


Exploring Legal Considerations for Tribes During the COVID-19 Pandemic

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Hello from Vallonia, Indiana!




← my last photo pre-@15
my assistant →
Neville




Hello from Brewer Farms!



Agenda

- **Refresher:** Federal Indian Law
 - **Background:** Tribal Public Health Law
 - **Background:** Tribal Emergency Preparedness Law
 - **Background:** Cross-Jurisdictional Coordination
 - **Refresher:** Federal Indian Health Policy
 - **Background:** Data and Surveillance
 - **Application:** Indian Law and the COVID-19 Pandemic
 - **Resources and Contact Information**
 - **Tribal Attorney Perspective and Discussion**
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Disclaimers

- The contents of this presentation are for educational purposes only.
 - I cannot provide legal advice on any issue and do not represent any individual or entity.
 - I recommend seeking the advice of an attorney or other qualified professional with questions regarding the application of law to your specific circumstance.
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More Disclaimers – Sorry!

- I will not be able to go into every issue in the level of detail I would like. I will be skipping some slides during my presentation, but they will still be available to you in case they are of interest.
- Please be patient with me with technology transitions.
- I haven't had the privilege to work closely with and Tribal nations within the boundaries of California. I have a lot to learn and look forward to hearing anything you might want to share.
- Lots of unknowns in federal Indian law, especially in the context of public health.

Super Unsatisfying!

Acknowledgments



Federal Indian Law

Federal Indian Law v. Tribal Law

- Federal Indian Law
 - The body of law that defines the rights, responsibilities, and relationships between Tribes, states, and the federal government.
- Tribal Law
 - The laws of individual Tribes including constitutions, codes, case law, and customary law

Sources of Federal Indian Law

Doctrine of Discovery

“It is supposed to be a principle of universal law, that, if an uninhabited country be discovered by a number of individuals, who acknowledge no connexion with, and owe no allegiance to, any government whatever, the country becomes the property of the discoverers, so far at least as they can use it. They acquire a title in common. The title of the whole land is in the whole society. It is to be divided and parcelled out according to the will of the society, expressed by the whole body, or by that organ which is authorized by the whole to express it.”

Johnson v. M'Intosh, 21 U.S. 543, 595

Sources of Federal Indian Law

Indian Commerce Clause

“Congress shall have the power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”

Article I, Section 8, Clause 3

United States Constitution



Sources of Federal Indian Law

Supremacy Clause

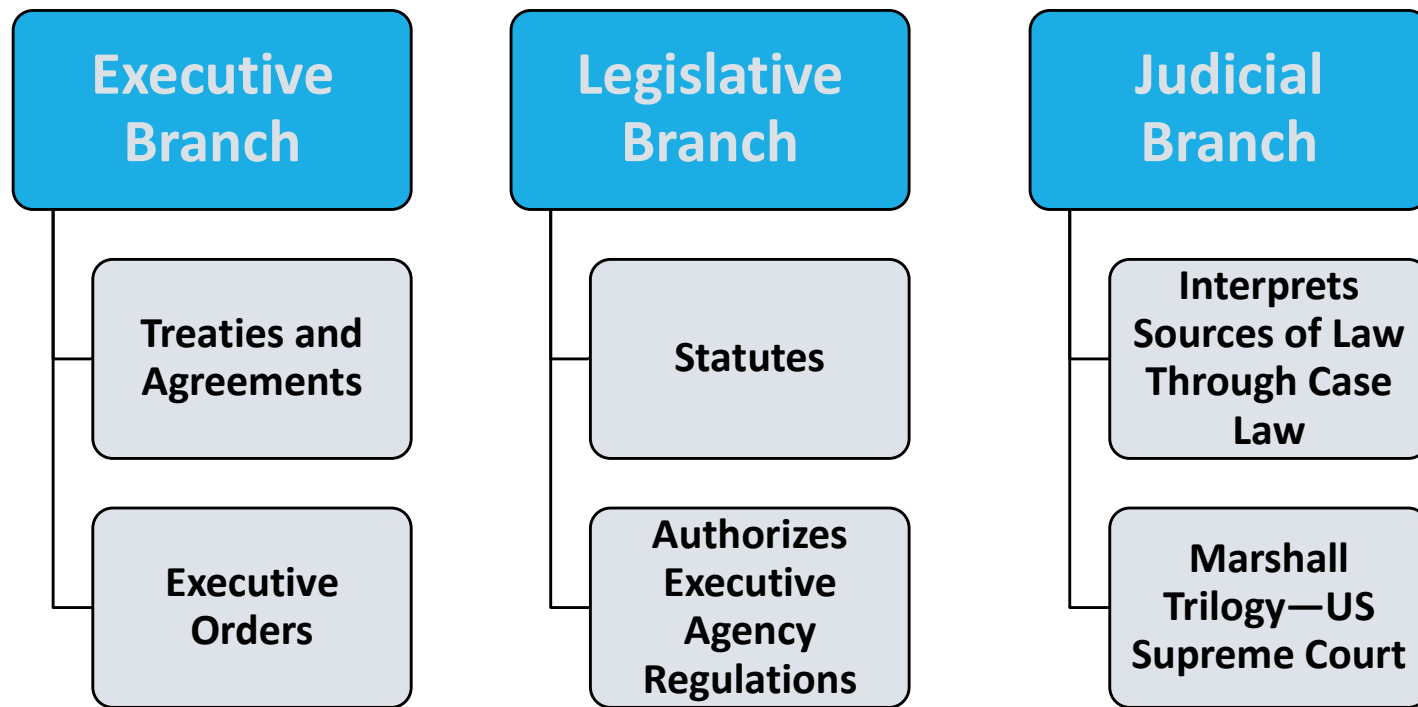
“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.”

