLLECTION OF INDIAN TRIBAL LAW CODES (Ralph Johnson & Susan Lupton eds., 1981). It was updated by INDIAN TRIBAL CODES: A MICROFICHE COLLECTION OF INDIAN TRIBAL LAW CODES (Ralph Johnson & Richard Davies eds., 1988). Further revision of this work has been stymied by difficulties in acquiring updated codes, but with legal documents from fifty-six tribes, it remains one of the most complete collections. Early versions of many tribal codes also may be found in an LLMC microfiche collection. Lists of the codes are included in the "Basic Legal Documents" section of NATIVE AMERICAN COLLECTION: A BIBLIOGRAPHY DESCRIBING THE MICROFICHE COLLECTION ASSEMBLED AND MARKETED BY THE LAW LIBRARY MICROFORM CONSORTIUM (Jerry Dupont ed., 1990). For other published sources, see my bibliographic essay, Nancy Carol Carter, *American Indian Tribal Government, Law, and Courts*, LEGAL REFERENCE SERVICES Q., 2000, no. 2, at 7. Although its holdings are not conventionally published, the National Indian Law Library in Boulder, Colorado, has been very successful in collecting tribal legal materials, including codes. See *infra* note 42. In recent years, the library of the National Judicial College in Reno, Nevada, has actively collected tribal codes. The *Indian Law Reporter* includes a section of tribal case decisions and some decisions are available electronically.

ingrained bias favoring access to legal information with an acceptance of the fact that tribal governments have absolutely no inherent obligation to publish codes, statutes, administrative rules and regulations, or court rules—not to line library shelves or for any other reason. In fact, within some tribes, any effort to reduce the shared community understanding of a customary justice system to writing may be anathema to core values, not to mention a doomed exercise in futility. There may be other cultural or religious reasons for keeping tribal codes private.

¶31 Some tribes are creating their first written laws. Others are rewriting “boilerplate” codes and constitutions provided by the federal government during the 1930s when about two-thirds of tribes chose to reorganize tribal governments under the Indian Reorganization Act.<sup>38</sup> Tribes have been encouraged to tailor their written codes to their own culture and history and to document the role, if any, of nonwritten customary law in tribal legal affairs.<sup>39</sup> This could mean the use of a native language, unfamiliar to most outside the tribe. Today, incentives for producing written codes may be entirely internal. Tribal governments and courts recognize a need for written laws and court rules as they become more active forces on their reservations. When tribes conduct their own law enforcement, tribal members may chafe at being held accountable to unwritten laws. Tribal advocates and defense attorneys may feel disadvantaged in tribal courts where only the officers and judges know the rules.<sup>40</sup> The need to deal with family and domestic issues, emerging environmental matters, or first-time economic dealings with nonreservation members may also lead to more written laws. Sometimes, the need to formalize tribal law is recognized, but costs, competing priorities, perceived lack of expertise, or tribal politics derail the project.

¶32 Even when in written form, tribes have no obligation to widely distribute their primary legal documents. Law librarians need to know that although tribal legal documents exist in writing, they still may not be conventionally published or easily available. Here, however, is another issue begging for our professional attention. If tribes do want to disseminate their legal information, what approach makes sense in the current legal publishing market? Legal megapublishers are not going to line up for these limited market products. Law librarians are supposed to be legal publishing experts, but what could we advise? Must tribes privately publish, market, and distribute their own legal information? Is there a potential publishing role for the BIA (perhaps unacceptable to tribes) or legal organizations like the National American Indian Court Judges Association, the American Bar Association, or even AALL?

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38. Indian Reorganization (Wheeler-Howard) Act of 1934, ch. 576, 48 Stat. 934 (codified as amended at 25 U.S.C. §§ 461–479 (1994)). The most recent addition to the rich literature of this pivotal legislation is ELMER R. RUSCO, *A FATEFUL TIME: THE BACKGROUND AND LEGISLATIVE HISTORY OF THE INDIAN REORGANIZATION ACT* (2000).

39. An Indian law expert recommended this approach in a consulting report. See *INDIAN COURTS AND THE FUTURE: REPORT OF THE NAICJA LONG RANGE PLANNING PROJECT 103–04* (D. Getches ed., 1978).

