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Teaching Treaties: Treaty Abrogation and the Rule Against Perpetuities: Seventeen Quotations and Two Graphs to Get Students Talking

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TEACHING TREATIES: TREATY ABROGATION AND THE RULE AGAINST PERPETUITIES: SEVENTEEN QUOTATIONS AND TWO GRAPHS TO GET STUDENTS TALKING

ROBERT LAURENCE*

Preliminary Commentary

This is me. What you read following each quotation or graph is my commentary upon the material that I present to my students, via handouts, as we study Indian treaties.

To begin with, unlike most of the other Indian law courses discussed at this Symposium, in mine—taught in a state without Indian Country, and to an audience almost entirely non-Indian—it is important to begin non-historically and not with the Marshall Trilogy, as discussed elsewhere in these pages. My students need to see on the very first day of class an Indian tribe as a modern functioning government. So, at the outset of the semester we spend about three or four hours discussing a case called *United States v. Ant*,[1] which is a largely uncommented-upon case involving the federal prosecution of a tribal member who has already been convicted, without having been *Miranda*-ized, before the tribal court. *Ant* introduces my students to tribes *as governments*, and it also serves very nicely as a way of setting forth what I call the seven basic principles of the entire course.[2] One of those principles, little involved in *Ant* itself, is the existence, enforceability, and abrogability of Indian treaties.

Leaving these seven principles aside, we then plunge into a careful and wide-ranging discussion of the concept of tribal, state, and national sovereignty, and of the plenary power of Congress over the tribes. You might see, for example, an obscure article in the *Tulsa Law Review*.[3] When we return near mid-semester to the direct study of treaties, the assignment

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1. 882 F.2d 1389 (9th Cir. 1988).

2. *See generally* Robert Laurence, *The Basic Principles of American Law as They Apply to American Indian Tribes*, 5 Y.B. N.Z. JURISPRUDENCE 35 (2003).

3. Robert Laurence, *Don't Think of a Hippopotamus: An Essay on First Year-Contracts, Earthquake Prediction, Gun Control in Baghdad, the Indian Civil Rights Act, the Clean Water Act, and Justice Thomas's Separate Opinion in* United States v. Lara, 40 TULSA L. REV. 137 (2004).

for class is the *Dion* case, but, as class begins, and without mentioning either the assignment or Indian treaties, I put the Rule Against Perpetuities (RAP) on the floor.

And, with that introduction, my nineteen quotations and two graphs follow.

I.

"No interest in property is good unless it must vest, if at all, within 21 years following a life or lives-in-being at the creation of the estate."[4]

Commentary

The Rule Against Perpetuities is not usually among the most-loved recollections of the first-year property course for most upper-class students. Getting this statement out of them is a little like tooth-pulling, and here in Indian law, I am not practicing that kind of dentistry, worthy though it might be in other circumstances. After a couple of good-faith efforts, I stand ready to lay the RAP upon them.

II.

"*A person may control the use and disposition of his or her property for only a relatively short period of time after his or her death.*"[5]

Commentary

Of more use for present purposes than the bar-exam RAP, is a statement like this one, which goes to the essence of the rule, leaving out most of the detail. It is easiest to get this kind of plain-language translation out of the students if there is a non-law student in the class, as there is in mine occasionally, but not regularly. Just ask the law students to explain the RAP to the present (or an imagined) intelligent non-law student. A statement such as this one—designed for discussion by non-lawyers, but not for bar-exam use—captures the essential policy conflict presented by the RAP. On one side, we have the interests of the "Dead Hand," that is to say the desire of property owners to control the property they own and to

4. This is a traditional statement of the Rule Against Perpetuities, whose origins lie in *The Duke of Norfolk's Case*, 3 Ch. Cas. 1, 22 Eng. Rep. 931 (1682).

5. This is a statement of the Rule Against Perpetuities as it might be explained to an intelligent non-lawyer.

determine future owners even after they are dead.[6] On the other side is the "Living Hand," the understandable inclination of the living to think that they are the ones who best know how property should be used, and to think that the dead should be content simply to be dead.

