INTRODUCTION

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Since the 1960s, scholarship in the field of the law regarding indigenous peoples has increased at an astonishing pace, not only in the United States, but throughout the world.[1] A happy consequence of this scholarly interest has been an increase in the diversity of voices heard.[2] Where at one time it seemed that many scholars shared a similar vision of the doctrines that were supposed to animate the field, recent years have produced challenges to the traditional way of thinking about the subject. The *Arizona Law Review* has brought together some of these diverse voices to create a Symposium that will raise the level of this debate even further.

The Symposium begins appropriately with a lively essay by Vine Deloria, Jr., *Laws Founded in Justice and Humanity: Reflections on the Content and Character of Federal Indian Law,* calling into question the academy's emphasis on imposing doctrines on the mass of material that has become known as Federal Indian Law. Professor Deloria emphasizes that the very nature of lawyers is to synthesize orderly rules to predict the future. Nevertheless, he reminds us that Indian law resists this process because it is uniquely historical. As a result, most treaty, statutory, and decisional law is only understandable if grounded in its historical context. For this reason, he asserts that "[w]hatever doctrine and theory may be said to exist in federal Indian law is not the result of an internal logical consistency or the presence of enduring principles of jurisprudence but is merely the rationality we choose to ascribe to it."

As do most, Professor Deloria traces the emergence of Indian law as a field to the original Cohen *Handbook*[3] and its subsequent elevation to near

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1. *See generally* LAW & ANTHROPOLOGY: INTERNATIONALES JAHRBUCH FÜR RECHTSANTHROPOLOGIE (published since 1986) (a Yearbook comprised of articles in English, Spanish, Portuguese, and German dealing with indigenous peoples edited by scholars at the University of Vienna); FOURTH WORLD BULLETIN (published since 1988) (a periodical dealing with indigenous issues edited at the University of Colorado).

2. In addition to the works of authors represented in this symposium, see also Barsh, *Current Developments: Indigenous Peoples: An Emerging Object of International Law,* 80 AM. J. INT'L L. 369 (1986); Comment, *Toward Consent and Cooperation: Reconsidering the Political Status of Indian Nations,* 22 HARV. C.R.-C.L. L. REV. 509, 589-602 (1987) (international); Ball, *Constitution, Court, Indian Tribes,* 1987 AM. B. FOUND. RES. J. 1 (criticizing the Indian law establishment); Frickey, *Scholarship, Pedagogy, and Federal Indian Law,* 87 MICH. L. REV. (forthcoming article calling for a scholarly hornbook).

3. F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW (1942 ed.) [hereinafter 1942 HANDBOOK].

biblical status by the bench and bar. Like some other recent scholars, Deloria is critical of this process. His criticism is that Indian law doctrines have become reified, "in utter defiance of their origin and usefulness." Since laws condition values,[4] modern practitioners and scholars take as a given that certain doctrines have existed from time immemorial. As a result, their vision of Indian law and its potential for change and development becomes ossified. A more serious problem is that they may take these principles to their logical conclusion in cases in which it would be absurd.

Ironically, this process has had some benefits as well, according to Professor Deloria. The doctrine of tribal sovereignty has become a powerful symbol in the modern era, capturing the imagination of policymakers as well as Indian activists. In addition, Indian litigation has become tedious precisely because of the complex doctrines that have developed through this effort to provide a unified framework. As a consequence of these related developments, negotiations as a method of dispute resolution have increased.

As the legal doctrines have taken on a life of their own, so has the history of Indian-White relations. Professor Deloria's comments on the insidiousness of the reification of Indian history are especially biting. As he indicates, historical mythologies have dominated Indian law since the time of *Johnson v. M'Intosh*[5] and have continued until the present. He urges scholars and practitioners to unearth these mythologies and expose them to the light of day. Careful attention to the actual facts of a particular controversy instead of childhood notions of Indian history[6] will produce a clearer understanding of past cases and prevent the perpetuation of these historical mythologies.

Professor Deloria ends his Essay by urging Indian lawyers to rely less on doctrines and more on negotiations. Nevertheless, he places the primary blame for what is wrong with Indian law today not on the misguided attempt to formulate doctrines where he believes none can be formulated, but on the government's failure to adopt and live by the principles of the Northwest Ordinance.