40. The rights of Indian citizens vis-à-vis the powers of tribal governments over them were specified in the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301–1341 (1994).

¶33 Absent traditional publication and distribution of information, digital initiatives are to be applauded. The *Tribal Court Clearinghouse* Web site<sup>41</sup> offers a link to tribal codes and constitutions. Another admirable venture is “a cooperative effort among the University of Oklahoma Law Center, the National Indian Law Library,<sup>42</sup> and Native American tribes providing access to the Constitutions, Tribal Codes, and other legal documents. [The libraries] work with tribes whose government documents appear on this web site; these tribal documents are either placed online with the permission of the tribes, or they are U.S. government documents, rightfully in the public domain.”<sup>43</sup> These are very welcome alternatives to a lack of access to current tribal constitutions, tribal codes, and other legal documents. Yet while these projects deserve our notice and appreciation, questions remain: Is Internet distribution of tribal law really the only choice? Is it the best choice?

¶34 If the goal is to create a permanent record of primary legal authority from our nation’s third sovereign, the Internet cannot be the first (or only) publication choice until authentication and archival storage issues are much better settled. As an immediate and only partially satisfactory action, law librarians may want to follow the example of the nation’s documents librarians who increasingly download and bind federal documents having only virtual existence to preserve contents that may evaporate into cyberspace. But printing out the tribal codes addresses only the issue of permanence, not that of authenticity. Furthermore, as the antithesis of the economies of scale provided by old fashioned publication methods (i.e., books professionally printed, bound, and distributed from one location), self-printing or publishing by individual libraries opens an entirely different discussion about how librarians interact with digital information and how we spend our time.<sup>44</sup>

¶35 Is there a role for law librarians in assisting tribes to gather and publish legal materials? Should every law librarian contact the nearest tribal government to offer his or her specialized knowledge and skills to get this primary legal information on the record and on the Internet, if not on the shelves of every law library? I am acutely uncomfortable making any such suggestion. The idea threatens to be a small-scale replication of the many well-known examples of misguided interfer-

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41. TRIBAL COURT CLEARINGHOUSE, Tribal Law & Policy Inst., at <http://www.tribal-institute.org> (last visited Oct. 22, 2001).

42. The National Indian Law Library “functions as a department of the Native American Rights Fund and serves both NARF and the public.” Nat’l Indian Law Library, Native Am. Rights Fund., at <http://www.narf.org/nill/Nillindex.html> (last visited Oct. 22, 2001). It has a collection of tribal codes.

43. NATIVE AMERICAN CONSTITUTION AND LAW DIGITIZATION PROJECT, at <http://thorpe.ou.edu/> (last modified Feb. 2, 2001). It currently offers seven full-text tribal codes.

44. See generally Gail McMilan, *Librarians as Publishers: Is the Digital Library an Electronic Publisher?* 61 C. & RES. LIBR. NEWS 928 (2000) (questioning whether the posting of library information in digital form deserves to be known as “publishing” when none of the traditional publication functions are performed).

ence in Indian affairs. However, there may be some appropriate middle ground between missionary-style outreach and a strict “mind-your-own-business” approach that completely cuts off law librarians from a service opportunity. Any potential interaction will require sensitivity and a patient willingness to educate others about our special knowledge of the methods of creating permanent records of laws, administrative rules and regulations, and case reports. Because of the dearth of libraries on Indian reservations, tribal members who have stayed close to home may not be very familiar with the professional skills librarians can offer<sup>45</sup> and certainly not aware of specialized law-librarian training and expertise. Identifying a contact or liaison who has established a relationship of trust with members of the tribe can be a very useful, if not essential, beginning. A willingness to hear and respect tribal views is important since they may not comport with law-librarian notions about the unassailable value of the current and archival legal record.

¶36 Here are a few ideas for some possible starting places to develop the relationships that could lead to involvement in the publication and distribution of tribal legal materials. Law-firm librarians working in firms representing a tribal government have an excellent window for learning more about the status of that tribe’s written legal materials. Attorneys in the firm are likely to be developing a relationship of trust with tribal leaders and may be able to convey a law librarian’s offer of special assistance if the tribe is interested in further documenting or more widely distributing its legal information. With the tribe’s permission and cooperation, such an undertaking could receive law firm support as pro bono activity or it could become a project for a local AALL chapter. If the tribe has a Web site, publication of the tribal code and other information could be facilitated. If the tribe lacks a Web site but agrees to dissemination, the law firm library might post tribal legal information or contribute it to an appropriate site.

