

TABLE OF CONTENTS

<i>Preface</i>	<i>xxi</i>
<i>Acknowledgments</i>	<i>xxvii</i>
1. TRIBAL GOVERNMENT	1
A. A BRIEF HISTORY OF CUSTOMARY AND TRADITIONAL AMERICAN INDIAN GOVERNANCE	1
1. American Indian “Tribalism”	1
2. Quasi-Judicial Character of Traditional American Indian Governance	6
• Case 4. Cries Yia Eya Banished for the Murder of Chief Eagle	6
• Case 96. Refusal of Divorce by Court Order	7
• Case 31. Slander	7
• Case 92. <i>Hōnimiidō v. Dohōōtwe</i>	7
• Case 21. <i>Mōkin v. Toyop</i>	8
• <i>Jacob Williams and Tuscarora Nation v. Six Nations Iroquois Council</i>	8
• <i>Catharine Hill v. Alex R. Jamieson</i>	9
• Executive Clemency	9
• [Advisory Opinion]	10
B. THE APPLICATION AND UNDERSTANDING OF UNWRITTEN LAW: THE THREE FIRES CONFEDERACY OF ANISHINAABEK	12

C. THE ORIGINS AND DEVELOPMENT OF MODERN AMERICAN INDIAN TRIBAL GOVERNMENTS	19
1. Early Tribal Constitutions	19
• Gayanashagowa or the Great Law of Peace	19
2. The Impact of the Treaty Relationship on American Indian Governance	24
• Treaty with the Ottawa and Chippewa	24
3. The Beginnings of American Indian Constitutional Government	27
• Cherokee Constitution of 1827	28
• Seneca Nation of Indians Constitution of 1848	32
• Pima Constitution of 1901	35
• Ottawa Laws (1850)	37
4. Removal, Allotment, and Assimilation: The Destabilization of Nascent American Indian Governance	41
5. The Indian Reorganization Act as the Organic Document of Modern Tribal Governance	48
6. Administrative Assaults on Tribal Governance during the Termination Era	51
• The Erosion of Indian Rights, 1950-1953: A Case Study in Bureaucracy	52
D. SELF-DETERMINATION AND THE FUTURE OF AMERICAN INDIAN TRIBAL GOVERNANCE	56
2. TRIBAL JUSTICE SYSTEMS	61
A. TRIBAL COURT LEGITIMACY	61
• Tribal Court Jurisprudence: A Snapshot from the Field	61
B. A SURVEY OF TRIBAL JUSTICE SYSTEMS AND PRACTICES	66
1. Examples of Modern Justice Systems	66
• Colville Confederated Tribes	66
• Northern Cheyenne Tribe	69
• Grand Traverse Band of Ottawa and Chippewa Indians	71
• Hopi Tribe	73
• Mississippi Band of Choctaw Indians	74

• Northwest Intertribal Court System	76
• John Haney, <i>The Seminole Way: The Path to the 2011 Reestablishment of the Seminole Nation of Oklahoma Tribal Court System</i>	78
2. Examples of Traditional Justice Practices	79
• U.S. Department of Justice & U.S. Department of the Interior	79
C. CHOICE OF LAW: CUSTOMARY, TRADITIONAL, AMERICAN, OR INTERTRIBAL?	83
1. The Legal Framework for the Use of Custom in Tribal Court Decision Making: Rules of Recognition and Change	83
• Diné Choice-of-Law Statute	84
• Hoopa Valley Tribe, <i>Traditional Tribal Law</i>	87
2. Choice of Law	90
• <i>Hopi Indian Credit Association v. Thomas</i>	90
D. TRIBAL JUDGES	98
1. Judicial Independence	98
• Little Traverse Bay Bands of Odawa Indians Constitution	98
2. Judicial Codes	100
• Oneida Tribe of Indians of Wisconsin	100
3. Theories of Tribal Judging	106
• Coyote Paradox: Some Indian Law Reflections from the Edge of the Prairie	106
3. TRIBAL CONSTITUTIONS	111
A. MODERN TRIBAL CONSTITUTIONS	111
1. A Brief History of Tribal Constitutions After the Indian Reorganization Act	111
• How Long Will Indian Constitutions Last?	111
• Cohen on Tribal Constitutions	113
2. White Earth Nation—A Case Study	118
• A Citizen’s Guide to the White Earth Constitution	118
B. TRIBAL CONSTITUTIONAL STRUCTURE	126
1. Judicial Review	126
• <i>Domencich v. Oneida Tribal Enrollment & Trust Department</i>	126

