Contents

Ac	page xiii	
	Introduction o.i Division of the Book o.2 A Note on Terminology	1 3 3
	PART I FROM SOVEREIGNS TO WARDS: THE HISTORY OF TRIBAL NATIONS AND THE LAW	
Ι	The Original American Governments 1.1 The First Americans 1.2 Early North American Civilizations 1.3 Indigenous Institutions	7 7 9 17
2	"Discovering" and "Founding" America 2.1 Voyaging to America and the Law of Discovery 2.2 Spain and Indigenous People 2.3 Britain's American Colonies 2.4 The Pequot War 2.5 King Philip's War	23 23 26 30 34 35
3	Commerce and Culture 3.1 Indians and Guns 3.2 The Birth of Indian Horse Cultures 3.3 A New Way of Life	38 39 43 47
4	World War and American Revolution 4.1 Enter George Washington 4.2 The French and Indian War 4.3 The Seeds of Rebellion 4.4 The Revolution Begins	52 53 54 55 57
5	Governing the United States and Tribal Rights 5.1 Tribal Resistance	61 62

x Contents

	5.2 Indian Tribes and the United States Constitution	66
	5.3 The Creek Treaty	69
	5.4 From Treaties to Trading Posts	71
	5.5 Title to Indian Lands	74
6	Indian Removal and the Cherokee Cases	79
	6.1 The Cherokee and Georgia	80
	6.2 Andrew Jackson and Indian Removal	83
	6.3 Removal in Motion	88
	6.4 Is the Cherokee Nation a "Nation"?	89
	6.5 The Laws of Georgia Can Have No Force	94
7	Reservations and Federal Power	98
	7.1 Fading Treaties	98
	7.2 The Last of the Indian Wars	100
	7.3 Reservation Life	103
	7.4 Indian Blood and Tribal Citizenship	105
	7.5 Spotted Tail, Crow Dog, and Tribal Law7.6 Criminal Law, Assimilation, and Plenary Power	108
		II2
8	Allotment and Assimilation	117
	8.1 The General Allotment Act	118
	8.2 Tribal Consent Not Needed	120
	8.3 Accelerating Allotment	123
	8.4 The Last Arrow but Still an Indian 8.5 Indian Boarding Schools	125
		127
9	The Indian New Deal to Tribal Termination	131
	9.1 Jim Thorpe	131
	9.2 Indian Citizenship and the Great War	133
	9.3 The Indian New Deal 9.4 World War II	136
	9.4 World War II 9.5 The Tribal Termination Era	139
	9.6 "Every American School Boy Knows"	141 144
	Tribal Self-Determination	
10		146
	10.1 Sheep and Sovereignty10.2 Buffalo Tiger and Fidel Castro	146
	10.3 Indians in the Great Society	149 152
	10.4 Tribal Self-Determination	154
	10.4	-) -
	PART II SELF-DETERMINATION MEETS PATERNALISM	
ΙΙ	An Unfit Guardian: Ongoing Federal Paternalism	161
	11.1 The Federal Government and Peabody Coal v. Navajo Nation	162
	11.2 The Largest Class Action in United States' History	166
	11.3 The Supreme Court Shields the Federal Government Again	169
	11.4 Double Standard for Tribal Governments	170
12	Excessive Federal Bureaucracy	174
	12.1 Trust Land	175
	12.2 Land Fractionation	177

Contents xi

	12.3	The HEARTH Act	179
	12.4	Rights-of-Way Indian Trader Regulations	181
		Natural Resource Development	
		Gaming	185 187
I 3		inal Justice Crisis	190
1 3	13.1	Indian Country's Peculiar Jurisdictional Regime	190
	13.2		191
	,	Consequences Don't Matter	192
	13.3	Duro v. Reina: Stretching Oliphant Further	200
	13.4	Minor Public Safety Improvements	201
	13.5	The Jurisdictional Quagmire	204
14	Triba	al Economic Development and Uncertain	
	Civil	Jurisdiction	210
	14.1		212
	14.2	The Path Is Not Clear: Dollar General v. Mississippi Band of	
		Choctaw Indians	216
	14.3	Taxation or Theft?	221
	14.4	What Is Legal?	223
	14.5	Tribal Sovereignty and the Digital Frontier	225
		PART III BECOMING NATIONS AGAIN	
I 5	Feder	ral Recognition	23I
	15.1	· ·	231
	15.2	e e	233
	15.3	The second secon	235
	15.4	The Coushatta Journey	237
	15.5	The Houma's Ongoing Quest	241
16		torial Jurisdiction	249
	16.1	0 ,	249
	16.2	1 0	251
	16.3	3	256
	16.4 16.5	Jurisdiction over Noncitizens Why Tribes Should Have Criminal Jurisdiction	259
	10.5	over Non-Indians	262
17	Triba	l Legal Institutions	266
-/	17.1	Tribal Law	267
	17.2	Tribal Courts	271
	17.3	Tribal Legal Bureaucracy	274
	17.4		277
	17.5	a t i mutter i i	278
	17.6	Tribal Institutions and Economic Development	279
18	Tribe	es as Nations	282
	18.1	State Opposition	283
	т8.2	Tribal Self-Governance and the Federalist System	287

xii Contents

	18.3	Tribal Sovereignty Can Benefit States	288
	18.4	Tribes as Shields from State Protectionism	289
	18.5	Tribal Self-Governance and a Mississippi Miracle	291
19	Education, Ethics, and the Law		295
	19.1	The Education System	295
	19.2	Recognizing a Civil Rights Trailblazer	297
	19.3	Legal Education and Tribal Sovereignty	300
	19.4	Legal Ethics	305
	Conclusion		309
Ind	lex		311