¶37 State and county librarians may provide assistance to the local Indian legal services office, and they, along with court and government law librarians, have opportunities for contact with tribal officials and advocates through the attorneys served by their offices and possibly through elected officials. Increasingly state government officials and judges are meeting with their tribal counterparts in formal and informal groups. In California judges have met with tribal leaders and Indian law experts to learn more about the operation of tribal courts through a minority affairs round table of the California Judges Association. The Tribal

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45. Along with an array of other social, educational, and economic problems on Indian reservations, library services tend to be inadequate if they exist at all. There is no current survey of tribal libraries, nor is the number of Native American librarians known. It is assumed to be a very small population, based on the low number of recent library and information school graduates identifying themselves as American Indian or Alaska Native (usually between seven and twenty-five students annually during the past decade). Lotsee Patterson, *History and Status of Native Americans in Librarianship*, 49 *LIBR. TRENDS* 182, 183 (2000).

Court/State Court Forum of Minnesota has approximately sixty-five members and holds quarterly meetings to discuss jurisdictional questions and issues of full faith and credit for judgments.<sup>46</sup> For a decade the Oklahoma Supreme Court and the Oklahoma Indian Affairs Commission have convened an annual Sovereignty Symposium to bring tribal officials and tribal judges together with State of Oklahoma officials and judges to discuss issues of mutual concern. With some research, government and court law librarians can learn whether similar meetings are occurring within their geographical region and identify the judges and officials who are participating. These contacts may be able to facilitate law-librarian attendance at the meetings and serve as liaisons to tribal officials. They may be able to advise on whether there is expressed tribal interest in propagating its laws and other primary legal materials.

¶38 Academic law librarians may have several avenues to involvement. An obvious starting place is with any faculty members teaching Indian law or Native American law courses and with the Native American law students group if one exists at the law school. Some Native American law faculty members serve as judges of tribal courts or may be involved with tribal government. A few law schools have clinical programs that send student interns out to work in tribal courts. Academic law librarians also may find useful contacts through a Native American Studies program on their campus or at another nearby university. There may already be established programs at local reservations that call upon the expertise of local faculty and librarians.

¶39 Law librarians have potentially valuable allies within the general library community. The American Indian Library Association (AILA) is the primary organization addressing the library-related needs of American Indians and Alaska Natives.<sup>47</sup> In 1998 the group held an ALA preconference event that included sessions on “collecting and accessing American Indian historical, governmental, and legal resources.”<sup>48</sup> The Society of American Archivists has created a Native American Archives Coalition to reach out to tribal archivists and to identify repositories with significant collections of Native American materials.<sup>49</sup> Law librarians wishing to work with tribes in building a published legal record may want to join AILA or contact its local members and those of the archives coalition.

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46. Julie Shortridge, *Tribal Court/State Court Forum Meets in Mille Lacs*, OJIBWE NEWS, May 19, 2000, at 1.

47. AILA was founded in 1979 and is affiliated with the American Library Association (ALA). It publishes a quarterly newsletter and holds an annual meeting at the ALA conference. One of several AILA goals is to provide technical assistance to Indian tribes on the establishment and maintenance of archival services. For further information, see Am. Indian Library Ass'n, at <http://www.nativeculture.com/lisamitten/aila.html> (last updated Oct. 10, 2001).

48. *Preconference Planned on Native American Resources*, AM. LIBR., Apr. 1998, at 9.

49. The Native American Archives Coalition contact currently is Richard Pearce-Moses, documentary collections archivist, Heard Museum, Phoenix, Arizona.

### Subject Headings and Classification

¶40 In an entirely different realm, matters of standardization and library policy also need law librarian attention. Our technical-services experts are well qualified to examine the subject headings and classification schemes that determine how materials relating to the third sovereign are arranged and accessed within libraries. Adjustments or major overhauls may be needed to assure that tribes, tribal governments, and the output of tribal courts are appropriately treated.