2.	Separation of Powers	129
•	<i>Standing Bear v. Pratt</i>	129
C.	CONSTITUTIONAL LAW AND TRIBAL GOVERNMENT	142
1.	Sources of Tribal Governmental Authority	142
•	<i>In the Matter of Village Authority to Remove Tribal Council Representatives</i> (Bacavi Certified Question)	142
2.	Legislative Immunity	151
•	<i>Quileute Nation v. Jamie</i>	151
3.	Removal of Tribal Judges	159
•	<i>Turtle Mountain Judicial Board v. Turtle Mountain Band of Chippewa Indians</i>	159
4.	Removal of Tribal Legislative or Executive Officials	171
•	<i>In re McSauby</i>	171
D.	TRIBAL SOVEREIGN IMMUNITY	177
•	<i>Deckrow v. Little Traverse Bay Bands of Odawa Indians</i>	177
4.	TRIBAL MEMBERSHIP	185
A.	TRIBAL MEMBERSHIP CRITERIA	188
•	Ely Shoshone Tribe Constitution and Bylaws	188
•	Constitution and Bylaws of the Sault Ste. Marie Tribe of Chippewa Indians	188
•	Saginaw Chippewa Indian Tribe of Michigan Constitution	189
B.	JUDICIAL REVIEW OF TRIBAL MEMBERSHIP DETERMINATIONS	191
1.	Tribal Court Authority to Review Tribal Membership Determinations	192
•	<i>Maltos v. Sauk-Suiattle Tribe</i>	192
2.	Limited Tribal Court Scope of Review	196
•	<i>Cooke v. Yurok Tribe</i>	196
3.	Blood Degree Certification	199
•	<i>Hoffman v. Colville Confederated Tribes</i>	199
4.	Dual Enrollment and Indian Blood of Other Tribal Nations	209
•	<i>In re Menefee</i>	209

C. DISENROLLMENT	214
1. Constitutional Authority	214
• <i>Snowden v. Saginaw Chippewa Indian Tribe of Michigan</i>	214
2. Equitable and Procedural Defenses	223
• <i>Alexander v. Confederated Tribes of Grand Ronde</i>	223
3. Erroneously Enrolled Persons	233
• <i>Cholewka v. Grand Traverse Band of Ottawa and Chippewa Indians Tribal Council</i>	233
5. TRIBAL ELECTIONS	245
A. JUDICIAL REVIEW OF TRIBAL ELECTIONS	245
1. Standards of Review	245
• <i>Darden v. Chitimacha Election Board</i>	245
2. Remedies	248
• <i>Bailey v. Grand Traverse Band Election Board</i>	248
B. QUALIFICATIONS OF TRIBAL GOVERNMENT ELECTORAL CANDIDATES	258
• <i>Tsosie v. Deschene</i>	258
C. QUALIFICATIONS OF VOTERS	264
• <i>Crowe v. Tribal Board of Elections</i>	264
D. TRIBAL CONSTITUTIONAL AMENDMENT ELECTIONS	268
1. Election Procedures	268
• <i>Kavena v. Hopi Indian Tribal Court</i>	268
2. Amendment by Petition and Referendum Process	273
• <i>Spurr v. Tribal Council</i>	273
E. CAMPAIN FINANCE	284
• <i>In re: Walkingstick</i>	284
F. THE PROBLEM OF HOLDOVER COUNCILS	286
• <i>Chamberlain v. Peters</i>	286
6. CIVIL RIGHTS	297
A. DUE PROCESS	299
• <i>High Elk v. Veit</i>	299

B. EQUAL PROTECTION	303
1. Discrimination on the Basis of Immutable Characteristics	304
• <i>Topping v. Ho-Chunk Nation Grievance Review Board</i>	304
2. Discrimination on the Basis of Marital Status	312
• <i>Arizona Public Service Co. v. Office of Navajo Labor Relations</i>	312
3. Religious Freedom	318
• <i>Townsend v. Port Gamble S'Klallam Housing Authority</i>	318
C. FREEDOM OF SPEECH	325
• <i>Navajo Nation v. Crockett</i>	325
D. BANISHMENT AND EXCLUSION	330
1. Facial Challenges	331
• <i>Mille Lacs Band of Ojibwe Indians v. Williams</i>	331
2. As Applied Challenges	339
• <i>Monestersky v. Hopi Tribe</i>	339
E. CIVIL RIGHTS AND SOVEREIGN IMMUNITY	344
• <i>Wescogame v. Alvarez</i>	344
7. CRIMINAL LAW AND PROCEDURE	355
A. PERSONAL JURISDICTION	357
1. Nonmember Indians	357
• <i>Means v. District Court of the Chinle Judicial District</i>	357
2. Indian Status	364
• <i>Eastern Band of Cherokee Indians v. Torres</i>	364
B. TERRITORIAL JURISDICTION	372
• <i>Navajo Nation v. Milosevich</i>	372
C. SUBSTANTIVE CRIMINAL LAW	378
1. Borrowed Criminal Codes	378
• <i>People of the Little River Band of Ottawa Indians v. Champagne</i>	378
2. Indigenous Criminal Law	384
• <i>Hoh Indian Tribe v. Hudson</i>	384
D. CRIMINAL PROCEDURE	388
1. Due Process	389
• <i>Davisson v. Colville Confederated Tribes</i>	389

