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# COMPARED WHEN? TEACHING INDIAN LAW IN THE STANDARD CURRICULUM

JAMES M. GRIJALVA\*

*Dear Prof. Grijalva,*

*I seem to remember you saying in class one day that everyone who is going to practice law in North Dakota should take your Indian Law class because an Indian Law issue will come up. Well I did not take your advice, and an Indian Law issue has come up. I hope that you do not mind helping me out now.*

*-Email message from a former student<sup>1</sup>*

## I. INTRODUCTION

Although I did not initially plan to practice Indian law,<sup>2</sup> it never occurred to me not to take Indian law courses in law school. As the son of an Indian Health Services dentist, I lived in and near Indian country for most of my childhood. When I chose law as a vocation, my early affinity for Indian country issues led to a college thesis on Alaska Native hunting and fishing rights, and then to Federal Indian Law, Native Natural Resources, and related courses in law school. That background set the stage for a private environmental law practice that evolved, somewhat by happenstance, into an emphasis on Indian country issues and then later to an academic appointment in related areas.

Outside of Indian law courses, I don't recall any of my law teachers commenting on or incorporating Indian law issues into their courses. Despite my interest in Indian Country, I failed to notice the omission then; it wasn't until much later that I began to see the many connections between

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1. My first draft of this article opened with a fictional quote I created to paraphrase the content of common phone calls I've received from former students over twelve years of law teaching. I replaced the fictional quote with this electronic mail message I received the same week as the Indian law pedagogy conference that is the focus of this symposium. Conversations with other Indian law teachers at the conference confirmed that many receive similar calls and messages like the one quoted here.

2. Throughout this article, I use the phrase "Indian law" to refer both to federal Indian law and the law made by American Indian tribes, sometimes separately referred to as "tribal law."

Indian law and other areas of the law. My representation of tribal governments on a host of environmental and natural resource issues implicated contracts, property, torts, corporate law, bankruptcy, state and federal constitutional law and taxation, as well as civil procedure and professional responsibility.

When I began teaching full-time in 1994, the connections became even clearer to me, so I began integrating Indian law issues and cases into my “other” courses.<sup>3</sup> Here on the northern Plains, it seemed obvious to me that many students would likely confront these issues in practice, yet the enrollments in my Federal Indian Law course were consistently small. One of my senior faculty colleagues kindly allowed me to appear in her first-year course in the spring to pitch Indian law to the students, and enrollments spiked for a time. Later, I assumed responsibility for the Property I and II course sequence, and converted my one-time, five-minute pitch into a series of integrated cases and issues.

I did not know then that integration of Indian law issues into other courses was the origin of the study of Indian law in American law schools.<sup>4</sup> The academy has come far since that time; many schools now offer one or more Indian law courses, and several offer certificates and even LL.M. degrees in Indian law. But the former student’s email message quoted above, and numerous phone messages like it, raise the question whether specialized Indian law courses are the answer to preparing students for broad general practice. Many students, it seems, are simply unaware of Indian law and its potential impacts on their future clients. Students who do realize that the body of Indian law exists often see it as a specialized area irrelevant to their intended career paths. Neither group tends to enroll in Indian law courses.

This article explores whether that reality deserves attention, and if so, how law teachers might approach it. Section II suggests there are several important pedagogical justifications and goals for Indian law integration. Section III takes up possible barriers and risks associated with integration, arguing they are misplaced or surmountable. In section IV, I review student reactions to an integration exercise in my Property Law course, which anecdotally support the goals of integration and suggest the risks are manageable. The article concludes with a plea and suggestions for

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3. My initial teaching responsibilities included Federal Indian Law, Administrative Law, Environmental Law, and Intellectual Property.

4. See Rennard Strickland & Gloria Valencia-Weber, *Observations on the Evolution of Indian Law in the Law Schools*, 26 N.M. L. REV. 153, 156-58 (1996) (describing the first appearance of Indian law in legal education in the 1970s by way of “subversive” integration in Property and then Constitutional Law courses).

increased attention to Indian law issues in courses not focused on Indian law.

## II. POSSIBLE PEDAGOGICAL JUSTIFICATIONS AND GOALS

There are any number of possible pedagogical justifications and goals for integrating Indian law into other courses in the “standard” law school curriculum. Some of these are amorphous theoretical aspirations, while others have direct practical applications and outcomes. Their value in any particular course depends largely on the individual teacher’s course-specific goals and teaching philosophy. They may also be influenced by the collective vision of the faculty as to their school’s mission. But, as the commercial advertising industry might tell us, integrating Indian law offers something for everyone.

### A. SEEKING INTEGRITY IN LEGAL EDUCATION

At perhaps the most general and theoretical level, integrating Indian law issues throughout the law school curriculum offers an additional measure of integrity in legal education.<sup>5</sup> Indian law is “important in its own right,”<sup>6</sup> and devoting time to its study models intellectual curiosity, one of our profession’s greatest virtues.<sup>7</sup> The continuity of Indian tribes as sovereigns predating the United States’ federal and state governments alone justifies attention.<sup>8</sup> Especially in states encompassing tribal homelands and tribal governments with functioning legal systems, I agree it is “irresponsible [for law schools] to ignore” Indian law issues.<sup>9</sup> Indeed, arguably law schools should recognize an obligation to address the unique needs of tribes and Indians for legal services.<sup>10</sup>

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5. Failing to address Indian law might be considered a distortion of some doctrines. See Frank Pommersheim, “Our Federalism” in *the Context of Federal Courts and Tribal Courts: An Open Letter to the Federal Courts’ Teaching and Scholarly Community*, 71 U. COLO. L. REV. 123, 124 (2000) [hereinafter Pommersheim, *Our Federalism*].

6. Cynthia Ford, *Integrating Indian Law into a Traditional Civil Procedure Course*, 46 SYRACUSE L. REV. 1243, 1264 (1996) (quoting Professor Martha Minow, Harvard Law School) [hereinafter Ford, *Integrating Indian Law*].

7. *Id.* at 1244.

8. See Strickland & Valencia-Weber, *supra* note 4, at 161.

9. Ford, *Integrating Indian Law*, *supra* note 6, at 1264 (quoting Professor Ann Jergens, William Mitchell Law School).

10. Debra L. Donahue, *A Call for Native American Natural Resources in the Law School Curriculum*, 24 J. LAND RESOURCES & ENVTL. L. 211, 212 (2004). Judith Resnik suggests integration of Indian law into federal courts jurisprudence could help address a “belated sense of obligation to speak about the history of treatment of Indian tribes.” Judith Resnik, *Dependent Sovereigns: Indian Tribes, States, and the Federal Courts*, 56 U. CHI. L. REV. 671, 701 (1989).