Article VI, Clause 2

United States Constitution



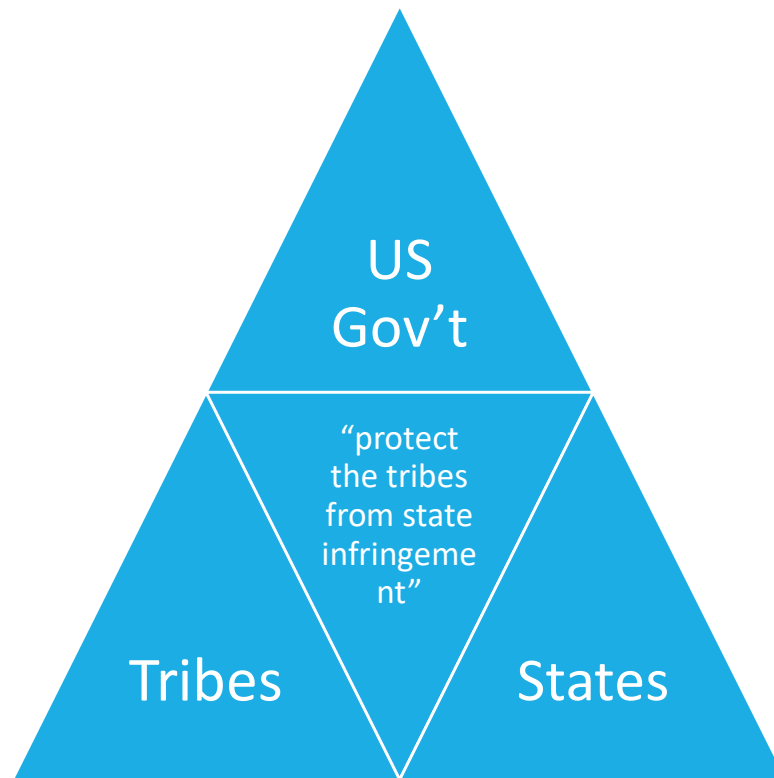
Sources of Federal Indian Law



Tribal Sovereignty & Tribal Inherent Authority

- Tribes have inherent authority as sovereign nations to protect and promote the health and welfare of their citizens using the methods most relevant for their communities
- Tribal inherent authority is a “plenary and exclusive power over their members and their territory, subject only to limitations imposed by federal law,” and includes the power to determine the form of tribal government and the power to legislate and tax, among others. COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, § 4.01[1][b]; § 4.01[2].

Sovereign Relationships



Plenary Power Doctrine

- The Supreme Court held that Congress has plenary power to legislate regarding all matters concerning Indians.

Ex Parte Crow Dog, 109 U.S. 556, 572 (1883)

United States v. Kagama, 118 U.S. 375, 384–5 (1886)

Trust Relationship

- The US Supreme Court has found that a unique trust relationship exists between the federal government and the tribes in light of their history, treaties, agreements, legislation, and case law
- Examples
 - Trust lands
 - Trust funds
 - Tribal consultation

See, e.g., United States v. Mitchell, 445 U.S. 535 (1980); *Menominee v. United States*, 391 U.S. 404 (1968); *Seminole Nation v. United States*, 316 U.S. 286 (1942); *Cherokee Nation v. Georgia*, 30 U.S. 1, 2 (1831).
Passamaquoddy v. Morton, 528 F.2d 370 (1st Cir. 1975).

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, WHAT IS THE FEDERAL INDIAN TRUST RESPONSIBILITY,
www.bia.gov/FAQs/index.htm.

Trust Relationship

“In carrying out its treaty obligations with the Indian tribes the Government is something more than a mere contracting party. Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, **it has charged itself with moral obligations of the highest responsibility and trust.**”

Seminole Nation v. United States, 316 U.S. 286, 296–7 (1942)

Jurisdiction

- Types of jurisdiction
 - Criminal
 - Civil
- Jurisdiction: based on two main factors
 - Identity of the parties involved
 - Location of the action
- Examples of unique jurisdictional structures
 - Public Law 280
 - Alaska Native villages
 - Oklahoma tribes