2. Search Warrants and Probable Cause	398
• <i>Metlakatla Indian Community v. Williams</i>	398
3. Right to Counsel	402
• <i>Gallaher v. Colville Confederated Tribes</i>	402
4. Confessions	409
• <i>Navajo Nation v. Rodriguez</i>	409
E. SENTENCING	415
• <i>Confederated Tribes of the Chehalis Reservation v. Lyons</i>	415
F. PROTECTION ORDERS	419
• <i>Spurr v. Spurr</i>	419
8. DOMESTIC RELATIONS	435
A. MARRIAGE	436
• <i>In re Validation of Marriage of Francisco</i>	436
B. PROBATE	444
• <i>In re: Estate of Sampson</i>	444
C. CHILDREN	459
1. Child Custody	459
• <i>Polingyouma v. Laban</i>	459
2. Application of Federal Statutes in Child Custody Matters	466
• <i>In the Matter of C.S.N.</i>	466
3. Child Support	474
• <i>In the Interest of A.A.M.B.</i>	474
4. Child Welfare	476
• <i>In the Matter of a Minor Child (L.J.Y. v. T.T.)</i>	476
5. Adoption	484
• <i>In the Matter of the Adoption of Davis</i>	484
9. PROPERTY	493
A. TRIBAL CULTURAL PROPERTY	494
• <i>Chilkat Indian Village, IRA v. Johnson</i>	494
B. REAL PROPERTY	500
1. Grazing Leases	500
• <i>Riggs v. Estate of Attakai</i>	500

2. Allotments	505
• <i>Smith v. Eckhart</i>	505
3. Leases of Tribal Lands	510
• <i>Colorado River Indian Tribes v. Waterwheel Camp Recreation Area, Inc.</i>	510
C. TRIBAL HOUSING	519
• <i>Coquille Indian Housing Authority v. Harrison</i>	519
D. LAND USE	525
• <i>FMC Corporation v. Shoshone-Bannock Tribes Land Use Department and Fort Hall Business Council</i>	525
E. JURISDICTION	537
1. Jurisdiction Under Tribal Law	537
• <i>Ross v. Sulu</i>	537
2. Jurisdiction over Nonmembers	541
• <i>Hoover v. Colville Confederated Tribes</i>	541
3. Jurisdiction over Off-Reservation Tribal Lands	558
• <i>Niagara Aerospace Museum v. Seneca Niagara Falls Gaming Corp.</i>	558
4. Jurisdiction over Fee Land Within Reservation Borders	564
• <i>Atkinson v. Beveridge</i>	564
10. CONTRACTS	569
A. CONTRACT DOCTRINES UNDER TRIBAL LAW	569
1. Contract Formation	569
• <i>Malaterre v. St. Claire</i>	569
2. Parol Evidence Rule	574
• <i>Southern Puget Sound Intertribal Housing Authority v. Johnson</i>	574
3. Implied Contracts	577
• <i>Colville Tribal Enterprise Corp. v. Orr</i>	577
4. Contract Breach	581
• <i>Pablo v. Confederated Salish & Kootenai Tribes</i>	581

5. Tribal Uniform Commercial Code	591
• <i>Butler Machinery, Inc. v. Farlee</i>	591
B. CONTRACT DISPUTE RESOLUTION	594
1. Arbitration	594
• <i>Confederated Tribes of Grand Ronde v. Strategic Wealth Management, Inc.</i>	594
2. Suits against Tribal Businesses—Waivers of Sovereign Immunity	610
• <i>World Extreme Cage Fighting, LLC v. Mohegan Tribal Gaming Authority</i>	610
3. Jurisdiction over Nonmembers	614
• <i>Flandreau Santee Sioux Tribe v. Sioux Falls Construction Company</i>	614
11. TORTS	623
A. TORT DOCTRINES UNDER TRIBAL LAW	623
1. Negligence	623
• <i>Smith v. Salish Kootenai College</i>	623
2. Defamation	632
• <i>Perron v. Mashantucket Pequot Tribe</i>	632
B. TRIBAL COMMON LAW CAUSES OF ACTION	642
• <i>Kimsey v. Reibach</i>	642
C. RESOLUTION OF TORT CLAIMS	648
1. Suits Against Indian Tribes Under Tort Claims Ordinances	648
• <i>Nguyen v. Spirit Mountain Casino</i>	648
2. Suits Against Tribal Entities Covered by Insurance	656
• <i>Amerind Risk Management Corp. v. Malaterre</i>	656
3. Suits Against Tribal Employees	663
• <i>Contreras v. Mohegan Tribal Gaming Authority</i>	663
D. PERSONAL JURISDICTION	665
• <i>Mahler v. Hinshaw</i>	665
E. ADJUDICATORY JURISDICTION OVER NONMEMBERS	670
• <i>Bank of Hoven (Plains Commerce Bank) v. Long Family Land and Cattle, Inc.</i>	670

