

CALIFORNIA INDIAN LAW ASSOCIATION, INC.

# LEGAL JOURNAL

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FALL • 2022



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2022 FALL LEGAL JOURNAL

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# 22nd ANNUAL CALIFORNIA INDIAN LAW CONFERENCE

*Post Self Determination: A New Era in Indian Law*

**Morongo Casino Resort & Spa**

**SUNDAY, OCTOBER 2, 2022**

## AFTERNOON EVENTS

Open Board of Directors Meeting &

Planning Session from 2pm-4pm

CILA Board Information Session at 4pm

## EVENING EVENT

Social Hour

Canyon Lanes Bowling Alley at Morongo  
from 7pm-9pm

**MONDAY, OCTOBER 3, 2022**

## MORNING PANELS

### Legislation Update

9am-10am

This panel will provide updates on federal and California legislation.

### Litigation Update

10:15am-11:15am

This panel will provide updates on federal and California litigation.

**CILA ANNUAL MEETING 11:15AM-12PM**

**LUNCHEON & KEYNOTE SPEAKER 12PM-1:30PM**

## AFTERNOON PANELS

### Indigenous Futurism: Liberatory Approaches to Self-Determination

1:45pm-2:45pm

A discussion on how tribes and their attorneys are shaping the future of Indian law.

### Two Years Under the Haaland Administration

3pm-4pm

This panel will examine federal policies and their impacts on tribes over the past two years.

**AWARDS DINNER 6PM - 8PM**

WITH A SPECIAL GUEST LECTURE ON THE HISTORY OF INDIAN LAW IN CALIFORNIA

**TUESDAY, OCTOBER 4, 2022**

## MORNING PANELS

### Tribal Courts & Public Safety

9:15am-10:15am

This panel will share current trends and innovative programs in tribal courts and tribal public safety in California.

### Elimination of Bias on Disabilities and Indigeneity in the Law

11:15am-12:15pm

Bias MCLE credits will be provided for this panel that will explore the intersection of disabilities and Indigeneity and how to eliminate biases on these topics in the practice of law.

7 MCLE Credits will be provided by the California Tribal Families Coalition.

Attorney Registration starts at \$175.

For full details visit: [CALINDIANLAW.ORG](http://CALINDIANLAW.ORG)



CALIFORNIA  
TRIBAL FAMILIES  
COALITION





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# PRESIDENT'S NOTE

Dear CILA Members and Supporters:

Greetings! Thank you for your continued support of California Indian Law Association, Inc (CILA). I wish you a warm welcome to our Fourth Edition of the CILA Legal Journal. On behalf of the CILA Board of Directors (Board), we thank all the authors who contributed amazing articles to this Fourth Edition. I would also like to thank our Legal Journal Committee for the time and hard work they put into this year's edition.

This year, the Board spent a good amount of time reflecting on the mission and values of CILA. Last year, the mission statement was updated to highlight CILA's dedication to protecting the rights of Tribes in California advancing self-determination and self-sufficiency. The mission was updated to include that while "Indian" is a legal term of art, it is important to acknowledge all Indigenous peoples who are also advancing and protecting self-determination and sovereignty. Following the changes of the mission statement, I would like to thank individuals on the Board for reviewing our current bylaws to (1) reflect the updates to our mission statement and (2) ensure that our bylaws align with the Hoopa Tribe's Corporations Code, which CILA has been incorporated under since 2002. While a tedious task, we believe this work was necessary to help CILA grow and move forward as an organization.

Building on the work of the prior Board, CILA has emerged as the dedicated organization for connecting Indian law attorneys and Indigenous individuals in the law or interested in the law with resources and support for this important work. This year, in response to the pioneering work of CILA's founding Board, various legal organizations and bar associations have sought to collaborate with CILA through joint speaking or co-sponsoring events. CILA also had a presence at the California Lawyers Association Annual Conference to highlight the importance for all legal practitioners in California in understanding how Indian law and the rights of Indigenous peoples in California may affect an attorney's practice. We hope to continue building on this key role of CILA in educating the general public and increasing visibility to Indian law and Indigenous rights issues.

This year CILA hosted the fourth annual Pathway to Law Program virtually in March, with ten (10) participants. Thanks to the Federated Indians of Graton Rancheria, Tachi-Yokut Tribe, and California ChangeLawyers, CILA was able to offer LSAT preparation



D scholarships to all 10 Program participants. We were also able to partner with California ChangeLawyers to award **Grace Carson** (Yavapi/Chiricahua Apache) the 3L Diversity Scholarship.

Last year, CILA unfortunately had to make a difficult decision about cancelling our in-person conference and instead offering a virtual speaker series. We kicked off the speaker series with an excellent keynote address by Stanford law professor **Elizabeth Reese** (Nambé Pueblo) and our honoring ceremony where we awarded the late **Honorable Judge Claudette White** (Quechan Tribe) with the 2021 Outstanding Achievement in California Indian Law and **Geneva E.B. Thompson** (Cherokee Nation) as the 2021 Outstanding Young Attorney. Kronick graciously provided the MCLE credits for the various topics which included Litigation and Legislation Updates, Taxation, Indigenous Landback, Infrastructure Improvements, and specialized substance use ethics.

CILA continued the Spring Speakers Series where we hosted two virtual MCLE webinars with **Ezra Rosser** on March 31, 2022 and with **Vanessa Racehorse** (Shoshone-Bannock Tribes) on April 28, 2022.

We hope you enjoy this Fourth Edition of the CILA Legal Journal and continue to support CILA programming and the Board's efforts for the years to come. Please reach out to myself or the Board at [calindianlaw@gmail.com](mailto:calindianlaw@gmail.com) with questions and feedback.



**TAMARA HONRADO**  
**PRESIDENT OF THE CILA**  
**BOARD** (SIX NATIONS OF  
THE GRAND RIVER  
(MOHAWK))



# 2022 PATHWAY TO LAW INITIATIVE

BY LAUREN GOSCHKE

**Lauren Goschke** is the CILA Board Secretary and Chair of the Pathway to Law Committee. She is a descendant of the Pechanga Band of Luiseno Indians and is in-house counsel at Southern California Edison.



The 4th Annual Pathway to Law Program (“Program”) occurred virtually March 18-19, 2022. The Program was sponsored by California ChangeLawyers, Tachi-Yokut Tribe, and the Federated Indians of Graton Rancheria.

The Program is a two-day law school application workshop for Native American undergraduate students and professionals committed to taking the LSAT and applying to law school. The goal of the Program is to “demystify” the law school application process and support prospective Native American law students who may not otherwise have the resources to submit a successful law school application. The Program works to (1) help Native American undergraduate students and professionals gain admission to competitive law schools and improve their position when they enter the job market, (2) increase the number of

Native American students applying to and attending law school, and (3) ensure that Native American attorneys grow and progress in the legal profession by providing mentorship and support early in their journey to law school.

Program participants had the opportunity to participate in a mock Federal Indian Law class taught by Professor Marc L. Roark (Southern University Law Center), participate in a Q&A session with law school admissions counselors, receive personalized feedback on their draft law school personal statements, explore potential financial aid options, learn about best practices for LSAT preparation, and hear from a panel of current law students and attorneys with diverse legal backgrounds and experiences. Following the Program, participants were grouped into attorney-mentor “pods,” with 2-3 attorney-mentors and



mentees per pod. All Program participants were also offered an LSAT test prep scholarship. Program participants are offered all of this at no cost because of the gracious support of Tribes and California ChangeLawyers.

Even with the challenges presented by COVID-19 and a virtual setting, CILA received overwhelmingly positive feedback on the Program from the participants. Participants reported that they were leaving the Program with more knowledge about the law school application process and confidence to apply than they had before participating in the Program. One participant shared the following about their experience:

**“Thank you so much for the opportunity to be part of the 2022 CILA Pathway to Law cohort. I gained a lot of valuable information and resources that will help me succeed in law school.”**

Other participants commented on how inspirational it was to hear presentations from Native American professionals. CILA will continue to support our 2022 Program cohort by hosting virtual social events, facilitating mentor pod meetups, sharing potential scholarship and/or job opportunities and much more to ensure all the participants have the resources and confidence they need to be successful.

CILA would like to congratulate the following participants for their commitment to and engagement in the 2022 Pathway to Law Program: **Natasha Wells** (Sioux); **Abby Gallardo** (Tunica-Biloxi Tribe); **Caressa Nugyen** (Ione Band of Miwok Indians); **Chelsea Healy** (Kainai First Nation); **Natane Castaneda** (Luiseño Band of San Luis Rey Mission Indians); **Cindy Katenay** (Navajo); **Michael Poitra** (Turtle Mountain Band of Chippewa Indians); **Phillip Tripp** (Karuk Tribe); **Hope Romero** (Tule River Tribe); **Jessica Keetso** (Navajo).

CILA would like to thank the **Tachi-Yokut Tribe**, the **Federated Indians of Graton Rancheria** and **California ChangeLawyers** for generously sponsoring LSAT preparation



**HOPE ROMERO**  
Tule River Tribe // Fresno Pacific University



**PHILLIP TRIPP**  
Karuk Tribe // California State University, Sacramento



**MICHAEL POITRA**  
Turtle Mountain Band of Chippewa // Minot State University/University of Mary



**CINDY KATENAY**  
Navajo (Diné) // University of Phoenix



**NATANE CASTANEDA**  
San Luis Rey Mission Indians // Florida International University



**CHELSEA HEALY**  
Kainai First Nation // University of California Los Angeles



**CARESSA NGUYEN**  
Ione Band of Miwok Indians // Evergreen State College



**ABBY GALLARDO**  
Tunica-Biloxi // University of California Los Angeles



**NATASHA WELLS**  
Cheyenne River Sioux/Standing Rock Sioux/Sihasapa Blackfeet Sioux // University of Colorado & Colorado State

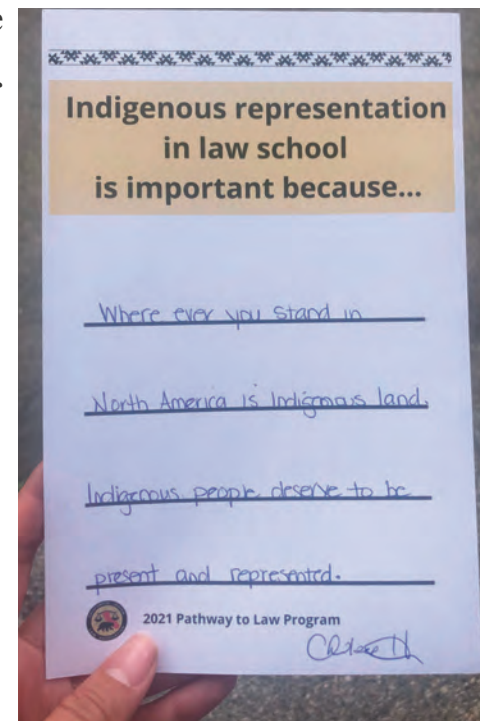
## 2022 Pathway to Law Cohort

\*Not pictured: **JESSICA KEETSO** Diné // Northern Arizona University

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scholarships for the 2022 cohort. CILA would also like to thank the following entities for their support of the 2022 Pathway to Law Program: **American Indian College Fund, Stanford Law School, UC Berkeley Law School, UC Davis School of Law, UCLA School of Law, Yale Law School, McGeorge School of Law, University of the Pacific, Cal Poly Humboldt, University of Arizona Indigenous Governance Program, American Indian Law Center, Inc, and TestMasters.**

*Thank You*



# A Conversation with Judge Abby

BY RYAN FLEISHER

In March this year, the federal government passed into law the Violence Against Women Act (“VAWA”) Reauthorization Act of 2022. We sat down with Chief Judge Abby Abinanti of the Yurok Tribal Court to discuss VAWA and domestic violence cases in tribal courts.

