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Foreword

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FOREWORD

A ‘Coyote Warrior’ and the ‘Great Paradoxes,’ the Scholarship of Professor Raymond Cross

Monte Mills*

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“How these paradoxes play out in real people’s lives is not simply a story about Indians. It is the story of America, a story about all of us. How we resolve these great paradoxes is our own Age of Discovery, one that asks all Americans, ‘After the storms, who are we?’”

Raymond Cross¹

I. INTRODUCTION

Indian law is home to virtually innumerable paradoxes. Indeed, the field’s foundations were laid by Chief Justice John Marshall’s struggle to reconcile the presence of indigenous societies, which had exercised territorial, governmental, and cultural sovereignty in the “New World” since time immemorial, with the doctrines of European colonists who

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1. PAUL VANDEVELDER, *COYOTE WARRIOR: ONE MAN, THREE TRIBES, & THE TRIAL THAT FORGED A NATION* 8 (2004). From poets, religious scholars, and Charles Darwin to Chief Plenty Coups, nearly every one of Raymond Cross’ scholarly works begins with a thought-provoking quote. Thus, it is only fitting to begin this issue with his own words.

ascribed to an incongruent notion of superior governmental authority.² The subsequent centuries of federal policy, United States Supreme Court precedent, and tribal nation building have deepened and complicated many of these challenges. One need only look at recent headlines,³ decisions of the Supreme Court,⁴ and the actions of tribal governments to see these paradoxes play out in the present day.⁵

Raymond Cross has long lived and worked in this world of paradoxes. A member of the Three Affiliated Mandan, Hidatsa, and Arikara Tribes of North Dakota (Three Affiliated Tribes or MHA Nation), Cross was born in Elbowoods, North Dakota,⁶ in the heart of the Tribes' world.⁷ Elbowoods lay in the fertile Missouri River valley near the center of the MHA Nation's Fort Berthold Reservation.⁸ Just before his birth, Congress authorized construction of Garrison Dam, which, following its completion in the early 1950s, held back the mighty Missouri River, flooding Cross' birthplace, family home, and over 150,000 acres of the MHA Nation's treaty-reserved homelands.⁹ Cross' father, Martin Cross, led the Three Affiliated Tribes' fight against the dam as the Tribes' Chairman, passionately demanding that Congress recognize the Tribes' rights to the lands that would be lost.¹⁰ Thereafter, Chairman Cross took on the federal government's termination policy, particularly when Congress considered the MHA Nation for termination of its tribal status.¹¹

2. See, e.g., *Johnson v. M'Intosh*, 21 U.S. 543, 591–92 (1823) (recognizing that “converting the discovery of an inhabited country into conquest” appears an “extravagant . . . pretension”).

3. See, e.g., Paul VanDevellder, *Reckoning at Standing Rock*, HIGH COUNTRY NEWS (Oct. 28, 2016), <http://www.hcn.org/articles/Reckoning-at-Standing-Rock>.

4. See, e.g., *Lewis v. Clarke*, 581 U.S. ____, 137 S. Ct. 1285 (2017) (refusing to extend tribal sovereign immunity to an individual tribal employee).

5. See, e.g., Justin Franz, *Critics Emerge as BIA Reviews New Blackfeet Constitution*, FLATHEAD BEACON (Sept. 12, 2016), <http://flatheadbeacon.com/2016/09/12/critics-emerge-bia-reviews-new-blackfeet-constitution/>; see also *Constitution*, BLACKFEET NATION, <http://blackfeetnation.com/government/constitution/> (last visited Nov. 14, 2016).

6. VANDEVELDER, *supra* note 1, at 138.

7. See, e.g., ELIZABETH A. FENN, *ENCOUNTERS AT THE HEART OF THE WORLD: A HISTORY OF THE MANDAN PEOPLE* (2015).

8. VANDEVELDER, *supra* note 1, at 16.

9. MICHAEL L. LAWSON, *DAMMED INDIANS REVISITED: THE CONTINUING HISTORY OF THE PICK-SLOAN PLAN AND THE MISSOURI RIVER SIOUX 52* (2009).

