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Dakota Tribal Courts in Minnesota: Benchmarks of Self-Determination

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Dakota Tribal Courts in Minnesota: Benchmarks of Self-Determination

Abstract

Professor Frank Pommersheim has written that “[t]ribal courts are the front line institutions that most often confront issues of American Indian self-determination and sovereignty.”¹ It is only fitting, then, that an issue devoted to the legal history and survival of Dakota people includes some information about the role Dakota tribal courts play in furthering the aims of self-determination. Of the over 565 federally recognized tribes in the United States, most operate some form of dispute resolution or judicial system—and all have distinct, unique histories and stories.² Little has been written about the Dakota legal systems, and it is in the spirit of tribal self-determination that we offer some foundational information.

This article focuses on the four Dakota tribal courts within the state of Minnesota.³ In Part I, we provide a basic history of Dakota tribal government in Minnesota, as well as a general overview of tribal courts. The article then explores the twentieth-century history of each Dakota tribal government, including the development of each court and the current laws that govern the tribe. Part II focuses on the Lower Sioux Indian Community. Part III focuses on the Prairie Island Indian Community. Part IV focuses on the Shakopee Mdewakanton Sioux Community, and Part V focuses on the Upper Sioux Community. The concluding section will offer some predictions as to the future development of the four courts. Readers will no doubt notice that we have more information on some tribes than others. Because there is no centralized database for compiling tribal court information, we have done our best to assess the information that is available to the public for understanding how Dakota courts work. We hope that readers will come away with a greater understanding of the significance and influence of Dakota tribal judiciaries.

Keywords

Indian law, tribal courts, Dakota tribal government, self determination

Disciplines

Indian and Aboriginal Law

Comments

This article is co-authored by John E. Jacobson.

**DAKOTA TRIBAL COURTS IN MINNESOTA:
BENCHMARKS OF SELF-DETERMINATION**

Sarah Deer[†] and John Jacobson^{††}

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Professor Frank Pommersheim has written that “[t]ribal courts are the frontline institutions that most often confront issues of American Indian self-determination and sovereignty.”¹ It is only fitting, then, that an issue devoted to the legal history and survival of Dakota people includes some information about the role Dakota tribal courts play in furthering the aims of self-determination. Of the over 565 federally recognized tribes in the United States, most operate some form of dispute resolution or judicial system—and all have distinct, unique histories and stories.² Little has been written about the Dakota legal systems, and it is in the spirit of tribal self-determination that we offer some foundational information.

This article focuses on the four Dakota tribal courts within the state of Minnesota.³ In Part I, we provide a basic history of Dakota tribal government in Minnesota, as well as a general overview of tribal courts. The article then explores the twentieth-century history of each Dakota tribal government, including the development of each court and the current laws that govern the tribe. Part II focuses on the Lower Sioux Indian Community. Part III focuses on the Prairie Island Indian Community. Part IV focuses on the Shakopee Mdewakanton Sioux Community, and Part V focuses on the Upper Sioux Community. The concluding section will offer some predictions as to the future development of the four courts. Readers will no doubt notice that we have more information on some tribes than others. Because there is no centralized database for compiling tribal court information, we have done our best to assess the information that is available to the public for understanding how Dakota courts work. We hope that readers will come away with a greater understanding of the significance and influence of Dakota tribal judiciaries.

1. Frank Pommersheim, *Tribal Courts: Providers of Justice and Protectors of Sovereignty*, 79 JUDICATURE 110, 110 (1995). Professor Pommersheim also refers to tribal courts as the “crucible” of tribal sovereignty. Frank Pommersheim, *The Crucible of Sovereignty: Analyzing Issues of Tribal Jurisdiction*, 31 ARIZ. L. REV. 329, 329 (1989).

2. MATTHEW L.M. FLETCHER, AMERICAN INDIAN TRIBAL LAW, at xxi (2011).

3. All eleven federally-recognized tribal governments in Minnesota, including the Minnesota Chippewa Tribe, operate tribal courts. Robert A. Blaeser & Andrea L. Martin, *Engendering Tribal Court/State Court Cooperation*, 63 BENCH & BAR MINN. (Dec. 2006), available at http://www2.mnbar.org/benchandbar/2006/dec06/tribal_court.htm. This article focuses on the four federally-recognized Dakota tribal communities in Minnesota. Dakota tribal courts exist in three other states as well (North Dakota, South Dakota, and Nebraska). Moreover, this article focuses on the Dakota tribes that are federally recognized by the U.S. government.

I. INTRODUCTION

A. *Dakota History in Minnesota*

The State of Minnesota⁴ was first established as a territory in 1849 and became a state in 1858.⁵ However, tribal nations and tribal bands engaged in self-governance for centuries before the first Europeans arrived in the area.⁶ The land now situated in southern Minnesota was originally home to the Mdewakanton Band of Eastern Dakota,⁷ who entered into several treaties with the United States between 1805 and 1863.⁸

Traditional Dakota government was democratic.⁹ As such, the government structures included a variety of dispute resolution structures. Restitution and reparations were traditionally the foundational principles for dispute resolution in indigenous communities.¹⁰ These long-standing practices were generally passed down orally from generation to generation.

The actions of the U.S. government before, during, and after the Dakota War of 1862 had devastating consequences for self-governing Dakota people, including widespread death, disease, and banishment from their homelands.¹¹ Rebuilding tribal governments in Minnesota was nearly impossible after the events of 1862, especially when the state government had an official anti-

4. The Dakota spelling is *Minisota* or *Mini Sota*. WAZIYATAWIN, WHAT DOES JUSTICE LOOK LIKE?: THE STRUGGLE FOR LIBERATION IN DAKOTA HOMELAND 8 (2008).

5. Minnesota Enabling Act, ch. 60, 11 Stat. 166–67 (1857).

6. *History of the Shakopee Mdewakanton Dakota*, SHAKOPEE MDEWAKANTON SIOUX CMTY., <http://www.shakopedakota.org/history.html> (last visited Nov. 6, 2012) (“The Minnesota River Valley has been home to the Dakota for hundreds of years”).

7. This band is also known as the Mississippi or Minnesota Sioux.

8. *Prairie Island Community History*, PRAIRIE ISLAND INDIAN CMTY., <http://www.prairieisland.org/community/> (last visited Oct. 14, 2012).