Judge Abby has served as the Yurok Tribe’s Chief Judge since 2007. She first joined the Yurok Court in 1997 and was a judicial officer in the San Francisco Superior Court for 20 years. Judge Abby is a respected tribal leader and was awarded CILA’s Outstanding Achievement in California Indian Law Award in 2020.

.....

**Thank you for sitting down with us. Maybe we can start with some background. What do we mean by domestic violence? Can you give some context to the issue of violence that occurs within families?**

Well, in our community, I think the context of domestic violence is that it’s a problem that seeped into our culture after the invasion. It’s not something that we ever really had to face in any kind of significant way before that. Because we didn’t have that kind of behavior.

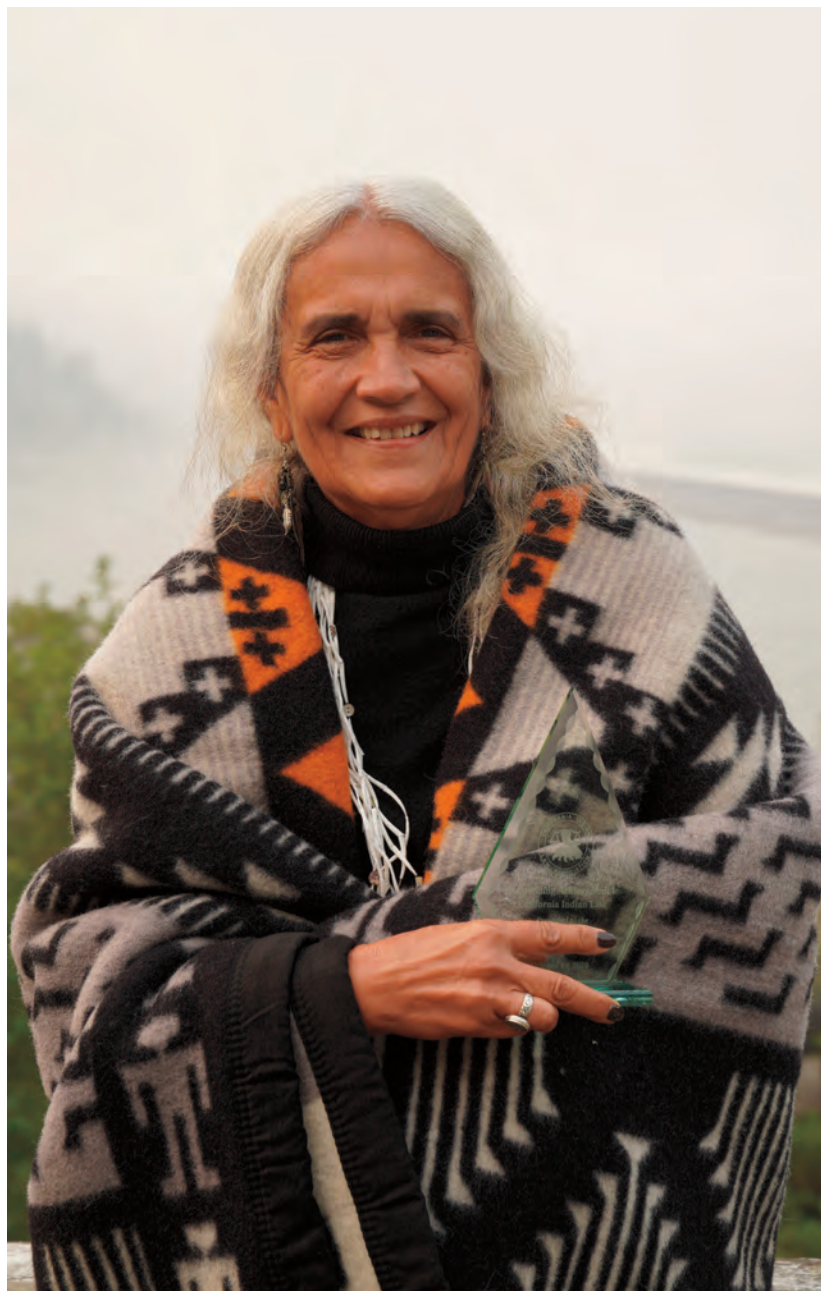
We lived in small villages. Abuse and violence wouldn’t have been tolerated. But then you have the invasion. And you have the introduction of a lot of new behaviors. And from those behaviors came many things—like the conditions for domestic violence.

The invasion brought to this community things like indentured slaves, massacres, and boarding school. And then people came to take the land so that they could either mine for gold, fish, or over-harvest the trees.

There was a clash between the two cultures. As new behaviors came here, we started picking up some of those behaviors.

**Can you describe the role of the Yurok Tribal Court in that context?**

I think our role in this tribe is that we are a member of extended families. For example—if I want fish, I’ll go to a nephew whom I know



fishes. And if they want such and so, they’ll come see Judge Abby because they know she’ll do that.

My role is simply to go, “look we have this resource, and we’ll help you with this problem.” And you know, we’re in the same village, the same place, we need to get to an answer to this. It isn’t that I need to impose a consequence.

Each human has what their purpose is and why they’re here. I may have to go to one person for something. But for something else they can come here. And that’s it.



**Can you say more about what ‘community’ means among humans, and what it means in relation to our environment?**

Well, for us we’re village-based and place-based. And we have a responsibility for that area and the people, trees, fish, and everything else in that place. And those are interlocking responsibilities. The environment provides for us. So as humans you ask yourself: how am I going to meet my responsibilities? And that’s basically what it is.

Often people come to me and say, “well I’ve done this” or “I’ve done that.” And I respond, “well, that’s not right. You know that’s not right.” And I ask

them, “how are we going to fix it? What are we going to do for you to make this right?”

I want to know how we are going to get this done. How are we going to help you? How are we going to help you learn that there is a different way; a way that won’t make you wake up feeling like a horrible person?

**There doesn’t seem to be much room for this approach in state or federal courts. In many ways the Yurok Tribal Court looks like a state system: there’s a judge, a plaintiff or prosecutor, a tribal code, a defendant. And yet, how you think about your role is very different.**

Right.

**I haven’t heard many people talk comfortably about that.**

Well, I think it’s because all of us went to law schools who taught something totally different. So, when we start to talk about the role of courts, we’re in that construct.

If you can’t break out of that construct, you’re just sitting in a tin can talking about what you already think you know. Because that’s the only thing you have to relate to.

But if you have another tin can, you go, “I’m familiar with that one, I’ll just walk over there. And bring this problem with me.” And creating that perspective changes the problem.

Because I can see this pretty clearly: if I resolve, “here’s a victim and here’s a perpetrator”—and I get this victim away. Well, the perpetrator just goes around the corner to their next victim. So, what am I really resolving? Nothing.

So, it’s my obligation, and it’s this institution’s obligation, to resolve the issues in these villages which we are responsible for. And to set a tone. And say, “we’re not going to do this. This is not OK. And we need to figure out

how to stop it.” You know, it’s hard to ‘consequence’ people into better behavior. They just don’t do it. The change has to come from within.

**“So as humans you ask yourself: how am I going to meet my responsibilities? And that’s basically what it is.”**

**What have you found to be effective when relating to people in this way?**

You interact. You’re basically modeling behavior and helping them learn what behavior is appropriate for a given circumstance.

You talk to people. You support them. And you help them learn. You help them see that, instead of reacting to something, well, here’s how you can respond another way.

And if you want to communicate, this is how you do it. Here’s how to act in a way that allows people to hear what you have to say. Let me show you how to do it.

**This is also not a common focus of the state or federal courts.**

Yeah. I feel like we’re a family and we have responsibilities toward each other. And this is what my job is, and this is what I do. Other people have other jobs. And they do that. I don’t tell them how to do their job and we try to work along with each other.

And it’s always ‘we.’ We are doing this. We are doing this together. It’s just like the rule of not over-fishing. You can’t over-fish because, if you do, there won’t be any fish! So, you may be satisfied at dinner that night, but you and everyone else on the river aren’t going to have many satisfying dinners when there aren’t any fish. I don’t want you to go to prison because,

if you go to prison, then your child is not going to have a father. And that's not good. Who is going to teach your boy?

**There is no carrot and no stick.**

No, I see it as a way for them to be tranquil too. For them to feel at peace. And at harmony. Because that's what you're working toward. You want them to live in harmony in place, in family, and in village. Because that's better for everybody.

**“You want them to live in harmony in place, in family, and in village. Because that's better for everybody.”**

For some people, the transmission of knowledge or ‘behavior modeling’ happens through fishing, basketry, language, and other contexts. It just so happens that you are in this role as ‘judge’—and if someone comes before you, the Yurok Tribal Court gives them a chance to hear a different way.

Yes. And we assume that, when you're talking to them, that it resonates with them. And it often does. And if it doesn't, that's a different problem.

But for the most part, they're not particularly happy. I mean, it's not like people in my Court like spending time with me or something. So, you have to help them get to where they want to be.

And then that person can transmit the message to others. I can say to them, “remember what we talked about before? Now your cousin is in trouble, and I want you to go talk to him. Talk about what we talked about. I think it would really help him.” They say, “OK, Judge Abby, I'll go do that.” You see. So then they go do it.