That responsibility may be more compelling in the face of continuing deficiencies in secondary and higher education in the United States. It seems that very few students arrive at the legal academy with studied knowledge of the history of U.S.-tribal relations or the contemporary issues facing native peoples and Indian country, much less the legal issues implicated.<sup>11</sup> One reason for addressing Indian law issues in the legal curriculum is simply as a modest measure to address that deficiency and offer some chance for students to become aware at least of the legal history.<sup>12</sup> This may well be the last chance for students to receive any formal education in that history,<sup>13</sup> and we should not let them leave the academy with such a significant “hole” in their education.<sup>14</sup> In addition to improving students’ historical knowledge, the study of Indian law can expand students’ skills of analysis.<sup>15</sup>

### B. ENHANCING STUDENTS’ CRITICAL THINKING

One important aspect of the integrity of legal education is the conscious effort to stimulate students’ critical thinking skills. The complexities and pendulum swings of Indian law contribute an additional means to the myriad of options for encouraging close and careful reading of judicial opinions,<sup>16</sup> with specific attention to how judges apply and misapply precedents.<sup>17</sup> It illustrates graphically how societies structure their legal systems and rules to serve societal values and choices, and how judges and law-makers make policy and philosophical choices in applying those rules.<sup>18</sup>

Critical thinking skills depend on the ability to make comparisons among alternatives, and Indian law provides a relatively accessible

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11. Barbara P. Blumenfeld, *Integrating Indian Law into a First Year Legal Writing Course*, 37 TULSA L. REV. 503, 504 (2001); Ford, *Integrating Indian Law*, *supra* note 6, at 1255.

12. Kenneth H. Bobroff, *Indian Law in Property: Johnson v. M’Intosh and Beyond*, 37 TULSA L. REV. 521, 538 (2001).

13. See Cynthia Ford, *Including Indian Law in a Traditional Civil Procedure Course: A Reprise, Five Years Later*, 37 TULSA L. REV. 485, 492 (2001) (suggesting the question is not whether students receive a little or a lot of exposure to Indian law, but whether they receive any at all) [hereinafter Ford, *Five Years Later*].

14. Blumenfeld, *supra* note 11, at 506.

15. See Gloria Valencia-Weber, *American Indian Law and History: Instructional Mirrors*, 44 J. LEGAL ED. 251, 255-56 (1994) (suggesting a historical study of Indian law helps students see history as a serious scholarly venture offering the possibility of “a deeper analysis”). See generally Samuel W. Calhoun, *The Law and the Little Big Horn: What Beginning Law Students Can Learn from General Custer*, 36 J. LEGAL ED. 403 (1986) (describing a critical thinking exercise used in the first-year orientation, drawing on historical materials surrounding George Armstrong Custer’s last misjudgment).

16. Bobroff, *supra* note 12, at 523.

17. *Id.* at 529.

18. *Id.* at 521, 538.

domestic example of comparative law.<sup>19</sup> The preoccupation of American law and society on individual rights might be brought into focus by “a tribal viewpoint that values common interests, with individual well-being protected because of a relational context with people and nature.”<sup>20</sup> Indigenous views on human relations to the natural world may shed light on alternative expectations and regulatory approaches for natural resource development.<sup>21</sup> Differences between western and Indigenous perspectives on the significance of promises made, and the consequences for violating them, throw contracts principles into specific relief.<sup>22</sup> Indigenous approaches to property ownership can help students see the values reflected in western property law,<sup>23</sup> and offer a “rich source for comparative discussion on the role of gender in property rights.”<sup>24</sup>

Indian law also offers a compelling window for introducing the larger conceptions of critical legal analysis such as Legal Realism, Critical Legal Studies, Critical Race Theory, and Law and Economics perspectives.<sup>25</sup> Difficult jurisdictional and jurisprudential problems abound in Indian law.<sup>26</sup> Indian law illustrates graphically how western European customs and traditions influenced the development of various aspects of Anglo-American law,<sup>27</sup> based sometimes on fanciful stereotypes,<sup>28</sup> and at other times on overtly racist assumptions and language.<sup>29</sup> In these and other senses, Indian law provides fertile ground to ask whether the “law’s final justification is in the good it does or fails to do the society of a given place and time.”<sup>30</sup>

Implicit in that question is the reality that while law plays a significant role in the creation and maintenance of productive societies, it is only one of many important roles. Similarly, the study of law is but one of many

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19. Ford, *Integrating Indian Law*, *supra* note 6, at 1243; Bobroff, *supra* note 12, at 533.

20. Strickland & Valencia-Weber, *supra* note 4, at 164.

21. Donahue, *supra* note 10, at 217.

22. See Jack F. Williams, *Integrating American Indian Law into the Commercial Law and Bankruptcy Curriculum*, 37 TULSA L. REV. 557, 569 (2001).

23. See, e.g., Stacy L. Leeds, *The Burning of Blackacre: A Step Toward Reclaiming Tribal Property Law*, 10-SPG KAN. J.L. & PUB. POL’Y 491, 494 (2000) (discussing the difference between western and Cherokee notions of lands “held in common”).

24. Bobroff, *supra* note 12, at 536.

25. *Id.* at 523.

26. See Pommersheim, *Our Federalism*, *supra* note 5, at 126; Resnik, *supra* note 10, at 676-78.

27. Williams, *supra* note 22, at 558. See generally ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* (1990).

28. Bobroff, *supra* note 12, at 532.

29. See generally ROBERT A. WILLIAMS, JR., *LIKE A LOADED WEAPON: THE REHNQUIST COURT, INDIAN RIGHTS, AND THE LEGAL HISTORY OF RACISM IN AMERICA* (2005).

30. Donahue, *supra* note 10, at 219 (quoting ALBERT CAMUS, *Reflections on the Guillotine, in RESISTANCE, REBELLION, AND DEATH: ESSAYS* 173 (1961)).

areas of inquiry contributing to the progress of modern society. An interdisciplinary approach to the law can help students appreciate these points, and Indian law offers, if not invites, exploration of numerous other disciplines. Perhaps most obvious are history and historical analysis, often overlooked in law school in favor of attention to current rules. Indian law can't be fully comprehended apart from its historical context, and taking such an interdisciplinary view can "challenge students accustomed to generic law" and provide them with additional analytic tools.<sup>31</sup> It may also provoke inquiry into the relation of professional work and ethics, including legal representation of Indians and Indian tribes.<sup>32</sup> Interdisciplinary inquiries provide valuable opportunities to bring non-law literature into law school classrooms, increasing student interest<sup>33</sup> and broadening their comfort with using materials beyond statutes and cases.<sup>34</sup>

### C. EXPOSING STUDENTS TO THE RELEVANCE OF INDIAN LAW IN A BROAD SPECTRUM OF PRACTICE AREAS

Teachers who integrate Indian law into their other courses may confront student questions about the relevance of Indian law to their desired practice areas and geographic locations.<sup>35</sup> Partly owing to the general failure of law school curricula to address Indian issues, law students often do not know what Indian law is or how it might impact their clients.<sup>36</sup> That fosters "an entrenched belief that Indian law is separate and apart, offering nothing to the more generalized study of law."<sup>37</sup>

But modern law practice across the nation, and especially in the west and mid-west, undermines those assumptions. Professor Bill Rice has written:

Experience has shown that "federal Indian law" impacts almost every conceivable field of law currently studied in the schools of law in this country. From criminal cases to Wall Street bond issues, from adoptions to intergovernmental relations, from accounting to workers' compensation, the range of matters in which

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31. See generally Valencia-Weber, *supra* note 15, at 252.

32. *Id.* at 264-65; S. James Anaya, The Ethics of Doing Federal Indian Law, presented at the 27th Annual Indian Law Conference (Apr. 10-11, 2003).