9. James L. Satterlee & Vernon D. Malan, *History and Acculturation of the Dakota Indians*, BULL. 613 (S.D. Agric. Experiment Station, S.D. State Univ., Brookings, S.D.), 1973, at 16.

10. For example, a 1922 manuscript recounts a Dakota procedure to correct the behavior of a man who disobeyed buffalo hunting rules, ending with the following description: “After this the councilors made a speech: a sort of sermon in which he was told that he was brave and that [he] had been treated after the manner of their ancestors and that he must stand his punishment like a man.” AMOS E. ONEROAD & ALANSON B. SKINNER, *BEING DAKOTA: TALES AND TRADITIONS OF THE SISSETON AND WAHPETON* 69 (Laura L. Anderson ed., 2003).

11. See generally WAZIYATAWIN, *supra* note 4.

Dakota policy. All four tribes—indeed, all Dakota people—share a common history of brutal oppression, war, and mass removal.

It is difficult to overstate the nature of the difficulties that Dakota people experienced in Minnesota throughout most of the twentieth century. Some Dakota people, forcibly removed from their homelands, began to rebuild governments in North Dakota, South Dakota, and Nebraska. Dakota people who remained in or returned to Minnesota faced obstacles of abject poverty, racial oppression, and a legacy of official anti-Indian policies. Yet a few sets of extended families were able to stay connected to one another despite tremendous odds. Many of these families and their descendants make up the population of today's Dakota tribes in Minnesota.

B. Tribal Court Development

The U.S. Supreme Court has acknowledged that “tribal courts are best qualified to interpret and apply tribal law.”¹² As noted earlier, tribal governments have methods of resolving disputes that date back thousands of years. Today, Indian tribes retain independent sovereign authority in the American legal system, which includes the right to make and enforce laws.¹³ The development of contemporary tribal courts in the United States has taken many forms.¹⁴ Some tribal nations developed American-style court systems in the nineteenth century.¹⁵ However, most contemporary tribal courts are twentieth century creations. The emergence of tribal courts in Minnesota is relatively recent¹⁶ when compared to tribes outside of Minnesota, with the Dakota tribal courts being the most recent development.¹⁷

The late twentieth century heralded a new era of Dakota tribal government development in Minnesota. Fundamental questions about membership (including enrollment and disenrollment) and land assignment/use began to arise with increasing frequency.

12. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987).

13. Korey Wahwassuck, *The New Face of Justice: Joint Tribal-State Jurisdiction*, 47 WASHBURN L.J. 733, 734 (2008) (“There are currently at least 350 tribal justice systems operating within Indian country”).

14. See Nell Jessup Newton, *Tribal Court Praxis: One Year in the Life of Twenty Indian Tribal Courts*, 22 AM. INDIAN L. REV. 285, 291–94 (1998).

15. See, e.g., VINE DELORIA, JR. & CLIFFORD M. LYTTLE, *AMERICAN INDIANS, AMERICAN JUSTICE* 113–16 (1983).

16. Wahwassuck, *supra* note 13, at 733.

17. *Id.* at 742–43.

Between 1988 and 1994, all four Dakota tribal nations established contemporary judicial systems. While each tribal government is an independent sovereign, there are some commonalities among the four Dakota tribal courts.¹⁸ Each Dakota tribal court was formed during a critical period of renewal for Minnesota tribes—namely, the late 1980s and early 1990s. As the four Dakota tribal governments began to acquire more economic resources, and consequently to take on more responsibilities, their need for dispute-resolution mechanisms that clearly possessed the jurisdiction to resolve tribal law questions grew as well. Fundamental questions about tribal membership, tribal land rights, relationships, and tribal governments' immunity from suit began to be raised more frequently during this time period. Without a tribal court to adjudicate these questions, some tribal members sought to litigate the questions in federal court, but federal courts generally lack jurisdiction to resolve questions of tribal law.¹⁹ It therefore became apparent to each of the four Dakota governments that effective judicial solutions to these fundamental problems would be possible only if they were decisions made under the umbrella of tribal sovereignty.

In addition, the onset of successful business development in the Dakota tribal communities in the 1980s and 1990s required the communities to address the resolution of the sorts of contemporary business issues that arise from financing, commercial transactions, and employment disputes. And, although state courts may have

18. For example, none of the four Dakota tribes in Minnesota currently exercise criminal jurisdiction. Pursuant to Public Law 53-280 (known as Public Law 280 or PL280), the state of Minnesota exercises concurrent criminal jurisdiction over reservations and trust lands in Minnesota. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588, 588-90 (codified at 18 U.S.C. § 1162, 25 U.S.C. § 1360, and in scattered sections of 18 U.S.C. and 28 U.S.C.). PL280 transferred criminal jurisdiction from the federal government to state governments in California, Wisconsin, Minnesota, Nebraska, Oregon, and Alaska. While all tribal governments in Minnesota technically retain concurrent criminal jurisdiction over Indian defendants, the expense and workload of a criminal docket has been a deterrent for Dakota communities exercising this inherent authority. As a result, most crimes that happen on Dakota lands in Minnesota are prosecuted under state jurisdiction. However, most of the constitutions are written in such a way as to allow for the exercise of concurrent reserved inherent authority in the future. *See, e.g.*, CONST. OF THE LOWER SIOUX INDIAN CMTY. IN MINN. art. V, § 3.

19. In the absence of tribal forums, attempts also were made to bring membership disputes for resolution by the Bureau of Indian Affairs with little result because that agency has been given no authority to adjudicate such questions. Likewise, state courts have no jurisdiction whatsoever over issues arising under tribal law. *See Williams v. Lee*, 358 U.S. 217 (1959).

jurisdiction over certain questions relating to the domestic relations of tribal people, the resolution of those sensitive questions can have a profound impact on the tribe itself, and having a forum that can apply tribal custom and tradition in those disputes provides enormous benefit both to the parties and to the tribe itself.

Prairie Island Tribal Judge B.J. Jones has explained that “[m]odern tribal courts have the unenviable task of doing justice in two worlds.”²⁰ Because of the unique circumstances in which tribal courts have developed, Dakota tribal judges must wrestle with more than just the current laws of the tribe. Wholesale adoption of American law and/or American procedures can result in a system that lacks credibility with the population. At the same time, some contemporary legal categories, such as commercial law or gaming law, may not have a pre-colonial parallel. In such cases, Dakota legislators and jurists often find non-binding guidance in the legal structures and decisions of non-tribal courts. Moreover, preserving and retaining jurisdiction requires that tribal judges engage with applicable state and federal law.