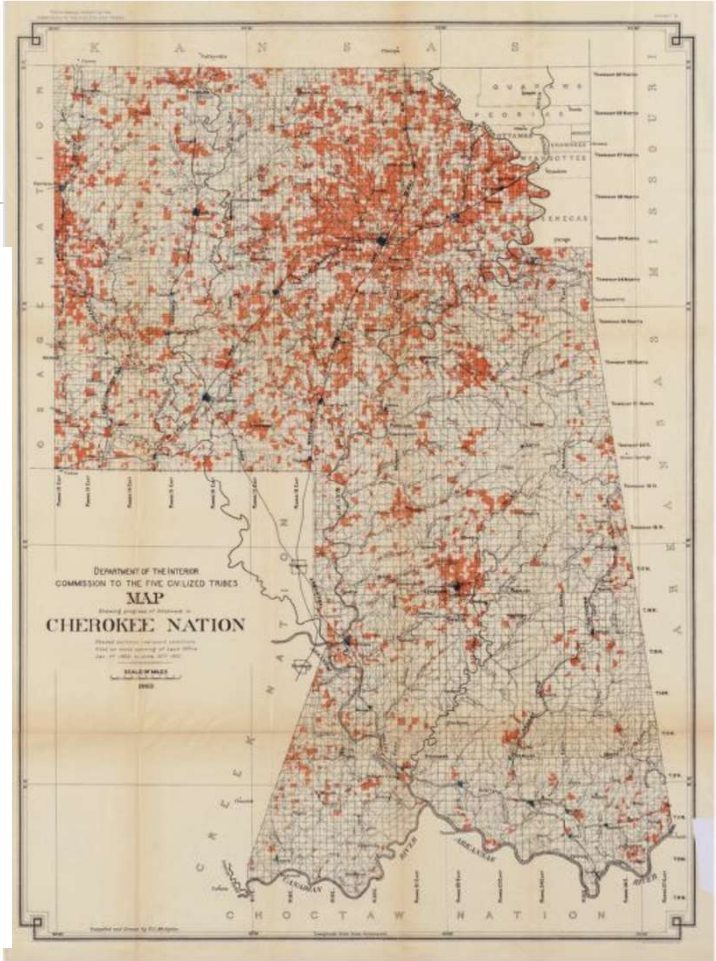
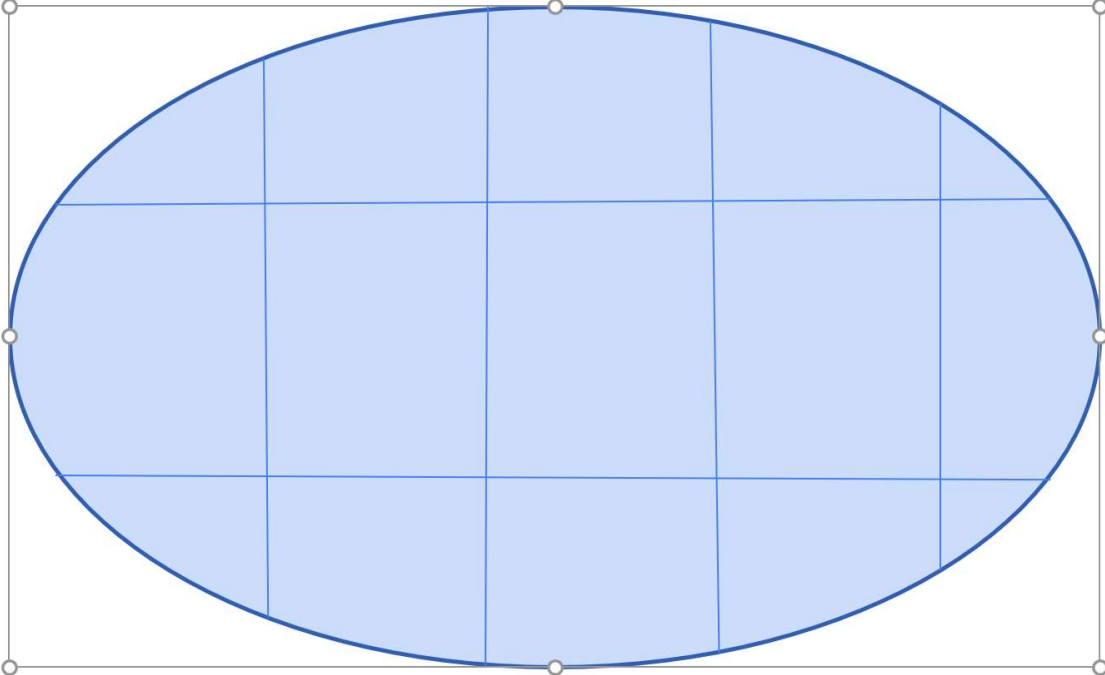
Jurisdiction

- Indian Country, 18 U.S.C.A. § 1151
 - “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.

Jurisdiction

- Tribal Lands: Terminology and Types
 - Indian Title
 - Fee Simple Title
 - Indian Country
 - Restricted Fee Lands
 - Reservations
 - Trust Lands
 - Allotments
 - Indian Land Claims
 - Land Buy-Back Program

Jurisdiction



Jurisdiction

- Criminal jurisdiction statutes
 - Indian Country Crimes Act (1790)
 - Major Crimes Act (1885)
 - Assimilative Crimes Act (1948)
 - Public Law 280 (1953)
 - Tribal Law and Order Act (2010)
 - Violence Against Women Act (2013 Reauthorization)

Jurisdiction

- Criminal jurisdiction: factors courts consider
 - Was the locus of the crime in Indian Country?
 - Does Public Law 280 or another specific jurisdictional statute apply?
 - Was the crime committed by or against an Indian?
 - Based on the identity of the defendant and the victim, what statutory scheme applies?