33. See Calhoun, *supra* note 15, at 403 (describing high student interest and spirited discussion stemming from the use of historical materials on the question whether George Armstrong Custer disobeyed his final orders).

34. Bobroff, *supra* note 12, at 532-33.

35. See, e.g., Blumenfeld, *supra* note 11, at 518.

36. Ford, *Integrating Indian Law*, *supra* note 6, at 1244.

37. Melissa L. Tatum, *Foreword to Symposium: Native American Law Essays on Integrating Indian Law into the Law School Curricula*, 37 TULSA L. REV. 481, 482 (2001).

“Indian law” can become the determining factor is perhaps as infinite as the subjects that may come before the Bar for decision.<sup>38</sup>

Increasing commercial activity in Indian Country—in manufacturing, natural resource development, tourism, gaming, and other areas—present expanding possibilities for contact with Indian law.<sup>39</sup>

I think it may be an overstatement to suggest “all lawyers must understand that tribes are sovereigns, with governmental authority over their territory,”<sup>40</sup> but beginning representation with such an understanding might reduce surprise and heedless litigation. And competent representation for the individuals and business concerns affected require at a minimum lawyers be sufficiently aware of the separate body of Indian law to know when specialized counsel might be necessary.<sup>41</sup> That view is supported by the recent decisions of the New Mexico and Washington Bar Examiners to include Indian law within the potential exam topics.<sup>42</sup>

Integrating Indian law into the general curriculum, especially in first-year courses, helps sensitize students to seeing Indian law issues in their other substantive courses.<sup>43</sup> It may broaden students’ consideration of potential litigation fora<sup>44</sup> and resolving conflicts of laws questions.<sup>45</sup> It may also encourage students not otherwise so inclined to enroll in courses focused on Indian law.<sup>46</sup>

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38. G. William Rice, *There and Back Again—An Indian Hobbit’s Holiday* “*Indians Teaching Indian Law*,” 26 N.M. L. REV. 169, 171 (1996).

39. Tatum, *supra* note 37, at 483; Williams, *supra* note 22, at 557-58; Donahue, *supra* note 10, at 212.

40. *See* Donahue, *supra* note 10, at 212.

41. *Cf.* Ford, *Integrating Indian Law*, *supra* note 6, at 1250-51.

42. In 2002, New Mexico added Indian Law to its potential Bar exam subjects, “including subjects such as federal Indian law, criminal and civil jurisdiction in Indian country and Indian child welfare act under state and federal law.” *See* New Mexico Bar Exam, <http://www.nmexam.org/rules/rules203.htm> (last visited Oct. 13, 2006). In 2007, Washington will include “Indian Law Jurisdiction” in its potential Bar exam subjects. *See* Washington State Bar Association, <http://www.wsba.org/lawyers/licensing/barexam.htm#9> (follow “What are the test subjects?” hyperlink) (last visited Oct. 17, 2006).

43. *See* Victoria Sutton, *American Indian Law—Elucidating Constitutional Law*, 37 TULSA L. REV. 539, 539 (2001); Blumenfeld, *supra* note 11, at 504; Ford, *Integrating Indian Law*, *supra* note 6, at 1257.

44. *See* Ford, *Five Years Later*, *supra* note 13, at 494 (noting a pedagogical goal of getting students to include tribal courts in their thought processes about potential fora).

45. *See* Wendy Collins Perdue, *Conflicts and Dependent Sovereigns: Integrating Indian Tribes into a Conflicts Course*, 27 U. TOL. L. REV. 675, 675 (1996).

46. Ford, *supra* note 6, at 1280.



D. INCREASING INDIAN STUDENT MATRICULATION AND RETENTION,  
AND DECREASING MARGINALIZATION

Despite the prevalence of Indian issues throughout many areas of law, American Indians have historically been underrepresented in the legal profession. As with other underrepresented groups, the possible reasons are manifold. One likely explanation is the failure of law schools to make law resonate with the real world experiences of native students.<sup>47</sup> In the early 1970s, no law school covered Indian law in any depth,<sup>48</sup> and there were but a handful of Indian students.<sup>49</sup> As some law schools increased their attention to Indian law over the last thirty years,<sup>50</sup> the overall enrollment of native students increased nearly ten-fold.<sup>51</sup>

Even with these laudable enrollment increases, American Indian and Alaska Native students still make up less than one percent of the overall student enrollment in United States law schools.<sup>52</sup> So the simple fact is native students generally find themselves experiencing “personal and cultural isolation in law school.”<sup>53</sup> In some instances, integrating Indian law issues into those courses might help move the native student from a sense of “marginality as an ‘outsider’”<sup>54</sup> into “enjoy[ing] the status of an ‘insider’ on the problem” through sharing her perspectives with classmates.<sup>55</sup> At the very least, integration addresses the rhetorical but poignant question, “How can a [native] student be expected to take his or her legal education seriously when his or her identity as it exists in the law is essentially erased?”<sup>56</sup>

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47. See Strickland & Valencia-Weber, *supra* note 4, at 160 (suggesting the failure of some law schools to teach Indian law affects their recruitment and graduation of Indian students).

48. See *id.* at 158.

49. For the 1971-72 academic year, 142 law schools (out of 147) reported to the ABA enrollment of 140 American Indian and Alaska Native students. See <http://www.abanet.org/legaled/statistics/minstats.html> (follow *American Indian or Alaska Native* hyperlink) (last visited Dec. 21, 2006).

50. See Strickland & Valencia-Weber, *supra* note 4, at 155-59 (describing the evolution of law schools' treatment of Indian law).

51. For the 2004-05 academic year, 185 law schools (out of 188) reported to the ABA an enrollment of 1,106 American Indian and Alaska Native students. See <http://www.abanet.org/legaled/statistics/minstats.html> (follow “American Indian or Alaska Native” hyperlink) (last visited Dec. 21, 2006) [hereinafter ABA American Indian Enrollment].

52. Compare *id.* with <http://www.abanet.org/legaled/statistics/charts/enrollmentdegrees-awarded.pdf> (last visited Dec. 21, 2006) (indicating that in the 2004-05 academic year, 148, 169 students attended law school).

53. Strickland & Valencia-Weber, *supra* note 4, at 164-65.

54. *Id.* at 165.

55. Blumenfeld, *supra* note 11, at 507-08.

56. *Id.* at 505. While outside the intended scope of this article, decreasing Indian law marginalization can also help tribal legal institutions achieve legitimacy in the view of federal courts. See Pommersheim, *supra* note 5, at 129 (arguing the marginalization of tribal courts in

### E. PREPARING STUDENTS FOR PROFESSIONAL LIVES IN A DIVERSE WORLD

Beyond the pernicious effects on native students, marginalization of Indian law also breeds negative consequences for non-native students preparing for practice in a multicultural world. The theoretical aspirations of intercultural awareness and sensitivity are key practical skills for productive working relations and successful business dealings between Indians and non-Indians.<sup>57</sup> Mutual appreciation of cultural differences benefits students in a “social sense,”<sup>58</sup> and may offset fears associated with appearances in unfamiliar courts.<sup>59</sup> It could also engender a level of respect not always displayed by off-reservation attorneys appearing in tribal courts.<sup>60</sup>

Law schools might be the “primary environments in which the respectful discourse [between Indians and non-Indians] can begin so that the twenty-first century is a different story than the past.”<sup>61</sup> The academy seems a natural forum to address society’s lack of “Indian law literacy,” which hinders true democracy in the context of tribal-federal relations,<sup>62</sup> and the “continuing struggle to find a principled basis for the relationship among the federal government, states and Indian tribes.”<sup>63</sup>

Indian cases provide “vivid insight” into three central jurisprudential themes: tolerance for subgroups that desire difference and self-governance; whether differences can be sustained; and whether distinct governance structures are supported.<sup>64</sup> It seems fair to suggest that for a society of diverse peoples to be productive, it must accept that minorities will have some power over others.<sup>65</sup>

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federal courts’ textbooks and scholarship makes more likely the continued marginalization of tribal courts in federal jurisprudence).

