



Tribal Data – Confidentiality Issues

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Foundation Doctrines of Federal Indian Law

- Inherent Tribal Sovereignty
- Federal Trust Responsibility
- Reserved Tribal Rights
- Plenary Power of Congress

Canons of Construction – treaties & statutes

Federal Supremacy vis-à-vis States –
enumerated power of the federal government

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Historical Eras of Indian Policy

- Colonial era – till about 1789
- Formative era – till about 1871
- Allotment era – till 1934
- Indian Reorganization era – till 1945
- Termination era – till 1961, or 1968
- Self-Determination era – current

Rise of “judicial plenary power”

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Tribal Governments in Cooperative Environmental Federalism

- Tribes can be treated like states for several statutes:
 - Clean Water Act
 - Clean Air Act
 - Safe Drinking Water Act
 - CERCLA (Superfund)
- Similar provisions in National Historic Preservation Act

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Tribal Concerns about Data

- The “Public” and the Tribal Community
 - The constituencies of tribal governments
- Land Re-acquisition Plans
 - The legacy of the Allotment era

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Tribal Concerns about Data

- Freedom of Information Act disclosures
 - DOI v. Klamath Water Users Protective Ass'n (Supreme Court 2001)
 - Data developed by Tribes for Bureau of Indian Affairs under consultant agreement must be disclosed under FOIA,
 - NOT covered by exemption 5 for intra-agency and inter-agency memoranda
 - There is no exemption based on the federal trust responsibility to the tribes

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Tribal Concerns about Data

- Citizen Suits & Tribal Sovereign Immunity
 - One way in which tribes are different from states – Eleventh Amendment immunity
 - Tribes as owners even when not operators
- Tribal Sacred Places and Traditional Cultural Properties

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