Family law, adoptions, citizenship, and guardianships are all examples of categories in which tribal courts have been revitalizing, codifying, and enhancing traditional, unwritten law. In such cases, a failure to understand and incorporate the unique legal status and history of each tribe may lessen the credibility (and thus the power) of the tribal court. Thus, what may appear from the outside perspective as a mere contract dispute or typical custody matter is really dredging up fundamental existential questions about the nature of the tribal government and the identity of the parties in the case. In addition, the recent development of tribal courts means that many issues may be a case of first impression for that particular court of record.

In the following sections, we consider the basic constitutional structure of each of the four Dakota tribal governments. We explore the development of the tribes’ constitutions and other governing documents.²¹ We provide an overview of each court’s

20. B.J. Jones, *Tribal Courts: Protectors of the Native Paradigm of Justice*, 10 ST. THOMAS L. REV. 87, 87 (1997).

21. A common constitutional structure emerges from these founding documents by no accident. These constitutions and bylaws were the product of the controversial Indian Reorganization Act of 1934 (IRA). Indian Reorganization Act, 25 U.S.C. §§ 461–79 (2006). Many tribal governments in the United States adopted constitutions pursuant to the IRA in the 1930s, and the typical

origin as well as information about each court's current docket. In addition, we explore some of the important decisions issued by each court. Finally, we offer some preliminary thoughts about cogent theories of jurisprudence emerging from the courts, and we highlight some potential themes to anticipate in the coming decades.

II. LOWER SIOUX INDIAN COMMUNITY

A. *Constitution*

The Lower Sioux Indian Community (LSIC) is located near Morton, Minnesota, in Redwood County.²² The LSIC Constitution was approved in 1936, pursuant to the Indian Reorganization Act (IRA), and was amended most recently in 2007.²³ The primary government entity for the LSIC is the Community Council, which is a five-member body elected, at large, by the resident members of the Community.²⁴ The LSIC Constitution outlines seventeen enumerated powers for the Council, including establishing ordinances and establishing courts.²⁵ The constitution deals in detail with such core issues as Community membership, elections, and governmental jurisdiction, and includes a lengthy article devoted to land assignments.²⁶

B. *Courts*

Tribal courts were anticipated and authorized under LSIC's original 1936 Constitution.²⁷ By the late 1980s, the LSIC (like other Dakota tribes) was wrestling with fundamental questions about tribal membership and tribal sovereign immunity. Pursuant to the constitution, LSIC created its tribal court in 1993.²⁸

constitutions (templates for which were provided by the federal government) did not include a separate judicial branch. This has presented challenges for many tribal governments who have identified a need for independent tribal courts. *See, e.g.,* Newton, *supra* note 14, at 291.

22. RESEARCH DEP'T OF THE MINN. HOUSE OF REPRESENTATIVES, INDIANS, INDIAN TRIBES, AND STATE GOVERNMENT 106 (4th ed. 2007).

23. CONST. OF THE LOWER SIOUX INDIAN CMTY. IN MINN.

24. *Id.* art. IV.

25. *Id.* art. V, § 1.

26. *Id.* art. IX.

27. *Id.* art. V, § 1(j).

28. *Tribal Courts*, MINN. AM. INDIAN BAR ASS'N, <http://www.maiba.org/tribalCourts.html> (last visited Nov. 6, 2012).

By that year, the Lower Sioux gaming business had been in existence for nine years, and because of unique issues that had arisen in the operation of the Community's tribal enterprises, LSIC leaders saw a need for a tribal court with commercial reach (including jurisdiction over workers' compensation issues and tribal business contracts).

The current LSIC Judicial Code establishes a Trial Court, Children's Court, and an Appellate Court.²⁹ The Judicial Code creates "exclusive original and appellate jurisdiction" in all matters in which the tribal government or businesses are parties.³⁰ The Judicial Code also defines the nature and extent of the Community's tribal sovereign immunity.³¹ The Judicial Code calls for three judges—an Appellate Judge, a Chief Trial Judge, and an Associate Judge—all of whom must be experienced lawyers over the age of twenty-five, and the Code provides that the LSIC Community Council may, by resolution, increase the number of Associate Judges.³² Judges may be removed by a referendum vote of the entire membership of the Community.³³

Any non-tribal member who wishes to practice law before the courts of the LSIC must be a "professional attorney" licensed to practice law before the highest court of any state.³⁴ Licenses are provided for a \$100 annual fee to those who meet the qualifications. Applicants must file an affidavit that the applicant "is familiar with the Constitution and By-laws of the Tribe, . . . Ordinances of the Tribe, Title 25 of the United States Code, and Title 25 of the Code of Federal Regulations."³⁵ The LSIC Court has created a digest of its opinions, although the Judges of the court have informed us that the digest now is somewhat dated.

29. LOWER SIOUX CMTY. IN MINN. JUDICIAL CODE § 1.01 (2010), available at <http://www.lowersioux.com/pdffiles/Judicial%20Code%20Courts%20and%20Jurisdiction.pdf>.

30. *Id.* § 1.04, subdiv. 5. The Judicial Code also explicitly provides that it shall not "be deemed to constitute acceptance of or deference to the jurisdiction of the State of Minnesota over any civil matter, where such jurisdiction does not otherwise exist." *Id.* § 1.05.

31. *Id.* § 1.06.

32. *Id.* § 1.09. Judges may be selected either by contract or appointment. *Id.* § 1.10. The Community Council has exercised its authority to increase the number of Associate Judges and has appointed one *pro tem* judge to the Trial Court.

33. *Id.* § 1.19.

34. *Id.* § 1.23.

35. *Id.* § 1.23, subdiv. 2.

The jurisdictional reach of the LSIC Tribal Court was larger at its inception than some of the other Dakota tribes because of the Community's desire to exercise authority over commercial matters (including contract disputes). The court regularly exercises jurisdiction over contract disputes that arise on the reservation.³⁶ Standing is limited to "controversies" arising within the LSIC's jurisdiction.³⁷ Since its inception, the tribal court has heard a wide variety of cases, including administrative law and civil procedure matters.