III.

"*Great nations, like great men, must keep their word. When America says something, America means it, whether a treaty or an agreement or a vow made on marble steps*."[7]

IV.

"*Last week we conducted another promising test of our missile defense technology. For the good of peace, we're moving forward with an active program to determine what works and what does not work. In order to do so, we must move beyond the 1972 Anti-Ballistic Missile Treaty, a treaty that was written in a different era for a different enemy. America and our allies must not be bound to the past. We must be able to build the defenses we need against the enemies of the 21st century*."[8]

Commentary

These two statements by the George Bushes, *perè et fils*, capture as nicely as any the conflict to which the Rule Against Perpetuities is the compromise, now with respect to treaties and not property rights. (If there's a difference. Justice Thomas has suggested that there isn't).[9] President Bush, *perè*, here represents the interests of the Dead Hand and the idea that promises, once made, should be kept. His inaugural comment is

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6. For a nice fictional rendition of this desire, written so as to question the wisdom of the Dead Hand, *see* Nevil Shute's 1950 book, *The Legacy*, which was made into the film *A Town Like Alice*. For a real-life battle, here stated passionately in support of the Dead Hand, *see* Hilton Kramer, *Looting Dr. Barnes: Philly Plutocrats Plunder a Legacy*, N.Y. OBSERVER, Oct. 13, 2003, (Arts & Entertainment) at 1.

7. President George H.W. Bush, Inaugural Address, 1 PUBLIC PAPERS OF GEORGE BUSH 1, 3 (Jan. 20, 1989). *See* Fed. Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, 142 (1960) (Black, J., dissenting) ("*Great nations, like great men,* should *keep their word. When America says something, America means it, whether a treaty or an agreement or a vow made on marble steps*.") (emphasis added). President Bush substituted "must" for Justice Black's "should" in the first sentence.

8. President George W. Bush, Remarks at The Citadel, 2 PUB. PAPERS 1500, 1504 (Dec. 11, 2001) *available at* 2001 WL 1571476 (F.D.C.H.).

9. *See* Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 220 (1999) (Thomas, J., dissenting).

especially apt in Indian law, of course, as he is quoting (almost) from Justice Black's famous dissent in the *Tuscarora* case, (which everyone, including me, needs to remember was *not* a treaty case).

President Bush, *fils*, here takes the position that times change in ways unanticipated by those who crafted the exchange of promises that is called a treaty, and the living are the ones in the best position to decide what the present rules should be, not those who are dead, retired, out-of-the-loop, or unelected.

V.

"*The message from this Administration, from those of us up here today, is this: You should keep the promises you make to your workers. If you offer a private pension plan to your employees, you have a duty to set aside enough money now so your workers will get what they've been promised when they retire.*"[10]

VI.

"*Delta Air Lines' lawyer said a bankruptcy judge will be playing 'Russian roulette' with the company's future if he denies its motion to terminate a traditional pension plan for pilots. Scuttling the plan for thousands of retired pilots is 'horrible,' Delta lawyer Marshall Huebner said Friday in a court hearing on the issue, 'but the simple thing is that Delta will not survive unless the plan is terminated.' In a preview of the arguments U.S. Bankruptcy Judge Adlai Hardin will hear, one group of retired pilots opposed Delta's move, saying the airline is exaggerating the risks of keeping the plan. Another retired pilot group said termination is probably necessary, and the airline's creditors said there's no other way to save the company.*"[11]

Commentary

Now here in the first of these two quotations we have the present President Bush following his father's lead and emphasizing the sanctity of promises. Which is not to say that he necessarily disagrees with the position of Delta's management—now as Debtor-in-Possession in the bankruptcy proceeding—that the deal originally promised to the now-

10. President George W. Bush, Remarks at the Signing of The Pension Protection Act of 2006 (Aug. 17, 2006) 2006 WL 2375038 (F.D.C.H.).