The second Essay, *The Process of Decision Making in Tribal Courts*, by Chief Justice Thomas Tso of the Navajo Supreme Court, illustrates how much the Anglo system can learn from the tribal courts. Judge Tso begins by explaining the Navajo people's long tradition of organized government. Like many indigenous peoples, the Navajo Nation's tradition of dispute resolution was an informal one, designed both to compensate the victim and restore the wrongdoer to harmony. Thus, when the government forced an Anglo court system upon the tribe, there were some difficult adjustments. Nevertheless, the Navajo Nation has combined the old and new ways, by, for

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4. For the classic statement of this principle, see McDougal, *Law as a Process of Decision: A Policy-Oriented Approach to Legal Study*, 1 NAT. L. F. 53 (1956).

5. 21 U.S. (8 Wheat.) 543 (1823).

6. In 1955, Justice Reed asserted that "[e]very American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force. . . ." Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 289-90 (1955). Professor Deloria's more recent examples demonstrate that Chief Justice Rehnquist had the same history teacher (or watched reruns of the same movie Westerns).

example, developing the Peacemakers courts, in which mediation is used to resolve disputes.

Justice Tso explains how the Navajo court system is organized and how the judiciary is insulated from tribal politics. The Navajo Nation's process of selection and training of tribal judges is particularly instructive. Navajo judges must serve a probationary period, during which they receive training at the National Judicial College or the National Indian Justice Center. Even after their probationary period, however, judges are evaluated annually by the tribal judiciary committee and receive additional training in areas in which they are deemed to need help.

Recognizing that Navajo custom and tradition is the law when federal or tribal statute does not require a different result, the Navajo courts have developed a considerable body of common law applying Navajo customs in recent years. After discussing this development, Judge Tso concludes his Essay by acknowledging that economic development may create continued challenges to tribal court jurisdiction. The civil jurisdiction of the Navajo tribal courts is very broad, including not only persons residing on the reservation but also those who cause an act to occur on the reservation. As a result, Navajo common law may be applied to non-Indians who seek justice in the Navajo courts. Pointing out that Navajo customary law is not that radically different from Anglo law, Judge Tso concludes by giving some examples of differences that are based on the different traditions of the two peoples. In short, Judge Tso's Essay demonstrates forcefully that just as restoring harmony is a crucial component of the Navajo way of life, so has the Navajo tribal court system harmonized the new Anglo court system with the old traditions of the People.

Robert Williams's contribution, *Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law*, lays bare the racist premises that underlie modern Indian law. Although others have raised concerns about these underpinnings,[7] many commentators treat modern Indian law doctrines as divorceable from the assumptions of racial inferiority that created such classic texts as *United States v. Kagama*,[8] and *United States v. Sandoval*.[9] Even more perversely, some courts and commentators have taken a kind of rosy-

7. Professor Williams has made this issue the focal point of his writings. *See, e.g., Jefferson, the Norman Yoke, and American Indian Lands*, 29 ARIZ. L. REV. 165 (1987); *The Medieval and Renaissance Origins of the Status of the American Indian in Western Legal Thought*, 57 S. CAL. L. REV. 1 (1983); *The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man's Indian Jurisprudence*, 1986 WIS. L. REV. 219. In addition, Vine Deloria has also stressed the racist premises of much of Indian law. In addition to his path-breaking book CUSTER DIED FOR YOUR SINS (1969), see also BEHIND THE TRAIL OF BROKEN TREATIES (1974); GOD IS RED (1973). *See also* R. BARSH & J. HENDERSON, THE ROAD: INDIAN TRIBES AND POLITICAL LIBERTY (1980); R. BERKHOFER, JR., THE WHITE MAN'S INDIAN (1978); Clinton, *Isolated in Their Own Country: A Defense of Federal Protection of Indian Autonomy and Self-Government*, 33 STAN. L. REV. 979 (1981); Harvey, *Constitutional Law: Congressional Plenary Power over Indian Affairs—A Doctrine Rooted in Prejudice*, 10 AM. INDIAN L. REV. 117 (1982); Newton, *The Judicial Role in Fifth Amendment Takings of Indian Land: An Analysis of the* Sioux Nation *Rule*, 61 OR. L. REV. 245 (1982); Strickland, *Genocide-At-Law: An Historic and Contemporary View of the Native American Experience*, 34 KAN. L. REV. 713 (1986).

8. 118 U.S. 375 (1886).