Issues involving Community members' eligibility to receive certain benefits also have been a steady presence on the court's docket, because the Community's Constitution provides that when a member has left the Community area for a period of two continuous years the member no longer is eligible to share in the Community's business income, hold a land assignment, or receive benefits from the Community's programs.³⁸ The Council, by ordinance, has made exceptions to the two-year rule for members who are in the U.S. military service, members who are in full-time education programs, and members who must be absent because of medical reasons.³⁹ The Community's Court, in *Eidsvig v. Lower Sioux Indian Community*, held that these exceptions are authorized by law,⁴⁰ but on an ongoing basis the court confronts factual disputes with respect to whether members in fact have qualified for one of those exceptions.

The LSIC Tribal Court also exercises some police authority.⁴¹ The LSIC has established a law enforcement agency and enforces its own traffic laws. The LSIC Tribal Law Enforcement Department operates on a community-policing model,⁴² and its officers are

36. See, e.g., *Thielen Leasing Inc. v. Jackpot Junction*, CIV-052, slip op. at 4 (Lower Sioux Indian Cmty. Tribal Ct. May 20, 1996) ("In determining the locus of a contract dispute, courts generally look to: 1) the place of contracting; 2) the place where the contract was negotiated; 3) the place of performance; 4) the location of the subject matter of the contract; and 5) the place of the residence of the parties.").

37. *Eidsvig v. Lower Sioux Indian Cmty.*, CIV-449-02, slip op. at 3-4 (Lower Sioux Indian Cmty. Tribal Ct. Sept. 26, 2002).

38. CONST. OF THE LOWER SIOUX INDIAN CMTY. IN MINN. art. III, § 3.

39. Lower Sioux Cmty. Council Res. No. 2-9-02.

40. CIV-449-02, slip op. at 20-21.

41. MINN. STAT. § 626.91 (2010).

42. *Tribal Law Enforcement*, LOWER SIOUX INDIAN CMTY., <http://www.lowersioux.com/d-triballaw.html> (last visited Nov. 6, 2012). Community policing is sometimes thought to be more culturally appropriate for tribal communities than traditional Anglo-American models of law enforcement.

cross-deputized with the Redwood County Sheriff's Department in an effort to provide more seamless enforcement of Minnesota criminal law. Criminal cases arising on the reservation (other than traffic offenses) are prosecuted in state court.

The LSIC Constitution was amended in 2007 to provide for tribal court jurisdiction over domestic relations, and since that time much of the court's caseload has involved working with families in the context of child-welfare proceedings.⁴³ In that context, the court and the Community's staff work closely with their counterparts in the local county governments.

One significant interpretative rule that has been elucidated by the LSIC Courts is a scheme for reliance on foreign law. In *Lower Sioux Community v. Scott*, the court clearly distinguished its own jurisprudence from that of foreign courts (including state courts):

This Court's stated order of preference for the application of case law from other jurisdictions is (1) Tribal law; (2) federal law; and (3) *if and only if* no Tribal or federal law addresses the issue, this Court will apply the rationale of laws from the state of Minnesota, *without adoption* of those laws.⁴⁴

C. *Relationship with State Courts*

The LSIC Judicial Code's Full Faith and Credit section requires that the Tribal Court honor state and tribal court final judgments for money damages.⁴⁵ As has been true for most tribal courts in Minnesota, the authority of the Lower Sioux Tribal Court has been challenged in Minnesota state courts. In *Klammer v. Lower Sioux Convenience Store*, a patron of the tribal convenience store sought to enforce a judgment from a Minnesota district court against the tribal business in state court.⁴⁶ When the Community

See generally EILEEN LUNA-FIREBAUGH, TRIBAL POLICING: ASSERTING SOVEREIGNTY, SEEKING JUSTICE (2007).

43. CONST. OF THE LOWER SIOUX INDIAN CMTY. IN MINN. art. XI.

44. No. 93-100, slip op. at 3 n.1 (Lower Sioux Cmty. Tribal Ct. Jan. 31, 1994) (emphasis added). Later, the LSIC Appellate Court admonished a plaintiff for bringing a claim under the Minnesota Human Rights Act. *Lamote v. Lohert*, No. 94-120, slip op. at 4 (Lower Sioux Indian Cmty. Ct. App. Dec. 16, 1996) ("Bringing a claim under the Minnesota Human Rights Act in this Court is akin to bringing such a claim in a Canadian Court").

45. LOWER SIOUX CMTY. IN MINN. JUDICIAL CODE § 1.08, subdiv. 1 (2010).

46. 535 N.W.2d 379, 379 (Minn. Ct. App. 1995). The Minnesota Court of Appeals found that the convenience store "is an arm of the tribal government." *Id.* at 383.

sought to have the case heard in tribal court, the district court ruled that a state court proceeding on the matter “would not interfere with the tribal counsel’s self-government or impair a right granted or reserved to reservation self-government by federal law.”⁴⁷ The Minnesota Court of Appeals subsequently reversed that judgment, holding that “unconditional access to state court” in such cases “would . . . impair the tribal court’s authority.”⁴⁸ The court of appeals applied the U.S. Supreme Court’s rule that parties must “exhaust remedies in tribal court” before challenging tribal jurisdiction in federal court⁴⁹ and agreed with the LSIC that the district court’s refusal to dismiss the state court proceeding “undermines the role of the tribal court, a vital part of the Community’s governance of reservation affairs.”⁵⁰ This 1995 victory for the LSIC in the Minnesota Court of Appeals established more certainty about the significance of tribal claims of self-governance generally.

III. PRAIRIE ISLAND INDIAN COMMUNITY

A. *Constitution*

The Prairie Island Indian Community (PIIC) is located in southeast Minnesota, adjacent to Goodhue County.⁵¹ The U.S. Secretary of Interior purchased land near Prairie Island for the benefit of some Mdewakanton tribal members in 1886.⁵² Fifty years later, the Prairie Island Community’s members adopted a written constitution pursuant to the Indian Reorganization Act, and became formally known as the Prairie Island Indian Community.⁵³ At that time, the federal government held 534 acres of land in trust for the PIIC. A corresponding corporate charter with bylaws was ratified one year later.⁵⁴

47. *Id.* at 381.

48. *Id.*

49. *Id.* at 383–84 (citing *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987)).

50. *Id.* at 381.