57. See Donahue, *supra* note 10, at 217.

58. Blumenfeld, *supra* note 11, at 508.

59. Valencia-Weber, *supra* note 15, at 265.

60. Ford *Integrating Indian Law*, *supra* note 6, at 1260-61 (describing common reports by tribal judges that off-reservation attorneys often show little respect for tribal courts and judges).

61. Strickland & Valencia-Weber, *supra* note 4, at 168.

62. Frank Pommersheim, *Democracy, Citizenship, and Indian Law Literacy: Some Initial Thoughts*, 14 T.M. COOLEY L. REV. 457, 467-69 (1997) [hereinafter Pommersheim, *Democracy*]. See generally Frank Pommersheim, *What Must Be Done to Achieve the Vision of the Twenty-First Century Tribal Judiciary*, 7-WTR KAN. J.L. & PUB. POL’Y. 8 (1997) [hereinafter Pommersheim, *What Must Be Done*].

63. Bobroff, *supra* note 12, at 538.

64. Resnik, *supra* note 10, at 702.

65. Valencia-Weber, *supra* note 15, at 265.

### III. PERCEIVED PEDAGOGICAL BARRIERS AND RISKS

Section II addressed the most global barrier to integrating Indian law into other courses: whether any need or justification exists for it. Assuming any particular teacher answers that question in the affirmative, there are still potentially significant reasons why she might not actualize that conviction. Some of these could be pretext, others are relatively minor, and some are true barriers. But, many of these are not unique to Indian law and, I believe, can be addressed sufficiently to convert them from barriers and risks to challenges and opportunities.

#### A. SPECIALIZED INDIAN LAW COURSES OBTVIATE THE NEED FOR INTEGRATION

The last thirty years has seen increased attention to Indian law in American law schools.<sup>66</sup> In the early 1970s schools had no Indian law courses, but a few “subversive” teachers were sneaking Indian law into their Constitutional Law and Property courses.<sup>67</sup>

In 1996, Professor Cynthia Ford reported that 42 of 176 ABA-accredited schools (or 24%) offered at least one Indian law course.<sup>68</sup> A dozen or so of those schools offered more than one Indian law course in specialized fields ranging across environmental law, taxation, natural resources, tribal government, jurisdiction, tribal law, gaming, human rights, and the like. In this symposium issue, Professor Gloria Valencia-Weber and Sherri Nicole Thomas reported that approximately 64 of the Nation’s 193 ABA-accredited schools (or 33%) offer at least one Indian law course.<sup>69</sup>

Without question, this recent expansion of law school curricula could and should fairly be said to serve many of the pedagogical justifications and goals noted in Section II. But standing alone, specialized Indian law courses are an incomplete solution, primarily because they do not reach the vast majority of students.<sup>70</sup> None of these courses are required for the Juris

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66. See Strickland & Valencia-Weber, *supra* note 4, at 155-59 (describing the evolution of law schools’ treatment of Indian law).

67. *Id.* at 158.

68. Ford, *Integrating Indian Law*, *supra* note 6, at 1252-53 (noting the course was usually the Federal Indian Law survey course).

69. Gloria Valencia-Weber & Sherri Nicole Thomas, *When the State Bar Exam Embraces Indian Law: Teaching Experiences and Observations*, 82 N.D. L. Rev 741, 746-47 (2006).

70. Approximately 76% of law schools offer no Indian law course. Additionally, Valencia-Weber and Thomas noted that some of the schools reporting affirmatively rely on courses like Legal History or International Law where Indian law is integrated into the material. *Id.*

Doctorate degree,<sup>71</sup> and only two of the fifty states test Indian Law subjects on the bar exam.<sup>72</sup> Because of deficient educational experiences, students are either unaware that the body of Indian law exists or perceive it as a niche field irrelevant to their intended career paths.<sup>73</sup>

Those barriers are compounded when the required first-year law school curriculum omits any reference to Indian law. First-year students are arguably more engaged and open to challenging material than upper-class students,<sup>74</sup> but if they sense their teachers see no relevance of Indian law to traditional doctrines, they are likely to skip specialized Indian law courses in favor of bar courses.<sup>75</sup> So, just as relegating ethics to the upper-class elective Professional Responsibility course suggests limited import,<sup>76</sup> specialized Indian law courses can implicitly reinforce the profession's marginalization of Indian law.<sup>77</sup> Professor Jack Williams supports that view by observing that Indian law courses "provide a convenient excuse to deposit the rich and vibrant body of tribal law in a place few students travel."<sup>78</sup>

#### B. TEACHERS LACK FAMILIARITY, MATERIALS, OR TIME

There are several practical threshold barriers for law teachers inclined to integrate Indian law into their traditional courses, but they are neither unique to Indian law nor particularly troublesome in other contexts. One concern is that most teachers lack familiarity with Indian law precepts. For better or worse, the legal academy has generally drawn its teachers from a limited set of law schools, most of which have historically overlooked Indian law.<sup>79</sup> Often these graduates were hired as teachers without significant legal practice, or with practices not implicating Indian law.

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71. Schools with Certificate programs in Indian law do of course require certain courses and/or credit hours in specialty Indian law courses.

72. See *supra* note 42 (referring to Indian law subjects on the New Mexico and Washington Bar exams).

73. See *supra* text accompanying notes 35-37.

74. See Stephen McG. Bundy, *Ethics Education in the First Year: An Experiment*, 58-AUT L. & Contemp. Probs. 19, 22 (1996) (citing sources on the "phenomenon of increasing student disengagement and lack of interest in the second and third year")

75. Tatum, *supra* note 37, at 483.

76. Bundy, *supra* note 74, at 24-25 (describing an interesting effort at Boalt Hall to teach Professional Responsibility in the first-year to improve students' "reception" to ethics and professionalism).

77. Cf. Sutton, *supra* note 43, at 555 (noting that Bob Woodward's THE BRETHERN reported how Chief Justice Burger would punish junior justices by assigning them "peewee" matters like Indian cases).

78. Williams, *supra* note 22, at 570.

79. Ford, *Integrating Indian Law*, *supra* note 6, at 1256-57. Many federal judges, also from this same limited pool, admit lacking expertise in the nuances of federal-tribal relations. See Pommersheim, *Our Federalism*, *supra* note 5, at 130.