Jurisdiction

- Civil jurisdiction
 - **Jurisdiction of tribal courts:** Personal jurisdiction and subject matter jurisdiction
 - **Adjudicatory jurisdiction:** Suits against tribal members v. tribal nonmembers
 - **Tax and regulatory jurisdiction:** State authority v. tribal authority
 - **Tribes-as-states provisions:** Clean Water Act, Clean Air Act

Jurisdiction

- Civil jurisdiction: *Montana v. United States*, 450 U.S. 544, 564–65 (1981)
 - **General rule:** The inherent sovereign powers of an Indian Tribe do not extend to the activities of nonmembers of the Tribe on non-member fee lands beyond what is necessary to protect tribal self-government or to control internal relations.
 - **Exceptions:** Known as the “*Montana Test*”

Jurisdiction

- Civil jurisdiction: *Montana v. United States*, 450 U.S. 544, 564–65 (1981)
 - Consensual Relations Test
 - Tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A Tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the Tribe or its members, through **commercial dealing, contracts, leases, or other arrangements**.
Id. at 565–6.

Jurisdiction

- Civil jurisdiction: *Montana v. United States*, 450 U.S. 544, 564–65 (1981)
 - Direct Effects Test
 - A Tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the **political integrity**, the **economic security**, or the **health** or **welfare** of the Tribe. *Id.* at 566.

Jurisdiction

- Civil jurisdiction: *Montana v. United States*, 450 U.S. 544, 564–65 (1981)
 - Exception
 - *Montana* exceptions may not extend tribal regulatory authority in land use situations.
Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, 492 U.S. 408, 410 (1989).

Cultural Sovereignty

“Political sovereignty and cultural sovereignty are inextricably linked, because the ultimate goal of political sovereignty is protecting a way of life.”

W. Richard West (Cheyenne-Arapaho)



Cultural Sovereignty

“The concept of cultural sovereignty encompasses the spiritual, emotional, mental, and physical aspects of our lives. Because of this, only Native people can decide what the ultimate contours of Native sovereignty will be.”

Wallace Coffey, Former Chairman, Comanche Nation

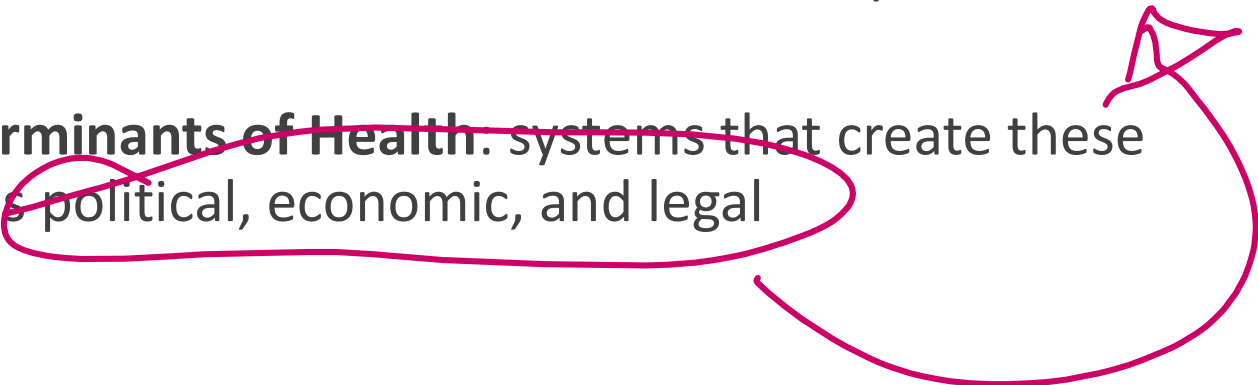
Rebecca Tsosie, Professor of Law, University of Arizona

Cultural Sovereignty

“Cultural sovereignty is the heart and soul that you have, and no one has jurisdiction over that but God.”

Wallace Coffey, Former Chairman, Comanche Nation

Social and Structural Determinants

- **Social Determinants of Health:** employment, income, housing, education and other conditions that determine inequitable health outcomes
 - **Structural Determinants of Health.** systems that create these inequities such as political, economic, and legal
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About social determinants of health, World Health Organization,

https://www.who.int/social_determinants/sdh_definition/en/ (last visited Jan. 30, 2019).

A conceptual framework for action on the social determinants of health, World Health Organization, 28 (2010), available at

https://www.who.int/social_determinants/corner/SDHDP2.pdf.

Structural Violence

“Structural violence, however, is almost always invisible, embedded in ubiquitous social structures, normalized by stable institutions and regular experience. Structural violence occurs whenever people are disadvantaged by political, legal, economic or cultural traditions. Because they are longstanding, structural inequities usually seem ordinary, the way things are and always have been.”

Winter, D. D., & Leighton, D. C. (2001). Structural violence. In D. J. Christie, R. V. Wagner, & D. D. Winter (Eds.), *Peace, conflict, and violence: Peace psychology in the 21st century*. New York: Prentice-Hall.