11. Russell Grantham, *First Salvos Fired in Delta Battle*, ATLANTA J.-CONSTITUTION, Sept. 2, 2006, at 1B.

retired pilots must be undone by one side acting alone. As is often the case, the battle between the Dead and Living Hands—or here the Debtor-in-Possession and the Retirees—is a difficult one to manage, as Delta's lawyer clearly expresses. That the retired pilots are themselves conflicted shows the difficulty of the issue, as, in fact, does the Pension Protection Act of 2006, which *inter alia*, provides a governmental insurance policy to protect the retirees of defaulting pension providers. The Rule Against Perpetuities is complicated exactly because it needs to be.

VII.

"A covenant marriage is a marriage entered into by one (1) male and one (1) female who understand and agree that the marriage between them is a lifelong relationship . . . . Only when there has been a complete and total breach of the marital covenant commitment may a party seek a declaration that the marriage is no longer legally recognized."[12]

Commentary

When it comes to the keeping, or not, of out-of-date promises, twenty-first century America's best example, of course, is divorce. The "great men" of George Bush, *perè*, and Justice Black, are doing a rather poor job lately maintaining the vows of marriage, but who, exactly, would return to the days before Henry VIII? A compromise position is the so-called "covenant marriage," where the parties are permitted voluntarily to bind themselves to a more restrictive divorce regimen, and, once having chosen that route, may not then voluntarily undo the choice, and opt back into a more liberal regimen, even if that is the desire of both parties, as the marriage begins to unwind. Anecdotally, it appears that covenant marriage is more popular among 50-somethings, re-committing themselves to an already comfortable relationship, than among 20-somethings, about to embark upon the peculiar undertaking we call marriage.[13]

12. ARK. CODE ANN. § 9-11-803(a)(1), (3) (2006). *See generally* Chauncey E. Brummer, *The Shackles of Covenant Marriage: Who Holds the Keys to Wedlock?*, 25 U. ARK. LITTLE ROCK L. REV. 261 (2003).

13. *See* David Holman, *A New Covenant*, AM. SPECTATOR ONLINE, Mar. 4, 2005 (on file with author).

VIII.

"We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary cannot question or inquire into the motives which prompted the enactment of this legislation. If injury was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought by an appeal to that body for redress and not to the courts. The legislation in question was constitutional, and the demurrer to the bill was therefore rightly sustained."[14]

Commentary

So finally we come to *Lone Wolf*, which famously held that Indian treaties are abrogable by one side acting alone, or, more precisely, that it was not a violation of constitutional due process for the United States to walk away from the obligations of an Indian treaty. The case is dreadfully written, full of early twentieth century racist rhetoric, but its result is almost unremarkable, when it is related back to Presidents Bush, *perè et fils*, the Rule Against Perpetuities, and the Dead *versus* Living Hand. At least put it this way: it would have been extraordinarily protective of the Dead Hand had the Supreme Court enjoined the abrogation of treaty by the Executive, and held that the only way treaty obligations could be changed would be by re-negotiating the treaty and re-submitting it to the Senate for ratification.

14. Lone Wolf v. Hitchcock, 187 U.S. 553, 568 (1903).

IX.

THE WHITE HOUSE
February 28, 2005

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Compliance with the Decision of the International Court of Justice in Avena

The United States is a party to the Vienna Convention on Consular Relations (the 'Convention') and the Convention's Optional Protocol Concerning the Compulsory Settlement of Disputes (Optional Protocol), which gives the International Court of Justice (ICJ) jurisdiction to decide disputes concerning the "interpretation and application" of the Convention.

I have determined, pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, that the United States will discharge its inter-national obligations under the decision of the International Court of Justice in the Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Avena), 2004 ICJ 128 (Mar. 31), by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision.