It's really hard for people to learn. One of the things our traditional stories tell is that it is hard for people to learn how to ask for help. Even though they may not be happy with themselves at the end of the day, for whatever reason it doesn't occur to them to ask for help.

So, you have to create that ability in people. The ability to ask for help.

In many of our prayers, it is emphasized that we are only humans. We're not at the top of whatever scale.

**You mentioned that the Court resonates with many but not all. Do you relate to Yuroks and non-Yuroks differently on the basis of their ancestry?**

No. I think one of the tipping points in this country was the concept of the ‘melting pot.’ The idea was, you get to come here, and part of the price is you lose your culture. That was a monumentally stupid idea. It has caused tremendous problems.

Most of the people who came here—they came because they were on the run, because they were forced to come, or whatever. But they came from a culture. And if they'd have brought their culture with them, there might be a lot less of this ‘jump into the melting pot and be as greedy as you want to be’ kind of thing. Because that's the new culture.

**Traditional community values are not often recognized or rewarded in ‘mainstream’ culture. Is this a barrier to connecting with people, or helping them to choose a different path?**

You know, some people can't make it. My job is to offer them that. But they have their own purpose, and they have their own path. Have I extended that, and watched it not work? Yeah.

I had a situation where I came across someone drunk, walking along the street in town. I got out of the car, and I was talking to her. She was very upset and felt bad. I said, “it's OK. Tomorrow we'll try again.” And she got up to walk away. The last thing I told her was, “I love you.” She turned around and said, “I love you, too.”

An hour later, she laid down along Highway 101 and was run over. She just couldn't do it. But it's better I said, “I love you” than “you're a jerk because you're drunk again.” What would that serve?

**“One of the things our traditional stories tell is that it is hard for people to learn how to ask for help.”**



Sometimes people can't do it. You want them to be strong enough. You want to help them be strong enough. But you don't know what's inside them. You don't know why they're doing it. Some things we just can't figure out.

And that's what I tell our advocates. When we first started this, people would say, "well we gave this person a chance before." And I said, "what's it to you? You sleep every night in a bed. This person slept across the damn street—I know because I saw him. If they're willing to try again today, why would we say no?"

And that doesn't mean there isn't accountability. We are working toward harmony, and that includes making things right. My job is to give people that choice and to help them—if they want it.

**You mentioned accountability. Could you say anything about 'tough love'?**

Well, the 'tough love' part comes in saying, "this is not right." Period.

'Tough love' isn't in the sentencing or the consequences. It's saying, "No. You're not going to do this. This is why. What are we going to do to fix this? How are we going to get there?"

**As a judge, it's not your job alone to impose a consequence – the person before you is also involved.**

Right. You say, "I'm going to help you do this, but what are we going to do?"

I had two guys that were fist fighting on the river over a fishing hole. They had been basically about to kill each other on the river. And I issued restraining orders. I was furious at them. And they came in here, and I said, "OK – we have a choice here. I'm going to send you outside with one of the dance leaders, and you guys can resolve this and come back and tell me it's resolved. Or, you're going to come in here and have a hearing—in front of one mad old Yurok woman. So, you think about it really carefully. What do you want to do?"

"We'll go out and talk to the dance leader." An hour-and-a-half later they come back, and they're laughing and talking. They knock on the door, and they say, "don't worry Judge, it's all fixed." I said, "OK, so I'll never see you again over this, right?" "No, Judge."

I said, "the only thing I have left for you is to go home and tell your sons, tell your nephews how you resolved this—because I don't know what got into your heads. But you knew better. And you knew what you should've done. So don't bring this to me ever again. And if I see any of you here, you will regret it."

I don't know how they resolved it, but they resolved it. And it's none of my business—I don't need to know.

**"I think it all comes back to whether you think everything is related or not."**

The common narrative about domestic violence seems to be that it is caused by "bad people." This strikes me as deeply rooted in our common sense—the idea that what happens 'over there' is 'their problem,' something 'outside of yourself.'

Well, I think it all comes back to whether you think everything is related or not. And I happen to think it is. So, if you have this problem over here, then it impacts me. And if I'm doing something wrong, it impacts you. It throws the balance of the world off.

And so, what you're trying to do, as a human, is to help create harmony. That's what you're working on. You'll probably never get there, but that's still your obligation.



### **This invites self-reflection.**

Right. That's why you dance. That's why you are in the community. Because you know you have a responsibility.

I was telling this kid who got a fishing violation. He got in trouble because he didn't pick up his nets when he was supposed to. It was a long story—but the bottom line was, I said, "bring fish to the dance and everything will be OK with me. You won't have to pay your fine, and I'll give your net back."

He's like, "well, how will you know if I did it?" I said, "because I will be at the dance, and if you don't do it, you're going to have a really lousy Monday morning." And that was that. And he can walk out having made it right. It's important for him to feel that he made things right—and for that to become his behavior. That's the point.

### **Could you describe some of the patterns that you see across cases of domestic violence?**

For me, I think the most frightening part of it was that most of the people don't know why they do it. And I think as a human, that's really hard. Because then you feel like you're mugged when you're doing it. Or they think up these reasons that they know don't make any sense.

So it's looking at stuff like that. And we're not taught to look at the context. We look at the symptoms of the context because it's easier to blame the person than to understand the whole thing. That bothers me.

And it's not an easy, quick fix. If it were as easy as saying, "well stop that," well, then, we probably wouldn't be here. But it isn't that easy.

One of the things we try to concentrate on when we're doing batterer intervention work is assisting the accused batterer in figuring out for themselves if any historical traumas—like slavery, mass killing, or boarding school—occurred in their family. Because that, in all likelihood, is where the behavior seeped into their family unit.

If you can figure that out, you at least have some sense of 'why.' And as human beings, it's

easier for us to change if we know 'why' something is happening—otherwise, the accused person doesn't really have a sense of what's motivating them. Giving them a 'why' helps them work with how to change that behavior. It makes it easier for them to try to figure out – 'OK, I'm going to be the last one in this line. And I'm going to remember the value system before that.'

And then you help them bring out that value system. And to develop practices consistent with that value system, even though all this intervening stuff has happened.

### **The Yurok Tribe will soon start prosecuting criminal domestic violence cases in tribal court. Can you talk about the process for developing an infrastructure to support these cases?**

Well, I think a big problem for us in California is P.L. 280 and getting funding. Because we have got these problems and behaviors now—even if they didn't start here—and we're the ones who are going to have to deal with them.

These are expensive problems to resolve. And you need these pieces to do it. Here's the prosecution. Here's the Emergency Protection Order. And the police to enforce it. Here's the shelter. These are expensive. That to me is the biggest hold-up. The expense of it.

And we don't have an existing infrastructure. With P.L. 280 the Feds basically said, "we're not going to give you any money. We're not going to give you courts. We're not going to give you police."

**"[W]hat you're trying to do, as a human, is to help create harmony. That's what you're working on. You'll probably never get there, but that's still your obligation."**

Well, how exactly do you expect me to resolve this? So, we're out there hustling full-time. We're trying to get funds to resolve problems that were brought here.

### **Do you see domestic violence or harassment restraining orders on your docket that warrant prosecution but go unprosecuted by the state?**

Yes.



**Are prosecutions ongoing in state courts that could be brought in Yurok Tribal Court under VAWA?**

What I think is happening is they're not brought anywhere. And when they are, I would like to see all of ours, for the most part, brought here.

**Have you given thought to the effect of the Indian Civil Rights Act, due process, and habeas review on the practices in your Court?**

You know, to me, I'm much more focused on solutions, and creating an ability for the person to engage in getting their solution. In getting back in harmony. Rather than for them to "win" and walk out of here—what exactly have they won? They just go out and get in more trouble.

I spent 20 years on the bench in San Francisco. I know how it works. Or how it doesn't work. I think people are going to have to really figure out how to get the state, or the federal government, or private philanthropy, to support an infrastructure that supports this concept. That's the huge first step to take.

**So, to the question of 'self-determination' and whether we're in a 'new era.'**

Well, you've got to pay attention to the environment. And when the environment changes, and it gives you an opportunity—you have to take it.

As far as the 'self-determination era' or the 'this' or 'that'—they do whatever they're going to do. I don't pay much attention to that. You know, they made it all up in the first place.

**So, you would say that you are relating to the environment in new ways as it changes, but the basic idea of living in harmony—**

Yeah, it's the same.

*Ryan Fleisher is a staff attorney at the Yurok Tribal Court. He works with elders in the community, and with those who have suffered from traumas. Ryan is a student of the Yurok Language Program.*

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# Does Compensatory Mitigation Serve Tribal Sovereignty?





*Introduction*

Compensatory mitigation is a mechanism to offset unavoidable impacts to natural resources protected by various regulations. It is one environmental market which tribes are excluded from in the black and white policy but not in practice. With resilience, a few tribes have successfully developed compensatory mitigation projects on tribal land, offsetting tribal development impacts to natural resources. For a tribe, compensatory mitigation is not only an opportunity to reap the ecological and economic benefits, but another way to exercise tribal sovereignty over the restoration and protection of natural resources on and potentially off tribal land. This article is a high-level overview of compensatory mitigation under section 404 of the Clean Water Act and the means by which tribes could exercise tribal sovereignty through the lens of compensatory mitigation.

**For a tribe, compensatory mitigation is not only an opportunity to reap the ecological and economic benefits, but another way to exercise tribal sovereignty over the restoration and protection of natural resources on and potentially off tribal land.**

*What are environmental markets and what is compensatory mitigation?*

Environmental markets are an approach to incentivizing conservation by protecting and mitigating development impacts on ecosystems.[1] These markets are designed to address the conflict between permitting development and remedying the impacts to natural resources. There are different environmental markets to address various ecosystem assets and services provided by natural resources.[2] Two notable markets that may be of pertinent interest to tribes include compensatory mitigation under Section 404 of the Clean Water Act (CWA) for impacts to wetlands, streams or other aquatic resources, and compensatory mitigation required for impacts to species under the Endangered Species Act (ESA) and U.S. Fish and Wildlife Service (Service) policies.[3] Section 404 of the CWA is a program to regulate discharge of dredge or fill material into waters of the U.S. (WOTUS) such as wetlands, streams, or other aquatic resources.[4] Impacts to WOTUS is prohibited unless a permit for the discharge is issued by the Army Corps of Engineers (Army Corps). When a developer has a proposed discharge, steps of avoidance and minimization for the impacts must be taken by the developer prior to engaging in compensatory mitigation.