51. RESEARCH DEP’T OF THE MINN. HOUSE OF REPRESENTATIVES, *supra* note 22, at 110.

52. Act of June 29, 1888, 25 Stat. 217, 228–29.

53. CONST. AND BYLAWS OF THE PRAIRIE ISLAND INDIAN CMTY. IN MINN.; *see also* Roy W. Meyer, *The Prairie Island Community: A Remnant of Minnesota Sioux*, 37 MINN. HIST. 271, 278 (1961) (describing the creation of the Prairie Island Constitution).

54. CORPORATE CHARTER OF THE PRAIRIE ISLAND INDIAN CMTY. (1937); *see also* Meyer, *supra* note 53, at 278.

Like the LSIC Constitution, the PIIC Constitution was largely based upon a boilerplate IRA tribal constitution template.⁵⁵ Some of the language in the PIIC Constitution is identical to that in the LSIC Constitution (though the tribal governments are completely distinct and independent). The primary governing body for the PIIC is the Community Council, made up of five members.⁵⁶ Article V of the PIIC Constitution provides a list of enumerated powers for the Council, including establishing ordinances and courts.⁵⁷ And, like the LSIC Constitution, the PIIC Constitution contains a lengthy article devoted entirely to land assignments.⁵⁸

The PIIC Constitution recently was amended by the Community's membership to change the manner in which Community members can maintain their citizenship rights. Originally, the Community's Constitution had a strict residency requirement—providing that non-residence on the reservation would cause the member to “lose all rights and privileges to benefits of said community.”⁵⁹ But in 1991, the Community amended that provision and permitted non-residents to retain their tribal rights and privileges (other than land assignments and jury eligibility).⁶⁰

B. Courts

Tribal courts were anticipated and authorized under PIIC's original 1936 Constitution.⁶¹ The PIIC Tribal Court was established in 1994 with broad civil jurisdiction.⁶² Cases before the PIIC Court are heard in the community courtroom in Welch, Minnesota.⁶³ The court system is two-tiered, with a single judge hearing lower court cases and a three-justice panel hearing appeals at the Prairie Island Court of Appeals.

55. See *supra* note 21 and accompanying text.

56. CONST. AND BYLAWS OF THE PRAIRIE ISLAND INDIAN CMTY. IN MINN. art. IV.

57. *Id.* art. V, § 1.

58. *Id.* art. IX.

59. *Id.* art. III, § 3.

60. PK v. WK (Prairie Island Tribal Cmty. Ct. Feb. 17, 2006) (citing CONST. AND BYLAWS OF THE PRAIRIE ISLAND INDIAN CMTY. IN MINN. art. III, § 3).

61. CONST. AND BYLAWS OF THE PRAIRIE ISLAND INDIAN CMTY. IN MINN. art. V, § 1(j); *id.* art. XI.

62. See *Krepel v. Prairie Island Cmty.*, 888 F. Supp. 106, 107 (D. Minn. 1995), *vacated*, 125 F.3d 621 (8th Cir. 1997) (establishing that the PIIC Tribal Court became operational on August 31, 1994).

63. *Tribal Courts*, *supra* note 28.

Attorneys wishing to practice before the courts of the PIIC must file an affidavit stating that the attorney is licensed to practice law before the highest court of any state.⁶⁴ In addition, attorneys must be familiar with the constitution and bylaws of the Community, the Judicial Code, and all other ordinances of the Community, as well as relevant federal laws.⁶⁵ The cost for a license to practice in PIIC courts is \$100.⁶⁶ The Prairie Island Tribal Court also accommodates *pro se* litigants as well as lay Community-member advocates.⁶⁷

PIIC has given broad civil authority to its Tribal Court. The general grant of jurisdiction to the court includes authority over “all members of the Tribe, wherever located, exercising tribal rights pursuant to federal, tribal, or state law.”⁶⁸ The PIIC’s Domestic Relations Code further explicates how the concept of inherent jurisdiction guides the court’s authority: “No more important power is exercised by Indian Tribes than the power to protect and govern the domestic relations of their members.”⁶⁹

Since the constitutional eligibility for membership includes persons who do not currently reside on the PIIC Reservation,⁷⁰ it follows that many legal aspects of domestic relations of members outside the Reservation remain with the Tribal Court.⁷¹ The PIIC Tribal Court has exerted jurisdiction over domestic matters, such as divorces, even when the parties are domiciled off-reservation,⁷² and extra-territoriality jurisdiction has been explicitly upheld in at least two cases.⁷³

Like LSIC, PIIC employs a police force, which is cross-deputized with the local county authorities. Non-traffic criminal offenses are referred to state court, which exercises jurisdiction over tribal lands pursuant to Public Law 280.⁷⁴

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. PRAIRIE ISLAND MDEWAKANTON DAKOTA CMTY. JUDICIAL CODE tit. 1, ch. 2, § 1(c).

69. *Id.* tit. 3, intro., § 1.

70. See CONST. AND BYLAWS OF THE PRAIRIE ISLAND INDIAN CMTY. IN MINN. art. III, § 3; PK v. WK, at 6 (Prairie Island Tribal Cmty. Ct Feb. 17, 2006).

71. PK, at 8.

72. See, e.g., *id.*

73. See *id.*; Johnson v. Child Welfare Office, CA-06-05 (Prairie Island Tribal Cmty. Ct App. Feb. 14, 2006).

74. See *supra* note 18.

The current judge of the PIIC Tribal Court is Professor B.J. Jones, who has extensive tribal judicial experience.⁷⁵ Today, the court hears about 500 cases a year, with a heavy children's docket.⁷⁶ The court also hears collections actions, conservatorships, and contract disputes.⁷⁷

C. *Relationship with State Courts*

Prairie Island has a full faith and credit law, and the trial court has received cases that have been transferred from the state court system (including wage garnishment cases from county courts).⁷⁸ The Prairie Island Tribal Court's jurisdiction has also survived challenges in other state courts. *Johnson v. Jones* is an example.⁷⁹ That case was filed in Middle District Court of Florida in 2005. Two parents (father was a tribal member and mother was not) challenged the Prairie Island Tribal Court's assertion of jurisdiction over their children in a child protection proceeding. Despite the fact that the family was domiciled off the reservation, the Florida judge found that the state courts lacked jurisdiction over the case. The state court considered tribal inherent sovereignty in deciding the case, noting that "[a] custody dispute involving an Indian child 'lies at the core' of a tribe's sovereignty."⁸⁰

IV. SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

A. *Constitution*

The initial reservation land for the Shakopee Mdewakanton Sioux Community (SMSC) was established in the late 19th century.⁸¹

75. Interview with B.J. Jones, Tribal Court Judge and Director, Tribal Judicial Institute at the University of North Dakota School of Law, 2 J. CT. INNOVATION 367 (2009).