George W. Bush[15]

Commentary

The earlier quotation of Bush, *fils*, on the ABM treaty necessarily raises the issue of whether the same rules apply, and whether the same compromises should be made, regarding international treaties. I am interested here in the treatment of international treaties under domestic American law, and not their treatment under international law, about which I am both largely ignorant and largely unconcerned. This quotation, showing the President's artful resolution of the compromise regarding the Vienna Convention on Consular Relations, and his subsequent withdrawal from the optional protocol of the Convention, shows the complexity of the issue.

15. George W. Bush, *Compliance with the Decision of the International Court of Justice in Avena* (Feb. 28, 2005), *available at* http://www.whitehouse.gov/news/releases/2005/02/20050228-18.html.

Adam Ereli, a spokesman for both the Department of State and for the Living Hand, explained the determination this way:

> [W]hen we signed up to the optional protocol, it [was] not anticipated that . . .cases . . .would be referred to the [International Court of Justice] [or that] the optional protocol would be used to review cases of domestic criminal law. This is a development, frankly, that we had not anticipated in signing up to the optional protocol . . . .[16]

X.

"[T]he question whether a particular measure was appropriate for protecting and advancing the tribe's interests, and therefore not subject to the constitutional command of the Just Compensation Clause, is factual in nature. The answer must be based on a consideration of all the evidence presented. We do not mean to imply that a reviewing court is to second-guess, from the perspective of hindsight, a legislative judgment that a particular measure would serve the best interests of the tribe. We do mean to require courts, in considering whether a particular congressional action was taken in pursuance of Congress' power to manage and control tribal lands for the Indians' welfare, to engage in a thoroughgoing and impartial examination of the historical record. A presumption of congressional good faith cannot serve to advance such an inquiry."[17]

Commentary

It is not too soon to note that some—perhaps many—treaty abrogations are compensable. *Sioux Nation* is seen to be directly connected to the suggestion given by the Supreme Court in *Lone Wolf*, as the later Court agreed with the earlier one that complaints regarding treaty abrogations should be taken to the Congress, or, in this case, to the Claims Court, set up by Congress to hear complaints for money damages against the United States.[18]

16. State Dep't Regular Briefing, (Mar. 10, 2005), *available at* 2005 WL 555679 (F.D.C.H.)
17. United States v. Sioux Nation of Indians, 448 U.S. 371, 415-16 (1980).
18. *See id.*

XI.

"*It must always be remembered that the various Indian tribes were once independent and sovereign nations, and their claim to sovereignty long predates that of our own Government*."[19]

Commentary

At some point in this discussion—perhaps here, perhaps earlier; perhaps via a student's observation, perhaps via my direct question—the difference between Indian treaties and individual property rights will become plain, and will thereby tie our discussion of treaties back into the earlier discussion—and the dominant theme of the entire course—of tribal sovereignty. Because of the corporate existence of both the tribes and the United States, the parties to a treaty are with us still. Neither being dead, there is no occasion for the operation of the Dead Hand. Technically, at least.

Unless one thinks, however, that the choice between Presidents Bush, *perè et fils*, is easy and clear, the doctrine of tribal sovereignty does not solve the question of the abrogability of treaties, but only makes it more complex.

An additional complexity with respect to Indian treaties is that treaty-making ended in 1871.[20] I had long assumed that this Act was entirely practical and that theoretically it was an unenforceable statement of policy by the forty-first Congress. Justice Thomas seems to want to lead the Court in another direction, and his separate opinion in *United States v. Lara*[21] tried to give this Act some doctrinal importance. Be that as it may, or may not be, practically speaking, treaty-making with the tribes has ended, forever, one suspects, this being a development about which I am somewhat ambivalent.[22] Thus, in the international situation, an out-moded treaty can be renegotiated, even where one of the original parties has now disappeared from the international scene; Russia, for example, became the obligor and beneficiary of treaties negotiated by the U.S.S.R. In Indian law, on the other hand, we have the unique situation where, under *McClanahan,* the tribal party to the treaty still exists, but under the Act of March 3, 1871, the treaty may not be renegotiated with it.