Thus, compensatory mitigation is for unavoidable residual impacts and may be required to replace the loss of wetland, stream, or other aquatic resource functions and natural resources in the area.[5] Mitigation is the restoration, creation, enhancement or preservation of natural resources and is achieved through the use of mitigation projects such as mitigation banks or in-lieu fee programs.[6]

*What does compensatory mitigation mean for tribes?*

Tribes are not included as mitigation sponsors or participants under the current section 404 compensatory mitigation policy. This creates challenges for tribes seeking opportunities related to compensatory mitigation as well as challenges related to Indian law. Despite the exclusion from policy, there are a few tribes who have successfully established a mitigation project (mainly banks) on tribal land. The majority of tribal mitigation projects are in the Northwest Pacific region, where tribes have and are working with the Army Corps and state agencies to navigate the project establishment in a way that both serves tribal sovereignty and adheres to mitigation project requirements and standards.[7] It is important to remember, tribes are subject to federal regulations, whether it be as a developer

who is required to do compensatory mitigation or a sponsor of compensatory mitigation who chose to develop a mitigation project to provide mitigation credits and offsets for impacts.

A mitigation project is generally established with the aim of providing compensatory mitigation credits, either privately (to be bought by one buyer) or commercially (to be bought by anyone). Tribes on the other hand have unique reasons for development beyond credit sales. One tribe chose to establish a mitigation bank to streamline the permit process for tribal members and provide credits for sale for on-reservation housing development. Another tribe who is in the process of establishment chose to develop a mitigation bank to provide credits for sale to offset impacts from their own tribal development. Another tribe simply wanted to reap the economic benefit of incoming revenue from the mitigation bank based off the substantial need for mitigation credits in the service area. The highlight of these examples is tribes exercise their tribal sovereignty and choose to establish compensatory mitigation projects for the prosperity of their own people and the protection of natural resources, now and for the future.

**“Tribes not only possess the traditional ecological knowledge for successful and organic restoration but a prime interest in the ecological health of their reservations and off-reservation natural and treaty resources for the coming generations.”**

For a tribe, compensatory mitigation is not only an opportunity to reap the ecological and economic benefits, but another way to exercise tribal sovereignty over the restoration and protection of natural resources on and potentially off tribal land. As the original stewards of the land, mitigation practices are not new to tribes and are inherently imbedded

within tribal ways of life, subsistence, and identity. However, the concept of a tribe receiving monetary compensation for mitigation is new and, under the current compensatory mitigation rules,[8] a valuable overlooked opportunity for tribes, federal agencies, and private landowners. Through compensatory mitigation, tribes could play a leading role in the expansion of America’s ecological restoration and mitigation industry. Tribes not only possess the traditional ecological knowledge for successful and organic restoration but a prime interest in the ecological health of their reservations and off-reservation natural and treaty resources for the coming generations.

*Potential ways to exercise tribal sovereignty in compensatory mitigation.*

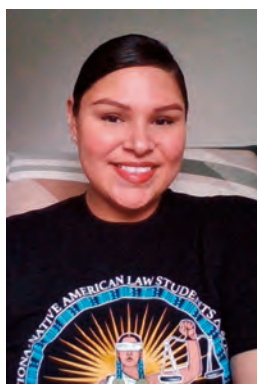
There are different ways tribes could possibly participate in compensatory mitigation projects: (1) holding a position on the internal review team of a mitigation project (if permitted by the Army Corps), (2) partnering with another tribe, non-profit, federal agency, or private landowner as a mitigation project sponsor either on or off tribal land; (3) agreeing to be the third-party conservation easement holder of a mitigation project; (4) agreeing to be the long-term steward of the mitigation site after all credits are sold, or (5) solely sponsoring a mitigation project on tribal land. The core of compensatory mitigation revolves around utilizing relationships to achieve the goal of restored and perpetually protected natural resources. This includes securing, restoring, and building new the relationships between the tribe and outside partners, natural resources, and future generations.

*Conclusion: Does compensatory mitigation serve tribal sovereignty?*

In short, yes, compensatory mitigation is an assertion of tribal sovereignty because it provides an additional avenue to restore and conserve natural resources in perpetuity. The concept of compensatory mitigation is to allow development impacts to natural resources while compensating for residual unavoidable impacts to mitigate (i.e., restore) the natural resources



through a compensatory mitigation project. This concept is sometimes at odds with tribal perspectives of natural resource protection, especially on reservations. However, as the effects of climate change and modern development [9] (tribal or non-tribal) impact tribal communities and tribal natural resources, compensatory mitigation may provide a viable opportunity for tribes to provide the necessary mitigation to natural resources. Compensatory mitigation has both ecological and economic benefits to natural resources and tribal sovereignty, as well as the underlying purpose of restoring tribal relationships with natural resources and protecting them for future generations.



*Mariah Black Bird-Perry is an ASU Law and Indian Legal Program Alum (22) and an enrolled member of the Cheyenne River Sioux Tribe. Mariah is the Tribal Mitigation Fellow at the Environmental Policy Innovation Center with a focus on Tribal compensatory mitigation banking policy and guidance.*

#### Endnotes:

[1] See the EPA website on ecosystem markets at <https://www.epa.gov/enviroatlas/ecosystem-markets-enviroatlas#:~:text=One%20approach%20to%20safeguarding%20ecosyst,mitigate%20for%20impacts%20to%20ecosystems>.

[2] See generally <https://www.fs.usda.gov/treearch/pubs/40903> (discussing the description of ecosystem markets and its benefits); see also <https://www.epa.gov/enviroatlas/ecosystem-markets-enviroatlas> (discussing the different types of ecosystem markets such as forest carbon, protected species and habitats, and water resources).

[3] Note: U.S. Fish and Wildlife Service is in the process of issuing policy for compensatory mitigation requirements under the Service and ESA.

[4] See <https://www.epa.gov/cwa-404/background-about-compensatory-mitigation-requirements-under-cwa-section-404> (discussing the background on compensatory mitigation).

[5] The amount and kind of compensatory mitigation is determined by the Army Corps of Engineers.

[6] For clarity, compensatory mitigation creates a system of credits and debits between a developer and a mitigation project sponsor. Compensatory mitigation is done after all steps have been taken to avoid or minimize impacts to natural resources from development. If compensatory mitigation is necessary, the developer can transfer the

responsibility to mitigate for the residual unavoidable impacts to a mitigation project sponsor. Generally, the sponsor will have a mitigation bank or an in-lieu fee program where credits to mitigate are available for purchase by the developer. If the correct kind of credit and amount is available, the developer will purchase a credit(s). In return, the sponsor will use the compensation to fund the mitigation of the project site. Mitigation banks are advanced mitigation, meaning the mitigation is done prior to the sale of credits, while in-lieu fee projects are not advanced mitigation and the mitigation occurs as the funding is received. Permittee responsible mitigation is where the developer both funds and performs the mitigation, thereby maintaining the responsibility to mitigate for its unavoidable development impacts.

[7] Requirements and standards can be found in the 2008 mitigation rule. See <https://www.epa.gov/cwa-404/compensatory-mitigation-losses-aquatic-resources-under-cwa-section-404-final-rule>. All 38 Army Corps district may have different requirements for compensatory mitigation. General requirements include financial assurances, a site protection mechanism, a sponsor.

[8] See <https://www.epa.gov/cwa-404/compensatory-mitigation-losses-aquatic-resources-under-cwa-section-404-final-rule> (the 2008 mitigation rule).

[9] Historical development (i.e., 50 years ago) impacted natural resources prior to regulatory protections and did not require compensatory mitigation. Therefore, only current [/modern] development impacts require mitigation. The goal of mitigation is net zero.



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On March 15, 2021, Congress confirmed Deb Haaland—a member of the Laguna Pueblo and then congresswoman for the State of New Mexico—as the first Native American Secretary for the U.S. Department of the Interior. Given Interior’s intertwined, yet often inharmonious, relationship with Tribal Nations, the placement of a Native woman at its helm was nothing short of monumental. Interior’s responsibility for managing the Bureau of Indian Affairs (BIA), as well as various land management agencies that oversee roughly one-fifth of all the land in the United States, means we are witnessing what could be a singularly important moment for the implementation of progressive, pro-Tribal policies. This Article summarizes how Secretary Haaland has captured this moment thus far.

.....

Since entering office, Secretary Haaland has spearheaded initiatives running the gamut from forward-looking climate change and conservation policy to reviewing the painful legacy of federal Indian boarding schools. To start, she has established the Tribal Advisory Committee, a new advisory body comprised of Tribal representatives from each of the BIA’s 12 regions. For the Pacific Region, the primary representative is currently **Erica Pinto**, Chairwoman of Jamul Indian Village of California, with **Reid Milanovich**, Chairman of the Agua Caliente Band of Cahuilla Indians, serving as the alternate.

# Spotlight on the Haaland Administration: Over a Year of Native Leadership

BY BETHANY SULLIVAN



The purpose of this Committee is to “ensure Tribal leaders have direct and consistent contact and communication with the current and future Department officials to facilitate robust discussions on intergovernmental responsibilities, exchange views, share information and provide advice and recommendations regarding Departmental programs and funding that impact Tribal Nations to advance the federal trust responsibility.” [1]





On June 22, 2021, following the uncovering of hundreds of unmarked graves at the Canadian Kamloops Indian Residential School, Secretary Haaland issued the Federal Indian Boarding School Initiative, the primary goal of which is to acknowledge the painful history of the boarding school era.[2] The Initiative includes a mandate to identify boarding school facilities and sites, the location of student burials, the identities and Tribal affiliations of children interred at such locations,

and the lasting consequences of these schools.[3]



Additionally, to address the horrific epidemic of missing and murdered indigenous women, Secretary Haaland moved quickly in the first few weeks of her leadership to establish the Missing and Murdered Unit under the Office of Justice Services at the BIA.[4] The purpose of the Unit is to provide leadership and direction for cross-departmental and interagency work on both unsolved and active cases.



Secretary Haaland has also strengthened the protections for sacred sites and prioritized opportunities for Tribal co-management by establishing a new memorandum of understanding, signed by eight federal agencies, to “increase collaboration with Tribes to ensure stewardship and access to sites, and incorporate Traditional Ecological Knowledge into management, treatment, and protection procedures.”[5]



She has begun taking specific action in this vein, such as overseeing the long awaited transfer of management over fish production at the Dworshak National Fish Hatchery on the Nez Perce Reservation in Idaho from a shared structure between the Fish & Wildlife Service and the Nez Perce Tribe to primarily Tribal management.[6] The Haaland Administration has also entered into an inter-governmental cooperative agreement with the five Tribal Nations culturally affiliated with the Bears Ears National Monument—the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah and Ouray Reservation, and the Pueblo of Zuni.[7] This agreement sets the parameters for cooperative management and shared decision-making, including the incorporation of Traditional Ecological Knowledge.