10. See, e.g., VANDEVELDER, *supra* note 1, at 114–38.

11. *Id.* at 163–73.

Thus, from his earliest days, Raymond Cross existed within and was affected by federal Indian law and policy. It is no surprise that he picked up the fight on behalf of his people as an attorney, leading an effort to ensure that Congress recognized the Three Affiliated Tribes' claims to damages and promised water development projects that never materialized following construction of Garrison Dam.¹² Those efforts ultimately resulted in Congress providing for nearly \$150 million in compensation for the Tribes' losses.¹³ The decades-long fight to secure rightful compensation for the flooding of the MHA Nation's homeland is simply one example of how Cross dedicated his career to fighting for Indian Country—first, as an attorney working for Indian tribes and tribal people, then, as a professor, teaching and inspiring others while researching and writing as a scholar of Indian law.¹⁴

This special issue of the Public Land & Resources Law Review is dedicated to this latter phase of Raymond Cross' career, his scholarly work. In the pieces republished here, Cross takes on paradoxes at the core of federal Indian law; the federal trust responsibility,¹⁵ protecting the connection to indigenous lands,¹⁶ and the exercise of tribal sovereignty to promote economic success.¹⁷ In addressing each of these complex topics, Cross inspires current and future leaders in the field while drawing on his deep experience and skills as a practitioner, not just theorist, of the law. As such, this collection is far more than simply a well-deserved tribute that preserves two decades of insightful Indian law scholarship. Rather, this volume serves as a gathering place for Cross' broad-ranging wisdom and intellect, providing readers with a contemporary context and enduring analysis of the modern challenges posed by the 'great paradoxes' of Indian law.

12. *Id.* at 201–19.

13. See Title XXXV of the Reclamations Projects Authorization and Adjustment Act of 1992, Pub. L. No. 102-575, 106 Stat. 4731 (Oct. 30, 1992).

14. For a biography of Professor Cross and his family, see generally VANDEVELDER, *supra* note 1.

15. Raymond Cross, *The Federal Trust Duty in an Age of Indian Self-Determination: An Epitaph for a Dying Doctrine?*, 39 TULSA L. REV. 369 (2003) [hereinafter *Epitaph for a Dying Doctrine?*].

16. Raymond Cross, *Sovereign Bargains, Indian Takings, and the Preservation of Indian Country in the Twenty-First Century*, 40 ARIZ. L. REV. 425 (1998) [hereinafter *Sovereign Bargains*]; Raymond Cross, *Development's Victim or its Beneficiary?: The Impact of Oil and Gas Development on the Fort Berthold Indian Reservation*, 87 N.D. L. REV. 535 (2011) [hereinafter *Victim or Beneficiary?*].

17. Raymond Cross, *Tribes as Rich Nations*, 79 OR. L. REV. 893 (2000) [hereinafter *Tribes as Rich Nations*]; *Victim or Beneficiary?*, *supra* note 16.

Most critically, readers will gain new perspective on present-day conflicts over natural resources, which often implicate rights to land reserved by tribes through treaties and which may threaten the connections between tribal communities and their current or traditional land base. Similarly, the works in this collection highlight the problems and possibilities of tribal self-determination, including the challenges of effectively exercising tribal sovereignty and the limitations of the federal trust responsibility to tribes. The remainder of this introduction briefly contextualizes each of these themes so readers can draw these and other connections to the work republished herein.

II. PARADOX I: NATURAL RESOURCE CONFLICTS

Conflicts over land and natural resources have helped define federal Indian law from its very origin.¹⁸ Land and the respective rights of tribes and non-Indians to occupy and possess it drove the negotiation of many treaties entered into by and between tribes and the young federal government until the end of formal treaty-making in 1871.¹⁹ The solemn bargains represented in the language of each treaty not only outlined the rights and responsibilities reserved by each party but also marked a meeting of the minds over how two distinct worldviews might interact and coexist. As the aboriginal inhabitants of the land, Indian tribes and their members sought to maintain and protect their ways of life by reserving their rights to their lands and traditional activities, such as fishing and hunting, throughout their territory.²⁰ On the other hand, at least initially, the young federal government sought certainty, protection, and largely negotiated with tribes on the same basis as international allies.²¹

Implicitly imbedded in the tribal reservation of lands and rights in each treaty is the preservation of tribal cultural and spiritual connections to the natural world. The creation stories of the Three Affiliated Tribes, as an example, tell of Lone Man and First Creator selecting the lands of

18. *See, e.g.*, *Johnson v. M'Intosh*, 21 U.S. 543 (1823).