9. 231 U.S. 28 (1913).

colored glasses approach to history, as if the more sinister chapters in the history books could be ignored safely.[10]

Professor Williams believes that Indian law scholarship does a disservice when it treats the Cherokee Cases as a sacred text, ignoring the reality that the "laws of Georgia are now in force in the Cherokee's ancestral homelands." In contrast, he analyzes the removal period's justifications for moving the Eastern tribes to the interior. These were that Indians were deficient, because they did not put the land to the highest and best use. Second, because of their tribalism, they could not be assimilated into the mainstream, and thus had to be isolated for their own safety as well as that of others. He traces these arguments to the seventeenth century colonizers and the enormously influential *Second Treatise on Government* in which John Locke posited that only labor could add value to property, thus permitting the conclusion that uncultivated land could be appropriated.

Professor Williams then warns that the same arguments advanced in the nineteenth century are being repeated by policymakers today. Williams takes as his starting point for this analysis, Memmi's definition of racism: "Racism is the generalized and final assigning of values to the real or imaginary differences, to the accuser's benefit and at his victim's expense, in order to justify the former's own privileges or aggression." From this definition he synthesizes four characteristics of racism: (1) the strategy of difference; (2) the assignment of negative values to differences; (3) totalization; and (4) justifying principles. Finally, he applies this definition to recent trends in Indian law and policy, ranging from judicial trends, such as the *Oliphant*[11] Court's labeling of Indian courts as too different from Anglo courts to provide adequate justice, to the Civil Rights Commission Investigation's focus on the lack of separation of powers in Indian tribes[12] as illustrating the continued presence of this racist discourse in Indian law today. He concludes by suggesting that any new doctrine imposed by the dominant legal culture on Indians should be viewed with great suspicion whenever the imposition is justified by arguments based on the unassimilability of tribal Indians or their cultural deficiencies.

Professor Sydney Harring's absorbing Article, *The Incorporation of*

10. For examples of ahistorical statements, see many of the modern cases relying on the trust responsibility. For instance, in Manchester Band of Pomo Indians v. United States, 363 F. Supp. 1238, 1243 (N.D. Cal. 1973), the court stated "[i]t is unquestioned that the United States has a solemn trust obligation to the Indian people." This statement is all the more amazing when one considers it was made in one of the first path-breaking cases that imposed fiduciary duties on the executive arising from this trust relationship. Commentators are not immune from these misstatements, either. In his influential article on the trust responsibility, Reid Chambers made the following somewhat naive remark: "Surprisingly, in view of their success in the Cherokee cases, the tribes did not seek judicial review of actions by federal officials which deprived them of their lands, such as in the administration of the Indian Removal Act of 1830." Chambers, *Judicial Enforcement of the Federal Trust Responsibility to Indians*, 27 STAN. L. REV. 1213, 1223 (1975).

11. Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978).

12. The Civil Rights Commission has not issued a final report yet, but has held five hearings, focusing in large part on the independence of the tribal court judiciary in general and separation of powers in particular. *See, e.g., U.S. Comm'n on Civil Rights, Enforcement of the Indian Civil Rights Act*: Hearing Held in Rapid City, South Dakota July 31-Aug. 1 & Aug. 21, 1986; *Id.*, Hearing Held in Flagstaff, Arizona, Aug. 13-14, 1987; *Id.*, Hearing Held in Washington, D.C., Jan. 28, 1988; *Id.*, Hearing Held in Portland, Oregon, Mar. 31, 1988; *Id.*, Hearing Held in Flagstaff, Arizona, July 20, 1988.

Alaska Natives Under American Law: The United States and Tlingit Sovereignty, 1867-1900, traces the history of the Tlingit peoples' relationship with the United States government. As Professor Harring illustrates, the same assumptions of native inferiority that dominated United States law regarding racial minorities and indigenous peoples in general impelled this history.

After describing the Tlingit people and their culture, Professor Harring examines the effect of one powerful federal court judge, Judge Deady, on the development of a separate status for Native Alaskans. Despite fairly clear statutory language in the trade and intercourse acts and broad statements by the Supreme Court, Judge Deady repeatedly held that the term "Indian Country" did not extend to Alaska. Thus the great mass of Indian laws that dealt with Indian country could not be applied and Alaskan natives were held subject to the same law as Alaskan settlers. Harring traces this separate development to the influence of the assimilationists whose ideas had begun to dominate Indian law in the Lower Forty-Eight in the 1880s and 1890s.