To support the Tribes’ work in carrying out this agreement, the Bureau of Land

Management (and the U.S. Forest Service, housed in the Department of Agriculture) have committed to providing resources to each Tribe. [8] As a final example, Secretary Haaland has initiated the process to withdraw federal lands within a 10 mile radius of Chaco Culture National Historical Park, a place sacred to local Tribes and Pueblos, and to more meaningfully

incorporate Tribal and Pueblo guidance into regional land management plans. [9] If completed, the withdrawal would protect such lands from new oil and gas leases for up to 20 years.



Related to conservation and natural resource management, Secretary Haaland has also set climate change action as a top Departmental priority. To that end, Secretary Haaland has also set climate change action as a top Departmental priority. To that end, Secretary Haaland created a Climate Task Force to “develop a strategy to reduce climate pollution; improve and increase adaptation and resilience to the impacts of climate change; address current and historic environmental injustice; protect public health; and conserve Department managed lands.”[10] Given these climate objectives and related federal policy, such as the American the Beautiful initiative, which aims to conserve 30 percent of the country’s lands and waters by 2030,[11]



Secretary Haaland is well positioned to facilitate Tribal assumption of primary management or co-management over a broad swath of federal lands and natural resources. Her ability to do so, however, may be complicated by limitations in existing federal land management statutes and regulations, as well as potentially conflicting directives—as set by agency organic acts—to manage public lands for multi-use and/or resource extraction.

Under Secretary Haaland’s watch, there have also been developments on the regulatory

front. For example, through her Assistant Secretary of Indian Affairs, Bryan Newland, the Department is proposing changes to the regulations governing trust land acquisitions (25 C.F.R. Part 151) as well as the regulations concerning State-Tribal gaming compacts (25 C.F.R. Part 293).[12] While formal draft regulations have not yet been issued at the time

of writing, the draft proposals circulated in Tribal consultation illustrate a clear focus on streamlining and clarifying agency processes in two

arenas of high importance to Tribes. In particular, the Part 293 regulations are an ambitious attempt to circumscribe State authority over Tribal gaming activities, bolstered by recent Ninth Circuit caselaw concerning State overreach in several California Tribal compacts. [13]

Needless to say, many of Secretary Haaland’s policies are still in the nascent or high-level stages. Whether and how these lofty goals will translate to meaningful, on-the-ground change remains to be seen. Moreover, given the myriad and sometimes conflicting missions of the Department’s agencies, Secretary Haaland may find implementation of certain objectives—such as the reduction of green house gases—stymied by her responsibilities to manage federal natural gas and oil reserves and the increasing pressure nation-wide to reduce energy and fuel costs. We will all be closely watching the next several (and hopefully more) years of the Haaland Administration.



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#### Endnotes:

- [1] Department of the Interior, Press Release, “Secretary Haaland Announces Members of the First-Ever Secretary’s Tribal Advisory Committee (June 15, 2022), <https://www.doi.gov/pressreleases/secretary-haaland-announces-members-first-ever-secretarys-tribal-advisory-committee>.
- [2] Secretary Memorandum to Assistant Secretaries, Principal Deputy Assistant Secretaries, Heads of Bureaus and Offices Federal Indian Boarding School Initiative (June 22, 2021), available at <https://www.doi.gov/sites/doi.gov/files/secint-memo-esb46-01914-federal-indian-boarding-school-truth-initiative-2021-06-22-final508-1.pdf>
- [3] *Id.*
- [4] Department of the Interior, Press Release, “Secretary Haaland Creates New Missing & Murdered Unit to Pursue Justice for Missing or Murdered American Indians and Alaska Natives” (Apr. 1, 2021) <https://www.doi.gov/news/secretary-haaland-creates-new-missing-murdered-unit-pursue-justice-missing-or-murdered-american>.
- [5] See Department of the Interior, Press Release, “Secretary Haaland Announces Interagency Effort to Protect and Increase Access to Indigenous Sacred Sites” (Nov. 16, 2021), <https://www.doi.gov/pressreleases/secretary-haaland-announces-interagency-effort-protect-and-increase-access-indigenous>.
- [6] Department of the Interior, Press Release, “Secretary Haaland Joins Nez Perce Tribe, Army Corps of Engineers to Commemorate Transfer at Dworshak National Fish Hatchery” (June 16, 2022) <https://www.doi.gov/pressreleases/secretary-haaland-joins-nez-perce-tribe-army-corps-engineers-commemorate-transfer>.
- [7] Inter-Governmental Cooperative Agreement between the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of Uintah and Ouray Reservation, and the Pueblo of Zuni and the United States Department of the Interior, Bureau of Land Management and the United States Department of Agriculture, Forest Service for the Cooperative Management of the Federal

- Lands and Resources of the Bears Ears National Monument (June 18, 2022), available at <https://www.blm.gov/sites/blm.gov/files/docs/2022-06/BearsEarsNationalMonumentInter-GovernmentalAgreement2022.pdf>.
- [8] Department of the Interior, Press Release, “BLM, Forest Service and Five Tribes of the Bears Ears Commission Commit to Historic Co-management of Bears Ears National Monument” (June 21, 2022), <https://www.doi.gov/pressreleases/blm-forest-service-and-five-tribes-bears-ears-commission-commit-historic-co-management>.
- [9] See Department of the Interior, Press Release, “Secretary Haaland Announces Steps to Establish Protections for Culturally Significant Chaco Canyon Landscape” (Nov. 15, 2021), <https://www.doi.gov/pressreleases/secretary-haaland-announces-steps-establish-protections-culturally-significant-chaco>.
- [10] Secretarial Order No. 3999, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process* (Apr. 16, 2021), available at [https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3399-508\\_o.pdf](https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3399-508_o.pdf).
- [11] See Department of the Interior, America the Beautiful: Spotlighting the Work to Restore, Connect and Conserve 30 Percent of Lands and Waters by 2030, <https://www.doi.gov/priorities/america-the-beautiful> (last visited June 30, 2022). One of the key principles of this initiative is “[h]onoring Tribal sovereignty and supporting the priorities of Tribal Nations.
- [12] See Department of the Interior, BIA, 25 CFR Part 151 (Land Acquisition) and 25 CFR Part 293 (Class III Tribal State Gaming Compact Process), <https://www.bia.gov/tribal-consultation/25-cfr-part-151-land-acquisition-and-25-cfr-part-293-class-iii-tribal-state> (last visited June 30, 2020).
- [13] See *Chicken Ranch Rancheria of Mewuk Indians v. Newsom*, No. 21-15751, 2022 WL 2978615 (9th Cir. July 28, 2022).



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# LOOKING TO CALNAGPRA

BY LAUREN VAN SCHILFGAARDE (Cochiti Pueblo)

The Native American Graves Protection and Repatriation Act (NAGPRA)[1] is a monumental piece of human rights legislation. Enacted in 1990, NAGPRA seeks to address the systemic yet contradictory disrespect and fetishization for Native American burial sites, funerary and sacred objects, and cultural patrimony. NAGPRA requires federal agencies and museums (1) to identify items in their possession; (2) try to determine whether remains and objects in their possession have a cultural affiliation with a present-day tribe; and (3) generally repatriate any culturally affiliated items to the tribe(s) or Native Hawaiian organization(s). Since 1990, NAGPRA has enabled the repatriation of over 84,000 Native American ancestral remains and over 1.5 million funerary objects.[2] The Act is arguably a fulfillment of international calls for Indigenous self-determination, including the right of Indigenous peoples to maintain, control, and protect their cultural heritage, as well as to repatriate their human remains. [3]

However, thirty-two years since the passage of NAGPRA, there is still immense work to be done. There are still at least 116,000 Native American relatives in the possession of institutions, of which 95 percent remain culturally unidentified.[4] Here in California, the University of California, Berkeley has repatriated only about 20 percent of its collection.[5] Professors at the University of California, San Diego sought to evade repatriation of two relatives discovered on the

property of the Chancellor's official residence, taking their dissent all the way to the Ninth Circuit.[6]

California is actually one of the only states to have domesticated NAGPRA into state law, through the passage of CalNAGPRA in 2001.[7] Prompted in part by the generally slow pace of repatriation by many of the University of California campuses, Governor Brown signed AB-2836 in 2018, amending CalNAGPRA in order to speed the repatriation process.[8] Governor Newsom then signed AB-275 in 2020, again at the behest of immense tribal advocacy, which further amended CalNAGPRA. For California, CalNAGPRA is an added layer of cultural heritage protection. NAGPRA and CalNAGPRA are to work in tandem—though the practical extent to which this takes place is a work in progress.

Meanwhile, there are national efforts to speed compliance with NAGPRA. In July of 2021, the Department of Interior invited tribes to consult on a draft proposal of revised NAGPRA regulations.[9] The Department published initial regulations to implement NAGPRA in 1995,[10] followed by a series of updates over the years, mostly technical.[11] The 2021 proposed regulations, however, offer a potentially fresh approach to NAGPRA implementation, that include re-orienting approaches to cultural affiliation, consultation, and enforcement. Tribes have submitted their initial reactions to the proposed draft, and many have urged for

additional opportunities to engage in consultation before the proposed draft advances in the rulemaking process.[12]

For all the fresh and re-oriented thinking that produced the proposed NAGPRA regulations draft, it was apparent that CalNAGPRA was not included in the brainstorming. Given the discrepancies, the Tribal Legal Development Clinic at the UCLA School of Law got to researching. I serve as the San Manuel Band of Mission Indians Director of the Tribal Legal Development Clinic. I had the immense privilege of supervising 2Ls Paton Moody and Caitlyn Walker, who over the course of the Spring 2022 semester, comprehensively compared the proposed draft regulations of NAGPRA with CalNAGPRA. Their findings highlight critical CalNAGPRA provisions that, hopefully in this moment of substantive, re-oriented rulemaking, should be incorporated into the NAGPRA regulations to benefit all tribes. These highlights are the product of their incredible work.