Compounding that gap in knowledge is the typical omission or superficial treatment of Indian cases and issues from legal casebooks and related materials.<sup>80</sup>

But it seems fair to assume that most law teachers have not studied or had substantial practice in every one of the four or five or more substantive areas in which they teach.<sup>81</sup> And, even in areas of familiarity, there are dozens of issues never confronted before. Part of the law teacher's awesome responsibility for transmitting knowledge must carry with it an obligation to expand her or his own knowledge. "[S]erious scholarship is the duty, the privilege, and the obligation of all who choose to live in the academic community."<sup>82</sup> There is a wealth of Indian law literature, and law school and university colleagues can assist in interpreting and putting it in context,<sup>83</sup> as could organizations with vested interests in Indian law integration.<sup>84</sup>

Related to these purported barriers is the scarcity of time. Teachers often lament the adequate time to cover substantive doctrinal issues, much less tangential topics treated in other courses.<sup>85</sup> But the argument proves too much; regardless of the credit hours, no course can cover all the substantive issues pertinent to any doctrinal area. Teachers routinely make conscious and subconscious decisions about whether and to what extent various topics will be covered. And it is hard to imagine any teacher believing their in-class coverage of any topic is all that is needed to equip students for actual practice in the area. The best that might be said is that the course grounded students in the vocabulary and concepts necessary to

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80. See Tatum, *supra* note 37, at 482; Resnik, *supra* note 10, at 676 n.21 (citing sources discussing the lack of integration of materials on Indian tribes in Constitutional Law); Ford, *supra* note 6, at 1266 (noting Civil Procedure books are "mute" on Indian law). Because of its significance to the origin of real property titles in the United States (and the arguably intriguing comparison to the classic fox case, *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. Ct. 1805)), several Property Law books excerpt the foundation Indian law case *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823), although many do not.

81. Cf. Resnik, *supra* note 10, at 690 (contrasting law teachers' hesitance to integrate Indian law into their courses out of a perception that it is "complex, foreign, very different, and thus an area set aside for experts," with their willingness to integrate economics, philosophy, political science, or feminist theory despite not being economists, philosophers, political scientists, or feminist theorists).

82. Rennard Strickland, *Scholarship in the Academic Circus or the Balancing Act at the Minority Side Show*, 20 U.S.F. L. REV. 491, 491 (1986).

83. Faulty colloquia can be productive vehicles for Indian law teachers to convey to their colleagues the fundamental concepts and principles of Indian law.

84. See Tatum, *supra* note 37, at 484 (describing a 2001 initiative of the Association of American Law Schools Section on Indigenous Nations and Peoples to collect and distribute materials designed for law teachers interested in integrating Indian law into their courses).

85. *Id.*

educate themselves when confronted with the substantive issues.<sup>86</sup> That more humble goal speaks just as well to the need for addressing students' Indian law illiteracy,<sup>87</sup> for the question whether to integrate Indian law may implicate whether the students receive some exposure or none at all.<sup>88</sup>

C. STUDENTS ARE MORE LIKELY TO BE CONFUSED, FRUSTRATED,  
AND ANGERED THAN ENLIGHTENED

Indian law is a complex, anomalous body of law that goes to the heart of a majority society's (in)tolerance for difference. Its study is intrinsically fraught with potential for confusion and emotionalism, which can be perceived as inconsistent with, or a hindrance to, the learning process. Students may feel "totally overwhelmed" and "utterly confused" when first confronted with this complex material.<sup>89</sup> Because law students seem obsessed with divining the "right" answers from class materials, they may express frustration and anxiety over issues lacking clear conclusions or coherence.<sup>90</sup> That result is particularly likely in the face of modern Indian law's continuing incoherence.<sup>91</sup>

But, like other barriers noted above, these challenges apply to most of what we teach. It seems presumptuous and inconsistent with reality to assume students are not frequently confused and frustrated by many doctrines (future estates in property and the Rule Against Perpetuities come to mind) and fact-specific "rules" (e.g., nuisance, the reasonable person, no disputes of material fact, etc.) regularly taught. And, arguably, confusion is a necessary predicate for true learning. Rote memorization seems the most pedestrian of learning methods,<sup>92</sup> and it offers nothing for the student who will unquestionably confront disjointed and unclear legal rules in practice. Confusion can perhaps hinder the learning process, but learning to handle it

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86. Ford, *Five Years Later*, *supra* note 13, at 486 n.4 (describing her explanation to students that many important substantive topics will not be covered in class, but they will learn how to educate themselves when they encounter such topics).

87. Pommersheim, *Democracy*, *supra* note 62, at 469.

88. Ford, *Five Years Later*, *supra* note 13, at 492.

89. Blumenfeld, *supra* note 11, at 515-17. Professor Kenneth Bobroff suggests the real challenge in using *Johnson v. M'Intosh* in Property Law is choosing among its many potential themes "so as not to overwhelm beginning law students." Bobroff, *supra* note 12, at 523.

90. Ford, *Five Years Later*, *supra* note 13, at 497-98 (describing students' frustration at the decision in *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), which rejected without analysis the tribal court exhaustion rule of *Nat'l Farmers Union v. Crow Tribe*, 471 U.S. 845 (1985), and *Iowa Mut. Ins. v. LaPlante*, 480 U.S. 9 (1987)).

91. See, e.g., *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 659 (2001) (Souter, J., concurring) (expressing a need for coherence in the Court's jurisprudence on the scope of inherent tribal sovereignty over non-Indians).

92. An insightful pedagogical concept often characterized as a Chinese proverb advises, "Tell me and I will forget; show me and I will remember; involve me and I will understand."

productively seems a legitimate legal education goal. Uncertainty is inherent in the common law process as it is in life.<sup>93</sup> Better to freeze in the relative safety of the classroom than in the real world when significant client interests are at stake.

I think the same can be said for the anger and/or shame often following students' first confrontations with injustices presented by the assimilationist goals and flawed ethnocentric assumptions driving federal Indian policies and court decisions.<sup>94</sup> Perhaps law teachers should time their integration to avoid "problems with potentially strong emotional content [that] get in the way of [] learning,"<sup>95</sup> or otherwise act to ensure students' "visceral response [doesn't] overwhelm intellectual discourse."<sup>96</sup> But, frankly, I think students' passionate responses to the law are too infrequent and should be encouraged rather than blunted.<sup>97</sup> Teaching the valuable habits of reflection and self-observation can help students distinguish their "emotional or visceral reaction" from the so-called objective view lawyers assume competent representation entails,<sup>98</sup> without compromising their humanness.

#### D. INTEGRATION WILL BACKFIRE BY TRIGGERING ADVERSE STUDENT REACTIONS

In addition to the possible loss of objectivity or distraction from analytic approaches, potential emotional student reactions may erase or undermine the believed value of integrating Indian law into other courses. There is the threshold issue of names;<sup>99</sup> some people prefer "Native American" to "Indian," and "indigenous" to "tribal." The difference is

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93. Ford, *Five Years Later*, *supra* note 13, at 497-98.

94. Valencia-Weber, *supra* note 15, at 254 (suggesting "multiple historical theories frustrate students who would prefer one universally accepted truth"). See also Resnik, *supra* note 10, at 696 (noting that "phrases like 'allotment,' 'discovery,' and 'relocation,' capture events that are deeply embarrassing to those committed to a vision of a United States founded upon consent and dedicated to non-discriminatory treatment").