After analyzing the cases culminating in *United States v. Kie*,[13] Harring then focuses on how this unique status affected the relationship of natives and non-natives in the late nineteenth century. While Alaska was under military rule, authorities respected Tlingit law, at least as it applied to natives. Both remoteness from the nearest federal court in Oregon and the absence of any civil law for Alaska made it more efficient to recognize Tlingit law. Professor Harring gives many examples of customary law applied by the Tlingit to settle disputes among themselves and with the settlers. As more settlers established themselves, the clash of cultures became more apparent. Once the Organic Act[14] created a civil government in Alaska, pressures were brought by assimilationists to bring the natives under the control of the territorial government. Nevertheless, Professor Harring demonstrates that the Tlingit continued to apply their own dispute resolution procedures even after the imposition of American law.

The last portion of Professor Harring's Article traces the assault on Tlingit sovereignty culminating in complete subjugation to Alaskan law by 1900. Well-publicized cases applying civil and constitutional law to the Tlingit seemed to illustrate some of the more barbaric practices of the natives. Harring's analysis of *In re Sah Quah*[15] is especially interesting. Most scholars know this case as the one stating that the thirteenth amendment's prohibition against slavery applies throughout the United States to private as well as state actors. Professor Harring explores the case in depth, raising the question whether the concept of slavery as used in the thirteenth amendment really fit the circumstances of Sah Quah, a Haida living apart from his supposed Tlingit slaveowners who was not required to work for them.

After *Sah Quah*, the imposition of Alaskan law accelerated. Professor Harring demonstrates why the Tlingit might have concluded that this law did not protect them equally, using examples of different treatments of white and native defendants in criminal cases. By the turn of the century, natives

13. 26 F. Cas. 776 (1885).
14. Ch. 53, 23 Stat. 24 (1884).
15. 31 F. 327 (1886).

were fully subject to Alaskan laws. Nevertheless, as his Article proves, the Tlingit people exercised sovereignty well into the nineteenth century.

An essential component of sovereignty is a court system to resolve disputes by reference to the customs and traditions of the sovereign state particularized in statutory and common law. Professor Frank Pommersheim's analysis of tribal court jurisdiction, *The Crucible of Sovereignty: Analyzing Issues of Tribal Jurisdiction*, will prove invaluable to scholars and practitioners alike. After *National Farmers Union*[16] and *Iowa Mutual*,[17] those who seek to avoid tribal court jurisdiction must first litigate the issue in tribal court. Professor Pommersheim proposes a framework to analyze the jurisdictional issues that most often arise. After reviewing tribal court jurisdiction, he explains the often blurred distinction between judicial and legislative jurisdiction and points out that both must be answered in the affirmative by a tribal court before the court can reach the merits of a particular controversy.

As a background to his framework, Professor Pommersheim addresses the two conflicting approaches the Supreme Court has taken (sometimes in the same opinion) toward tribal court jurisdiction. On the one end of the spectrum is the classic Cohen approach: whatever has not been expressly relinquished is retained, including tribal court power over non-Indians.[18] On the other end is the *Oliphant* approach characterized by Pommersheim as a willingness to look at changing circumstances and the kind of power the particular tribe traditionally exercised.[19] Instead of trying to impose a unifying doctrine on these conflicting precedents, Professor Pommersheim's framework attempts to take them both into account, especially when legislative jurisdiction is at issue.

As to the issue of judicial jurisdiction, Pommersheim recommends a tribal court first determine whether any statute or treaty limits tribal jurisdiction. Now that *National Farmers* has made clear that the Court is not willing to extend *Oliphant* to the civil side, he points out that in most cases this first stage (existence of a federal rule negating jurisdiction) will be answered in the negative, permitting the tribal court to address the three key elements of judicial jurisdiction: subject matter, in personam, and territorial jurisdiction. He suggests tribal courts look to all available sources of tribal law including written law and oral custom to resolve these questions. He also urges tribal courts to take a broad reading of their jurisdictional prerogatives, by, for example, treating activities occurring on trust land outside the diminished boundaries of a reservation as within tribal court jurisdiction in a proper case.