## **A core component of CalNAGPRA, and a primary need for it in California, is its more inclusive definition of tribe.**

### **Tribal Inclusion through Joint Claims**

A core component of CalNAGPRA, and a primary need for it in California, is its more inclusive definition of tribe. CalNAGPRA extends protections to both federally recognized tribes and California Indian tribes that appear on the contact list maintained by the Native American Heritage Commission[13]. NAGPRA protection, of course, is limited to federally recognized tribes.[14]

NAGPRA does not make any specific mention as to whether joint claims for repatriation are permissible under the statute. Some tribes have formed coalitions, comprised of multiple tribes, to consolidate similar claims, save financial and personnel resources, share NAGPRA expertise, and minimize administrative burdens on tribes. For some tribes, repatriation can be culturally undesirable, logistically

## **The proposed regulations' endorsement of joint claims represents an exciting opportunity to build on CalNAGPRA's definition of tribe.**

unfeasible, emotionally unbearable, and otherwise impossible without the assistance of another tribe. Joint claims made by two or more tribes can offer strategic advantages. While the current NAGPRA regulations do not acknowledge joint claims, the proposed regulations explicitly mention and endorse them.[15]

The proposed regulations' endorsement of joint claims represents an exciting opportunity to build on CalNAGPRA's definition of tribe. Not only can tribes consolidate financial and cultural resources through joint claims, they can theoretically incorporate non-federally recognized tribes as joint claimants in a sponsorship-like role. Though an imperfect method, this opportunity is novel, and much needed, particularly in states like California, whose history is rife with termination and other colonized forms of erasure.

### **Consultation**

NAGPRA is one of the few federal statutes that include a tribal consultation mandate. However, numerous tribes note that even within the framework of NAGPRA, meaningful consultation remains elusive, particularly regarding the actual consideration of tribal input.[16] Presently, neither the NAGPRA statute nor the current regulations define consultation. Marking a significant development, the proposed regulations offer a definition.[17] This proposed definition of consultation is a step in the right direction, where "all interested parties" are to engage in "joint deliberations" and "open discussion."

CalNAGPRA, however, offers a more robust definition of consultation.

## **CalNAGPRA, however, offers a more robust definition of consultation.**



CalNAGPRA defines consultation to include the “meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, achieving agreement.”[19] CalNAGPRA’s definition specifically highlights the need to respect cultural values, tribal sovereignty, and the necessity for confidentiality throughout the consultation process – all essential facets of adequate tribal consultation that are notably missing from the proposed regulations’ definition. CalNAGPRA outlines a significantly higher standard of consultation with regards to completing or updating inventories.[20] CalNAGPRA, much more than the current or proposed regulations of NAGPRA, comes close to the calls of the United Nations Declaration on the Rights of Indigenous Peoples, in which tribes have a right to a sufficiently meaningful standard of consultation that includes free, prior, and informed consent. [21]

traditional tribal knowledge regarding burial customs can reduce the potential for misidentification.

CalNAGPRA, unlike the current or proposed NAGPRA regulations, actually defers to traditional tribal knowledge. The California Legislature identified the intent of CalNAGPRA to include recognizing that tribes “have expertise with regard to their tribal history and practices” and that tribal traditional knowledge should be treated as the “authority with respect to determining cultural affiliation.”[24] Traditional tribal knowledge is thereby “given deferential weight.”[25] CalNAGPRA defines “tribal traditional knowledge” broadly, and specifically identifies it as “expert opinion.” Examples of CalNAGPRA’s support of tribal deference are found throughout the statute, including regarding cultural affiliation and identification determinations. CalNAGPRA’s elevation of traditional tribal knowledge reflects a substantive recognition of tribes, and their

**CalNAGPRA’s definition specifically highlights the need to respect cultural values, tribal sovereignty, and the necessity for confidentiality throughout the consultation process – all essential facets of adequate tribal consultation that are notably missing from the proposed regulations’ definition.**

### Deference to Tribal Knowledge

Most notably, CalNAGPRA elevates deference to tribal knowledge. Current NAGPRA regulations refer to traditional tribal knowledge as an acceptable source for establishing cultural affiliation.[22] This is a notable inclusion, as tribal knowledge has historically been devalued and dismissed. The proposed NAGPRA regulations draft goes further, noting that traditional knowledge should be treated as “equally relevant” as other academic sources. [23] This promotion is critical, as tribes have reported numerous instances in which tribally sourced information requires an academic supplement before it is given weight. Almost as if a scholar needs to “sponsor” tribal information before it is considered legitimate. Beyond insulting, failing to recognize and incorporate traditional tribal knowledge can be harmful. For example, burial practices and norms vary wildly between tribes and might differ from Western practices. Turning to

authority to self-determine their own narratives, culture, and ancestors. It finally evolves from the paternalistic impulse that tribes are best understood by outsiders.

### Conclusion

The scope of the proposed changes in the draft regulations go far beyond this article, including regarding new definitions like “geographic affiliation.” Cumulatively, they offer an existing opportunity to recharge repatriation and other cultural resource protection efforts. They enhance tribal autonomy. They push institutions, which despite thirty-two years, have still failed to repatriate their collections and remedy the harm their inappropriate acts of possession have caused. But, it is also clear that they can go further. CalNAGPRA, developed through significant input from California tribes, offers useful insight for how tribally self-determined repatriation ought to look moving forward.



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#### Endnotes:

- [1] 25 U.S.C. §§ 3001–3013.
- [2] The Long Journey Home: Advancing the Native American Graves Protection and Repatriation Act's Promise After 30 Years of Practice: Hearing Before the Subcomm. on Indian Affairs, 117th Cong. (Feb. 2, 2022) (Testimony of Joy Beasley, Assoc. Dir., Cultural Resources, Partnerships and Science, National Park Service, Dep't of Interior).
- [3] United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, ¶ 12, U.N. Doc. A/RES/61/295, Arts. 11 and 12 (Sept. 13, 2007).
- [4] The Long Journey Home: Advancing the Native American Graves Protection and Repatriation Act's Promise After 30 Years of Practice: Hearing Before the Subcomm. on Indian Affairs, 117th Cong. 9 (Feb. 2, 2022) (Statement of Anna Maria Ortiz, Dir., Natural Resources and Environment, U.S. Gov't Accountability Office).
- [5] California State Auditor, Native American Graves Protection and Repatriation Act: The University of California Is Not Adequately Overseeing Its Return of Native American Remains and Artifacts, Report 2019-047, 2 (June 2020).
- [6] *White v. University of California*, 765 F.3d 1010 (9th Cir. 2014).
- [7] California Native American Graves Protection and Repatriation Act (CalNAGPRA), AB-978 (2001), codified at Cal. Health & Safety Code §§ 8010–8029.
- [8] For example, the amendments require the University of California regents, as a condition for using CalNAGPRA state funds, to establish a NAGPRA oversight committee and adopt policies and procedures. All repatriation and violation claims will go to the campus committee, which must support appeals and dispute resolution. The amendments additionally establish a bi-annual audit of the University of California's NAGPRA compliance. *Id.* at Sec. 3 and Sec. 4.
- [9] Draft 43 C.F.R. Part 10 Native American Graves Protection and Repatriation Regulations (released July 8, 2021), available at [https://www.nps.gov/subjects/nagpra/upload/NAGPRA-Draft-Rule\\_Text-for-Consultation\\_ENCLOSURE-TO-LTR.pdf](https://www.nps.gov/subjects/nagpra/upload/NAGPRA-Draft-Rule_Text-for-Consultation_ENCLOSURE-TO-LTR.pdf) (last accessed Jul. 29, 2022).
- [10] 60 Fed. Reg. 62158 (Dec. 4, 1995), codified at 43 C.F.R. Part 10.
- [11] 33482 (Jun. 11, 2014); 80 Fed. Reg. 68465 (Dec. 7, 2015).
- [12] Freedom of Information Act Request, Tribal comments regarding the Draft NAGPRA Regulations, DOI-NPS-2022-000473 (released Nov. 9, 2021).
- [13] Cal. Health & Safety Code § 8012(c).
- [14] 25 U.S.C. § 3001(7).

- [15] Draft Regulations for Consultation, Draft 43 CFR Part 10: Native American Graves Protection and Repatriation Regulations, § 10.3(c) (Jul. 8, 2021) [https://www.nps.gov/subjects/nagpra/upload/NAGPRA-Draft-Rule\\_Text-for-Consultation\\_ENCLOSURE-TO-LTR.pdf](https://www.nps.gov/subjects/nagpra/upload/NAGPRA-Draft-Rule_Text-for-Consultation_ENCLOSURE-TO-LTR.pdf) [hereinafter "Draft 43 C.F.R."].
- [16] 25 U.S.C. § 3002(c)(2) and § 3005(a)(3).
- [17] U.S. Gov't Accountability Office, Examples of Certain Federal Requirements That Apply to Cultural Resources and Factors That Impact Tribal Consultation, GAO-20-466T, 9 (Feb. 2020).
- [18] Draft 43 C.F.R. § 10.2 (defining consultation as "a process involving the exchange of information, open discussion, and joint deliberations with respect to potential issues, changes, or actions by all interested parties.").
- [19] Cal. Health & Safety Code § 8012(e).
- [20] Cal. Health & Safety Code § 8013(b)(1)(B) and § 8013(j)(2)–(4).
- [21] G.A. Res. 61/295, ¶ 12, U.N. Doc. A/RES/61/295, Art. 19 (Sept. 13, 2007).
- [22] 43 C.F.R. § 10.2(e)(1).
- [23] Draft 43 C.F.R. § 10.3(a).
- [24] Cal. AB-275, § 1(k)(5) (2020).
- [25] *Id.*
- [26] Cal. Health & Safety Code § 8012(p).
- [27] *See* Cal. Health & Safety Code § 8012(l), § 8013(c)(2), and § 8013(b)(C)(ii).