¶41 Astute observers have long recognized that political content and subliminal messages can be embedded in adopted library standards. Classification schemes and subject headings systematize knowledge in patterns that can instill and then reinforce perceptions and ways of thought. Some of the most outspoken librarians are those who recognize—and fear—the power and shortcomings of certain library standards.

¶42 Sanford Berman<sup>50</sup> and his Cataloging Consumers Network<sup>51</sup> are persistent and ardent critics of the most widely used thesaurus, the *Library of Congress Subject Headings* (LCSH).<sup>52</sup> Berman wants the LCSH vocabulary to be contemporary, accurate, and predictable, but instead finds it “archaic, inaccurate, and unpredictable.”<sup>53</sup> Berman further observes that the “subject approach potentially represents the most powerful and fruitful means to access library materials, but at present remains woefully undeveloped and underutilized. [Moreover, subject cataloging] sometimes transmits undesirable messages. . . .”<sup>54</sup> The LCSH thesaurus and LC subject cataloging practice are also the target of critics who take a different tack from Berman. They gleefully ridicule what appear to be silly, offensive, or useless subject headings.<sup>55</sup> Another thread in this literature deals humorously or philosophically with the problem of an anachronistic subject-heading system that

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50. Berman was the head cataloger at the Hennepin County (Minnesota) Library for many years, and received ALA’s Margaret Mann Citation for “outstanding achievement in cataloging and classification” in 1981. He is the author of numerous articles and books on cataloging practice. See *Sanford Berman Selected Bibliography*, SPEAKER ARCHIVES, Library & Info. Studies Student Ass’n, Univ. of N.C. at Greensboro, at [http://www.uncg.edu/lis/lissa/speaker\\_archives/sberman.html](http://www.uncg.edu/lis/lissa/speaker_archives/sberman.html) (last visited Oct. 24, 2001).
  51. The Cataloging Consumers Network, headquartered in Edina, Minnesota, is a lobbying group that petitions the Library of Congress for changes to existing subject headings and the addition of new headings.
  52. CATALOGING POLICY & SUPPORT OFFICE, LIBRARY OF CONG., LIBRARY OF CONGRESS SUBJECT HEADINGS (24th ed. 2001).
  53. Sanford Berman, *Tools for Tinkering*, in SUBJECT CATALOGING: CRITIQUES AND INNOVATIONS 213, 213 (Sanford Berman ed., 1984).
  54. Sanford Berman, *Introduction* to SUBJECT CATALOGING: CRITIQUES AND INNOVATIONS, *supra* note 53, at 1, 1.
  55. See, e.g., John R. Likins, *Subject Headings, Silly, American—20th Century—Complications and Sequelae—Addresses, Essays, Lectures*, in SUBJECT CATALOGING: CRITIQUES AND INNOVATIONS, *supra* note 53, at 3. Likins questions the usefulness of many Library of Congress subject headings, wondering if library patrons ever approach the catalog to look for topics such as HEMORRHOIDS—POPULAR WORKS; ODORS IN THE BIBLE; SNEAKERS—ADDRESSES, ESSAYS, LECTURES; or STRIKES AND LOCKOUTS—SOY SAUCE INDUSTRY.



can never quite keep up with the times, whether the outdatedness involves medical or technical terminology or terms that evolve with changing social consciousness about such matters as ethnicity, gender, race, and sexual orientation.<sup>56</sup> Finally, there is the research that documents just how poorly LC subject classification captures the content of books.<sup>57</sup> This same research countered what might be a ready assumption in today's electronic environment—keyword searching *does not* solve access problems or make subject headings obsolete. In the study, keyword searching did not do a better job of retrieving for content than LC subject headings.<sup>58</sup>

¶43 Little has been written that specifically analyzes the LCSH thesaurus for materials dealing with American Indians, Alaska Natives, and Hawaii Natives or the work of the LC's subject catalogers in this domain. In one of the few published commentaries, Sanford Berman predictably suggests that the term "Indians" be dropped in favor of "Native American."<sup>59</sup> This idea will not win universal support and in fact was rejected in a more general article on subject access to diversity materials.<sup>60</sup> Berman's other suggestions are consistent with his notion that subject treatment should reflect something of the language, experience, and viewpoint of the people who are the subject of the literature being cataloged. In the application of this model, Berman proposes some new headings and unfavorably critiques some recent LC additions to the lexicon. He favors tribal names employed by the tribes themselves instead of English language adaptations of tribal names.<sup>61</sup> LC has already changed Chippewa to Ojibwe and Papago to Tohono O'Odham. The contrary view on this trend points to a confusing inconsistency; LC does not use the vernacular in subject headings for Germany or other nations.