Pommersheim's analysis of legislative jurisdiction and *Montana*,[20] the leading case, is particularly helpful. As he illustrates, *Montana* reverses the presumption of the judicial jurisdiction cases and must be placed in the re-

16. National Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845 (1985).
17. Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9 (1987).
18. 1942 HANDBOOK, *supra* note 3, at 122.
19. *Cf.* Rice v. Rehner, 463 U.S. 713 (1983) (O'Connor, J.) (absent tradition of controlling liquor, state control was permissible.).
20. Montana v. United States, 450 U.S. 544 (1980).

strictive strain of the *Oliphant* line of cases. He criticizes the Court's decision to apply a more restrictive rule to issues of legislative jurisdiction (contrary to its trend in civil law generally[21]): "This inconsistent analysis by the Supreme Court continues to vitiate any hope for conceptual coherence and analytical unity within Indian law."[22]

The final portion of Pommersheim's Article focuses in detail on several thorny jurisdictional problems. First is what he calls the "no forum" problem. Many tribal courts may not entertain in personam jurisdiction over interracial claims unless the parties consent to jurisdiction. As a practical matter, these provisions result in no forum for a non-Indian creditor seeking to sue an Indian debtor (who has no practical reason to submit to tribal court jurisdiction). As the author points out, dominant culture courts are particularly perplexed by the possible result that a non-Indian may have no forum within which to resolve an on-reservation dispute with an Indian. He reviews the methods used to provide a forum, including permitting diversity jurisdiction. Ultimately, he recommends that tribes by judicial (a broad reading of what suffices for consent to jurisdiction by the Indian defendant) and legislative actions remove the no-forum barrier. Once the tribal courts are open to all, the no-forum argument will have no force, he reasons.

Related to the no-forum issue is what the author calls the "no law" problem—a situation arising when a state permits a certain kind of claim, but a tribe does not. Courts are reluctant to dismiss a case because there is no law to apply.[23] This situation often arises when a creditor seeks to collect a judgment on a reservation. Although the tribe may provide for post-judgment enforcement, it may not permit garnishment. Such was the case in *Joe v. Marcum,*[24] in which the federal court resolved the problem by relying on tribal law. Professor Pommersheim recommends this solution, suggesting that tribal positive law reflect a conscious explanation of why a particular type of claim, common in state court, has been rejected by a tribe as conflicting with tribal policy, tradition, and culture. Such a record would then reflect what is often the reality: "The apparent absence of tribal law, in some instances, is not a void, but rather a well-considered tribal public policy judgment." A second thorny issue is the distinction between members and non-member Indians. The author urges that the distinction not be carried

21. At least as far as due process constraints are concerned, the Court's trend has been in the opposite direction in civil cases not involving Indian tribes. *Compare, e.g.,* Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1987) (due process counsels caution in extending in personam jurisdiction over foreign corporations) *with* Allstate Ins. Co. v. Hague, 449 U.S. 302 (1981) (minimal contacts sufficient to uphold application of Minnesota law permitting stacking of insurance coverage to accident occurring in Wisconsin).

22. A case argued this term involving tribal zoning power over non-member Indians and non-Indians may clarify the appropriate analysis of legislative jurisdiction. Confederated Bands and Tribes of the Yakima Indian Nation v. Whiteside, 828 F.2d 529 (9th Cir. 1987), *cert. granted sub nom.* Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, 108 S. Ct. 2843 (1988).

23. *But cf.* Walton v. Arabian American Oil Co., 233 F.2d 541 (2d Cir. 1956) (The court of appeals upheld the dismissal of a tort claim arising out of an accident in Saudi Arabia because plaintiff did not put on evidence of Saudi Arabian law regarding negligence. The trial court had dismissed because there was no law to apply in the absence of Saudi Arabian law.).

24. 621 F.2d 358 (10th Cir. 1980).

over to the criminal area, criticizing the Eighth Circuit's reading of *Colville*[25] as requiring the distinction to be enforced in all exercises of tribal court jurisdiction.

Finally, the author concludes by examining the relationship between tribal courts and the federal system. As tribal courts become more important, the threat of federal encroachment becomes more imminent and tribal court judges must look over their shoulders at the threat of federal review. At the same time, he urges tribal court judges to pay careful attention to their own tradition, even when to do so would diverge from the "dominant canon." He believes that tribal court decisions reflecting this kind of attention to tribal culture and tradition will earn greater respect from the federal courts and stand as the tribal court's best protection from federal encroachment.