76. E-mail from B.J. Jones, Chief Judge, Prairie Island Tribal Court, to Sarah Deer, Assistant Professor of Law, William Mitchell Coll. of Law (Aug. 23, 2012, 13:00 CST) (on file with author); see also *Tribal Courts*, *supra* note 28 (noting that the court has a "relatively light civil litigation docket").

77. E-mail from B.J. Jones, *supra* note 76.

78. *Tribal Courts*, *supra* note 28.

79. No. 6:05-CV-1256 (ACC/KRS) (M.D. Fla. Nov. 3, 2005).

80. *Id.* at 3-4 (quoting *John v. Baker*, 982 P.2d 738, 758 (Alaska 1999)).

81. Act of Mar. 3, 1863, ch. 119, § 5, 12 Stat. 819; Act of Feb. 16, 1863, ch. 37, § 9, 12 Stat. 652, 656. These two laws allocated money and land within Minnesota's borders to the loyal Mdewakanton Sioux and their descendants. See also Act of Aug. 19, 1890, 26 Stat. 336 (providing more money for loyal Mdewakanton Sioux); Act of Mar. 2, 1889, 25 Stat. 980. Some of the money

The land now lies within the boundaries of the City of Prior Lake in Scott County.⁸² SMSC established its contemporary constitution in 1969.

The SMSC Constitution stresses the Community's sovereignty and its power of self-determination as central tenets.⁸³ The legislative body of the Community is the General Council, which is composed of all enrolled members who are at least age eighteen.⁸⁴ The day-to-day operations of the tribal government are managed by the Community's Business Council, which is a three-person board elected, at large, by the Community's membership.

Economic development for the SMSC began to emerge in the mid-1980s with the success of the Little Six Bingo Palace,⁸⁵ and today SMSC is one of the most economically self-sufficient tribal nations in the United States.⁸⁶ The Community has entered into extensive intergovernmental agreements with local municipalities and counties.⁸⁷ The area economy has benefited greatly from the SMSC's contributions to road construction projects and local government programs.⁸⁸ In addition, the SMSC is well known for its many charitable contributions to organizations and tribal governments throughout the United States. When longtime Chairman Stanley Crooks passed away in August 2012, his leadership was lauded as a shining example of tribal entrepreneurship and generosity. The Star Tribune obituary noted:

appropriated for loyal Mdewakanton was used to purchase land at Prior Lake in the 1880s.

82. See RESEARCH DEP'T OF THE MINN. HOUSE OF REPRESENTATIVES, *supra* note 22, at 114.

83. See *Sovereignty*, SHAKOPEE MDEWAKANTON SIOUX CMTY., <http://www.shakopeedakota.org/sovereignty.html> (last visited Nov. 6, 2012).

84. See CONST. OF THE SHAKOPEE MDEWAKANTON SIOUX CMTY. IN MINN. art. III-V.

85. *History of the Shakopee Mdewakanton Dakota*, SHAKOPEE MDEWAKANTON SIOUX CMTY., <http://www.shakopeedakota.org/history.html> (last visited Nov. 6, 2012).

86. *Shakopee Mdewakanton Celebrate 40 Years as a Federally Recognized Indian Tribe*, SHAKOPEE MDEWAKANTON SIOUX CMTY. (Dec. 29, 2009), <http://www.shakopeedakota.org/newsroom/press-releases/2009/shakopee-mdewakanton-celebrate-40-years-federally-recognized-indian-tribe>. The proximity of the SMSC's reservation to the Twin Cities of Minneapolis/St. Paul has played a significant role in the economic success of the tribe. See Laura J. Smith, *Native Land Acquisition in the Minnesota River Valley*, 17 GREAT PLAINS RES. 155, 156 (2007).

87. See *About the Mdewakanton Dakota*, *supra* note 81.

88. *Id.*

Crooks also was known for encouraging his community to be generous in sharing the wealth it built from casino earnings. Thanks in part to his leadership, tribe members approved community donations of more than \$243 million to tribes and charitable organizations, and tribal loans of more than \$450 million for economic development and community development.⁸⁹

B. Courts

Plans for an SMSC tribal court began to develop during intra-tribal disputes, centering on the rights of Community members, in the late 1980s. The court became an official government entity in February 1988.⁹⁰ The preamble to the Tribal Court's authorizing ordinance explains some of the problems that had been ongoing:

The Shakopee Mdewakanton Sioux Community has recently been torn by disputes which the BIA [(Bureau of Indian Affairs)] cannot help us resolve and . . . the personal and political stress generated by these disputes makes government of tribal affairs and day to day life difficult . . .⁹¹

One of the most central concerns of the Community in creating its court was ensuring the court's independence. Given the political climate and the recent history of conflict, the developers of the court foresaw the possibility that attempts might be made to exert political influence over the court. To avoid this, the framers of the Court Ordinance created lifetime tenure for the court's judges (subject to removal, for cause, only by a two-thirds vote of the entire General Council).⁹²

The original Court Ordinance created a court with three judges. Until 2010, the court operated a flexible appellate scheme. If a single judge heard the initial case, an appeal could be heard by the panel of all three judges. However, if three judges heard a case *en banc*, which the Tribal Court Ordinance permitted, there was no appeal. The Court Ordinance was amended in 2010 to authorize

89. Nicole Norfleet, *Obituary: Stanley Crooks Led Tribe to National Influence*, STAR TRIB., Aug. 26, 2012, <http://www.startribune.com/local/minneapolis/167445535.html?refer=y>.

90. SHAKOPEE MDEWAKANTON SIOUX CMTY. ORDINANCE 02-13-88-01 (1988). This was the first establishment of a contemporary Dakota tribal court in Minnesota.