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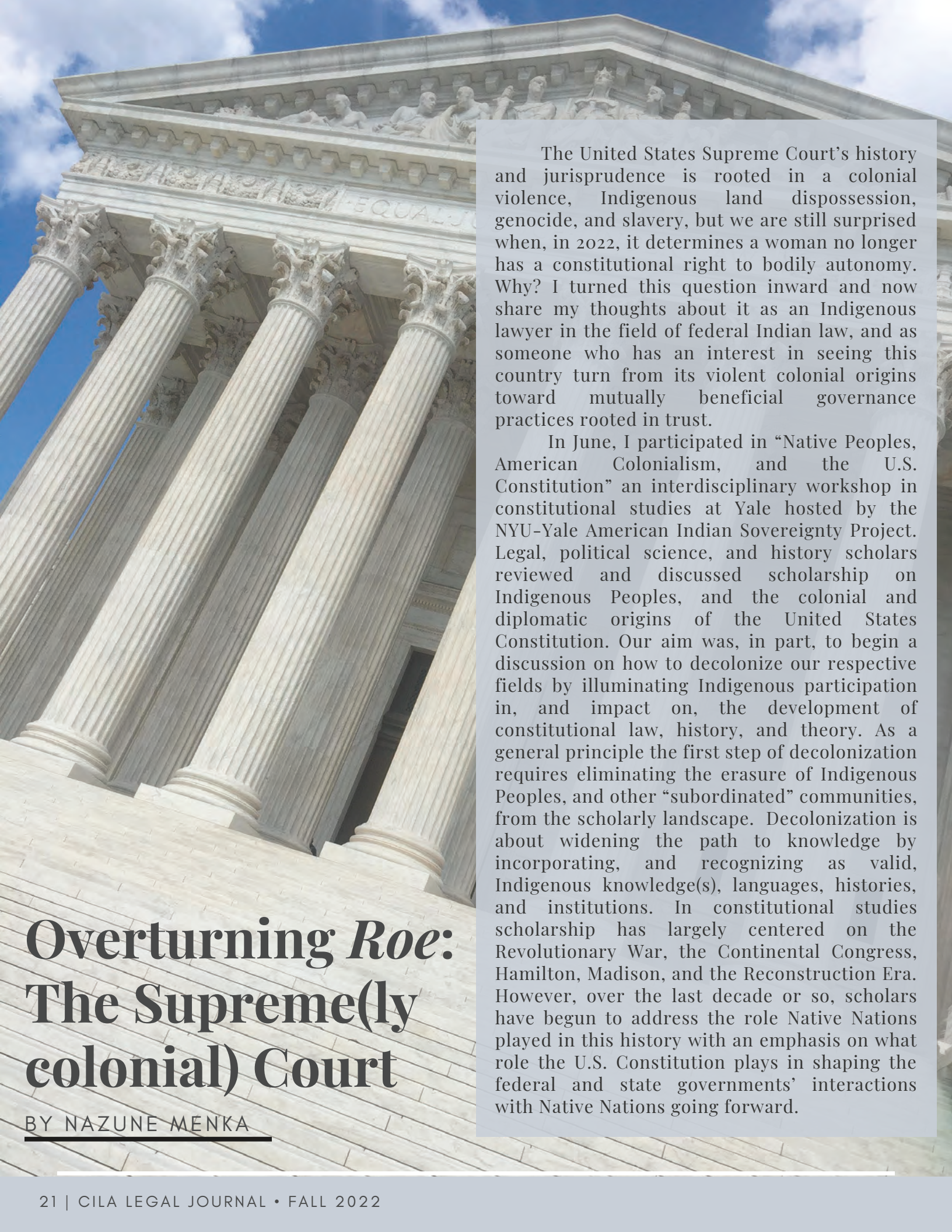
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# Overturning *Roe*: The Supreme(ly colonial) Court

BY NAZUNE MENKA

The United States Supreme Court's history and jurisprudence is rooted in a colonial violence, Indigenous land dispossession, genocide, and slavery, but we are still surprised when, in 2022, it determines a woman no longer has a constitutional right to bodily autonomy. Why? I turned this question inward and now share my thoughts about it as an Indigenous lawyer in the field of federal Indian law, and as someone who has an interest in seeing this country turn from its violent colonial origins toward mutually beneficial governance practices rooted in trust.

In June, I participated in “Native Peoples, American Colonialism, and the U.S. Constitution” an interdisciplinary workshop in constitutional studies at Yale hosted by the NYU-Yale American Indian Sovereignty Project. Legal, political science, and history scholars reviewed and discussed scholarship on Indigenous Peoples, and the colonial and diplomatic origins of the United States Constitution. Our aim was, in part, to begin a discussion on how to decolonize our respective fields by illuminating Indigenous participation in, and impact on, the development of constitutional law, history, and theory. As a general principle the first step of decolonization requires eliminating the erasure of Indigenous Peoples, and other “subordinated” communities, from the scholarly landscape. Decolonization is about widening the path to knowledge by incorporating, and recognizing as valid, Indigenous knowledge(s), languages, histories, and institutions. In constitutional studies scholarship has largely centered on the Revolutionary War, the Continental Congress, Hamilton, Madison, and the Reconstruction Era. However, over the last decade or so, scholars have begun to address the role Native Nations played in this history with an emphasis on what role the U.S. Constitution plays in shaping the federal and state governments' interactions with Native Nations going forward.



In examining this history one can't ignore the colonial origins of the country, and the violent federal and state-sanctioned "removal" of Indigenous peoples from their homelands in service of the settler-colonial project.[1] The Supreme Court has often been heavily involved in this colonial violence. But despite the imagery we might conjure up about U.S. history during this time, at spaces and places between 1492 and 1871 (when treaty making formally ended),[2] this was an era of diplomacy by and between early colonists and Native Nations. This era had moments of multicultural jurisgenesis where mutually beneficial arrangements were codified in the sacred text of treaties.[3] Still yet, this early federal government vacillated between being an eager diplomat in treaty making and wielding imperial violence in its legislatures and judiciaries.

of states encroaching on the autonomy and freedom of Native Nations.[4] This power struggle is often what interpreting the Constitution is centered around. In federal Indian law, the unyielding advocacy of Indigenous leaders, scholars, organizations, and Tribal governments lobbying for Native Nation sovereignty and power has worked to combat the colonialism of unrestrained federal power and unregulated power grabs by states.

In *McGirt v. Oklahoma*, *Herrera*, and *Cougar Den* the Court returned, after a long hiatus, to recognizing treaties with Native Nations as the supreme law of the land—a power explicitly provided for in the Constitution. For a Court with several justices considered to be textualists and/or originalists, this recognition may not be surprising. Constitutional scholars search to find meaning in the document by

**Dobbs reads like a case from the 1800s when the Court found itself searching to rationalize its imperialistic endeavors by citing laws and practices that fly in the face of modern day human rights.**

In jurisprudence defining this early relationship between Native Nations and the federal government the Supreme Court recognized it had a trust responsibility to Native Nations stemming from these early diplomatic relationships, and the changing circumstances of increased U.S. strength and power. (See *Cherokee Nation v. Georgia* (1831)). The Court also created the doctrine of federal plenary power over Indian affairs which it viewed as necessary in 1832 to protect Tribes from the state of Georgia. Indeed Native Nations have historically and contemporarily sought federal protection from state persecution by invoking the trust responsibility and even plenary power. Unfortunately, the federal government often breached this responsibility by breaking its promises, canceling treaties, and fraudulently ceding Indigenous lands under this self-dealt doctrine of power which is not enumerated in the Constitution. (See e.g. *Lone Wolf v. Hitchcock* (1903)). NYU Law Professor Maggie Blackhawk, one of the workshop hosts, might call these types of self-dealing cases "common law colonialism" as they illustrate both the dangers of an unrestrained federal power, and dangers

focusing on the explicit terms contained therein, seeking to understand the original intent of the framers, positioning rights in the context of historical practice, and, of course, prior case law. Figuring out how the Court will interpret the Constitution without such explicit text—for example when it makes an argument for plenary power over Indian affairs or questions the trust responsibility—is harder as these doctrines are not enumerated in the Constitution.

On June 24th this unenumerated rights problem emboldened the Supreme Court to turn to extratextual factors to overturn a woman's right to bodily autonomy in *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*. The case, *Dobbs v. Jackson Women's Health Org.*, signifies that the colonial Supreme Court is back in no uncertain terms. Dobbs reads like a case from the 1800s when the Court found itself searching to rationalize its imperialistic endeavors by citing laws and practices that fly in the face of modern day human rights. (See *Johnson v. M'Intosh* (1823); *Dred Scott v. Sanford* (1857); *Plessy v. Ferguson* (1896)) The Court opines that "liberty" shouldn't be construed to



include a woman's right to choose, and because that right is neither explicitly enumerated in the Constitution, nor rooted in the Nation's history, the Court has no choice but to allow states to regulate abortion. The opinion places an inordinate amount of focus on legal history in the period between the 1600-1800s. The colonial elephant in the opinion is that during the 1600-1800s legal institutions only granted sovereignty to white property owning men. If we, as United States citizens, are looking to this colonial Supreme Court to defend any of our rights not explicitly enumerated in the Constitution, and this Supreme Court's answer is to look to the legal institutions of the 1600-1800s for what is "deeply rooted in this Nation's history and tradition," we are in a world of danger.[5]



opinion on *Oklahoma v. Castro-Huerta*, essentially eschewing foundational tenets of federal Indian law and holding that despite Congressional action and treaty language to the contrary, a state has concurrent criminal jurisdiction with the federal government over non-Indians who commit crimes in Indian country.[6] To reach this conclusion the Court cherry picks three cases from the plethora of foundational federal Indian law cases and thinly veils its decision in favor of state power as constitutional under the Tenth Amendment.[7] Dobbs, *Castro-Huerta*, and numerous other cases from the recent Supreme Court term, indicate the Court is not merely interpreting the Constitution, but drastically reimagining and reinforcing its own power.[8] To be sure,

the Constitution is a colonial document and the Court sees it as just that. Until we decide to amend, rescind, or work around this colonial Constitution, the interpretation of the Court will reign supreme and our unenumerated rights, and Tribal sovereignty, may be stripped away by the Court or state by state.

In reimagining the Constitution at Yale with the cohort in June, I found hope for the first time in the words "We the People." We discussed the Constitution's foundations in the settler-colonial project, why it is important to name it, and how doing so might shape a more liberatory future. We were no longer ignoring the colonial elephant in the room that has served as an intellectual wedge between my Indigenous identity and U.S. citizenship. It was powerful, and an important paradigmatic moment for me as an early law scholar. The cohort discussed what it might look like to shift from a rights based framework to a structure based framework that would be less reliant on the Supreme Court's rights limiting colonial jurisprudence. What might it look like if we all engaged in collaborative and restorative law making, if we cited Indigenous worldviews and laws instead of the colonial era, if the federal trust responsibility applied to all U.S. citizens? If we decolonize the law? We may very well have to lean into our inherent power and sovereignty and leave the Supreme Court to its colonial endeavors and remove our trust from the institution if it refuses to evolve along with the rest of us. In the meantime, I hope we can see the value of decolonizing our institutions and look to new ways of knowing and worldviews that center on reciprocity, trust, responsibility, and good governance. For now we should all be lobbying our federal and state legislatures to create the changes we want to see—as Indigenous communities continue to do when the Court behaves colonially and power is stripped from "*We the People*".