Adverse Outcomes of Federal Indian Law

Tribal Sovereignty and
Federal Recognition

- Termination of Tribes

Indians and Citizenship

- Hyperregulation

Doctrine of Discovery
and Indian Title

- Preventing Access to Ancestral Lands
- Preventing Access to Sacred Lands and Waters

Domestic Dependent
Nations and Plenary
Power

- Federal Preemption
- Federal Authorization of State Jurisdiction

Trust Responsibility

- Ineffective Consultation

Jurisdiction

- Lack of Civil Authority Over Non-Member Land Use
- Limited Criminal Authority Over Non-Indian Crimes

ICWA

ISDEAA

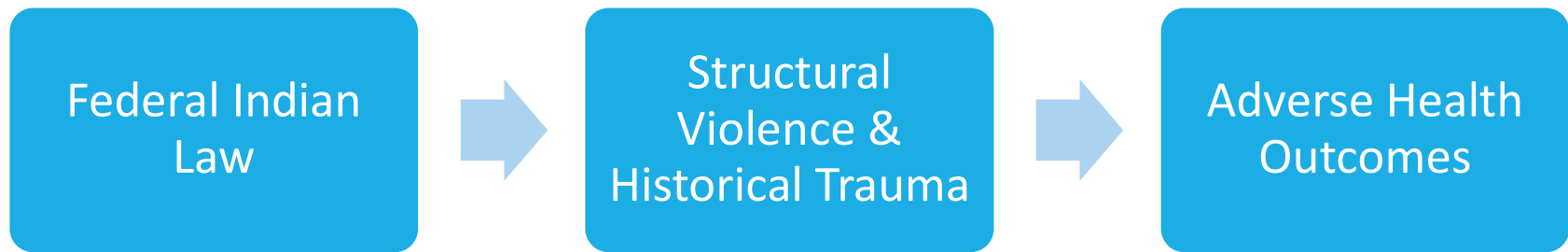
NAGPRA

Plenary Power

Domestic
Dependent
Nationhood

Legalized Colonization &
Genocide

Linking Federal Indian Law to Adverse Health Outcomes



Tribal Public Health Law

What is Tribal public health law?

Tribal Law

- The laws of individual Tribes including constitutions, codes, case law, and customary law

Federal Indian Law

- The legal framework governing the rights, responsibilities and relationships between Tribes, states, and the federal government

Tribal PH Law

- Any body of law—Tribal, federal, state, or other—that can affect the population health of American Indian and Alaska Native communities.
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Tribal Law

- The laws of individual Tribes including
 - Constitutions
 - Codes
 - Case Law
 - Customary Law

Standing Rock Sioux Tribal Constitution

“The Tribal Council shall exercise the following powers...[t]o promote and protect the health, education and general welfare of the members of the Tribe, and to administer charity and such other services as may contribute to the social and economic advancement of the Tribes and its members.”

Article IV, Section 1(c)

Little Traverse Bay Bands of Odawa Indians Waganakising Odawa Tribal Code of Law

6.3003. Creation Of The Department

The Tribal Council hereby approves the creation of the Health Department within the Executive Branch of government.

Little Traverse Bay Bands of Odawa Indians Waganakising Odawa Tribal Code of Law

6.3004. Authority And Duties

A. The Department shall have the following duties under the direction of the Director:

1. Promote, design and implement health programs for each facet of our tribal community.
2. Strive to improve and enhance the understanding of health-related issues within our community and in the greater community.
3. Assist with annual community events that incorporate health and wellbeing.
4. Provide services and programs that increase health and wellbeing.

Little Traverse Bay Bands of Odawa Indians Waganakising Odawa Tribal Code of Law

6.3004. Authority And Duties (cont.)

5. Administer health-based programs, grants and projects that assist our Tribal Citizens with an awareness of the unique needs of our Tribal Citizens.
6. Establish more interactive resources for Tribal citizens that utilize the most current and feasible technologies.
7. Administer all Indian Health Services' health-related programs and funding received by the Tribe, as appropriate.
8. Administer all funds and grants to the Tribe related to health matters, as appropriate.
9. Establish appropriate programs such as health clinic, dental clinic, contract health, healthy start, community outreach, diabetes self-management, substance abuse, mental health and any other applicable health related opportunities.

Klimmek v. Oneida HRD-Benefits Oneida Tribal Judicial System: Trial Court

Not Reported in Am. Tribal Law, 2005 WL 6425720 (Oneida Trial Ct.)

Only the Westlaw citation is currently available.

Oneida Tribal Judicial System,
Trial Court.

KLIMMEK, Christine, Petitioner

v.

ONEIDA HRD-BENEFITS, Crawford & Co., Respondent.

No. 04-TC-093.

Jan. 12, 2005.

Judicial Officers Winnifred L. Thomas, Janice L. McLester and Leland Wigg-Ninham presiding.

Final Decision

*1 This case has come before the Oneida Appeals Commission.

I. Background

Due to a fall on June 30, 2004, Christine Klimmek sustained injuries to her upper lip, requiring six stitches. Ms. Klimmek strained muscles in her back, neck, shoulders and right arm, Ms. Klimmek also sustained scrapes on forehead, palms and knees. As a result of this Ms. Klimmek has been experiencing headaches. The injury report stated Ms. Klimmek slipped while she was trying to stand on a rock to draw a design of a labyrinth when she fell about three to four feet landing onto crushed rocks.