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19. McClanahan v. Ariz. State Tax Comm'n, 411 U.S. 164, 172-73 (1973).

20. *See* Act of Mar. 3, 1871, c.120 § 1, 16 Stat. 566 (codified as 25 U.S.C. §71).

21. 541 U.S. 193, 214 (Thomas, J., concurring) (2004).

22. *See* Robert Laurence, *Antipodean Reflections on American Indian Law*, 20 ARIZ. J. INT'L & COMP. L. 533 (2003).

XII.

"*What is essential is clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty.*"[23]

Commentary

What happened to *Dion*? Somewhere in the midst of the discussion of the Dead and Living Hands, of the George Bushes, *perè et fils*, of promise-keeping and -breaking, I will ease *Dion* and the hunting of the National Bird into the discussion, usually in response to an overly facile statement in support of treaty rights by a student whom I guess to be an environmentalist. In the course of that discussion, I introduce the class to Chief Billie's confrontation with one of the last remaining Florida panthers, *puma concolor coryi*, recounted in *United States v. Billie*.[24] The complete versions of these two cases, the first to apply the quoted *Dion* test, become reading assignments as the discussion of treaties continues. The *Billie* cases are especially good for class discussion, both because of the glamour of the animal at issue, and because of its virtual indistinguishability of the Florida panther from the western cougar, *puma concolor*, of which there are many.

23. United States v. Dion, 476 U.S. 734, 739-40 (1986).

24. 667 F.Supp. 1485 (S.D. Fla. 1987). The State of Florida's parallel prosecution is found in State v. Billie, 497 So.2d 889 (Fla. App. 1986).

XIII.

The First Graph

A B C D E F G H

Proposition A: *Lone Wolf* is wrong and the federal courts should enjoin the unilateral abrogation of Indian (and international?) treaties.

Proposition B: *Lone Wolf* is right, but *Dion* is wrong, and the federal courts should require the intent to abrogate an Indian treaty to appear on the face of the abrogating statute.

Proposition C: *Dion* is wrong, but *United States v. White*, 508 F.2d 453 (8th Cir. 1974), is right, i.e., the federal courts should require that the intent to abrogate be found explicitly on the face of the statute or in the legislative history.

Proposition D: *Dion* is right, but applies only to the Bald Eagle Protection Act.

Proposition E: *Dion* is right, and applies beyond the Bald Eagle Protection Act, but its application should only be extended carefully.

Proposition F: *Dion* is right and should be extended aggressively in order to advance the worthy purposes of the various environmental statutes. Thus, *Billie* is right, because of the worthiness of the abrogating statute, i.e. the Endangered Species Act.

Proposition G: *Dion* is right, but *Billie* is wrong, because the Endangered Species Act is not that important an environmental statute. However, a really important statute like the Clean Water Act or the Clean Air Act should be found to abrogate Indian treaties by implication.

