A Symposium on Tribal Courts: Introduction

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The development of tribal courts as the cornerstone of tribal sovereignty continues to be an exciting frontier in the field of Indian law. This is especially true in light of the United States Supreme Court's decisions in *National Farmers Union Insurance Cos. v. Crow Tribe* and *Iowa Mutual Insurance Co. v. LaPlante*, which hold that tribal courts are the primary forums for adjudicating civil disputes that arise in Indian country. As Justice Marshall wrote in *Iowa Mutual*, "[t]ribal courts play a vital role in tribal self-government, and the Federal Government has consistently encouraged their development." Yet it is this growing prominence that has, in turn, raised new and highlighted old questions that pervade Indian law.

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3. *Id.* at 14-15 (citation omitted).
It is our good fortune that a number of these pressing issues—both new and old—are the focus of this symposium issue on tribal courts. The issues explored include historical reviews of Oklahoma tribal courts\(^4\) and Navajo tribal courts,\(^5\) the continuing conceptual difficulty of many courts, particularly Oklahoma state courts, of reliably analyzing issues relative to determining tribal jurisdiction,\(^6\) and the nascent role of tradition in emerging Navajo jurisprudence.\(^7\) The forthright exposition of these issues by Professor Arrow, Ms. Wallingford, and Mr. McBride in their respective articles does much to identify and clarify the ongoing trends and continuing dilemmas.

These trends and dilemmas also highlight the deeper, bigger picture in Indian law in a number of areas. One trend is the trajectory of (tribal) sovereignty on its path from jurisdiction to jurisprudence, from power to values. As tribal courts become more secure in the recognition and permanence of their (jurisdictional) authority, there will be (as there already is) increasing focus in their jurisprudence on the values they seek to realize and embody in their decision-making. This link is critical because power that becomes disconnected from the actualization of humane, cultural values is all too susceptible to arbitrariness and abuse. This important concern for values is also manifest in the increasing interest of many tribal courts in the application of tribal tradition and custom and the development of an authentic tribal common law. The ongoing commitment to synthesize the best of both the dominant and indigenous canons is one


\(^{7}\) Wallingford, supra note 5, at 146-51.
of the most exciting and salient qualities of much emerging tribal court jurisprudence.\textsuperscript{8}

Another trend identified in these symposium pieces that is related to the larger Indian law focus is the troubling, doctrinal incoherence of many courts, particularly state courts, in their analysis of tribal jurisdiction issues. There is, for example, the continuing inability of many courts to make the important distinction between legislative/regulatory jurisdiction and adjudicatory jurisdiction, as well as understanding the various components of the critical term “Indian country” as it is defined at 18 U.S.C. § 1151.\textsuperscript{9} The United States Supreme Court itself has done little to clarify these cleavages and much uncertainty has resulted.\textsuperscript{10} State courts—including some of the egregious Oklahoma examples described in the symposium articles—often seem either technically incapable or politically unwilling to engage in persuasive analysis when deciding jurisdictional issues. Yet perhaps this is not wholly unexpected given the new prominence of tribal courts and the ignorance and animus that has historically surrounded their perception by many people, both Indian and non-Indian, on and off the reservation.

In any event, the federal policy of encouraging tribal self-determination and tribal self-government has been vigorously reaffirmed by the Supreme Court decisions in \textit{National

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\item \textsuperscript{9} 18 U.S.C. § 1151 provides:
\begin{quote}
Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country,” as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.
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Farmers Union and Iowa Mutual. Tribal courts are properly seen as vital institutions for implementing this important national policy. As a result, tribal courts are the very visible standard bearers for charting much of the future of tribal sovereignty. In pursuing this mission, they need increased understanding, additional support, and continued respect as the enduring forums for rendering justice throughout Indian country. This mission continues to advance with the assistance of the contributions that appear in this timely tribal-court symposium issue of the Oklahoma City University Law Review.