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56. See, e.g., Gary M. Klein, *Sex Education and Sexuality Before Stonewall: A Historical Look at Subject Headings Used*, 22 REFERENCE SERVICES REV., 1994, no. 4, at 29; Margaret N. Rogers, *Are We On Equal Terms Yet? Subject Headings Concerning Women in "LCSH,"* 37 LIBR. RESOURCES & TECHNICAL SERVICES 181 (1993); Jessica L. Milstead Harris & Doris H. Clack, *Treatment of Peoples in Subject Analysis*, 23 LIBR. RESOURCES & TECHNICAL SERVICES 375 (1979); JOAN K. MARSHALL, ON EQUAL TERMS: A THESAURUS FOR NONSEXIST INDEXING AND CATALOGING 6-10 (1977) (setting forth the author's "Principles for Establishing Subject Headings Relating to People and Peoples"); SANFORD BERMAN, PREJUDICES AND ANTIPATHIES: A TRACT ON THE LC SUBJECT HEADINGS CONCERNING PEOPLE (1971).
  57. Research that analyzed the accuracy of LC subject classifications when compared to content summaries in *Book Review Digest* found that in one-third of more than one thousand examples, the Library of Congress subject heading did not capture the contents of the book. Importantly, this research also demonstrated that key-word searching based on words in the title did not remedy the problem of poorly assigned subject headings. Tschera Harness Connell, *Techniques to Improve Subject Retrieval in Online Catalogs: Flexible Access to Elements in the Bibliographical Record*, 10 INFO. TECH. & LIBR. 87 (1991).
  58. *Id.* See generally John M. Budd, *The Complexity of Information Retrieval: A Hypothetical Example*, 22 J. ACAD. LIBRARIANSHIP 111 (1996) (calling for more subject entries of greater specificity to improve library access).
  59. Sanford Berman, *When the Subject Is Indians*, AM. INDIAN LIBR. NEWSL., Winter 1995, at 3, available at [http://www.nativeculture.com/lisamitten/ailanewsW95\\_LCIndians.html](http://www.nativeculture.com/lisamitten/ailanewsW95_LCIndians.html).
  60. "Native Americans," it was pointed out, may be residents of South, Central, or North America. Karen A. Nuckolls, *Subject Access to Diversity Materials: The Library of Congress Subject Heading Shortfall*, 45/46 REFERENCE LIBR. 241, 244 (1994), reprinted in RACIAL AND ETHNIC DIVERSITY IN ACADEMIC LIBRARIES: MULTICULTURAL ISSUES 241, 244 (Deborah A. Curry et al. eds., 1994).
  61. Berman, *supra* note 59.

¶44 Troubling to some—and certainly imprecise—is the failure of LC to develop and use subject headings that describe Alaska Natives of various ethnic identification or to specifically identify Native Hawaiians. A work dealing with Alaska natives (Indians, Eskimos—or Inuits, and Aleuts) is likely to receive the generic subject INDIANS OF NORTH AMERICA—ALASKA. This apparently is an expediency because more specific headings exist to describe Alaska natives.

¶45 Native Hawaiians are not considered “Indians”<sup>62</sup> and cannot be specially identified with current subject headings. The subject heading HAWAIIANS is used for works having to do with any resident of the state, not specifically those who fit the legal or cultural definition of “Native Hawaiian.” The generic INDIGENOUS PEOPLES is sometimes employed. This lack of specificity is unfortunate because a great deal of literature is now generated about the politically active Native Hawaiians and their cultural and political differences from Hawaii citizens descended from nonnatives. Furthermore, the unsettled legal future of Native Hawaiians promises to produce an even richer bibliography.

