INTRODUCTION

Native American law governs the relations of the American Indians, as individuals and in tribal organizations of varying degrees of formality, among themselves, with other American citizens, and with the governments of the individual States and the Federal union. Indian law today is strongly colored by its history. During the colonial period, the British imperial government administered Indian affairs, and during the Revolution and Confederation eras the individual states retained substantial power over Indian relations. Since 1789, however, the United States Constitution has assigned to the Federal government the primary authority to deal with Indian tribes. The dealings between various Indian groups and the English government, the English colonies, and later the individual states under the Articles of Confederation and the Federal government under the Constitution all still affect the status of Indian tribal rights and claims. Out of this history have emerged three basic concepts--both embodied in early 19th-century opinions of Chief Justice Marshall:

- **Original Indian title**

- **Federal Sovereign Title**: Indians have good title to their lands against everyone except the sovereign (the original colonial powers, succeeded by the United States of America); in other words, no one but the sovereign can take Indian land (Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543 (1823)).

- **Domestic dependent nations**: Indian tribes are sovereign states, and the United States deals with them by means of treaties; "their relation to the United States resembles that of a ward to his guardian" (Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831)).

Until 1871, the Federal government generally dealt with Indians by means of treaties with individual tribes in their status as "domestic dependant nations." Indian treaties, insofar as they are still in effect, largely govern Indian relations today. Indian affairs are now otherwise controlled by federal statutes and regulations.

TREATIES

- **United States Statutes at Large**: Volume 7 of the original (1846) edition contains all Indian treaties signed between 1778 and 1842, arranged in chronological order. Access is provided by a table of contents at the beginning of the volume and an index by tribe at the back. Subsequent Indian treaties were published in individual volumes of the Statutes, with ordinary, international treaties. Check
the subject indexes of each volume under "Indian Affairs," "Indian Treaties," or "Indian Department."

- Kappler, C., ed., Indian Affairs: Laws and Treaties, 7 vols. (1904) (KF8203/1975), provides the text of all Indian treaties in chronological order, with indexes by tribe and place name.

- Citations to treaties: Check Shepard's U.S. Citations: Statutes in the "United States Statutes at Large (not in United States Code)" section. Treaties are arranged by date of signing, interspersed with ordinary statutes. The United States Code Service--Uncodified Laws Volume also collects citations to Indian treaties.

STATUTES

- Most current, generally effective federal statutes applicable to Indian affairs are codified in Title 25 of the United States Code.
- Older federal statutes are collected in chronological order, and indexed by tribe, in Kappler's Indian Affairs: Laws and Treaties; those effective up to 1872 are codified in Title XXVIII of the Revised Statutes of the United States.
- References to pertinent federal statutes up to 1907 are under the heading "Indians" and under the names of individual tribes in Beaman and McNamara's Index Analysis of the Federal Statutes (to 1873) and in Scott and Beaman's Index Analysis (to 1907).
- Many early enactments can be found in Laws of the Colonial and State Governments, Relating to Indian Affairs, from 1633 to 1831 (1832, repr. 1979) (KF8203/1979).
- The federal Indian statute that has perhaps engendered the most controversy recently is the Indian Gambling Act, 25 USC 2701 et seq., regarding the rights of tribes to conduct gambling operations.

REGULATIONS

The most important federal agency in this field is the Bureau of Indian Affairs, administratively part of the Department of the Interior. Its regulations are codified in Title 25 of the Code of Federal Regulations. For a convenient guide to practice before the Bureau and allied agencies, see vol. 19 of Federal Procedure, L.Ed. (KF8835/F43/1981). The Bureau's administrative decisions are selectively reported in
Schaffer Law Library’s Guide on Native American Law Materials

the Indian Law Reporter (KF8201/A3/In2). See also US Dept of Justice, Office of Tribal Justice.

COURT OPINIONS

TRIBAL CODES
Not all Indian groups are acknowledged as tribes by the Federal government (for recognition criteria, see 25 C.F.R. Part 83). Those groups that have sufficient cohesiveness, historic identity, and autonomy to be federally recognized as tribes are, however, granted a large measure of self-government, often to a degree almost as extensive as that of the States of the union. Recognized tribes may have their own codes of law, legislatures, courts, and police.

- University of Oklahoma Law Center Codes

TREATISES
The standard treatise is Felix Cohen’s Handbook of Federal Indian Law (1982 ed.) (KF8205/C66/1982). Books on Indian law are generally classified under the call numbers KF8200 et seq.; books on Indian history and affairs are under E70 et seq.

LOOSELEAF SERICE
Indian Law Reporter (monthly, 1974-) (KF8201/A3/In2). The most useful current service in the field, it collects, in annual looseleaf volumes, the text of leading federal, state, and tribal court opinions and selected decisions of the Bureau of Indian Affairs. It provides a topical index and table of cases.
PERIODICALS

- American Indian Journal (1975-)
- American Indian Law Review (1973-).

For an excellent bibliography of articles on the subject, see Fausett and Royster, Courts and Indians... 1922-1986, 7 Legal Ref. Serv. Quart. 107-229 (Nos.2/3/4, 1987). For other articles, check the Index to Legal Periodicals under "Indians" and the Current Law Index and LegalTrac under "Indians of North America" and under the names of individual tribes.

INTERNET SITES

- Law Library of Congress: Indians of North America
- Cornell Legal Research Institute, American Indian Law: an overview
- Bureau of Indian Affairs
- Native American Law Blog

NEW YORK STATE MATERIALS

Most books on Native American law emphasize the western Indian tribes and their relations with the federal government, and pay little attention to the problems of northeastern Indian groups and their interaction with state governments. Indian relations in New York State are unique in a combination of two factors: on one hand they are the product of complex legal interaction dating back to the 17th century; on the other, that interaction continues to this day, because in New York (unlike most of the other northeastern states) the Indian tribes--the Iroquois nation--continue as legally recognized and long-established political units. For a discussion of this unique interrelationship, see People ex rel. Ray v. Martin, 294 N.Y. 61 (1945).

The Federal government recognizes this situation by granting New York State courts some degree of civil and criminal jurisdiction over Indian tribal members (25 USC 232 and 233), and New York State has attempted to regularize the relationship through adoption of an Indian Law (Chapter 31 of the Consolidated Laws).

Indian-N.Y.S. relations today present two major problems. The first is the power of the State to tax sales on Indian reservations; for this see Dept. of Taxation & Finance v. Attea, 512 U.S. 61 (1994). The second is the continuing validity of Indian land claims in upstate New York; for this see:

- County of Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985) (legal claims);
- City of Sherrill v. Oneida Indian Nation, 544 U.S. 197 (2005) (equitable claims); and
- C. Vecsey and W. Starna, eds., Iroquois Land Claims (1988)