THE HONOURABLE SOCIETY OF THE MIDDLE TEMPLE

American Indians and American Law

Principles at the Intersection of Identity, Sovereignty, and Federalism

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SESSION OVERVIEW

Roadmap & Core Objectives

Ten Centuries Scope

Tracing indigenous history, federal law, and enduring tribal sovereignty.

Constitutional Duality

Tribes exist outside the Constitution, yet incorporated within federalism.

Research Platform

Distilled from UNC -Chapel Hill course to anchor future inquiry.

FOUNDATIONAL DEFINITIONS

Words Matter: Nomenclature & Identity

Colonial Constructs

Terms like *Indian* and *Tribal* are colonial labels, imprecise, and disfavored in academia.

Organic Identity: Most prefer Native or specific affiliation (e.g., *Anikiduwa* or Muscogee).

Federal Codification

Title 25 of the U.S. Code explicitly governs 'Indians' and 'Tribes'.

Normalized in legal discourse due to statutory and constitutional necessity.

HISTORICAL CONTEXT

The Indigenous World Pre -1492

1,000 CE

Cahokia Metropolis

Population exceeded London or Paris. Unsurpassed in N. America until 1780 Philadelphia.

1492 CE

Tenochtitlan

Five times the size of London. Rivaled only by Constantinople, Paris, or Venice.

575

Sovereign Nations

Federally recognized today. A teeming continent of kinship, trade, and diplomacy.

CONTACT ERA

Competing European Visions

Spanish Model

Enslavement for silver mining; mission administration across the Southwest.

French Model

Intermarriage and trade networks; minimal territorial seizure.

British / U.S. Model

Driven by land acquisition, removal, and identity extirpation.

FOUNDATIONAL LAW

The Constitutional Framework

Three Constitutional Mentions

Apportionment (Art. I, § 2): Excluding 'Indians not taxed'.

Taxation (14th Amendment): Direct tax calculations.

Commerce Clause (Art. I, § 8): Power to regulate trade with tribes.

Extra -Constitutional Pre -existence

Tribes were sovereign external entities at the Founding. The fragile new republic negotiated with tribes as foreign powers.

JUDICIAL FOUNDATIONS

The Marshall Trilogy & Trust Relationship

Johnson v. M'Intosh (1823)

Discovery doctrine reduces tribal title to occupancy right.

Cherokee Nation v. GA (1831)

Tribes defined as 'domestic dependent nations'.

Worcester v. GA (1832)

State laws have no force in Indian territory; federal preemption.

19TH & 20TH CENTURY POLICY

Plenary Power & Statutory Erosion

Ex Parte Crow Dog (1883) & Plenary Power

Catalyzed Major Crimes Act and broad congressional intervention.

General Allotment / Dawes Act (1887)

Broke up communal land bases; forced agrarian assimilation.

Termination & PL -280 Era (1950s)

Attempted dissolution of federal recognition and state jurisdiction shifts.

CONTEMPORARY JURISPRUDENCE

The Modern Era & Nation Building

Jurisdiction Limits

Montana v. US & Oliphant: Presumptive limits on tribal civil and criminal authority over non-members.

Affirming Sovereignty

McGirt, Cooley, Denezpi: Reinforcing inherent treaty rights, policing authority, and dual sovereignty.

Family & Culture

Indian Child Welfare Act (ICWA): Protecting tribal family structures and nation-building.

CLOSING THOUGHT

"Identity is an ongoing negotiation between what you call yourself and what others call you."

Thank you to the Masters of the Bench, Members, and Students of Middle Temple.