¶46 LC has sought input from AILA on possible subject heading changes and deserves credit for accepting many new historical and topical headings suggested by St. Louis University Law Library when it cataloged the *Native American Reference Collection* as a major microforms set for OCLC.<sup>63</sup> Other well-received changes have been made. Rules now call for dropping the venerable INDIANS OF NORTH AMERICA in favor of the specific tribal name if the appropriate topical subdivision is assigned.<sup>64</sup> LC also is considering treatment more consistent with other ethnic groups by adopting geographically explicit headings, such as INDIANS—NEW YORK.

¶47 While this discussion has largely focused on subject headings when viewed through the lens of respectful attention to race and ethnicity, as well as current notions of political correctness, the entire point of this article is missed if we stop at that analysis. The thrust here is to raise consciousness around law library treatment of American Indian tribes as *governments*. As noted earlier, recognized tribes are not just racial groups, they also are self-governing, sovereign political entities empowered to exercise governmental functions.

¶48 In this regard, most law librarians need to catch up with LC and our own

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62. Some Indian law scholars argue that a “trust relationship” exists between Native Hawaiians and the United States federal government that is akin to that of the United States and recognized Indian tribes. However, efforts to legally establish that Native Hawaiians are “Indians” for purposes of the law have failed to date, most recently when the Supreme Court declined to reach that question in deciding *Rice v. Cayetano*, 528 U.S. 495 (2000). In the wake of the *Rice* decision, bills have been introduced in Congress to clarify Native Hawaiian status. See generally Kimberly A. Costello, Note, *Rice v. Cayetano: Trouble in Paradise for Native Hawaiians Claiming Special Relationship Status*, 79 N.C.L. REV. 812 (2001).

63. After undertaking this project in the early 1990s, St. Louis University proposed a large number of new subject headings to the Library of Congress. In a slow process, LC accepted and added many of those suggested. E-mail message from Richard Amelung, Head of Technical Services, St. Louis University Law Library, to Nancy Carol Carter, University of San Diego (May 24, 2001) (on file with author).

64. *H 1152 Indians of North America*, 41 LIBR. OF CONGRESS CATALOGING SERVICE BULL. 84 (1988).

cataloging experts. These policy seers have out-distanced common law-library practice. The 1998 revision of the second edition of the *Anglo-American Cataloguing Rules* (AACR2R) includes “Native American nations” under the definition of “national governments” when specifying rules for creating entries for treaties.<sup>65</sup> This rule is cited and more completely discussed in the leading law library cataloging manual that states that AACR2R “[treats] native American nations as national governments.”<sup>66</sup> This manual also specifies that Native American codes are “treated as if they were a code of a state of the United States,”<sup>67</sup> thereby giving effect to a special rule of AACR2R applicable to uniform entries for “legislative enactments and decrees of a *political jurisdiction*. . . .”<sup>68</sup>

¶49 With this clear guidance, it is disappointing that law libraries have not uniformly implemented the rules. A spot survey of law-library online catalogs shows that cataloging practice lags behind both LC policy and the best professional advice of law catalogers. Some law libraries are according tribal governments appropriate treatment in the cataloging of tribal legislative output, but many are not. Based on conversations with catalogers, noncompliance appears to be attributable to lack of awareness of the standards, rather than disagreement with the rules or a determination to make a backhanded political statement. This article calls for the *affirmative* political statement that law libraries can make by following LC policy and treating Indian nation materials in conformity with that of other jurisdictions.

¶50 Methods of classification of legal materials generated by tribal governments present yet another challenge for law librarians. At this point, the classification tables do not reflect the sovereignty of tribal governments. Many American Indian materials fall into LC class “E,” which may have become an over-used catchall for materials needing more careful classification.<sup>69</sup> Law-related American Indian information is classified in the LC system at KF8201–8228 and falls after materials related to the military. Research did not reveal whether this location is a holdover from the original handling of federal Indian affairs within the War Department, but the coincidence is too striking not to notice. In any event, Indian nations do not get a treatment within the LC classification scheme that is consistent with the treatment of states, or even with territories or cities of the United States. Rather, all American Indian legal materials are classified with publications generated by or written about United States federal government agencies and activities. Tribal law is inserted at KF8220–8224.