Navajo Nation Code

Health Commitment Act of 2006

“The Navajo principle of k'é (respect, solidarity, compassion and cooperation) shall be applied at all steps of the civil commitment, evaluation, treatment processes, and reintegration of the afflicted person into the community.”

Tribal Emergency Preparedness Law

Tribal Emergency Preparedness Authorities

- As sovereign nations, tribes have inherent authority to protect the public health and welfare of their citizens
- Thus, in the context of emergency preparedness, tribes have the authority to engage in preparedness and response activities using the methods that are most appropriate for their communities
- Tribal governance is rich with examples of emergency preparedness and response authority
 - Tribal constitutions
 - Tribal codes
 - Tribal emergency management plans

Williams v. Lee, 358 U.S. 217, 271 (1959); *United States v. Wheeler*, 435 U.S. 313, 322–3 (1978).

Snoqualmie Indian Tribal Code

- Emergency Management Department Act
 - Establishes the tribe's Emergency Management Department
 - Requires the development of a Tribal Comprehensive Emergency Management Plan
 - Outlines duties of the tribal chairman during an emergency
 - Authorizes the tribal chairman to declare an emergency

Tribal Emergency Declarations

- Tribes have the authority to protect the public health and welfare of their citizens by issuing emergency declarations
- This authority may be granted through:
 - Tribe's Constitution
 - Legal Codification
 - Inherent Authority

Emergency Authorities Through Policies

- A tribe's policies or procedures may allow emergency action to be taken to respond to a threat
- Example:
 - “Procurement by noncompetitive proposals may only be used when the **department director** and/or **designated administrative staff person** has **documented** that one of the following circumstances applies: ...(ii) The **public exigency or emergency** for the requirement will not permit a delay resulting from competitive solicitation;”

Sitka Tribe of Alaska, Administration Policy and Procedures, Procurement Policy and Procedure. Section V. Procurement Selection.(e)(6)(A). Available at

www.sitkatribes.org/government/council/documents/procurementpolicyREVISEDsectionsVe52.pdf.

Tribal Emergency Management Plans

- May be required by tribal law
- Detail a tribe's strategy for responding to and mitigating emergencies
- Often include the activities listed in the Public Health Preparedness Capabilities standards developed by CDC, although they might refer to these activities using varying terminology

Lummi Nation's Comprehensive Emergency Management Plan

- Details the incident command structure and duties in the event of an emergency
- Discusses intergovernmental coordination with state, local, and federal partners
- Outlines the tribe's responsibility to protect all of the public: "The Lummi Nation has established this plan to . . . [s]ave and protect the lives of the residents, visitors, employees, students, the public, and clients both living and working in Lummi Nation facilities and the Lummi Indian Reservation."

Cross-Jurisdictional Coordination

Cross-Jurisdictional Coordination

- While states have limited jurisdiction with respect to tribal lands, tribes are free to enter into intergovernmental agreements with state, local, or other tribal governments on cross-jurisdictional issues, including emergency preparedness
- Emergency management plans often detail specifics for coordination with other governments and agencies
- Intergovernmental agreements allow governments to formalize arrangements to share information and data, medical and response personnel, and other resources in the event of an emergency
 - Mutual aid agreements
 - Memoranda of understanding
 - Tribal Emergency Mutual Aid Compacts

Olympic Peninsula of Washington Mutual Aid Agreement

- 7 tribes and 3 local health departments in the Olympic Peninsula of Washington entered into a mutual aid agreement in which all partners agreed to aid and assist each other and share resources in the event of a public health incident, disaster, or emergency
- The types of assistance can be “related to day to day public health services, communicable disease outbreak, isolation and quarantine public health services, or any other public health service or action”

Federal Indian Health Policy

Federal Indian Health Policy

- Recognition of the Tribal Sovereignty Doctrine
- Plenary Power Doctrine
- Trust Responsibility and the Trust Relationship
- Criminal and Civil Jurisdictional Issues
 - Role of State and Federal Governments
 - Mutual Aid Agreements and Memoranda of Understanding
 - Unique Jurisdictional Structures, i.e., Public Law 280
- Federal laws related to health and safety

Federal Indian Health Policy

- Consultation requirements
 - Any federal agency with a role in health and emergency preparedness and response is obligated to serve and provide opportunities for consultation to tribes in addition to providing other services and resources available at the agency
- Trust Relationship: “[The United States] has charged itself with moral obligations of the highest responsibility and trust.”
- Example federal statutes and regulations
 - Funding and technical/direct assistance
 - Stafford Act declarations or Public health emergency determinations

Federal Indian Health Systems

- Indiana Self-Determination and Education Assistance Act
- Indiana Health Care Improvement Act
- Affordable Care Act
- I/T/U System (IHS, Tribal, Urban)
- Title I Self-Determination Contracts (ISDEAA 1975)
- Title V Self-Governance Compacts (originally Title III ISDEAA Amendments 1994)


Data and Surveillance

Tribal Surveillance Laws

- Tribal disease reporting laws
- Example: Sac & Fox Tribe of the Mississippi in Iowa Code, Article IV § 12–4203 (2007) requires health care providers to notify occurrences of reportable diseases to the Tribal Health Director. The report must include:
 - (a) the name of the disease;
 - (b) the approximate date the person with the disease is believed to have contracted the disease; and
 - (c) all other information which would likely be of use to the Tribe to prevent the spread of the disease; provided that no client-identifiable information shall be disclosed.