19. *See* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 1.03[1], at 23–30 (Nell Jessup Newton, ed. 2012).

20. *See, e.g.*, Treaty between the United States and the Flathead, Kootenay, and Upper Pen d'Oreilles Indians art. 3, July 16, 1855, 12 Stat. 975 (reserving to the Tribes the right of “taking fish at all usual and accustomed places”).

21. *See, e.g.*, *Worcester v. Georgia*, 31 U.S. 515, 551 (1832) (“When the United States gave peace, did they not also receive it? Were not both parties desirous of it? If we consult the history of the day, does it not inform us that the United States were at least as anxious to obtain it as the Cherokees? We may ask, further: did the Cherokees come to the seat of the American government to solicit peace; or, did the American commissioners go to them to obtain it?”).

the Fort Berthold Reservation “as the tribal people’s permanent homelands.”²² The Tribes reserved their rights to the area in the 1851 Treaty of Fort Laramie, which, as described by one commentator, represented “a formal recognition of what had been an informal arrangement since the fifteenth century . . . enclos[ing] 12 million acres containing many of the tribe’s sacred sites and traditional hunting grounds.”²³ This land base, though reduced by subsequent agreement to form the present day reservation of the MHA Nation,²⁴ is central to the cultural and legal identity of the Tribes. Indeed, the Fort Berthold Reservation is like all Indian lands that, “form[] the basis for social, cultural, religious, political, and economic life for American Indian nations.”²⁵

In the 20th Century, the Supreme Court explicitly opened the door for Congress to abrogate treaty promises without regard for tribal input or consent.²⁶ Concurrently, the federal government pursued a policy of allotment and assimilation, which, from 1887 to 1934, resulted in the loss of 90 million acres of tribal land, nearly two-thirds of tribal land base at the time.²⁷ Though the 1934 Indian Reorganization Act ended allotment and restored some unallotted and unsettled lands to tribes,²⁸ challenges to tribal land ownership and threats to the tribal land base have remained. For example, the federal government’s authorization and construction of dams along the Missouri River resulted in the flooding and loss of hundreds of thousands of acres of tribal land from the Sioux and Fort Berthold reservations.²⁹ These threats are not just stories for history books as the friction between the pressures of a non-Indian society and the rights reserved by tribes in those time-honored, government-to-government bonds persist.³⁰

In light of this continuing paradox, Cross’ scholarship offers fresh and alternative visions for protecting the cultural connection between tribal people and places, for ensuring due compensation for the taking of

22. *Victim or Beneficiary?*, *supra* note 16, at 545.

23. VANDEVELDER, *supra* note 1, at 72.

24. Agreement with Indians at Fort Berthold Agency, Dec. 14, 1886, 26 Stat. 1032 (ratified in 1891).

25. COHEN’S HANDBOOK, *supra* note 19, § 15.01, at 994–95.

26. *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

27. COHEN’S HANDBOOK, *supra* note 19, § 1.04, at 73.

28. 25 U.S.C. § 463 (2012).

29. LAWSON, *supra* note 9, at 40–57.

30. *See, e.g.*, Jenny Schlecht, *1851 Treaty Resonates in DAPL*

Discussion, BISMARCK TRIBUNE (November 10, 2016),

http://bismarcktribune.com/news/state-and-regional/treaty-resonates-in-dapl-discussion/article_e9bd6a47-e14e-507e-bb0a-8ee29eb30c9e.html.