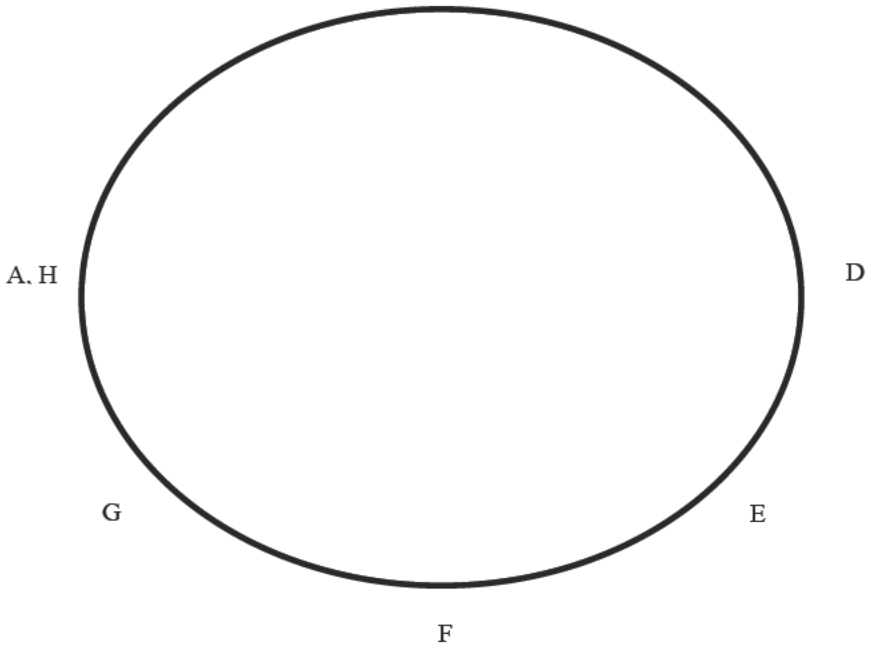
Proposition H: Any later statute should abrogate a prior inconsistent treaty.

Commentary following the First Chart:

After (usually) considerable struggle with *Dion* and the *Billie* cases, I force the students to place themselves on the first chart above. Ordinarily they spread themselves out quite nicely across the entire spectrum. (For what it's worth, after the students have committed themselves to a place on the chart, I place myself at position C)

XIV.

Mr. Ireson's Graph



Commentary

The last time I taught the course, Nelson Ireson, a strong tribal advocate throughout the semester, placed himself surprisingly at H, and then argued forcefully that there was little difference between choices A and H, making the spectrum an ellipse. It is for such insights that I teach the course. Support for his position follows.

XV.

"I want you to understand that you are absolutely dependent upon the Great Father to-day for a living. Let the Government send out instructions to your agent to cease to issue these rations, let the Government instruct your agent to cease to issue your clothes. . . . Let the Government instruct him to cease to issue your supplies, let him take away the money to run your schools with, and I want to know what you would do. Everything you are wearing and eating is gratuity. Take all this away and throw this people wholly upon their own responsibility to take care of themselves, and what would be the result? Not one-fourth of your people could live through the winter, and when the grass grows again it would be nourished by the dust of all the balance of your noble tribe."[25]

XVI.

"Given the Tribe's evident concern with reaffirmance of the Government's obligations under the 1858 Treaty, and the Commissioners' tendency to wield the payments as an inducement to sign the agreement, we conclude that the saving clause pertains to the continuance of annuities, not the 1858 borders."[26]

XVII.

" "[27]

Commentary

We end here, with two quotations and one non-quotation from the *Yankton Sioux* case. We have Commissioner Cole's extraordinarily bare-knuckled (from a twenty-first century perspective) negotiation style. We have Justice O'Connor's pragmatic, if cold, use of Mr. Cole's words. And we have the words that were not written by any Justice: "I concur in the result in this case, but write briefly and separately to comment on the Court's use of Commissioner Cole's statement to the Yankton Sioux during the winter of 1892, a time of deep, deep distress . . . ."

Mr. Ireson's reformulation of the graph from a linear spectrum into an ellipse is most clearly suggested by Commissioner Cole's statement. As

25. South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 346-47 (1998) (quoting Council of the Yankton Indians (Dec. 10, 1892)).

26. *Id*. at 347. Justice O'Connor wrote for a unanimous Court.

27. *Id*. (_____, J., concurring in judgment).

Mr. Ireson put it: If the United States could then, and can now, impose a "renegotiated" change in treaty obligations like that, then how, exactly, is Proposition A different from Proposition H? How indeed?

Returning to the *Yankton* case, I ask the students this: which bothers you more as a twenty-first century American—that Mr. Cole said such a thing in 1892, or that Justice O'Connor used the quotation without batting an eye in 1998? I suspect that if I were teaching the course just now, the name of Benedict XVI would arise in the conversation: To what extent would the quoting of Mr. Cole's words serve "to begin a dialogue" with the Indians?