The code defines reportable conditions and includes various infectious diseases, vital statistics (births and deaths), and violent injuries.

Federal Requirements

- IHS maintains a Resource and Patient Management System to maintain patient health records and immunization data.
 - The Government Performance and Results Act requires federal agencies, including IHS, to report health data as a mechanism to track the quality of services provided by the agency.
 - Tribal self-governing health programs through ISDEAA are often required to provide public health data to IHS as part of their agreements with the agency.
- 




Public Health Law

Office for State, Tribal, Local and Territorial Support
Centers for Disease Control and Prevention


Tribal Epidemiology Centers Designated as Public Health Authorities Under the Health Insurance Portability and Accountability Act

In 2010, Congress enacted the Patient Protection and Affordable Care Act (ACA),¹ which permanently reauthorized the Indian Health Care Improvement Act (IHCIA).² Originally passed in 1976 and subsequently amended, IHCIA declares that “it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy.”³ IHCIA established the legal and programmatic structure for providing health services to American Indian and Alaska Native populations (AI/AN).⁴


Tools Provided Under Federal Law

- Authorizes the CDC to assist Tribes with the collection data related to adverse childhood experiences through various public health surveys.
 - IHClA also authorizes funding to Tribes for the prevention of infectious disease that can include surveillance.
 - Tribes are often required to report health surveillance data to the federal government as part of their agreements to receive funding.
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State Law Implications

- Each state requires the reporting of certain diseases and conditions by health care providers and laboratories to state and local health agencies.
 - For example, Oklahoma's law requires health care providers, laboratories, and hospitals to report various diseases, conditions and injuries to the state health department.
 - Diseases such as AIDS and influenza are included as well as injuries such as drownings and traumatic brain injuries.
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Data Collection & Sharing Considerations

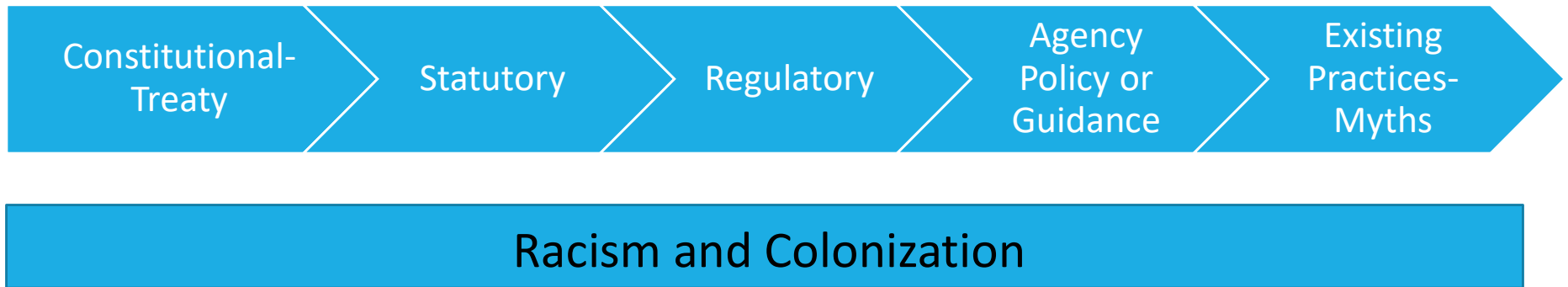
- Tribal ownership of data & Tribal sovereignty implications
 - Which law is going to govern?
 - Use and presentation of data
 - Data quality and data management systems
 - IHS v Tribally-Operated Facilities
 - Role of Tribal IRB and Tribal research and data statutes
 - Tribal Consultation
- 

Indian Law and the COVID-19 Pandemic

Public Health Legal Preparedness

- Understanding the role of law as a tool in exercising public health emergency response authorities
- Recognizing perceived and actual legal barriers to implementing certain response actions
- Incorporating legal requirements and procedures into preparedness plans, exercises, and activities

Perceived and Actual Legal Barriers



Tribal Health Systems, Red Star Innovations



Issues

Not legal advice!

- Jurisdictional issues in the provision of public health services
- Considerations for cross-jurisdictional agreements and MOUs
- Intragovernmental Responsibilities
- HIPAA and Case Disclosures

it depends!
unpredictable!

Determining Federal v. Tribal Jurisdiction

- “Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.” *United States v. Wheeler*, 435 U.S. 313, 322–3 (1978) (quoting F. Cohen, HANDBOOK OF FEDERAL INDIAN LAW 122 (1945)).
- Laws of General Applicability

Determining State Jurisdiction

- General Rule: states do not have jxd over Tribal lands
- Federal preemption analysis, which must consider when state jxd would infringe on Tribal sovereignty and self-government
- Inquiry regarding state interests v. Tribal interests v. federal interests
- Comprehensive Tribal codes can strengthen a Tribe's argument against state jurisdiction
- Tribes will have the strongest authority over trust lands
- Remember: Jurisdiction and Responsibility are not the same
 - Tribal members are also state citizens, Non-Tribal member state citizens live and work on Tribal lands