95. Blumenfeld, *supra* note 11, at 509 (noting a decision not to cover Indian law in first semester legal writing out of a concern for its complexity).

96. Valencia-Weber, *supra* note 15, at 254-55 (suggesting teachers must help students avoid losing focus on the "hard analytic tasks" because of their emotional responses).

97. At this Indian law pedagogy conference, Professor Frank Pommersheim encouraged such reactions, implying one must be "morally dead" to feel nothing after reading Indian law cases like *Johnson v. McIntosh*, which he simply characterized as "hurtful."

98. See Blumenfeld, *supra* note 11, at 518.

99. See Sutton, *supra* note 43, at 539. The issue of names might seem minor, but it carries significant reminders of earlier days when the federal government arrogantly decided the names by which certain tribes would be known, as well as the modern relic of non-Indian schools that use American Indian names and symbols for their athletic teams. See *infra* text accompanying notes 104-07.

largely generational,<sup>100</sup> but a teacher's "wrong" use can offend both native and non-native students.<sup>101</sup>

Students may also refuse to engage the material out of a sense that devoting time in substantive courses to Indian law issues wastes their time with irrelevant material adequately covered elsewhere.<sup>102</sup> Students who come to law school with some "knowledge" of Indian issues, with its accompanying biases and judgments, may have a difficult time embracing the point of any lesson that challenges their beliefs.<sup>103</sup> At worst, students may become defensive and suspect or challenge the teacher's decision as motivated by a desire to "indoctrinate" the students into believing as the teacher does.

That concern can be especially acute in law schools like the University of North Dakota (UND). UND is located on the vast northern plains of eastern North Dakota on the western border of Minnesota, once home to endless tall grass prairie and thousands of indigenous people. Manifest destiny and supporting federal policies changed the face of the land and its people. Little remains of the original native prairie or native population. The enormous extent of tribal territories shrunk to four reservations in North Dakota, eight in South Dakota, and eleven in Minnesota. Immigration by large numbers of Scandinavians led to an overwhelmingly White population.

The Law School draws the majority of its students from North Dakota and northern Minnesota, and so its student body mirrors the region's homogenous demographics. Despite the active and continuing efforts of the Faculty Diversity Committee and others, enrolling students of color, primarily American Indians, is a constant challenge.

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100. I use "Indian" because nearly all of my clients—officials of Indian tribes—use it as a generic reference to indigenous people. *Accord* Rice, *supra* note 38, at 172 n.11. Tribal citizens of younger generations, from which law schools draw most of their students, tend to prefer "Native American."

101. The flip side may also be true. One of my non-native students once objected vociferously to Indian law's reference to "non-Indians." She said, "Call me White or call me Caucasian, but don't call me a 'non' something. I'm not a non-something."

102. Ford, *Five Years Later*, *supra* note 13, at 487-91 (noting student comments on integrating Indian law into first-year Civil Procedure as including some responses that it was a waste of time). Worse, it is possible, though probably not provable, that students might give lower marks on course evaluations because the teacher "wasted" time on Indian issues. That result may be more likely for minority teachers whom students perceive as deviating from "standard institutional fare." See Reginald Leamon Robinson, *Teaching from the Margins: Race as a Pedagogical Sub-Text, A Critical Essay*, 19 W. NEW ENG. L. REV. 151 (1997).

103. See Blumenfeld, *supra* note 11, at 517-18 (describing her sense that integrating Indian law in an urban school in Detroit was in some ways more productive than in New Mexico where students arrived with comparatively more exposure and consequently more entrenched biases and judgments, making it harder to view the materials objectively).



Yet, despite UND's location in Indian country, our students generally come to us with limited knowledge of the legal and political issues implicating federal Indian law. Like most Americans, they received little or no formal education on the history of U.S. relations with Indian tribes, or its legal consequences. They are aware, of course, of the existence of reservations, and may even have a sense that tribes have a governmental power of sorts over tribal citizens there, though most have no idea tribal sovereignty might extend to non-Indian activities on reservations. They "know" that the federal government plays a more active role on reservations than in state territories, but they typically don't understand why, or realize its implications for judicial and regulatory jurisdiction, property ownership rights, law enforcement, or a host of other issues.

Some students are also burdened with long-standing and continuing exposure to harmful and hurtful stereotypes about Indians. That "knowledge" spans topics like welfare, alcoholism, "special" hunting and fishing rights, tribal court illegitimacy, tribal governmental corruption, lawlessness, and others. These are not unique to North Dakota of course, but there is one significant complicating factor: the University's athletic teams are called Fighting Sioux, and their logo is an Indian head.

Since the 1970s, debate has raged on campus and in the community over whether the name and logo are used "in honor of the first inhabitants of the region,"<sup>104</sup> or demeans, dehumanizes, and objectifies a living culture.<sup>105</sup> This is not the place for a substantive discussion of the controversy,<sup>106</sup> but it has created a palpable divide on the campus and in the community. Harsh words are frequently exchanged, evoking emotions that range across disinterest, disgust, frustration, anxiety, fear and anger. Indian students are regularly asked whether they are for or against the name and logo. Even in the "safe" environment of the classroom, reminders of the controversy and community tension are reflected in logos adorning T-shirts, hats, coffee mugs, water bottles, pencils, legal pads, key chains, and stickers.

Against this backdrop, introducing Indian law and policy in other courses presents special considerations. Some students are particularly alert to any suggestion their teachers might try to sway their opinions on the

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104. See UND Code of Student Life, *available at* <http://sos.und.edu/csl/vii-4.php>. A common public announcement before sports events at UND asserts "The name and logo were adopted in the 1930s to honor the rich culture and heritage of the American Indian."

105. See Building Roads Into Diverse Groups Empowering Students, <http://www.und.nodak.edu/org/bridges/index2.html> (follow "Resolutions" hyperlink for Indian tribes and organizations officially opposed to the name and logo).

106. Speaking on a different subject at this conference, Professor Frank Pommersheim aptly observed "one person's tradition is another's abuse of power."

logo. Such students might view discussion of Indian law as logically irrelevant to “regular” law, suggesting the teacher may have some inappropriate ulterior motive.<sup>107</sup> They might buttress that assumption with the conviction that students who wish to learn about Indian law are free to take one or more of the several upper-class elective courses focused on the area.

The easiest way to avoid these risks is obviously to make no reference to Indian law except in courses specifically focused on the topic. But that approach deprives students on both sides of the issue, and those in between, of a relevant real world opportunity to apply their critical analysis skills, as well as the benefits of expanded knowledge discussed in section II above. Ultimately, like an investor’s tolerance for risk, the decision of whether and how to integrate Indian law into other courses remains personal to each teacher.