Indian lands, and for tribal governments wrestling with the promise of economic benefit and the perils of natural resource destruction. For example, *Sovereign Bargains, Indian Takings, and the Preservation of Indian Country in the Twenty-First Century* offers a new perspective on how tribes should be compensated by the federal government for the taking of Indian lands, such as those flooded by federal projects along the Missouri River.³¹ Drawing upon his extensive experience representing and advocating for the MHA Nation in the Tribes' decades-long fight to achieve fair compensation for that lost land, *Sovereign Bargains* traces how tribal lands have been treated under the evolving doctrines of federal Indian law. Cross forcefully illustrates the disconnect between the law's foundations, which sought to insulate Indian land from interference, and the more modern conception of the federal plenary power, which largely authorizes the federal taking of Indian land with little regard for tribal interests or due compensation. He argues:

The contemporary survival of Indian societies requires their protection from the ill-advised federal takings of their lands. Indian treaties once recognized a vast "Indian-only" zone in the American West: a geographic area wherein the Indian peoples were free to choose a legal, cultural, and economic system that best suited their members' needs. The federal government pledged to use its regulatory and military capabilities to preserve this Indian Country boundary. . . . The federal government's plenary power over Indian lands threatens to reduce the Indian self-determination policy to rhetorical extravagance. This power threatens those Indian lands that will make possible the hoped-for revitalization of Indian economies and cultures.³²

Drawing from that vein, *Development's Victim or its Beneficiary: The Impact of Oil and Gas Development on the Fort Berthold Indian Reservation* seeks to answer the question of "whether the tribe's distinctive ties to their homelands, as embodied by their unique sovereign and political rights within their reservation, can be adequately protected from development's overweening risks and impacts," particularly in light of the potential for immense economic benefits from such development.³³ True to his career as tribal legal counsel and advocate, Cross presents the

31. *Sovereign Bargains*, *supra* note 16.

32. *Id.* at 505–06.

33. *Victim or Beneficiary?*, *supra* note 16, at 546.

primary legal issues facing the Three Affiliated Tribes and maps a course for the Tribes to follow to meet those “strategic challenges.”³⁴ In doing so, Cross provides a practical guide for implementing theories of economic development, including the prominent nation building model proposed by Stephen Cornell and Joseph P. Kalt.³⁵ As such, though specific to the challenges of development on the Fort Berthold Reservation, this work continues to offer assistance to tribes across Indian Country who face the same paradox between pursuing much-needed economic opportunities and preserving the unique values of their land base.

Thus, though they span a decade, the arguments and proposals set forth in these articles remain vibrant and relevant for those facing the challenges of conflicts over tribal rights to natural resources and land.

III. PARADOX II: TRIBAL SELF-DETERMINATION AND THE FEDERAL TRUST RESPONSIBILITY

Just as the seeds of conflicts over tribal rights to natural resources were planted in the Supreme Court’s earliest Indian law decisions, those cases also laid the foundation for a second paradox at the core of Raymond Cross’ scholarship: the inherent tension between the exercise of tribal self-determination and the federal government’s trust responsibility to Indian tribes.

This tension began with the Supreme Court’s efforts to define the legal status of the Cherokee Nation and determine whether the Cherokee constituted a “foreign state” for purposes of bringing an original action before the Court.³⁶ Unable to agree that the Cherokee were “foreign,” Chief Justice Marshall instead deemed the Nation a “domestic dependent nation” whose relationship to the United States “resembles that of a ward to its guardian.”³⁷ Though not unanimously supported by his fellow justices at the time,³⁸ Marshall’s conceptions of tribal status and the

34. *Id.* at 548–69.

35. *See, e.g.*, Stephen Cornell & Joseph P. Kalt, *Two Approaches to the Development of Native Nations: One Works, the Other Doesn’t*, in *REBUILDING NATIVE NATIONS: STRATEGIES FOR GOVERNANCE AND DEVELOPMENT* (Miriam Jorgensen ed., 2007).

36. *Cherokee Nation v. Georgia*, 30 U.S. 1, 15 (1831).

37. *Id.* at 17.