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65. JOINT STEERING COMMITTEE FOR REVISION OF AACR, *ANGLO-AMERICAN CATALOGUING RULES* 365 n.10 (Michael Gorman & Paul W. Winkler eds., 2d. ed., 1998 rev., Canadian Library Association 1998) [hereinafter AACR2R].

66. MELODY BUSSE LEMBKE & RHONDA K. LAWRENCE, *CATALOGING LEGAL LITERATURE: A MANUAL ON AACR2R AND LIBRARY OF CONGRESS SUBJECT HEADINGS FOR LEGAL MATERIALS* app. A at A–32 (3d ed. 1997).

67. *Id.* at 390.

68. AACR2R, *supra* note 65, at 358 (emphasis added).

69. E-mail message from Kelly Webster, University of Michigan, to Nancy Carol Carter, University of San Diego (Feb. 27, 2001) (on file with the author).

¶51 A remedy may lie in the currently unused KFY class. Although LC may already have plans for this class, using KFY would place Indian nations between United States cities and United States territories. In any case, whether this class or another is used, the primary law of Indian nations should stand outside the classifications for United States federal law affecting Indians.

¶52 Hawaii and Alaska will pose particularized questions in such a scheme. Although there are Native Hawaiian sovereignty advocates, there is not at this time a Native Hawaiian legal entity that compares to a federally recognized Indian tribal government. How such a new classification scheme should be applied to native groups in Alaska is equally unclear. The entire legal history of Alaska natives is very different from Indian tribes in other states, due to special terms in the 1867 purchase treaty negotiated with Russia, the dearth of treaties between Alaska native groups and the United States, and the singular nature of the Alaska Native Claims Settlement Act.<sup>70</sup>

¶53 The expertise of law librarians is needed to assist LC in bringing about appropriate cataloging and classification changes for the legal materials of American Indians, Alaska Natives, and Native Hawaiians. Assistance may necessarily have to take the form of lobbying. The Canadian example is instructive. In response to cataloger requests, the National Library of Canada developed new approaches relating to the native peoples of Canada, including an enunciated distinction between INUIT and ESKIMO,<sup>71</sup> to use with its publication, *Canadian Subject Headings*.<sup>72</sup>

¶54 Whatever specific changes are wrought, we are already seeing a move away from the convenient lumping together of the United States indigenous population into a monolithic whole. If Berman's model serves, we will see subject headings that better reflect the varied experiences of different groups and the stark differences perceived by and among tribes about themselves and each other. Progress on these fronts means we will have to learn new names for tribes. The comfortably familiar tribal designations ingrained in our national folklore may be relegated to cross-reference status. Changes in the classification of tribal legal materials likewise means extra work for law librarians, but this reform would update an antiquated system and allow all libraries to more appropriately acknowledge the third American sovereign.

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70. 43 U.S.C. §§ 1601–1628 (1986). This law settled all aboriginal title claims in Alaska prior to the construction of the Alaska pipeline and it organized traditional native groups into corporations for the management of settlement resources. The degree to which these native corporations have sovereign powers corresponding to those of Indian tribes has been litigated. The Bureau of Indian Affairs lists, along with recognized tribes, the Alaska native groups said to be eligible for federal services. The latest United States Supreme Court ruling diminished the sovereign standing of Alaska native corporations. *Alaska v. Native Village of Venetie*, 522 U.S. 520 (1998).

71. Nuckolls, *supra* note 60, at 247–48.

72. NAT'L LIBRARY OF CANADA, *CANADIAN SUBJECT HEADINGS* (Alina Schweitzer ed., 3d ed. 1992).

### **Conclusion**

¶55 This article sets out the legal background of tribal sovereignty and offers a justification for increased attention to the third sovereign in American law libraries. Law librarians are asked to think differently about American Indian law and particularly tribal law, to reevaluate the place of these materials within our core collections, and to remold the ways in which we provide access through reference readiness, cataloging, and classification. Every specialty within law librarianship has a role to play in reshaping our professional approach to the legal record of the third sovereign and in helping to make it a more permanent one.

¶56 Once librarians accept the primary nature of this body of law, most of these suggested actions will become matters of professional routine, not detours into legal exotica. American Indian law presents every law librarian with an intellectually stimulating means of furthering the interests of justice within the domain of the American legal system that is our own.