#### IV. SOME ACTUAL STUDENT REACTIONS

I entitled section II “possible” justifications and goals and section III “perceived” barriers and risks because neither the existing literature nor this article proves the benefits or dangers of integrating Indian law into other courses. Quite frankly, most of the positive and negative ideas raised here and elsewhere are based on the same kind of intuitive judgments teachers regularly make about what works and what does not. If not already obvious by this point in the article, I believe the risks of integration are non-unique and outweighed by the potential benefits. And, as I assume is true for other law teachers with experience or interest in Indian law,<sup>108</sup> I can’t help but see Indian law issues in all my “other” courses. So, I devote a week or more in Environmental Law to Indian Country issues,<sup>109</sup> integrate a number of Indian law cases in Administrative Law,<sup>110</sup> and back when I taught Intellectual Property, addressed some interesting Indian issues there as

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107. *Cf.* Robinson, *supra* note 102, at 152 (arguing that white male colleagues and students see race in every aspect of a minority professor’s teaching).

108. *See, e.g.*, Williams, *supra* note 22, at 570 (noting that he integrates Indian law into “virtually all the classes I teach, [including] admiralty, bankruptcy, civil procedure, commercial law, professional responsibility, law and technology, and taxation.”).

109. *See, e.g.*, South Dakota v. Yankton Sioux Tribe, 522 U.S. 329 (1998) (regulation of reservation landfill); HRI, Inc. v. EPA, 198 F.3d 1224 (10th Cir. 2000) (regulation of Indian country underground injection); Administrator, State of Arizona v. EPA, 151 F.3d 1205 (9th Cir. 1998) (tribal redesignation of air quality); City of Albuquerque v. Browner, 97 F.3d 415 (10th Cir. 1996) (tribal water quality standards imposed on off-reservation discharger).

110. *See, e.g.*, Lincoln v. Vigil, 508 U.S. 182 (1993) (discontinuation of health benefits to disabled Indian children); Morton v. Ruiz, 415 U.S. 199 (1974) (eligibility requirements for services benefits to off-reservation Indians); Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F. Supp. 252 (D.D.C. 1972) (federal trust responsibility to Indians affecting reasonableness of agency action).

well.<sup>111</sup> And, of course, in Property Law, I cover the infamous *Johnson v. M'Intosh*<sup>112</sup> case.

Despite some of the risks of adverse student reactions suggested in Section II.D, over the years I've received a number of positive student reactions, randomly volunteered. In end-of-course evaluations, however, students rarely mention my integration of Indian law. That may be due partly to the fact that my school uses the University's generic evaluation forms designed for undergraduate students and not specific to the law school experience. Seeking direct contemporaneous feedback from students has not been a hallmark of legal education, and the recent trend in higher education toward assessment of student learning has only just begun to enter the consciousness of the legal academy.<sup>113</sup>

Professor Cynthia Ford broke with tradition in 2001 by directly soliciting student reactions to her Indian law integration in first-year Civil Procedure in preparation for her presentation at the Tulsa conference.<sup>114</sup> Her reported results were enlightening and encouraging, and stimulated me to do something similar in anticipation of this Indian law pedagogy symposium. About two weeks after discussing *Johnson v. M'Intosh* in Property this fall, I asked students to spend five minutes in class writing "any reactions" they had to the case or class discussion, and turn them in to me anonymously.<sup>115</sup> I explained my reason for asking was related to my upcoming presentation on integrating Indian law into other law school courses for this symposium.

The non-scientific results were pleasantly surprising (to me) because they generally supported integration, specifically (and in some cases explicitly) supported the benefits asserted in section II, and did not implicate the risks in section III (except for confusion and frustration, which I argued could be seen as positive rather than negative results).<sup>116</sup> Of the 71 total responses (out of 80 first-year students), the comments could be generally categorized as such:

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111. See, e.g., *Pro Football, Inc. v. Harjo*, 1999 WL 375907 (Trademark Tr. & App. Bd. (1999) (trademarked "Redskins" team name as disparaging); *Hornell Brewing Co. v. Rosebud Sioux Tribal Court*, 133 F.3d 1087 (1998) (misappropriation of Crazy Horse's name and likeness).

112. 21 U.S. (8 Wheat.) 543 (1823).

113. See generally GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* (2000). Most American law schools limit assessment to clinical and legal writing programs. *Id.* at 16.

114. See Ford, *Five Years Later*, *supra* note 13.

115. I thought this approach would be more effective in generating timely anonymous responses than an email inquiry. One problem I didn't anticipate was how many "laptop students" come to class with neither paper nor a writing instrument.

116. Out of a sense of curiosity rather than scientific validity, I did not read the comments until after drafting sections II and III.

<u>No. of comments</u> <sup>117</sup>	<u>Reaction categories</u> <sup>118</sup>
46	Stimulated critical thinking <sup>119</sup>
34	Generally positive reactions <sup>120</sup>
17	Generated confusion and/or emotional reactions <sup>121</sup>
13	Increased awareness of diversity/other views <sup>122</sup>
11	Addressed gaps in historical knowledge <sup>123</sup>
10	Should integrate Indian law <sup>124</sup>

117. These numbers report the frequency of the various substantive subjects raised in the comments. Some student responses included more than one substantive subject, and so were counted more than once.

118. My request of the students was for “any reactions” and did not specify the categories listed in sections II and III as benefits or risks, so obviously it was my reading of the comments that destined them for one category or another.

119. Comments attributed to this category specifically mentioned critical thinking, or the value of comparative approaches, or discussed the logical force, justice, or fairness, of the Court’s analysis and result. One representative comment said, “I definitely expanding [sic] my logical thought processes on the subject of property by being introduced to an often hidden subject or idea.” Another said, “I think its [sic] important to have cases such as these. It allows us to see what we may have never seen. We can use these cases to contrast what we are learning against what we know.” Another said, “The case gave a harsh and realistic illustration of our ability to rationalize and legitimize even the most improper and unfair courses of action. The way the decision was based on other elitist countries’ policy and methods of claiming/taking land was more than a reach in my opinion.”

120. Comments attributed to this category specifically noted perceived value in including the case and discussion, but did not include comments discussing the substantive rationale or result (which implied stimulation of critical thinking). Representative comments used words like “interesting,” “useful,” “valuable,” “worthwhile,” and “thanks for including it.”

121. Comments attributed to this category used words like “confused,” “mixed emotions,” “disgust,” “shame,” “embarrassed,” “frustrated,” and “disturbed” or “disturbing.” One representative comment said “I was shocked at the sentiments toward the tribes. Marshall’s opinion made it seem like the white inhabitants were doing the tribes a favor by allowing them to remain on the land with even *limited* ownership.” (emphasis in original).

122. Comments attributed to this category specifically noted perceived value in considering other cultures’ views on property possession, being aware of diversity and civil rights concepts, and addressing marginalization of minority peoples. One representative comment said, “The case was interesting for the social impact of Supreme Court cases. The case was such a blatant form of racism to the Indians, yet it was written by some of the brightest legal minds of their time. . . . I think cases like this put a human aspect of law into play that often isn’t seen.” Another said, “I was relieved to know that concepts of discrimination, ethnic and racial prejudice in the US legal system and the exclusive and systematic disempowerment of ‘minority’ groups, particularly Native Americans, would be addressed in this class. . . . [I]t seems crucial to make a conscious effort to give a voice to those groups who have been silenced.”