38. *Id.* at 22 (Johnson, J., concurring) (“I cannot but think that there are strong reasons for doubting the applicability of the epithet *state*, to a people so low in the grade of organized society as our Indian tribes most generally are.”); *Id.* at 32 (Baldwin, J., dissenting) (“My view of the plaintiffs being a sovereign independent nation or foreign state, within the meaning of the constitution, applies to all the tribes with whom the United States have held treaties: for if one is a foreign nation or state,

federal-tribal relationship remain bedrock principles of federal Indian law to the present day.³⁹

In the very next term of the Supreme Court, Chief Justice Marshall recognized further complexity in the status of tribes and their relation to the federal government when confronted with the question of whether the State of Georgia could apply its laws within Cherokee territory. Relying on his views of tribes and their unique relationship with the federal government, as documented in numerous treaties, Marshall confirmed the sovereign status and territorial independence of the Cherokee from Georgia's interference:

The Cherokee nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States.⁴⁰

Marshall's recognition of inherent and distinct tribal sovereignty, particularly in relation to state authority, and his conception of the federal government's "guardian" role to tribes, are the framework upon which federal Indian law has been built.

Although federal Indian policy has often failed to serve the tribes' best interests or protect tribal sovereignty, the modern era of tribal self-determination, ushered in by passage of the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA),⁴¹ is based on a recognition that the federal government has an obligation to "respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as

all others in like condition must be so in their aggregate capacity; and each of their subjects or citizens, aliens, capable of suing in the circuit courts.").

39. *See, e.g.*, *Puerto Rico v. Sanchez-Valle*, 136 S. Ct. 1863, 1872 (2016) ("After the formation of the United States, the tribes became domestic dependent nations." (citations omitted)); *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 192 (2011) (Sotomayor, J., dissenting) ("Since 1831, this Court has recognized the existence of a general trust relationship between the United States and Indian tribes." (citation omitted)).

40. *Worcester v. Georgia*, 31 U.S. 515, 561 (1832).

41. Pub. L. No. 93-638 (Jan. 4, 1975) (codified at 25 U.S.C. §§ 450-450n (2012)).

other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.”⁴² To carry out this obligation, Congress, through the ISDEAA and its subsequent amendments, authorized and encouraged federal agencies to contract with Indian tribes and to transfer the management, oversight, and control of federal Indian programs to tribes. This structure is intended to “support[] and assist[] Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.”⁴³ While straightforward in purpose and laudable in concept, the successful implementation of the self-determination policy has been far more nuanced, particularly when that policy is viewed as antithetical to the federal government’s trust responsibility.⁴⁴

Two of the articles republished here, *Tribes as Rich Nations* and *The Federal Trust Duty in an Age of Indian Self-Determination: An Epitaph for a Dying Doctrine?*, take on the paradox inherent in the self-determination era and the federal trust responsibility. Cross first takes dead aim at the self-determination policy in *Tribes as Rich Nations*, beginning with the powerful claim that “[e]mancipating today’s American Indian peoples requires a fundamental restructuring of the contemporary concept of tribal self-determination.”⁴⁵ By tracing the “life-cycle” of the legal construct of an Indian tribe, from its birth in the opinions of Chief Justice Marshall through its death during the allotment and assimilation eras and its rebirth in the reorganization era of the 1930s, Cross sets the stage for a new conception of tribes and tribal government that rejects the “standard model of tribal self-determination.”⁴⁶ Rather than adhere to that model’s recipe for tribes to take on the administration of “narrowly defined statutory functions” and its attendant drawbacks,⁴⁷ Cross instead calls for a new model of the tribe and tribal self-determination that transcends the legal history of the tribal concept, reconnects tribal governments with tribal cultures and constituencies, and “[re-]sets a place for [tribes] at the

42. 25 U.S.C. § 450a(a) (2012).

43. *Id.* § 450a(b).

44. *See, e.g.*, *U.S. v. Navajo Nation*, 537 U.S. 488, 508 (2003)

(rejecting a claim by the Navajo Nation that the federal government breached its trust responsibility by approving a coal lease offering the Nation less than fair market value in part because the Indian Mineral Leasing Act under which the claim was brought “aims to enhance tribal self-determination” which is “directly at odds with [federal] control over leasing” (citations omitted)).

