



Indian Law and Tribal Jurisdiction

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Introductory points

- Indian law and tribal jurisdiction is highly complex.
- The basic courses at UND are:
 - Federal Indian Law
 - Relationship between federal government and tribes
 - Tribal Law
 - How tribes adjudicate disputes in tribal communities, and tribes' relations with one another and with the states

Some key concepts

- Inherent sovereignty
 - Tribes have sovereign power and sovereign immunity.
 - Tribal power was not given by the U.S., but descends from sovereignty existing before the U.S.
- Plenary power of Congress
 - Congress has broad powers over tribes under the Indian Commerce Clause of the U.S. Constitution, per SCOTUS.
 - Congress can limit and expand tribal powers.
 - SCOTUS review is limited.

Jurisdiction

- Jurisdiction of tribal courts over Indians
 - Tribal courts have jurisdiction over tribal members for facts arising in Indian Country
 - Unless act of Congress prescribes otherwise
- Jurisdiction of tribal courts over non-Indians
 - No criminal jurisdiction (*Oliphant* 1978)
 - Civil jurisdiction may arise, depending on status of land, non-Indians' consensual relationship with tribe or tribal members, need for jurisdiction because of "direct effect on the political integrity, the economic security, or the health or welfare of the tribe."

Sources

- Brian L. Pierson, Determining Tribal Court Jurisdiction Over Non-Tribe Members, Wisconsin Lawyer (Nov. 2008)
- Federal Indian Law for Alaska Tribes: <https://tm112.community.uaf.edu/unit-4/general-principles-of-federal-indian-law/>
- Conversations with Prof. Keith Richotte



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