123. Comments attributed to this category specifically admitted filling gaps in the students’ knowledge of the history of U.S.-tribal relations and/or asserted the value of integration in addressing society’s deficient attention to that history. One representative comment said “It has long been custom [sic] in the US to forget about the treatment of the Indian and talk about how great American history is and how we need to thank Christopher Columbus. It’s important to get an ‘actual’ education—including all aspects of our history and not just what makes us all better or feel justified for truly horrible behavior.” Another said “I really appreciated the incorporation of *Johnson v. Macintosh* (sp?) into our reading not only from a legal standpoint, but a historical standpoint. This is somewhat embarrassing to admit, but I have never really understood the structure of Native American land ownership.” Four other comments used the term “eye-opener” in referring to the historical aspects of integration.

7	Increased integrity of legal education <sup>125</sup>
3	Generally negative reactions <sup>126</sup>
1	Stimulated interest in taking an Indian law course

Notwithstanding my footnoted caveat about how I categorized the comments, I was heartened that nearly half reacted positively and over half spoke of or demonstrated critical thinking. More importantly, the overwhelming number of comments demonstrated some level of self-reflection, which we all recognize is a critical attribute of effective lawyers, but which is rarely practiced in doctrinal courses. Interestingly, not one comment viewed the case as irrelevant to the course or as time wasted. Also interesting to me was the complete absence of references to UND's Indian-head logo controversy.<sup>127</sup>

Of the seventy-one comments, there were only three I labeled as negative. Even these expressly or impliedly supported the integration exercise. In the spirit of benefits and risks discussed above, I found two of the three<sup>128</sup> negative comments particularly revealing:

I thought the materials presented prior to the Johnson case [on found property and possession of foxes] were a 'set-up' leading us to have certain reactions to Johnson. Let me explain. We discussed found property, saying the property, in cases where it is lost or abandoned, goes to the true owner above all others and that wild property must be dead in the possessor's hands or mortally wounded and still being pursued. Then we jumped to possession of "wild lands" in the Johnson case & everything we'd been taught

124. Comments attributed to this category specifically stated Indian law should be integrated in other courses, or "to some extent" or "more." One representative comment said, "Our casebooks should have more Indian law cases."

125. Comments attributed to this category did not use the word "integrity," but clearly implied that not integrating Indian law in courses and casebooks undermined the legitimacy of their legal education. One representative comment said "W/o [sic] at least some reference to this type of case or these types of issues, it would leave a major hole in the formation of property and ownership in the U.S." Another said "Indian law is an important aspect to our society and should be a part of a truly well-rounded legal education."

126. See *infra* notes 127-28 and accompanying text for my thoughts on the three comments attributed to this category.

127. Because the comments were anonymous, I anticipated a handful of logo references, either positive or negative. Their absence implied students accepted the assignment at face value; that is, as a legitimate course-related task rather than for some ulterior irrelevant purpose. But the absence of logo references also suggested students may not connect the University's controversial use of Indian names and symbols, which surrounds students constantly, with the larger themes reported in the comments.

128. The third comment I categorized as negative said the discussion focused more on *my* perceptions of injustice than on "determining where/why the justice (lack of) or reasoning occurred in the first place."

before told us that land (by that I mean rights to possess ie [sic]— buy & sell) should belong to the Indians.

I didn't like the case on Indian Law for many reasons. One is that your [sic] viewed it with modern eyes instead of for its time saying it was an embarrassment [sic]. Well the Magna Carta is an embarrassment [sic] in modern times but you can't view it that way. Also you skimmed over the writing about the fact that the Europeans were not always the aggressors nor were they the first aggressors. Also you didn't state that the tribes always fought each other and in the case of a few tribes, some were even forced to extinction. You also did not state that we had just won a war against them for the land and the fact that the Europeans gave them any right after the bloody war is amazing.

## V. CONCLUSION

My empirical, but not scientific, inquiry into student reactions buttresses what many Indian law teachers have believed intuitively for years. The need for Indian law integration exists in real and practical forms. Many students lack a basic foundation in the history of the United States' treatment of indigenous peoples, which hinders their understanding of the legal principles governing modern day disputes involving Indians and Indian country. Increased economic development in Indian country means the nature and extent of those disputes continues to expand.

Integration of Indian law into other law school courses helps address the currently unmet need in a way and on a scope that one or two specialized Indian law courses cannot. The direct practical benefit increases lawyer competence and decreases opportunities to commit malpractice in multiple areas of the law across the Nation, particularly in the many western and mid-western states with Indian country. A host of other Indian law integration benefits are more amorphous, but nonetheless are bedrock aspects of the academy: developing students' critical thinking, transmitting accurate and comprehensive knowledge, and providing a supportive learning environment inclusive of all students.

The barriers and risks sometimes perceived for integration are legitimate, but they are not unique to Indian law nor do they seem particularly challenging. Some of those risks I think we avoid to the detriment of our students; complex material is confusing and injustice sanctioned by the rule of law is frustrating. Do we really want our students to have no emotional reaction, or should we help them find productive means for coping with their humanness?

The practical barrier of teachers' lack of knowledge and time to remedy that gap is more fundamental but still surmountable. Indian law teachers can forward new cases and materials relevant to colleagues teaching other subjects in their schools. They can make time to consult with and assist those colleagues individually or collectively through faculty colloquia. They can reach colleagues outside their schools with articles in legal education journals and course materials and thoughts posted to the Internet.

A more formal option was announced in 2001 at the University of Tulsa conference on integrating Indian law into law school curricula. That conference featured five professors' articles on integration in Civil Procedure, Legal Writing, Property, Constitutional Law and Bankruptcy, accompanied by course materials and teacher's manuals to assist other professors interested in integration.<sup>129</sup> The Association of American Law Schools Section on Indigenous Nations and Peoples initially assumed responsibility for advertising and distributing this materials bank,<sup>130</sup> but that initiative appears to have faltered. Regardless, it seems fair to say the materials bank should be significantly expanded, which it could if each (or most) of those who teach and write on Indian law committed to preparing just one packet of course materials.<sup>131</sup>

In the foreword to the law review symposium issue collecting the Tulsa conference papers, Professor Melissa Tatum expressed a hope that conference would generate additional symposia and not become "a spark that fizzles."<sup>132</sup> I hope this article and other ideas raised at the 2006 University of North Dakota conference help fan the flame. In that regard, I found Professor Gloria Valencia-Weber's and Sherri Thomas's presentation on how Indian law became a bar exam subject in New Mexico particularly interesting.<sup>133</sup> It appears South Dakota may soon follow.<sup>134</sup> Other states containing Indian country and law schools featuring established Indian law concentrations, like North Dakota, Montana, Wisconsin, Colorado, Arizona, and Oklahoma, are likely prospects to join the trend. Perhaps more than any other signal, including Indian law on bar examinations demonstrates the subject is not a niche field irrelevant to general practitioners.

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129. See generally Tatum, *supra* note 37.

130. *Id.* at 484.

131. As noted earlier, there are numerous areas of the law implicating Indian law. Additionally, even for areas with existing materials and writings on integration (like Property or Constitutional Law), other professors would benefit from a choice of several approaches just as we are with multiple casebooks in one area.

132. Tatum, *supra* note 37, at 484.

133. See generally Valencia-Weber & Thomas, *supra* note 69.

134. Frank Pommersheim reported to conference attendees that South Dakota is close to a final decision adding Indian law to the topics tested on its bar exam.