45. *Tribes as Rich Nations*, *supra* note 17, at 893.

46. *Id.* at 897–923.

47. *Id.* at 929–32.

table of American governance.”⁴⁸ Again drawing on his experience with and the history of the MHA Nation, Cross offers recommendations for how tribes may do so, including the prescription that new constitutional efforts will likely be necessary for the Three Affiliated Tribes to “reclaim their tribal institutions.”⁴⁹

The challenge Cross laid down nearly two decades ago to re-define tribal self-determination remains a vigorous and daily pursuit for tribes across Indian Country. Many tribes have pursued—and struggled with—constitutional reform efforts,⁵⁰ including the Blackfeet Nation of Montana, whose proposal to substantially revise its constitution was submitted to the Bureau of Indian Affairs for review in the fall of 2016.⁵¹ Cross’ notion that such work is necessary to “reclaim tribal institutions” thus remains a prescient idea.

At a broader level, the evolution of the self-determination policy has taken various forms since *Tribes as Rich Nations* was first published in 2000. In the context of criminal jurisdiction, for example, Tribal Law and Order Act of 2010 and the reauthorization of the Violence Against Women Act in 2013 resulted in options for tribes to assume broader sentencing powers and limited authority to try and punish certain non-Indian defendants.⁵² These changes were in part motivated by the recognition that the reach of self-determination policies was limited and, much like Cross’ critique, supported only a narrowly defined expansion of tribal authority.⁵³ And, perhaps consistent with the “standard model of tribal self-determination,” these changes demand tradeoffs, including that tribes adhere to U.S. Constitution standards (and, in one regard, standards in excess of the constitution)⁵⁴ in order to exercise such broader powers and authority.⁵⁵ Therefore, Cross’ critique and questions about the extent

48. *Id.* at 924.

49. *Id.* at 975.

50. *See, e.g., Tribal Executive Branches: A Path to Tribal Constitutional Reform*, 129 HARV. L. REV. 1662 (2016).

51. Franz, *supra* note 5.

52. 25 U.S.C. §§ 1302(a)(7), 1304 (2012).

53. *See, e.g.,* Kevin K. Washburn, *Tribal Self-Determination at the Crossroads*, 38 CONN. L. REV. 777, 786 (2006) (“real self-determination has not been-and cannot be-achieved until tribes can determine for themselves what is right and what is wrong on their own reservations and in human transactions involving their own members.”).

54. *See* Jordan Gross, *VAWA 2013’s Right to Appointed Counsel in Tribal Court Proceedings – A Rising Tide that Lifts all Boats or a Procedural Windfall for Non-Indian Defendants?*, 67 CASE WESTERN RESERVE L. REV. 379 (2016).

55. 25 U.S.C. §§ 1302(c), 1304(d) (2012).

to which tribes can truly exercise self-determination in the current era of federal policy continue to offer relevant inquiry.

Similarly, *An Epitaph for a Dying Doctrine?* lays out a direct challenge to the Supreme Court's 2005 decision in *United States v. Navajo Nation*,⁵⁶ offering instead a helpful construction of the federal government's trust obligations as requiring support for tribal self-determination efforts.⁵⁷ By tracing the intertwined roots of both the trust responsibility and the inherent right of tribes to engage in self-determination, the "Romulus and Remus" of Indian law,⁵⁸ and the subsequent inability of the Supreme Court to properly interpret and protect the federal trust duty, Cross undercuts the basis of the majority's opinion in *Navajo Nation*, which relied, in part, upon the fallacy that tribal self-determination necessarily reduces, if not eliminates, any federal trust obligation to tribes.⁵⁹ Instead, Cross rejects that zero-sum approach and provides a method for ensuring that the federal government's trust obligations demand support for tribal self-determination.⁶⁰

Although the approach Cross suggests has not yet found significant purchase in subsequent Supreme Court jurisprudence,⁶¹ Congress has made clear that it views the federal trust obligation to tribes in a similar manner. The Indian Trust Asset Reform Act, passed in June 2016, reaffirmed "that the responsibility of the United States to Indian tribes includes a duty to promote tribal self-determination regarding governmental authority and economic development."⁶² This reaffirmation of Congressional policy supports Cross' proposed canon of judicial interpretation that Indian statutes should be interpreted to preserve tribal authority, especially the authority to engage in self-determination, unless the statutory language expressly provides otherwise.⁶³ Whether the judicial branch, and in particular the Supreme Court, recognizes this

56. 537 U.S. 488 (2005).