Professor Richard Collins argues that the structure of the Constitution as a whole can be read to protect American Indian tribal existence and institutions in his Article, *Indian Consent to American Government.* He makes the point that the federal-Indian relationship cannot simply be grounded on the existence of an original treaty relationship. Although many early treaties were negotiated at arm's-length between bargaining parties with a fair amount of power on each side, by 1819 the federal government had consolidated its power. Later treaties began to resemble sham transactions, and some were openly based on coercion. At the same time, the Supreme Court has applied theories regarding sovereignty, the trust relationship, and the appropriate method of interpretation of treaties and statutes to *all* Indian tribes, whether or not the particular tribe could trace the roots of its relationship to the government to a "good" treaty, a "bad" treaty, or any treaty at all. Basing these doctrines solely on treaties does not explain this application of general principles to dissimilar tribes.

Professor Collins argues that an explanation lies in an implicit decision by the Supreme Court to protect the "basic constitutional value, that power should be exercised with the consent of the governed." Although exercising the franchise satisfies the liberal theory of consent for individuals, Collins argues that tribal Indians must be treated as a collective. He traces tribal collective consent to the early treaties between strong tribal governments and the new American nation, which, he argues, should serve as paradigms for freely given consent. Typically, they contained provisions recognizing the authority of the United States, providing for cessions of land in return for promises of protection of the unceded tribal land and recognizing tribal control over internal relations. These early treaties, which he calls "peace" treaties, provide the formative general principles of federal Indian law, according to Professor Collins. While recognizing deviations, Professor Collins traces a strain of executive and congressional actions predicated upon this notion of Indian tribal consent.

Professor Collins notes that it is the judiciary that has most honored this principle. He acknowledges the Court's often gratuitous recognition of

25. Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134 (1980).

congressional paramount authority over Indians.[26] At the same time, he praises the Court for mitigating the harshness of the plenary power doctrine by developing the sovereignty and trust doctrines and canons of construction favoring Indian tribes in the interpretation of treaties and statutes. It is his thesis that in developing these doctrines, the Court has reached back to the terms of early treaties with then-powerful Indian tribes as inspiration for developing universal doctrines applied to all tribes. These early treaties have thus become "the benchmark for interpreting federal Indian policy." Indeed, although not endorsing the result in *Oliphant*, he argues the methodology, looking to the early treaties as benchmarks, is a contemporary example of the Court's reliance on the terms of Indian consent to United States authority as exemplified by the early peace treaties.

The last portion of Professor Collins's Article is a criticism of those who seek protection for tribal sovereignty or property by focusing on the individual rights provisions of the Constitution.[27] Focusing on these provisions can have almost perverse results, Collins warns. To begin with, the provisions do not adequately address the kinds of group rights tribes seek to protect. More important, these very provisions can be used against tribes. For instance, individual property rights are sacred in American law. As a result, restrictions on alienation, a common feature of Indian tribal property (and some individual property as well), seem almost "un-American." As for equal protection, he cites the existence of various groups (such as the Interstate Congress for Equal Rights and Responsibilities) which argue that Indian separateness denies non-Indians equal opportunity. Finally, he points out that concern with due process causes some to focus on requiring tribal governments to protect the rights of individual members to the same extent that the majority community does without sufficient understanding of the different cultural perspectives and legal status of tribal governments and institutions.

Counterpoised against this unsatisfactory record of individual rights guarantees is the structure of the government created by the Constitution itself. This structure has served and will continue to serve as the primary bulwark against majority abuse of tribal rights, according to Professor Collins. The commitment of power over Indians to Congress has insulated tribes from destructive results of state authority. The requirements of bicameralism and presentment have protected Indian tribes because overcoming the built-in inertia of the legislative process adds an additional layer of insulation to protect tribal Indians from the popular will. Finally, the independence of the judiciary has permitted that branch to enunciate doctrines grounded in respect for Indian tribal consent.

I am honored to have been asked to introduce this excellent collection. These Essays and Articles provide a rich source of information on the cur-

26. *See, e.g.*, United States v. Wheeler, 435 U.S. 313, 323 (1978) (Although recognizing inherent tribal power, the Court stated: "It exists only at the sufferance of Congress and is subject to complete defeasance.").

27. Modesty does not prevent me from admitting that I am one of these misguided souls. Newton, *Federal Power Over Indians: Its Sources, Scope, and Limitations*, 132 U. PA. L. REV. 195 (1984).

rent state of Indian law, illustrating the diversity of modern Indian law scholarship. The debate sparked by this Symposium should become a catalyst for rethinking many of the historical and legal shibboleths of Indian law.