Two Quotations in Conclusion

XVIII.

"Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tossed, to me:
I lift my lamp beside the golden door."

Emma Lazarus
"The New Colossus" (1883)

XIX.

"Do I contradict myself?
Very well then I contradict myself.
(I am large, I contain multitudes.)"

Walt Whitman
"Song of Myself" in *Leaves of Grass* (1891)

Commentary: *Thoughts after the Symposium*

One leaves the North Dakota Symposium, both its live and printed versions, optimistic about the pedagogy of American Indian law. The Baker Court Room at U.N.D. was, and these pages in the *North Dakota Law Review* are, full of ideas and energy. The relatively new professors, especially, have brought, and are bringing, to the field new missions and new enthusiasm, and—that much more remarkable—the earlier generation of professors is showing itself willing both to lead the way and to accept the offered innovations. The students of the future are a lucky bunch.

As should have been expected, the Symposium did not—and could not—separate pedagogy from theory, and most of the offerings, in Grand Forks and here, are a nice mix to the two. (The present essay alone, perhaps, is pure pedagogy.) And it is entirely appropriate that two scholars of generation-long standing stated most clearly, for me, the two doctrinal issues for the next generation to tackle. First—actually second chronologically, but first logically—Professor Goldberg of UCLA raised the fundamental question of when the rules with respect to Indian tribes should be the same as those off-reservation, and when they should be different. I took my shot at that question, to no great effect, in the article on symmetry and asymmetry,[28] but there is much, much more to be done. Perhaps most difficult is this question: of what impact on the law—practical and doctrinal impact—is the fact that most all Indian tribes are so very much smaller than all states? How much nationhood can be expected from a county-sized government? It is impossible to ignore this difference, in my view, though it is not always the case that the difference makes a difference in the outcome. It is exactly this question, very broadly put, that Professor Goldberg set the next generation of scholars to work on.

Secondly, Professor Pommersheim, of the University of South Dakota, asked as plainly as it has ever been asked: What is the perimeter of the Plenary Power? Much of the scholarly work done so far, for good or ill, has been pointed toward showing the illegitimacy of the Plenary Power, but, without entirely abandoning that position, Professor Pommersheim still noted that conceding the existence of the power does not concede its infinity. Any constitutional power must have a perimeter and some hard work should be put into finding it. I, who long ago confessed to being able to live with the Plenary Power,[29] must admit that I did not even try to survey this perimeter, beyond noting that the power, if found in one place in the Constitution, would be restricted by other places therein, a rather elemental proposition ratified by the court in the *Seminole Tribe* case.[30] Beyond this, I don't know, and admit that trying to explain Indian law without figuring out the Plenary Power is a little like trying to explain the physics of the universe while leaving out gravity. But Professor Pommersheim has set the issue before us and it's time we tried our hands at general relativity.

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28. Robert Laurence, *Symmetry and Asymmetry in Federal Indian Law*, 42 ARIZ. L. REV. 861 (2000).

29. Robert Laurence, *Learning to Live with the Plenary Power of Congress over the Indian Nations*, 30 ARIZ. L. REV. 413 (1988).

30. Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996).

Now, on closer examination, these two issues for the twenty-first century merge, and Professor Pommersheim's is seen to be but a special case of Professor Goldberg's. For there *are* Commerce Clauses in the Constitution other than the Indian Commerce Clause, and they have both established and emerging perimeters, as the Court has allowed, *vel non*, over the years various acts of Congress. Thus, Professor Pommersheim's issue, stated in Professor Goldberg's terminology, is whether the perimeter of the Commerce Clause is the same for the tribes as it is for the states. What, in the end, does "commerce with the Indian nations" mean? The new scholars and teachers will need to be working there for some years to come, a proposition that seems not to daunt them.

All-in-all, then, I am optimistic about Indian law in the years ahead, both in the classroom and in the law journals. In the *United States Reports*? Well, now, that's another matter.