91. *Id.*

92. *Id.* § IV.

the appointment of two *pro tem* judges, who are “on call” to hear cases at the trial level if the three full-time judges have recused themselves, and who also are available to sit on appellate panels.⁹³

In the nearly twenty-five years of its existence, the SMSC Court has developed a reporter system, a digest of its opinions, and a citator. At present, the court has published four volumes of trial court opinions and two volumes of appellate court opinions. Copies of the reporters, the digest, and the citator have been placed in the libraries of each of the four Minnesota law schools; in the law libraries of the U.S. Court of Appeals for the Eighth Circuit and the U.S. District Court for the District of Minnesota; and the law libraries of Scott, Dakota, Hennepin, and Ramsey Counties. Copies of the reporter and digest system also can be purchased from the SMSC Clerk of Court.

Custom and tradition have the force of law in the SMSC Tribal Court. Some cases in Shakopee have involved expert testimony from elders about matters including government and membership. Attorneys wishing to practice before the courts of the SMSC must file an affidavit stating that the attorney is licensed (and in good standing) to practice law before the highest court of any state or the District of Columbia.⁹⁴

Originally, the SMSC General Council limited the Community’s Court’s jurisdiction to the sorts of disputes that the Community had been dealing with throughout the 1980s—disputes over membership (enrollment and disenrollment), the rights of members, the sovereign immunity of the Community’s government, and other fundamental legal issues.⁹⁵ For the first six years of the court’s operation, the SMSC Court used this jurisdiction to resolve many of these long-standing internal disputes. And in 1992, the SMSC Court declared a portion of an ordinance that had been adopted by the Community’s General

93. Shakopee Mdewakanton Sioux Cmty. Res. 05-11-10-015 (2010) (amending SHAKOPEE MDEWAKANTON SIOUX CMTY. ORDINANCE 02-13-88-01).

94. *Tribal Courts*, *supra* note 28.

95. See SHAKOPEE MDEWAKANTON SIOUX CMTY. ORDINANCE 02-13-88-01, § 2 (authorizing the tribal court to exercise “original and exclusive jurisdiction” over controversies arising out of the Constitution, bylaws, ordinances, resolutions pertaining to (1) membership, (2) voter eligibility, and (3) legislative procedure). The Ordinance also authorized jurisdiction over controversies arising out of the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301–41 (2006). *Id.*

Council to be unconstitutional, establishing the rule of judicial review.⁹⁶

After 1992, the Community's General Council periodically augmented the court's jurisdiction, adding workers' compensation jurisdiction, tort and contracts jurisdiction, domestic relations jurisdiction, and, most recently, the jurisdiction to appoint and supervise conservators. As a consequence, although the court still occasionally is presented with issues involving the rights of Community members, the vast bulk of the court's caseload now concerns Children's Court and domestic-relations matters.

C. *Relationship with State Courts*

Shakopee honors state court decisions, through Rule 34 of the SMSC Court's Rules of Civil Procedure.⁹⁷ In one case, which was ultimately heard by the Community's Court and then by the U.S. District Court for the District of Minnesota and the U.S. Court of Appeals for the Eighth Circuit, former employees of Little Six, Inc. sued a corporation in the Community's Court for retirement benefits they claimed had been authorized by the Community.⁹⁸ The plaintiffs won their case in Shakopee's Trial Court but lost before the SMSC Court of Appeals.⁹⁹ The plaintiffs then sought redress in the U.S. District Court for the District of Minnesota, which declined to defer to the final judgment of the Community's Appellate Court.¹⁰⁰ In turn, the district court was reversed by the Eighth Circuit, which held that "[t]he tribal appeals court properly determined that the legal status of the LSI draft benefit plans was a matter governed by tribal law."¹⁰¹

V. UPPER SIOUX COMMUNITY

A. *Constitution*

Original Dakota lands were returned to some Mdewakanton Dakota people in 1938, creating the Upper Sioux Community

96. *Ross v. Shakopee Mdewakanton Sioux Cmty.*, 1 Shak. T.C. 86, 88 (1992).

97. SHAKOPEE MDEWAKANTON SIOUX CT. R. CIV. P. 34 (1997).

98. *Prescott v. Little Six, Inc.*, 387 F.3d 753, 754 (8th Cir. 2004).

99. *In re Trust Under Little Six, Inc. Ret. Plans v. Little Six, Inc.*, 4 Shak. T.C. 57, 72 (Mar. 29, 2000), *rev'd* 1 Shak. A.C. 182, 189 (Oct. 26, 2001).

100. *Prescott v. Little Six, Inc.* 284 F. Supp. 2d 1224, 1232 (D. Minn. 2003).

101. *Prescott*, 387 F.3d at 757.

(USC).¹⁰² The reservation is located in Yellow Medicine County, near present-day Granite Falls, Minnesota.¹⁰³ Upper Sioux tribal members refer to their land as *Pejuhutazizi K'api Makoce*.¹⁰⁴

The current USC Tribal Constitution was adopted in 1995.¹⁰⁵ A five-member Board of Trustees, elected for staggered four-year terms, is the Community's primary governing body.¹⁰⁶ The tribal government established its first gaming operation in 1990 by opening the Firefly Creek Casino.¹⁰⁷ Since that time, USC has utilized its financial resources to leverage the acquisition of additional ancestral lands.

B. Courts

The USC Constitution does not explicitly authorize a tribal court system, so the USC Court has been created by ordinance.¹⁰⁸ Tribal courts at Upper Sioux were established by the Upper Sioux Community Judicial Code in 1994, largely to deal with commercial disputes that had arisen from the operation of the Community's gaming enterprise.¹⁰⁹ The Community's extensive judicial code includes provisions for court funding, jurisdiction, staffing, an

102. *Our History*, UPPER SIOUX COMMUNITY, <http://www.uppersiouxcommunity-nsn.gov/pages/history.htm> (last visited Nov. 6, 2012).

103. RESEARCH DEP'T OF THE MINN. HOUSE OF REPRESENTATIVES, *supra* note 22, at 116.

104. *Our History*, *supra* note 102 (explaining that this translates to "the place where they dig for yellow medicine"); *see also* KYLE E. SCHERER & GIDEON A. VALKIN, WINDS OF CHANGE: CONSTITUTIONAL REFORM AND THE UPPER SIOUX INDIAN COMMUNITY 9 (2004), *available at* http://isites.harvard.edu/fs/docs/icb.topic177572.files/Winds_of_Change_UpperSioux_membership.pdf ("Today, the Dakota still dig for the yellow root along the banks of the [Minnesota] [R]iver, just as they've been doing for thousands of years."); WAZIYATAWIN, *supra* note 4, at vii.