57. *Epitaph for a Dying Doctrine?*, *supra* note 15, at 396 (proposing a new judicial canon of construction that, without express language to the contrary, "would require federal courts to presume that Indian self-determination statutes preserve the historic rights Indians have traditionally enjoyed under the federal trust relationship").

58. *Id.* at n. 24.

59. *See supra* note 44 and accompanying text.

60. *Epitaph for a Dying Doctrine?*, *supra* note 15, at 395–97.

61. *See, e.g.*, *United States v. Jicarilla Apache Nation*, 564 U.S. 162, n. 8 (2011) (describing various eras of federal Indian policy and concluding that "the trust relationship has been altered and administered as an instrument of federal policy" rather than to serve and support tribal self-determination).

62. Pub. L. No. 114-178, 130 Stat. 433 (2016).

63. *Epitaph for a Dying Doctrine?*, *supra* note 15, at 396.

approach remains to be seen; however, Cross' 2003 work provides a convincing roadmap and justification for doing so.

Given the depth of experience, intellect, and ability reflected in Cross' work, it remains of timeless relevance. Readers of this volume will undoubtedly identify issues and analysis posed by Cross' work well beyond the brief context and analysis offered here. And, particularly with regard to the paradoxes of tribal treaty rights to land and natural resources, tribal self-determination, and the federal trust responsibility, scholars, attorneys, and, most importantly, tribal leaders, will continue to benefit from this volume. Indeed, Cross' dedication to serving tribes and their leaders as legal counsel and advisor—the highest calling of a tribal attorney—is reflected throughout these works and his incredible career.

IV. A LEGACY FOR INDIAN LEGAL EDUCATION

The idea for this issue was born from tributes to Raymond Cross offered at the Public Land & Resources Law Review's 2015 Public Lands Conference. These tributes, offered by three of his former students, each of whom has built a successful career in Indian law, spoke to Cross' influence on a generation of lawyers who learned from him the complexities and challenges of working for and on behalf of Indian tribes and their people. His commitment to the continuing improvement and enhancement of legal education is reflected in the final piece of this volume, which calls for the legal academy to commit itself to "community development and empowerment within America's minority communities."⁶⁴ In doing so, Cross argues for a new model of legal education that synthesizes community-based lawyering, as described by Professor Anthony V. Alfieri,⁶⁵ with the "Native American lawyer model," which, following the Supreme Court's decision in *Morton v. Mancari*,⁶⁶ "helped spur the growth of the twin phenomena of Native American diversity and Indian self-determination."⁶⁷ According to Cross, the Native American lawyer model has been quite successful in "re-

64. Raymond Cross, *The Fate of Native American Diversity in America's Law Schools*, 27 J. C.R. & ECON. DEV. 47 (2013) [hereinafter *Native American Diversity*].

65. Anthony V. Alfieri, *Educating Lawyers for Community*, 2012 WIS. L. REV. 115 (2012).

66. 417 U.S. 535 (1974).

67. *Native American Diversity*, *supra* note 64, at 61.

shap[ing] the landscape, not just of Indian Country, but of American legal education as well.”⁶⁸

The same could be said of Raymond Cross who, in his career as an attorney, a teacher, and a scholar of Indian law, remains a model to which each of us should aspire and whose scholarly work has helped shape both the way we think about the law, as well as the law itself.⁶⁹

It is a true honor to introduce and present some of his important work.

68. *Id.* at 55. This proposal, like those more specifically focused on Indian law, continues to resonate, especially in light of recent challenges facing the legal academy. *See, e.g.*, Noam Scheiber, *The Law School Bust*, N.Y. TIMES, June 19, 2016, at BU1.

69. *See* *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 U.S. 139 (1984); *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877 (1986).