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#### Endnotes:

[1] Pub. L. No. 105-06, ch 148, 4 Stat. 411-12 (1830)(more commonly known as the Indian Removal Act of 1830 and now codified as amended at 25 U.S.C. § 174).

[2] Indian Appropriations Act of 1871 ch. 120, 16. Stat. 544, 566 (March 3, 1871) now codified as "Future treaties with Indian tribes" (25 U.S.C.A. § 71 (West)) (providing "[n]o Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired." ). For an in depth discussion of questionable constitutionality of the Congressional rider ending treaty making see Moore, David H. and Steele, Michalyn, Revitalizing Tribal Sovereignty in Treaty-making (April 22, 2022). 97 N.Y.U. L. Rev. 137 (2022).

[3] See Robert A. Williams, *Linking Arms Together: American Indian treaty visions of law and peace*, 1600-1800, 28 (1997).

[4] Blackhawk, Maggie, Federal Indian Law as Paradigm Within Public Law, 132 HARVARD L. REV. 7, 1787 (2019), citing Philip P. Frickey, A Common Law for Our Age of Colonialism: The Judicial Divestiture of Indian Tribal Authority over Nonmembers, 109 YALE L.J. 1, 81 (1999) coining the term "common law of colonization").

[5] *Dobbs* at 5, 12, 13, 36, & 75.

[6] See Elizabeth Reese, *Conquest in the Courts*, The Nation (July 6, 2022) (calling the opinion "unmoored from the key cases of federal Indian law and divorced from the realities of American history").

[7] See *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022) citing *Organized Village of Kake v. Egan*, 82 S.Ct. 562 (1962) (holding under the Alaska Statehood Act that although the federal government retained absolute jurisdiction and control over Indian lands and Indian property Alaska Natives were still subject to state hunting and fishing laws); *United States v. McBratney*, 104 U.S. 621 (1881) (finding the Act of March 3, 1875 granting Colorado statehood, and granting criminal jurisdiction over Colorado's citizens and other white persons in the state, necessarily repealed any existing Treaty language to the contrary); and *Draper v. U.S.*, 164 U.S. 240 (1896) (holding the language of the enabling act of Montana stating the federal government retained absolute jurisdiction over Indian lands did not include federal jurisdiction over crimes committed by non-Indians).

[8] See generally *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S. Ct. 2111 (2022)(finding a New York law reasonably restricting concealed gun carry unconstitutional and heavily focusing on 18th century law as a rationale); *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022) (finding prayer, on public school grounds and during official school events by a football coach, guaranteed as free speech under the Constitution in " accord[d] with history and faithfully reflect[ed] the understanding of the Founding Fathers"); *W. Virginia v. Env'tl. Protec. Agency*, 142 S.Ct. 2587 (2022)(limiting the EPA's ability to regulate carbon emissions under Section 111(d) of the Clean Air Act ); *Egbert v. Boule*, 142 S. Ct. 1793 (2022)(limiting redress for a Fourth Amendment excessive force violation for victims of harassment by federal officers at the border); and *(Vega v. Tekoh.*, 142 S.Ct. 2095 (2022)(when filing a § 1983 civil rights claim a Miranda violation does not constitute the deprivation of a right secured by the Constitution).



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# The Next Front in Tribal Sovereignty: Oral Health?

BY BRETT WEBER



As Tribes continue a tireless, centuries-long struggle to assert sovereignty before colonial governments and external pressures, they engage in many policy areas: land management, natural resource extraction, criminal justice, and dozens of others. It may seem strange to put oral health in a prominent place on this list, but that is just what Tribes in Alaska and the Pacific Northwest have been doing for years. These Tribes are utilizing Dental Health Aide Therapists (DHATs or dental therapists), specialized providers who fill a critical gap in Indian Country's oral health care system. DHATs improve oral health outcomes in their communities by expanding access and offering culturally competent care. California Tribes may benefit from their work in the near future.

Dental therapists specialize in basic preventative and restorative oral health services. Their scope of practice is more limited than dentists': while a dentist can do approximately 500 procedures, that number for

DHATs is closer to 50. But those 50 are the most commonly needed and easily performed. Anywhere between half and two-thirds of patients at an oral health clinic can be treated by a dental therapist, allowing dentists to focus on more complex cases. In the Alaska Native communities that DHATs serve, the number of preventative services offered to children has increased by over 60 percent, the number of teeth needing to be extracted decreased by 74 percent, and the number of children needing procedures under general anesthesia has been cut by 30 percent.[1] Tribes in the Pacific Northwest that employ dental therapists report a significant decrease in wait times--the length of time a patient waits between making an appointment and being seen. [2]

California Tribes can employ dental therapists in three ways: state licensure, federal certification, or Tribal licensure.

Typically, healthcare providers practice under a license controlled by the state government in accordance with state law. This

**Typically, healthcare providers practice under a license controlled by the state government in accordance with state law.**

is true for most providers within the Indian Health System, whether they work for the Indian Health Service (IHS), a self-governance Tribe, an inter-Tribal health consortium, or an urban Indian health organization. Most physicians, dentists, specialists, and behavioral health providers work under a state license with a scope of work prescribed by the state government. California issues licenses for these providers to practice but does not currently issue licenses for dental therapists.

**California ... does not currently issue licenses for dental therapists.**

Typically, state governments will pass a law through the legislative process creating a pathway for licensure in a specific profession, along with any requirements it deems necessary. Legislatures can also direct the state health department to establish a licensure pathway through the rules and regulations process. Once the legislature creates a process for licensure of dental therapists, the state can begin issuing license. Once an individual provider has a state license, they can work in private practice, non-profit health facilities, or other settings.

**Tribes and Tribal health consortia in California would be able to employ dental therapists with their health funding from IHS using this pathway only once California enacts a licensure process for dental therapists...**

Self-governance Tribes or consortia, which operate their own healthcare systems, negotiate with IHS for annual funding amounts for their healthcare services. Therefore, Tribes and Tribal health consortia in California would be able to employ dental therapists with their health funding from IHS using this pathway only once California enacts a licensure process for dental therapists and if IHS agrees to a Tribal negotiator putting forward dental therapy positions in its annual funding

negotiations. The California legislature is not currently considering any legislation to license dental therapists, so this option may be a few years away for the state's Tribes.

The second pathway for Tribes to employ dental therapists is under federal certification. The federal government has several agencies that provide direct health care services: IHS, the Veterans Health Administration, and the Military Health System. While most providers operate under state licensure, the Community Health Aide Program (CHAP) is an exception. CHAP is an IHS program certifying providers working in Alaska Native communities. Alaska Tribal leaders developed the program to increase the providers serving isolated Alaska Native villages. These communities typically number a few hundred, not enough to support full-time health care providers, and are disconnected from the rest of the state except by air. Indeed, because of the difficulties in providing consistent oral health care to these communities, CHAP was the first entity anywhere in the United States to employ DHATs.

Since the 1960s, CHAP has provided frontline medical services to Alaska Native communities; since then, CHAP has grown to provide behavioral and dental health services. Because the program is so successful in Alaska, in 2010 (as part of the Affordable Care Act), Congress gave IHS legal authority to expand CHAP to Tribes nationwide. However, an amendment added to the law now requires Tribes to get permission from their state governments if they want to hire DHATs under CHAP. Frankly, this is an unusual requirement and can place state governments in an awkward position of having veto power over one specific provider type within a much broader Indian health system.

As noted, IHS received legal authority to expand CHAP in 2010. Six years later, IHS began that process, and in 2020, the agency published a circular interim policy for CHAP expansion. The lengthy time period is partially explained by lack of funding: Congress only began appropriating funding for CHAP in 2020, and then only at \$5 million per year—far below the President's budget request of \$25 million.[3]





Tribally licensed dental therapists to bill the state's Medicaid program for reimbursement when treating eligible patients. Despite the heavy investment required, Swinomish's licensing model has been replicated in at least one other Tribe in Washington state, and Swinomish now has two dental therapists practicing in its health system. Tribal sovereignty is a concept as old as the Tribes themselves. At first glance, oral health may not seem to be an area where discussions of Tribal sovereignty determine policy outcomes. Still, Alaska Native communities and Tribes in the Pacific Northwest have shown

Each IHS Service Area will establish an Area Certification Board of experts who will provide recommendations for candidate certification. While California Area (one of the twelve IHS Service Areas which encompasses all of the Tribes within California) has not yet set up its Area Certification Board, nor has it received funding from IHS, Areas can enter into reciprocity agreements with other areas, such as Alaska, that already have established boards. These agreements would allow dental therapists credentialed by another Area to practice in the California Area. Federal certification will be an extremely useful tool for Tribes wishing to employ DHATs, but IHS must make funding available for CHAP in California Tribes.

Finally, the third option for Tribes to employ dental therapists is a direct assertion of sovereignty. Tribal licensing allows a provider to practice within a Tribal nation. As sovereign governments, Tribes can regulate providers in their nations through licensure the same as any state government. One Tribe used this authority to license dental therapists. Swinomish Nation established its Tribal licensing board and hired a dental therapist licensed by the board in 2016. Establishing the board, composed of experts in provider scopes of practice, took several years of active recruitment and sustained support from the Tribe's elected officials. A productive relationship with the state of Washington assisted the Tribe in securing the ability of the

that if communities and Tribes in the Pacific Northwest have shown that if they have a strong desire to hire dental therapists and tackle longstanding oral health issues, nothing can stand in their way. Tribes in California should keep this in mind.

For more information on dental therapy, visit: [nihb.org/OralHealthInitiative](https://nihb.org/OralHealthInitiative), [IHS.gov/chap](https://IHS.gov/chap), and [dentaltherapy.org](https://dentaltherapy.org).



**Brett Weber** serves as the Director of Environmental Health Programs in the Public Health Department at NIHB. Prior to NIHB, Mr. Weber worked at the United States Senate Committee on Indian Affairs as a Policy Fellow where he worked on

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#### Endnotes:

- [1] "Dental Utilization for Communities Served by Dental Therapists in Alaska's Yukon Kuskokwim Delta: Findings from an Observational Quantitative Study." Donald Chi, DDS, PhD. University of Washington. August 2017.
- [2] "Dental Therapy in the Indian Health System." National Indian Health Board. September 2019.
- [3] "FY 2023 Congressional Justification of Estimates for Appropriations Committees." Indian Health Service. April 25, 2022.



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