Determining Tribal Civil Jxd Non-Member

- Civil jurisdiction: *Montana v. United States*, 450 U.S. 544, 564–65 (1981)
 - **General rule:** The inherent sovereign powers of an Indian Tribe do not extend to the activities of nonmembers of the Tribe on non-member fee lands beyond what is necessary to protect tribal self-government or to control internal relations.
 - **Exceptions:** Known as the “*Montana Test*”
 - Consensual Relations
 - Direct Effects

Criminal Jurisdiction Implications

- Indian v Non-Indian; State v Tribal
- Public Law 280
- Some Tribal criminal codes allows for civil jxd over nonmembers
- Criminal trespass
- Criminal infectious disease laws

Cross-Jurisdictional Agreements

- Can be as formal as legally binding agreements, less formal MOUs, or informal agreements
- Can include data sharing, resource sharing, service support
- All or some combination is okay!
- Considerations
 - Application (public health emergency only, others)
 - Licensing and Qualification
 - Costs and Reimbursements
 - Indemnification
 - Temporary delegation of authorities to non-Tribal public health officer (but including withdrawal at any time)

Intragovernmental Responsibilities

- Tribes have the inherent authority to engage in public health activities. Period.
- Tribal codes, plans, and policies help operationalize public health activities and prevent confusion in real time.
 - Designation of a certain department as a the public health authority
 - Designation of a certain position as a public health officer
 - Designation of responsibilities across different departments and entities, including clinics
- Tribal administrative law considerations – hard to predict
- Consideration for clinics: is the activity within the scope of your ISDEAA contract? do you already perform services and programs outside of your contract?
 - If not, Tribal codification (or other written policy) may be a needed or very useful
 - If not, could have state jxd exposure ie state licensing laws
 - If not, then liability coverage may be needed through Tribal code

HIPAA and Case Disclosures

- Office of Civil Rights COVID Bulletin,
<https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>
 - Public Health Activities
 - Disclosures to Prevent a Serious and Imminent Threat
 - Disclosures to Family, Friends, and Others Involved in an Individual's Care and for Notification
 - Minimum Necessary
- HIPAA Hybrid Entity Designation.
<https://www.networkforphl.org/resources/tribal-hipaa-hybrid-entity-faqs/>

Slides
will be shared

Resources

Additional Resources – Practice Oriented

- American Indian Health Center of Washington, 2019 Novel Coronavirus, <https://aihc-wa.com/incident-responses-and-other-news/>
- Tribal HIPAA Hybrid Entity FAQs, <https://www.networkforphl.org/resources/tribal-hipaa-hybrid-entity-faqs/>
- Tribal Emergency Preparedness Law, <https://www.cdc.gov/phlp/docs/brief-tribalemergency.pdf>
- Tribal Public Health and the Law: Selected Resources, <https://www.cdc.gov/phlp/docs/tribal-ph-resource.pdf>
- Tribal Epidemiology Centers Designated as Public Health Authorities Under the Health Insurance Portability and Accountability Act, <https://www.cdc.gov/phlp/docs/tec-issuebrief.pdf>
- Tribal Laws Related to Infectious Disease Control, <https://www.cdc.gov/phlp/docs/tribalidlaws-brief.pdf>

Additional Resources – Practice Oriented

- National Policy Matrix: Crossjurisdictional Sharing Agreements Between Tribes and Counties, http://www.publichealthsystems.org/sites/default/files/PHS4/72458GPreport_01.pdf
- Toolkit: Cross-Jurisdictional Sharing Between Tribes and Counties for Emergency Management, https://crihb.org/wp-content/uploads/2017/02/CJSToolkit_Final.pdf
- Responding to Public Health Emergencies on Tribal Lands: Jurisdictional Challenges and Practical Solutions, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1239&context=yjhple>
- Barriers to Collaboration Between Tribal and County Governments: Planning for Major Disasters and Other Emergencies, https://phsharing.org/wp-content/uploads/2019/06/72458GPreport_06.pdf

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Additional Resources - Academic

- Tribal Sovereign Authority and Self-Regulation of Health Care Services: The Legal Framework and the Swinomish Tribe's Dental Health Program,
<https://digitalcommons.law.umaryland.edu/jhclp/vol21/iss2/2/>
- A Framework for Tribal Public Health Law,
<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1803&context=nlj>
- Federal Indian Law as a Structural Determinant of Health,
<https://journals.sagepub.com/doi/abs/10.1177/1073110519898041?journalCode=lmec&>
- Exploring Legal Issues in Tribal Public Health Data and Surveillance,
<https://law.siu.edu/common/documents/law-journal/articles%20-%202019/fall-2019/2---Hoss--jr-1.pdf>

Additional Resources - Academic

- Emergency Declarations and Tribes: Mechanisms Under Tribal and Federal Law, <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1182&context=ilr>
- Indian Lives Matter: Pandemics and Inherent Tribal Powers, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3575751
- Cross-Jurisdictional Sharing for Emergency Management-Related Public Health: Exploring the Experiences of Tribes and Counties in California, <https://www.frontiersin.org/articles/10.3389/fpubh.2017.00254/full>
- Disaster Preparedness Resource Allocation and Technical Support for Native American Tribes in California, <https://www.degruyter.com/view/journals/jhsem/13/3/article-p351.xml>

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Thank you,
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&
Maggie!