105. CONST. OF THE UPPER SIOUX CMTY.

106. *Id.* § 4. The constitution authorizes the Board of Trustees to exercise governmental and business authority. *Id.* §§ 8–9. Enumerated government powers of the Board of Trustees include the power to represent the Community and employ legal counsel. *Id.* § 8. Business powers include administering Community funds and making recommendations to the Bureau of Indian Affairs regarding "land assignments, cancellations, leases, buildings and land resources pertaining to the land of the Upper Sioux Reservation." *Id.* § 9(A), (G).

107. *See Tribal Enterprises*, UPPER SIOUX CMTY., <http://www.uppersiouxcommunity-nsn.gov/pages/history.htm> (last visited Nov. 6, 2012). The casino today is known as Prairie's Edge Casino Resort. *Id.*

108. UPPER SIOUX CMTY. JUDICIAL CODE tit. I, ch. 1, § 1.

109. Telephone Interview with Leif Rasmussen, Legal Counsel, Upper Sioux Indian Cmty. (Aug. 20, 2012).

appellate court structure, attorney licensing, and court costs.¹¹⁰ Cases are commenced in the Upper Sioux Trial Court and can be appealed to the Upper Sioux Court of Appeals.¹¹¹

The caseload of the USC Court is relatively light. Typically, the trial court convenes twice a month. Its docket consists primarily of child custody proceedings, collection matters, contract disputes, and occasionally a marriage dissolution or probate proceeding. In addition, the court hears traffic offenses involving USC members.¹¹²

Both attorneys and lay advocates may appear before the USC Court. To obtain a license to practice before the court, applicants must be familiar with Upper Sioux law and Title 25 of the United States Code.¹¹³ Attorneys also must be admitted to practice in the highest court of any state.

C. *Relationship with State Courts*

The Upper Sioux Court Code “contemplates granting full faith and credit to state court orders, if there is reciprocity from those Courts.”¹¹⁴

VI. DAKOTA COURT-STATE COURT RELATIONSHIPS

The recognition of the Dakota tribal courts by state and federal courts has been somewhat inconsistent. In 1996, the Minnesota Supreme Court expressed significant deference to tribal courts for certain disputes arising in Indian country.¹¹⁵ However, the current Minnesota Rules grant state court judges significant discretion in enforcing tribal court opinions that do not fall under a federal mandatory category.¹¹⁶ The rule is thus based on the concept of “comity” rather than full faith and credit. When compared to other states, the Minnesota rule has been called a

110. UPPER SIOUX CMTY. JUDICIAL CODE tit. I.

111. *Tribal Courts*, *supra* note 28.

112. Telephone Interview with Leif Rasmussen, Legal Counsel, Upper Sioux Indian Cmty. (Sept. 10, 2012).

113. *Tribal Courts*, *supra* note 28.

114. *Id.*

115. *Gavle v. Little Six, Inc.*, 555 N.W.2d 284, 291 (Minn. 1996) (quoting *Williams v. Lee*, 358 U.S. 217, 223 (1959)) (noting that state court abstention is appropriate when the exercise of state court jurisdiction would “undermine the authority of the tribal courts over Reservation affairs” or “infringe on the right of Indians to govern themselves”).

116. MINN. GEN. R. PRAC. 10.02.

“tentative stance.”¹¹⁷ These rules acknowledge that recognition and enforcement of tribal court decisions is required by federal law in certain circumstances.¹¹⁸ One factor that state courts may consider in deciding whether to enforce a tribal court order is “whether the tribal court reciprocally provides for recognition and implementation of orders, judgments and decrees of the courts of this state.”¹¹⁹

There is clearly interest among the Minnesota state and tribal judiciary to work cooperatively toward solutions that arise in cases of concurrent jurisdiction. The Minnesota Tribal Court/State Court forum was created in 1997 to enhance communication between tribal and state court judges.¹²⁰ The forum drafted a “proposed full faith and credit rule” for Minnesota and presented it to the Minnesota Supreme Court in 2002.¹²¹ This proposed rule was ultimately rejected by the Supreme Court in favor of the current Rule 10. The Minnesota State/Tribal Judicial Forum continues to meet regularly, indicating ongoing efforts to refine or reform rules.

VII. CONCLUSION

“American Indians in Minnesota are living in exciting times. Tribal people have the financial seeds of prosperity planted and the knowledge to use them wisely for the betterment of all humanity.”¹²²

The contemporary Dakota courts in Minnesota exemplify the commitment that Mdewakanton Dakota people have to self-determination. A judiciary reflects the fundamental legitimacy of a sovereign government, not based solely on power, but based on the

117. Kevin K. Washburn & Chloe Thompson, *A Legacy of Public Law 280: Comparing and Contrasting Minnesota's New Rule for the Recognition of Tribal Court Judgments with the Recent Arizona Rule*, 31 WM. MITCHELL L. REV. 479, 481 (2004).

118. “Where mandated by state or federal statute, orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe shall be recognized and enforced.” MINN. GEN. R. PRAC. 10.01.

119. *Id.* at 10.02(a)(9).

120. Blaeser & Martin, *supra* note 3, at 18; *see also* Wahwassuck, *supra* note 13, at 743 (discussing the first working groups created by the Minnesota Tribal-State Forum). For an overview of the tribal court-state court model, see H. CLIFTON GRANDY & H. TED RUBIN, *TRIBAL COURT-STATE COURT FORUMS* (1993).

121. Blaeser & Martin, *supra* note 3, at 18.

122. Thomas D. Peacock & Donald R. Day, *Nations Within a Nation: The Dakota and Ojibwe of Minnesota*, DAEDALUS, Summer 2000, at 155.

ability to solve difficult internal problems.¹²³ Moreover, a judiciary is a core representation of self-government to the outside world. The key to sustaining and strengthening self-determination lies in the ability of a government to resolve disputes internally and secure protection for vulnerable citizens. Tribal courts also necessarily influence the way that tribal governments conduct both internal and external business. With the development of independent tribal courts, elected leaders can now focus more directly on their roles in making and enforcing laws, rather than resolving disputes. Hence, the development and sustainment of the four Dakota Communities' tribal courts also reflect the legitimacy of the Communities themselves. All of these attributes are central to the continued success of Dakota people.

123. See Christine Zuni, *Strengthening What Remains*, 7 KAN. J.L. & PUB. POL'Y 17, 18 (1997) ("Tribal courts exist primarily to advance tribal people").