

ARIZONA LAW REVIEW

VOLUME 32

1990

NUMBER 4

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Essays

- THE RIGHTS OF INDIGENOUS PEOPLES AS
COLLECTIVE GROUP RIGHTS *Robert N. Clinton* 739

International efforts to protect the rights of indigenous peoples and other national minorities has refocused world attention on the nature of human rights. Professor Clinton argues that the rights of indigenous peoples only can be understood as group or collective rights. He further suggests that the long struggle of indigenous peoples for recognition of their collective rights constructively highlights certain weaknesses in western legal thought about the origin and nature of rights and invites reconsideration of collective rights.

- JUDICIAL PHILOSOPHIES IN COLLISION:
JUSTICE BLACKMUN, *GARCIA*, AND THE
TENTH AMENDMENT *Bryan H. Wildenthal* 749

The Supreme Court's landmark federalism decision in *National League of Cities v. Usery* (1976), and the cases leading to its reversal in *Garcia v. San Antonio Metropolitan Transit Authority* (1985), illustrate the contradictory interplay of ideology and judicial philosophy on the Court. The deep division on the Court in this area, reflected by Justice Blackmun's decisive change of heart, arises from a collision of judicial philosophies which has forced a role reversal on most of the Justices. The resolution of the issue reached in *Garcia*, while seemingly a victory for the "liberal" wing of the Court, in fact vindicates profoundly conservative values of judicial restraint and strict constructionism.

Articles

- THE *SALVE REGINA* COLLEGE CASE:
PUTTING *ERIE* BACK ON TRACK *Winton D. Woods* 773

Professor Woods responds to a recent article urging the United States Supreme Court to adopt the Ninth Circuit requirement of *de novo* review in *Erie* cases. He argues that the federal trial judge's prediction of what state courts will do in fact is entitled to deference and urges the Supreme Court to reject the Ninth Circuit position.

- CLASSIFYING CREDIT CARD RECEIVABLES
UNDER THE U.C.C.: PLAYING
WITH INSTRUMENTS? *Stephen L. Sepinuck* 789

This article explores how the billions of dollars owed to merchants and banks on credit card transactions should be classified under Article 9 of the Uniform Commercial Code. Resolution of this issue affects whether the many creditors of these merchants and banks must file a financing statement or take possession of a writing in order to perfect their security interests in such receivables.

CAPITAL FELONY-MURDER, OBJECTIVE

INDICIA, AND COMMUNITY SENTIMENT *Norman J. Finkel* 819

This article analyzes the Supreme Court's social science analysis of where community sentiment stands on the death penalty for non-triggermen felony-murderers, and finds that a number of conclusions reached by both the *Enmond* and *Tison* Courts cannot withstand social science scrutiny. Using experimental methods, we find that community sentiment rejects the accessorial liability theory, nullifies the felony-murder rule, and rejects the death penalty for accessories. To achieve accord between community sentiment and the law, this analysis shows that it is the *Tison* majority who must shift.

SCIENTIFIC EVIDENCE: TOWARD PROVIDING THE LAY TRIER WITH THE COMPREHENSIBLE AND RELIABLE EVIDENCE NECESSARY TO MEET

THE GOALS OF THE RULES OF EVIDENCE *Kenneth R. Kreiling* 915

The author suggests that the existing approaches to admissibility of scientific evidence have lost sight of the goal of the Rules of Evidence concerned with expert evidence and the goals of the Rules generally. The result has been failure to provide the reliable and comprehensible evidence needed by a lay trier for accurate decisionmaking. The author suggests a coherent interpretation of the relevant Rules and a strategy of "enhancement" of the offer which does not rely primarily on the exclusionary sanction, is consistent with the goals of the Rules generally and will better meet the requirements of a lay trier.

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