

# ARIZONA LAW REVIEW

---

VOLUME 31

1989

NUMBER 2

---

## FOREWORD

The Honorable William C. Canby, Jr.

"Indian law" is a deceptively simple term. At its barest, it refers to that body of federal law that deals with the status of Indian tribes, their special relationship with the federal government, and the effects of that status and relationship on the states. Viewed more broadly, Indian Law is a reflection of national policy of profound importance. At its heart lie political and ethical questions of the nation's proper treatment of tribes that it overcame, displaced, and yet engaged in a reciprocal relationship of the most solemn obligations. The kind of policy we choose has much to do with the national soul, or ought to.

When Indian Law cases come into court today, they usually come as contests of power among the tribes, the federal government, and the states. These issues of power become, in law, questions of jurisdiction, often of exquisite complexity. They are anything but one-dimensional. The greatest challenges in law arise when a difficult, technical problem requires not only an immediate, applied expertise of a high order, but a perspective—a sense of the history and policy that must inform any intelligent choice. By that standard, there is no subject more consistently challenging than that of Indian Law.

There is also no subject more worthy of intensified scholarly examination, and the editors of the *Arizona Law Review* are to be commended for presenting us with this Indian Law Symposium. The Essays, Articles, and Notes that follow reflect the complexity and astonishing variety of public issues that permeate Indian affairs today. Most important, the writers never fail to address their subjects from the larger perspective; the history, the policy, and the ethical choices are never out of view.

The contribution that this Symposium makes is larger than even its authors and editors might believe. For serious scholarship in Indian Law is still very limited in extent. To the casual reader, that fact might suggest a narrow subject matter, possibly a backwater of the law. The fact is otherwise, to a startling degree. In the past ten years, the United States Supreme Court has decided thirty-five Indian Law cases, on full opinion after argu-

ment. How many other discrete fields of law have commanded that kind of attention from the nation's highest court? Nor is the current caseload the result of some sort of recent flurry; the same level of Supreme Court attention to Indian Law has persisted throughout most of our history. Congress has been equally engaged; in addition to devoting one entire chapter of the United States Code to the subject, it has enacted literally thousands of statutes relating to Indian affairs, only a small portion of which have been codified. The executive branch, in addition to negotiating hundreds of treaties, has produced endless orders and regulations relating to Indians and their tribes.

The point, of course, is not simply that the volume of decisional and statutory law relating to Indians is huge; it is that Indian Law has been a most significant part of this nation's legal agenda from the beginning. That it presents intricate and important problems is clear from the Supreme Court's docket; that Court does not take easy and unimportant cases. The field is one that deserves the kind of action and assistance that scholars can bring to it. This Symposium, with its thoughtful and thorough treatment of many diverse issues of Indian Law, is an important step along the right path. Congratulations to all who contributed!