12. PROCEDURE AND JURISDICTION	685
A. JURISDICTION	686
1. Territorial and Personal Jurisdiction	686
• <i>Kang v. Chinle Family Court</i>	686
2. Appellate Jurisdiction	691
• <i>Kalantari v. Spirit Mountain Gaming, Inc.</i>	691
B. JUSTICIABILITY	696
1. Standing	696
• <i>Village of Mishongnovi (Cultural Preservation Board) v. Humeyestewa</i>	696
2. Advisory Opinions	706
• <i>In Re Little Traverse Bay Bands of Odawa Indians</i>	706
C. TRIBAL COURT CONTEMPT POWER	716
• <i>Bear Soldier District v. Bear Soldier Industries</i>	716
D. CERTAIN PROCEDURE DOCTRINES UNDER TRIBAL LAW	721
1. Statutes of Limitations	721
• <i>Bugenig v. Hoopa Valley Tribe</i>	721
2. Attorney Fees	725
• <i>Neff v. Port Susan Camping Club</i>	725
3. Enforcement of Foreign Judgments and Orders	728
• <i>Previti v. C&S Wholesale Grocers, Inc.</i>	728
4. Default Judgments	732
• <i>Arquette v. Park Place Entertainment Corp.</i>	732
5. Juries	737
• <i>Flandreau Santee Sioux Tribe v. Sioux Falls Construction Company</i>	737
13. TRIBAL REGULATORY AND ADMINISTRATIVE LAW	743
A. EMPLOYMENT LAW	744
1. Tribal Enterprise Employment	744
• <i>Shananaquet v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corp.</i>	744
2. Tribal Government Employment	747
• <i>Hoopa Valley Indian Housing Authority v. Gerstner</i>	747

3. Employment-Related Administrative Hearings	758
• <i>Synowski v. Confederated Tribes of Grand Ronde</i>	758
4. Application of Federal Laws	767
• <i>Harrington v. Little Traverse Bay Bands of Odawa Indians</i>	767
B. TRIBAL POLICE POWERS	774
1. Civil Offenses	774
• <i>Skokomish Tribe v. Mosbarger</i>	774
2. Civil Forfeiture	779
• <i>Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty-three and 14/100 Dollars (((\$1,463.14)</i>	779
3. Inherent Tribal Regulatory Powers	784
• <i>Big Man v. Big Horn County Electric Cooperative, Inc.</i>	784
C. CORPORATE AND BUSINESS ENTITIES	787
1. Tribal and Business Enterprises	787
• <i>Hawl'Bay Ba:J Enterprises Inc. v. Vaughn</i>	787
2. Indian Preference in Contracting	790
• <i>Oneida Seven Generations Corp. v. Quality Construction Management, LLC</i>	790
D. GAMING	795
1. Regulation	795
• <i>United States ex rel. Auginaush v. Medure</i>	795
2. Tribal Trust Funds	810
• <i>Seidel v. Mohegan Tribe of Indians of Connecticut</i>	810
E. TRIBAL TAXATION	816
• <i>Rose v. Adams</i>	816
F. JUDICIAL REVIEW OF TRIBAL BUSINESS DECISIONS	822
• <i>Bravo v. Hualapai Tribe</i>	822
14. PROFESSIONAL RESPONSIBILITY AND REGULATION OF LAWYERS	829
A. LAWYERS	829
1. Discipline	829
• <i>In the Matter of Seanez</i>	829
2. Disqualification	846
• <i>Hernandez v. Lower Sioux Indian Community Council</i>	846

3. Abusive Litigation Tactics	850
• <i>Hoopa Valley Tribal Council v. Jones</i>	850
B. LAY ADVOCATES	854
• <i>IDM Financial, LLC v. Napeahi</i>	854
C. ADMISSION	858
• <i>In the Matter of the Continued Admission to the Muscogee (Creek) Nation Bar Association by Zvenia</i>	858
D. JUDICIAL RECUSAL AND DISQUALIFICATION	866
• <i>Peone v. Colville Confederated Tribes</i>	866
E. IN-HOUSE COUNSEL	870
• <i>Lomayesva v. Talayumptewa</i>	870
<i>Table of Cases</i>	883
<i>Index</i>	901